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A BOSTON COLLEGE LAW
PROGRAM BECOMES
THE FIRST AND ONLY
LEGAL ADVOCATE FOR
THE WRONGLY DEPORTED

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BY JERI ZEDER

IN 1999, “Eliza,” a permanent legal resident, was banished from the United States, forbidden ever to return, even to visit her children.

When she was seven years old, Eliza immigrated lawfully to the US with her parents, grew up in Texas, and married a US citizen. In the mid-1990s, during a painful divorce, Eliza became addicted to drugs and stole to support her habit. She wound up with two non-violent criminal convictions and a prison term, where she successfully completed drug treatment. Yet, despite serving her sentence, coming clean, and being a legal resident, Eliza was swept up in a new wave of tough immigration law enforcement and permanently deported to England. There, she started a new life and has remained on the right side of the law. Her children, however, stayed in Texas, with their father and grandparents. They spent summers with Eliza in England, but she could not visit them in the US, mother and children deprived of each others’ attention and company.

This state of affairs went on for nearly ten years, and probably would have continued indefinitely, had not BC Law’s Post-Deportation Human Rights Project (PDHRP) intervened.

Founded in 2005, the PDHRP bills itself as the first and only legal advocacy project in the country to focus on deportees. Its charge is so novel that the legal tools to represent deportees don’t even exist yet: There’s no such thing as post-deportation law. The PDHRP is inventing it.

even if the non-citizen had served his or her sentence and gone on to lead a law-abiding life. Before 1996, you could remain in the US pending appeal of your deportation order; now, you are deported immediately and have thirty days to appeal from abroad—difficult when you have no attorney and don’t know your rights. Before 1996, you could file a motion to reopen your case to reverse a mistake or introduce new evidence; that option is gone. Before 1996, immigration administrative judges could consider mitigating circumstances and the impact of deportation on your family. No longer.

Couple this crackdown with an under-resourced system, and the results are Kafkaesque. Last year, 214 immigration judges decided 350,000 cases. More than one million individuals are deported or ordered to leave the US each year. Many are poor and limited English speakers; most have no lawyers. As many as 31,000 individuals are held at immigration detention facilities on any given night. People can be arrested without a warrant, have no right to an attorney, are detained in remote locations, and have no access to supporting evidence or paperwork. Lacking standard due process safeguards, the system puts even citizens and long-term legal residents at risk. In April 2009, the Associated Press reported documenting more than fifty-five cases of US citizens arrested as illegal immigrants or deportable residents, with immigration lawyers counting hundreds more. According to some estimates, as many as 100,000 people have been wrongly deported from the US. Thousands of them are the breadwinners or primary

THE DAUGHTER OF A DEPORTEE WROTE AN ESSAY FOR SCHOOL TITLED, “MY DAD IS NOT A CRIMINAL.”

But why take such a difficult tack? Why not, say, focus on preventing unlawful deportation in the first place? Because, while BC Law is and continues to be a national leader in representing immigrants facing deportation, the problem is bigger than that. The US deportation system is broken. It’s rounding up hundreds of thousands of socially and economically vulnerable people every year, most of them unrepresented by legal counsel, and expelling them from the country without legal recourse. Simply stated: The PDHRP is necessary.

“Deportation was a relatively small scale operation until fairly recently,” says BC Law Professor Daniel Kanstroom, author of *Deportation Nation: Outsiders in American History* (Harvard University Press 2007), and the immigration scholar and advocate who founded and directs the PDHRP. “Since 1996, though, we have seen a tsunami of deportation because of harsh new laws that, in my view, overreacted to the problem. They removed discretion and mercy and reduced judicial oversight. It has been a radical policy experiment with devastating effects.”

Kanstroom is referring to the Anti-terrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. These laws made it easier to detain non-citizens, eliminated the hardship waivers that once spared the family members of US citizens from deportation, and required the deportation of green card holders for petty crimes that garnered sentences of at least a year. Their effect was retroactive, applying

caretakers in families with elders or children who are US citizens.

