Honoring Excellence
by Judy H. Watts

Through five new named chairs, the School of Law honors five outstanding faculty and pays tribute to six individuals who helped make School history.

Established two years after the Civil War ended, the then-named St. Louis Law School at Washington University had no permanent home, no guaranteed income beyond essential expenses, and no law books in 1867. Today, through the dedication of faculty, administrators, alumni, and friends at every stage of its 133-year history, Washington University School of Law is well on its way to fulfilling its dean’s vision of an intellectual center deeply committed to outstanding scholarship, teaching, and community service.

Central to the School of Law’s continued ascendance are faculty and students of the highest caliber. Endowed professorships are a vital way to attract the very best scholars—professors and students alike—and to retain outstanding faculty.

“At this School, endowed chairs are the psychological equivalent to knighthood,” says Joel Seligman, the School’s 22nd dean and the Ethan A.H. Shepley University Professor. “They recognize outstanding scholarship, sometimes outstanding service, invariably outstanding teaching.”

To honor five of the legal profession’s finest legal scholars and teachers and to pay tribute to six remarkable figures in its history, the School of Law has established five new named chairs.

Ronald M. Levin
Henry Hitchcock Professor of Law
Teaches Administrative Law, Civil Procedure, Legislation

The legal rules that regulate the regulators are Ronald Levin’s province in administrative law. Federal agencies, typically created in crisis or from a sense of social urgency, often develop, administer, and enforce their own regulations. Levin, installed as the Henry Hitchcock Professor of Law on March 29, 2000, examines how these agencies and the courts interact.

and arbitrariness, yet preserve agency flexibility. Much of his effort has involved identifying the legal grounds on which a court can set aside an administrative agency action—research designed to make the standards clear, consistently applied, and resistant to political agendas.

Levin’s most recent scholarship concerns judicial remedies in administrative law. “Recent case law has indicated that a court has a wide range of options available to it when it has judged an agency action to be illegal,” Levin says. He adds that a balance must be struck between “the general desirability of giving people an effective remedy against illegal government activity and the disruption that can occur in the short run if the agency action is set aside.”

Many of Levin’s projects have grown out of his work with the American Bar Association. Active in its Administrative Law Section for more than 20 years, Levin became its chair in July 2000. He is the first faculty member from Washington University School of Law to serve as chair of any ABA section. This involvement with the bar dovetails with Levin’s longstanding interest in legislative measures that would revamp the administrative process. He recently wrote to a Senate committee on behalf of his ABA section, questioning a congressional measure designed to limit the doctrine of preemption. His letter argued that the issue of conflicts between state regulations and federal law is too complex for across-the-board legislative correction.

Levin’s scholarship has also explored methods of streamlining the rulemaking process for administrative agencies. A study that he wrote as a consultant to the government about one such method, “direct find rulemaking,” provided a template that is now used by many federal agencies.

Working in an area that periodically preoccupied the nation, Levin has also conducted research on congressional ethics in what he calls today’s “age of mistrust.” The ABA used this work in proposing guidelines on congressional intervention and advocacy on behalf of constituents. “My work emphasizes that congressional interventions can serve legitimate functions and discourage a too-easy tendency to think of them as scandalous,” Levin says.

His work with government officials, judges, and private practitioners provides him with invaluable material for the courses he teaches. Levin prepares intensively for his classes and selects materials, including those in his own published casebook, that allow the class to move to ever-deeper levels of analysis. “But my students also come away from my courses remembering the jokes, the anecdotes, and the news clips,” he says. “I use them to keep people paying attention and thinking about the material.”