While the PDHRP is rooted in the Law School campus, it is a project of the University’s Center for Human Rights and International Justice, where Kanstroom serves as associate director. The center aims to strengthen the field of human rights by bringing together scholars and practitioners from a broad spectrum of disciplines. Consistent with the center’s mission, the PDHRP is an interdisciplinary endeavor. The center’s director, BC theology professor David Hollenbach, SJ, calls Kanstroom a “pioneer” in the field of deportation law. Hollenbach says in a recent email that the PDHRP will “provide a framework for reflection on how the law should develop” through the analysis of how deportation affects individuals and communities. He continues: “My hope is that it will set a model for other work in human rights by the Center for Human Rights and International Justice.”

In conceptualizing the PDHRP, Kanstroom worked with a number of academics and practitioners, particularly professor of community/social psychology M. Brinton Lykes at the BC Lynch School of Education, assistant professor Qingwen Xu at the BC Graduate School of Social Work, and then-PDHRP staff attorney Rachel Rosenbloom. They arrived at three strategies: litigation, policy work, and participatory action research, an approach that combines empirical study with community activism. The idea is that, together, these methods bolster each other and form a powerful springboard for change.



BC Law's Immigration Offerings

Immigration and human rights at BC Law is a varied and rich endeavor, with opportunities for teaching and learning, theory and practice, scholarship and activism, both at home and abroad. The landscape includes:

COURSES

- Immigration and Refugee Law
- Advanced Immigration Law and Business Immigration Law
- International Human Rights Law
- Administrative Law
- International Criminal Tribunals: Theory & Practice
- Immigration Law Guided Research Seminar
- War, War Crimes, and Genocide

CLINIC

- Boston College Immigration and Asylum Clinic. With faculty supervision, students represent indigent non-citizens and asylum seekers.

LAW REVIEWS

- *International and Comparative Law Review*
- *Third World Law Journal*

MOOT COURT

- Jessup International Moot Court competition

CENTERS & PROJECTS

- Boston College Center for Human Rights and International Justice. A multi-disciplinary center housed at the main BC campus, with a major Law School presence and participation by law students and faculty.
- Boston College Law School International Human Rights Program. A comprehensive program in international and comparative law with curricular and co-curricular elements.
- Post-Deportation Human Rights Project. A project of the BC Center for Human Rights, housed at the Law School. A multi-disciplinary project focusing on research and representation for deportees.
- Owen M. Kupferschmid Holocaust/Human Rights Project. A student-led, faculty-advised

project, developing the precedential value of Holocaust-related international law.

- Spring Break Service Trips with Immigration agencies, non-profits, etc.

STUDENT ORGANIZATIONS

- International Justice Project. Focuses on human rights in the Americas, in partnership with the Harvard Human Rights Program.
- International Law Society
- Immigration Law Group

STUDY ABROAD

- London Program human rights externships
- International Criminal Tribunal externships
- BC Immigration & Asylum Project externships
- Law and Justice in the Americas
- Foreign study at BC partner universities abroad

OTHER

- International Scholars Program. Brings visiting scholars from around the world to the Law School for a semester or academic year.

—JZ



Immigration Reality Check

- **12–15 million undocumented non-citizens** live in the US.
- **Some 13 million lawful permanent residents** live in the US.
- **More than 170 million “non-immigrants”** (e.g., tourists, students, etc.) enter the US legally each year.
- **Some 1 million new legal immigrants** arrive each year as permanent residents.
- **More than 34 million individual non-citizens** have been subject to deportation or “voluntary departure” since 1978.
- **Over 1 million people** are deported or ordered to leave the US each year, of which 349,041 were formal deportations ordered by immigration courts in 2008, up from 206,339 in 2006.
- **Over 9 million people** were deported or “voluntarily” departed in administrative actions from 2000–2007.
- **Over 280,000 people** are detained by the

Department of Homeland Security for at least 24 hours, in over 400 facilities, at a cost of \$1.2 billion per year.

- **About half of immigration detainees** have no criminal record.
- **685 immigrants** were arrested in 2004 in non-criminal workplace raids; by 2006, that number had risen to 5,184.
- **New immigrants** are 45 percent less likely to commit violent crimes than are third-generation Americans, but criminal prosecutions for immigration offenses totaled 67,994 in FY 2009 to date, up 14.1 percent from last year, up 139 percent from 5 years ago, and up 459 percent from 10 years ago.
- **Of the 31,075 immigrants in detention** on Sept. 1, 2009, only 1,742—less than 6 percent—had committed violent crimes.
- **Nearly half of unauthorized immigrant households** (47 percent) consist of a couple with children.

- **There are 4 million US-born citizen children** in mixed-status families (with unauthorized immigrant parents), up from 2.7 million in 2003.
- **Hundreds of thousands of deportees** are young people who came to the US as infants and toddlers with refugee parents. They can be deported for simple possession of drugs, driving while intoxicated, petty larceny, and simple assault.
- **US citizens** have been mistakenly detained and deported.
- **Most deportees** lack immigration counsel or have inadequate counsel.
- **Some 80,000 to 100,000 people** have been mistakenly deported, based on best estimates of annual deportations, recent Supreme Court cases, and assuming a 1 percent error rate among actual deportations.

—JZ

Litigation involves direct representation, attorney training, and shepherding test cases through federal court. To increase the pool of attorneys who are prepared to represent deportees, the PDHRP also drafts practical advisories and manuals that are posted on its website.

In test cases before five federal circuit courts, with more in the pipeline, the PDHRP is serving as either counsel of record or in an advisory, pro bono, or amicus role. These cases are aimed at establishing what remedies are available to a person who has been wrongly deported. Circuit splits have already emerged, increasing the chance that the Supreme Court will take up the issue.

One of those splits occurred in the Tenth Circuit in *Rosillo-Puga v. Holder*, a case that's representative of the millions of families that have been broken apart by deportation. A legal immigrant from Mexico, Rosillo-Puga was convicted of battery in 1997 in Indiana. In 2003, now living in Colorado, Rosillo-Puga was charged by the Department of Homeland Security, tried without counsel before an immigration judge, and deported to Mexico. He left behind his wife, Chiara Rosillo, an eleven-year-old son, and a six-year-old daughter, all US citizens. Three months after his deportation, the Seventh Circuit ruled that the crime for which he was convicted was not a deportable offense.

In 2007, the PDHRP and pro bono attorneys from Holland & Knight were on the case. They filed in immigration court for the reopening and reconsideration of the deportation ruling against Rosillo-Puga. The immigration judge denied the request, ruling

challenges give BC Law students an edge. "Regardless of legal specialty, it's important to be a creative lawyer," she says. "Out-of-the-box, creative lawyering is a skill every lawyer must have. These sorts of lawyers have the greatest impact on our society." Sthanki joined the PDHRP in 2009 when Rosenbloom left for an assistant professorship at Northeastern University School of Law. Before that, Sthanki was a staff attorney for South Texas Asylum Representation Project, where she provided legal services to immigrants detained at the Port Isabel Detention Center.

The PDHRP's policy work is aimed at legislative and regulatory reform. With its co-sponsor, the ABA Commission on Immigration, the PDHRP comments on and drafts regulations and legislative proposals, and educates policymakers. In February of 2008, for example, Rosenbloom testified before the House Immigration Subcommittee. Kanstroom has been a keynote speaker and participant in a number of professional and academic conferences. The PDHRP will be hosting its own conference at BC in March called "Deportation, Migration, and Human Rights: Interdisciplinary Theory and Practice." Erzulie Coquillon '09, who is on leave from the New York firm of Shearman & Sterling to work at the PDHRP this year, is helping to organize it. The PDHRP is increasingly called upon for comments in major news outlets, including the *New York Times* and the *Washington Post*. In a *Post* op ed highlighting the injustices of the US detention and deportation system, Rosenbloom poignantly wrote, "Individuals can be deported for shoplifting, jumping subway turnstiles,

THE SITUATION IS KAFKAESQUE. MORE THAN ONE MILLION PEOPLE ARE ORDERED TO LEAVE THE US EACH YEAR.

that federal regulations preclude reconsideration once a person is deported. The Board of Immigration Appeals upheld the decision, as did the Tenth Circuit in September 2009, with one judge submitting a powerful dissent. The lawyers are filing a Petition for En Banc Rehearing.

Meanwhile, Rosillo-Puga's family lost its sole breadwinner. When he was deported, Rosillo-Puga was working full time, earning \$22 an hour. Chiara says that she and her children, now eighteen and thirteen, live on her monthly \$672 disability checks. Her children are angry and miss their father terribly, she says. Her daughter wrote an essay for school titled, "My Dad Is Not a Criminal." Her son, once an excellent student, is scrambling to earn enough credits to graduate this year. "I miss him so much," Chiara says. "I've been with him for half of my life. I feel like part of me is gone."