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“In Tribute

Henry Hitchcock
1829–1902

One of four speakers representing the four sections of the Union at the centennial of the organization of the Supreme Court of the United States, 1890
Helped organize the Missouri Bar; elected first president, 1882
Organized the Missouri Civil Service Reform Association; elected president, 1881
Elected president, St. Louis Bar Association, 1880
One of 15 founders of the American Bar Association, established 1878; president, 1889
Helped organize the then-named St. Louis Law School at Washington University; dean, 1867–70 and 1878–81, serving without compensation
Assistant adjutant general (rank of major) of volunteers in the Union Army and judge advocate on General William T. Sherman’s staff; accompanied General Sherman on the “march to the sea” from Atlanta to Savannah; after General Joseph Johnston’s surrender in 1865, attended conference between Generals Sherman and Johnston and carried dispatches announcing the agreement to Washington, D.C.
Board of Directors, Washington University, 1859

Great-grandson of American revolutionary Ethan Allen, grandson of a distinguished United States circuit judge appointed by President John Adams, and son of a respected chief justice of Alabama, Henry Hitchcock had a brilliant career that extended his ancestral tradition. A leading lawyer in St. Louis who would acquire a national reputation as a jurist, Hitchcock worked in 1860 to elect Abraham Lincoln president. An outspoken opponent of slavery, he was a delegate to numerous sessions of the Missouri State Convention between 1861 and 1863, as well as a member of key committees on the militia and on loyalty oaths for state officeholders.

Hitchcock was a gifted speaker and author who delivered papers on American state constitutions, general corporation laws, and constitutional development in the United States. Through all his endeavors, he maintained a flourishing private practice devoted to civil law.
Just three years after President Abraham Lincoln’s assassination in 1865, Lemma Barkeloo and Phoebe Couzins applied to law school. Neither Barkeloo, who came from a distinguished Dutch family in Brooklyn, nor Couzins, who came from a prominent family in St. Louis, had a role model or mentor. But their determination to join the legal profession was as absolute as their sense of entitlement, equality, and confidence in their intellectual gifts. Henry Hitchcock, the founding dean, and the faculty of the law school at Washington University admitted both women for the fall of 1869—making this two-year-old law school one of the first in the country to disregard gender in its admissions process.

After Barkeloo was admitted to the Missouri bar in 1870, she practiced law in the offices of St. Louis attorney Lucien Eaton, making history when she tried a case in court. Her bright career ended the same year when she died of typhoid fever at the age of 30. Grieving colleagues in the St. Louis Bar Association paid their respects in addresses and in resolutions presented to the Criminal Court.

Although Couzins set up a law office downtown after her graduation, she devoted most of her energies throughout her prime to the women’s suffrage movement and spoke eloquently on behalf of women’s rights before the Democratic National Convention on June 27, 1876.
John Owen Haley
Wiley B. Rutledge Professor of Law

Teaches Comparative Law: Europe, Latin America, & East Asia; Contracts; Japanese Law; Transnational Litigation

Legal regulation of assisted reproduction will affect not only the children to be created in the laboratory, but also existing children awaiting adoption.

of professional and community service activities. Included on this list is sitting on the council of the American Law Institute. From 1994 to 2000 she served as adviser to ALI’s Principles of the Law of Family Dissolution. She recently concluded six years of service on the board for the Mary Institute and Saint Louis Country Day School and currently sits on the board of Planned Parenthood of the St. Louis Region.

In addition to serving as associate dean of faculty, Appleton has a long list

"I love to teach," Haley says. "Teaching is just a wonderful way to think through problems. And I think it's important for American lawyers to have some perspective on foreign

John Owen Haley
Wiley B. Rutledge Professor of Law

In Tribute

Wiley Blount Rutledge
1894—1949
Justice, Supreme Court of the United States (1943-49)
Justice, Court of Appeals for the District of Columbia (1939–43)
Washington University School of Law: dean, 1931–35; acting dean, 1930; professor, 1926–30

Kentucky-born and Midwest-bred, Wiley Blount Rutledge was Franklin Delano Roosevelt’s eighth and last appointment to the Supreme Court of the United States. Although Rutledge’s service ended precipitately upon his death six-and-a-half years later, he wrote 171 majority, concurring, and dissenting opinions and constantly championed substantive civil liberties.