For the law students involved in these cases, the work is both daunting and exhilarating. "One of the most challenging things is realizing there's not always an answer," says Joy E. Hewitt '11, who has been assigned to the PDHRP through BC Law's Immigration Law Clinic. "You can work on something for weeks and weeks and you're not necessarily going to find an answer."

Dylan Hayre '11, another clinical student, says, "We're developing the law as we're working on it. The importance and the novelty of the work we do comes across early on."

PDHRP supervising attorney Maunica Sthanki believes these

drunken driving, and petty drug crimes. Some of those who have been subject to mandatory deportation came to the United States as infants and have never known life elsewhere."

Along with litigation and policy work, the PDHRP is engaging in participatory action research (PAR) under the guidance of BC social psychology professor Brinton Lykes and social work professor Qingwen Xu. In standard social science research, investigators study their human subjects at arm's length. In PAR, by contrast, the people being studied are active participants in shaping the research and determining how to use the findings. For the PDHRP's purposes, the thinking is that PAR can foster community action and promote an understanding of immigrant communities under siege. PAR can also help law students better understand human rights advocacy. "Lawyers are used to helping individuals," explains Rosenbloom. "The PAR model means looking at it as a collective issue."

In partnership with community organizations Centro Presente in Cambridge, La Organización Maya K'iche in New Bedford, and English for Action in Providence, RI, the PDHRP has been conducting a study called the Detention and Deportation Participatory Research Project; results will be published in the coming year. The study explores the effect on Latino families of the 2007 federal immigration raid at the Bianco Factory in New Bedford, and has looked transnationally at the issue by studying *(continued on page 52)*

under fifteen, and the juvenile court judges can practically name all the girls in Israel who have been arrested this year. However, unlike the US, status offenders (youth defined in Israel as those who cannot be protected by their parents because their behavior poses significant risks to themselves, such as running away) can be treated in locked facilities alongside youth charged with crimes. In fact, the two locked treatment facilities for girls in Israel are populated primarily by what we would define as status offenders. In the US, the Juvenile Justice and Delinquency Prevention Act has prohibited states from confining status offenders in locked facilities with delinquent youth since 1974 under a deinstitutionalization of status offender mandate.

This is where the tension between needs and rights is played out. The girl in Jerusalem Juvenile Court had not been charged with a crime until she set fire to the sofa in her treatment facility, yet she had spent a reasonable amount of time receiving treatment behind locked doors because her behaviors put her at risk and beyond the control of her parents. Now, through her conduct in the facility, she was at risk of sliding into the criminal justice system. But under Israel law, fourteen is too young for criminal treatment and there is no appetite for punishing a girl with her level of demonstrated need. The judge ordered home detention and a more complete evaluation.

Her story, like the stories of so many girls in the US justice system, remains to be continued.

Francine Sherman is an Adjunct Clinical Professor and Director of the Juvenile Rights Advocacy Project at BC Law. She consults nationally to foundations and juvenile justice systems on issues relating to girls in the juvenile justice system.

A Worthy Adversary

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Guatemalan families living in the US and in Guatemala. Law students pair up with social workers and psychologists to interview immigrants and their family members. The interviewees, aware of their legal vulnerability, speak more openly because of the presence of a legal counselor who can protect their rights and advise on their legal situations.

From a lawyer's standpoint, the interdisciplinary approach has already borne fruit. For example, the PDHRP offers "Know Your Rights" presentations through immigrant community organizations. Typically

in these presentations, a lawyer or law student lectures an audience of people with varying levels of formal education and English language proficiency. But, according to the PDHRP social scientists, when information is delivered this way, the audience retains very little. Turns out, role playing and performance are more effective. The PDHRP has adjusted its "Know Your Rights" seminars accordingly.

Lykes and Xu see several lessons here. "For lawyers, a really important dimension is to learn how to provide the best technical skills you can garner, but also deconstruct that system so people can advocate for themselves," says Lykes. "This is an important message if we are committed to redressing social injustice." Xu says, "We can provide information to lawyers to help them understand the impact of deportation on the whole family." Law students learn that social workers and psychologists can be partners in meeting clients' non-legal needs and getting them the mental health and social services they require. Xu also emphasizes that working with social workers and psychologists can help improve law

students' cultural competency.

Cultural competency is one of many lessons that are expected to come out of the PDHRP's investigation into the Guatemalan community. Scarred by thirty-six years of civil war and poverty, the people of Guatemala encounter the US immigration system through a lens of historical trauma. By taking the unusual step of traveling to Guatemala to study how the experiences of detention and deportation affect immigrants' families of origin, the PDHRP hopes to broaden the public conversation about immigration. What are the conditions that make people migrate? How does their history shape their perceptions? How is immigration enforcement affecting the children of immigrants, many of whom are US citizens? How is it affecting the social fabric of the countries the US deports to?

The PDHRP's researchers have learned that the US detention and deportation system has devastating human consequences. The families who participated in the PDHRP study cited poverty and violence in their home countries as the primary reasons for migrating to the US. The expe-

In His Own Words

Professor Dan Kanstroom explains why immigration law is his life's work

I initially went to law school because I wanted to learn how to use state power on behalf of disempowered and marginalized people. I thought I would do labor law because my father was a union organizer, and that seemed like a natural fit.

Before I went to law school, I had been a writer and musician, and I traveled a lot. I performed a lot in Europe, so I had a sort of international feel about things. I remember discovering immigration law more or less by accident and suddenly realizing that it was both tremendously intellectually challenging, but also incredibly compelling because these are people who in many respects have no rights at all that the law recognizes. In that sense, immigration law resonated for me, like the case of Dred Scott: What do you do when there's a human being in front of you and the law says this person has no rights?

I started out as a law student working on asylum cases for Salvadorans and Haitians. I had a connection to Haiti; my uncle was Haitian, and I had Haitian cousins. Once I got into it, I realized that immigration law brought together all of the elements that make for an interesting and satisfying career. If you win

one of these cases, you really feel like you've done something. I have pictures of clients—children—whom I feel wouldn't be here had it not been for the legal work I was able to do. That's tremendously gratifying. It's often also quixotic. The chances of winning these cases are often very small.

And then I found that the history of it was fascinating, that the interaction with the clients was fascinating, and I liked speaking different languages and traveling to different countries. Sometimes, when I was in practice, I would sit in my office and somebody would come in and I'd be speaking German with one guy and then with the next client I'd be speaking Spanish. It was just really enriching and interesting and compelling.

And teaching immigration law is fun. People who like the puzzles of law and the intellectual challenge of it are never bored. It's infinite that way. People who feel they want to do some good in the world—again, there are infinite ways to do that. People who believe in human rights or who are trying to reform the law—they find that in immigration law. People who are internationalists and find it interesting to experience different cultures—they also find that in immigration law. So I think that it has all the pieces that you'd look for, at least for me.

—Interview conducted and edited by Jeri Zeder

rience of migration tore families apart, and the specter of detention and deportation stressed parents and children alike. According to Kalina Brabeck, an assistant professor of counseling, educational leadership, and school psychology at Rhode Island College who served as a PDHRP co-principal investigator, it is not unusual for a family to take on serious debt to finance a family member's travel to the US. If that family member is deported before earning enough money to pay off the debt, an already poor family becomes further impoverished. "What's happening to families here is having an impact on families there," says Brabeck. "Families on the other side of the border suffer enormously."

That suffering is part of why Kanstroom established the PDHRP. "Professor Kanstroom has a humanitarian streak to him that makes him different," says Debra Brown Steinberg '79, who leaned heavily on Kanstroom in her successful quest to gain green card status for sixteen families whose loved ones perished on 9/11. "His commitment is not abstract; it is to the people. That makes him a great human being, not just a great professor and advocate."

One family that has certainly suffered is that of Eliza, whose one stumble in life led the US immigration system to drive a wedge between her and her children. Her case seemed hopeless—until the PDHRP took it on. Through dogged legal research and advocacy, the PDHRP won a rare instance of post-deportation legal relief: a single-entry tourist visa. Now, Eliza can regularly visit her children in the US, where she can meet their friends, see their school, know their teachers, and more fully be part of their lives.

Jeri Zeder is a regular contributor to BC Law Magazine.

Point of View

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rejection letters crash back in. One friend's resume was returned, unopened, with "Return to Sender" stamped on it. One of my rejection letters was somehow mailed to my mother's address; I guess they felt she could soften the blow.