It was Rutledge, for example, who delivered the opinion of the Court in Thomas v. Collins, declaring his opposition to restrictions on individual freedom unless those restrictions “be justified by clear public interest, threatened … by clear and present danger.”

Rutledge believed that the law’s chief function, after it had secured individual liberties, was to serve the “never-ending process of accommodating freedom to law and law to freedom,” according to a 1951 Supreme Court resolution in Rutledge’s memory. Humanity’s capacity for accommodation was the source of his faith in principles of federalism, which he considered democracy’s only hope for survival, according to historian Fred L. Israel. And as a former student remembered years later, Rutledge made everyone in his classes understand that the law’s ultimate goal is to produce fairness instead of advantage in its application.
legal systems. So even if I’m teaching a course on contracts, I make it clear how American law has been influenced by foreign law, at the same time making sure students understand recent developments.”

With its ethnically homogeneous population and strongly communitarian society, Japan is as distinctive as it is a pivotal part of an increasingly interdependent world. Haley’s original scholarship on the Japanese legal system has afforded significant insight and opened new avenues of research for the legal community. He has come to understand how legal rules are used and enforced in Japan, and how private law rules are enforced through lawsuits. He has also conducted research on regulatory rules and the role of government, particularly what the Japanese call administrative guidance, and the use of the criminal process as a mechanism for enforcing legal rules.

In the course of his scholarship, Haley saw areas in which the Japanese approach yielded positive results. For example, he cites the Japanese criminal justice system’s reliance on “correction,” which is based on offenders’ willingness to accept responsibility for what they did and to be reintegrated into society. “I believe increasingly that the Japanese system is the degree to which its judiciary has been almost completely free of corruption,” Haley says, “so the comparison of Japan to other countries becomes very important.” Indeed, Haley says he is seeking elements that the American system can borrow that will help resolve urgent issues.

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Owing not least of all to the happy decision to learn German following Harvard Law School, Stanley L. Paulson, a leading scholar of
Continental legal philosophy, found his lifelong field of interest. The door was opened to fellowships and research abroad, international conferences, and publication in German-language journals. Over the years Paulson has worked with colleagues in virtually all the Western European countries, in half a dozen Eastern European countries, in Latin America, and in the Far East. Postdoctoral fellowship support has come from the Rockefeller Foundation, the National Endowment for the Humanities, the Fulbright Commission, the Alexander von Humboldt Foundation (Bonn-Bad Godesberg), the Max Planck Society (Munich), and the Deutsche Forschungsgemeinschaft (Bonn).

Paulson will be installed as the William Gardner Hammond Professor of Law in November 2000. His research has centered primarily on Hans Kelsen (1881–1973), considered by many the preeminent legal philosopher of the 20th century. Kelsen, in his role as a framers of the Austrian Constitution of 1920 (with modifications, today’s Austrian Constitution), was the leading figure in creating the practice of constitutional review in Europe. He was also prominent in public international law, including United Nations law, and he made distinguished contributions to the theory of federalism and to democratic theory.

Paulson earned a doctorate in philosophy at the University of Wisconsin at Madison, and in his first years after law school he focused on public international law, emphasizing its theoretical component. And he has examined at length basic questions about the concept of law as understood in legal positivism and natural law theory, coming to appreciate that Kelsen’s work fits neither of the traditional rubrics. Rather, as Paulson has argued, Kelsen’s is a “transcendental” theory, reflecting the “middle way” of Kant and the fin-de-siècle neo-Kantians.

Paulson’s other research interests include the theory of legal rules, including empowerment, as well as the history of the idea of centralized constitutional review and “monism” in public international law. In a German context, Paulson has examined the legal theory of Georg Jellinek and the legal philosophy of Gustav Radbruch, whose seminal treatise was recently published in a new edition by Paulson and a German colleague.