And on top of that, students are getting hostile towards each other. I consider BC Law a very collegial environment, where people are always sharing notes or congratulating each other on various accomplishments. Although that is still mainly the case, OCLs brought out the claws and fangs. My friend happened to be one of

those lucky students who had multiple interviews and callbacks. As he walked by, whispers of "He has another interview—I hate him" escaped otherwise smiling faces. Let's be honest for a moment; we all hated him a little bit, but in a love-hate sort of way. Some people generalized, "I hate all 'suits.' Why are they hogging all of the interviews?" Others envied, "I wish I could be in a suit." Still more envied, but for other reasons, "I want to wear my suit. I spent so much money on it, and it looks sooo good on me." Some were "posers" and wore their suits despite not having any interviews. One of my friends was the single member of the "Pretend not to have an interview, so my friends won't be jealous" group; as soon as she was done with her interview, she rushed into the bathroom and changed back to her casual clothes. One thing was certain, most of us wished we were part of the "science background" group—the students interested in IP dominated the interviews.

Aside from the snarky behavior of the jealous-types, many students have banded together. There is an unspoken rule at social events: Do not mention the three-letter-word "JOB." Doing so will certainly ostracize the speaker and elicit groans and curses from the rest of the group. Those who do have jobs keep mum and often evade the question even if asked directly. And understandably. The "I have a job already" group is very small. Hey, it's lonely at the top.

Along with concerns about this summer, most students are worried about securing jobs after graduation. Will firms be hiring the haggard and beaten 3Ls next fall, or just the doe-eyed members of the Class of 2012? Will the "I have a job" group finally dominate? Will we ever be able to wear our suits?

Just in case, I'm keeping my iron at the ready.

Scholar's Forum

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- The ferment on the Harvard campus during Homans' undergraduate years. In the late 1930s, the administration slowly severed its close ties to Nazi Germany, and the student body moved from isolationism to enthusiastic support for entry into the war to save Britain (Homans enlisted in the Royal Navy six months before Pearl Harbor).

- The stifling political and cultural repression of the "Haunted Fifties," as I. F. Stone dubbed the decade. During this time Homans served as Counsel to the Civil Liberties Union and handled several pivotal cases of the era.

- The efforts of the Nixon and Johnson administrations to use the conspiracy prosecution as the weapon of choice to disrupt and deter the growing anti-Vietnam War movement in the 1960s. Homans was on the defense team in the landmark "Boston Five" prosecution of Dr. Benjamin Spock, the Rev. William Sloane Coffin, and three other leaders of the draft resistance.

- The decades-long struggle to end the death penalty in Massachusetts. The effort finally succeeded with Homans' case of *Comm. v. O'Neal*.

- The evolving role of the criminal defense attorney over the past fifty years.

Homans stands in the line of great lawyers like John Adams, Salmon P. Chase, and Clarence Darrow, who, as Oliver Wendell Holmes Jr. put it, were willing to immerse themselves in the agonies of their times. But the narrative contrasts Homans' storied legal career with a very troubled personal life—including two failed marriages, self-destructive abuse of alcohol and tobacco, and egregious mismanagement of his finances—testifying to both the costs of such immersion as well as the strength of the human spirit when committed to the pursuit of the common good.

I knew Bill Homans slightly while I was in practice and we worked together on some matters, particularly the campaign against the restoration of the death penalty in the 1980s. He left behind little in the way of personal papers or correspondence, presenting a formidable challenge to any biographer of a deceased subject (1997). The written record of his life exists in the court files, briefs, transcripts, and decisions in the hundreds of cases he handled, as well as in newspaper accounts and magazine profiles. I relied extensively on interviews with family, friends, and associates.

At a time when trial lawyers and the larger profession are under attack from several quarters, the nobility of Homans' career stands as a salient reminder of the central role lawyers play in the political and moral progress of our democracy, as deToqueville observed nearly two hundred years ago.

Faculty Profile

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in the woods with his son, accompanied by their dog Murphy, and sometimes by his wife Dana McSherry '04. He and his son have a goal of climbing all the 4,000-foot-plus peaks in New Hampshire by the time Liam goes to college. So far, they're on track, having conquered nine last summer.

—Jane Whitehead