Writing in English and German, Paulson has published nearly 100 papers to date. He often works with his wife, whom he calls “my great sparring partner and research consultant.” He says that “just as I could not have pursued my greater research program without time abroad, I could not have done any of these things without Bonnie.” The Paulsons’ second book for the Oxford University Press, Normativity and Norms: Critical Perspectives on Kelsenian Themes (1998), contains papers from 27 authors representing 12 countries. Running nearly 700 pages, it has been enthusiastically reviewed in major European and English-language newspapers and journals.

Paulson is writing a treatise on Kelsen’s work from a juridico-philosophical standpoint. “Kelsen approached the law and its problems as one steeped in the Continental legal tradition and in philosophy,” Paulson says. “Kelsen was audacious in his wholesale rejection of both traditional theories of law: natural law and fact-based legal positivism. He offers us an extraordinarily multifaceted picture of the law.”

“When Daniel Keating completed his one-year appointment as the School of Law’s dean in June 1999, he says one of the lessons he learned was that a dean has a difficult time “doing anything but administration.”

Now the School’s associate dean for academic affairs, Keating can again devote more time to his scholarship and teaching. Joel Seligman, the current dean, praised Keating for his skills in all three areas—administration, scholarship, and teaching.

Keating will be installed as the Tyrrell Williams Professor of Law in spring 2001. A man who wears a succession of worthy professional, community, and personal hats, he told one reporter that he has always “relied on efficiency and my ability to do a lot of things quickly, but still thoroughly.”

These traits have been evident from the beginning of Keating’s career. A specialist in bankruptcy law, Keating had not been able to take a course in this field at the University of Chicago Law School. So he simply “learned it
on the job and on the train” when he went to work after graduation in the bankruptcy section at what was then the First National Bank of Chicago.

Since his arrival at Washington University in 1988, Keating has conducted extensive research and provided incalculable service. He has published two casebooks, Sales: A Systems Approach and Commercial Transactions: A Systems Approach (the latter co-authored); a treatise on bankruptcy and employment law; numerous published articles; and teachers’ manuals and faculty resource guides. He has served a total of six years so far in two appointments as associate dean while maintaining a full teaching load.

In his research, Keating first focused on retiree medical benefits and bankruptcy, exploring the problem of retirees who are simply owed the promise of their benefits when companies file bankruptcy. When the United States Congress passed typically cosmetic legislation in the Bankruptcy Code in 1988, Keating wrote one article about it and later developed a second article from his footnote on the related issue of pensions in bankruptcy. He continued to publish on the subject of employees’ rights in bankruptcy for the next five years.

Keating began to research aspects of the Uniform Commercial Code in the early 1990s. While preparing the article “Exploring the Battle of Forms in Action,” which appeared in the August 2000 issue of the Michigan Law Review, Keating did what had never been done in that area: conducted 25 telephone interviews with buyers and sellers who engage in the exchange of paper filled with blanks and boilerplate.

The results of the study were useful, he says, particularly in the absence of much empirical work in sales law.

Next Keating will redo both of his casebooks in light of an imminent revision of Article 2 of the UCC.

In the meantime, Keating continues to conduct the innovative, four-star Reorganization Seminar, team-taught with Lloyd Palans, a partner at Bryan Cave in St. Louis, and with Barry Schermer, JD ’72, a judge of the United States Bankruptcy Court in St. Louis. He still hosts annual potluck dinners at his home for each of his classes, even when 80 students attend. Keating always ensures that his teaching is rigorous without being humiliating. And without fail, he studies published photographs of his students before the first day of classes so they will know that he has learned who each one is, that he cares, and that he is accessible.

Professor of law and Madill Professor of Contracts and Law. Washington University School of Law, 1913–47 Charter member and adviser, American Law Institute

When Tyrrell Williams was appointed to a full-time faculty position at Washington University School of Law in 1913, he was the first—and until fall 1917 remained the only—exception to the tradition of hiring only practitioner-teachers. Williams’ full-time teaching of courses, including Contracts and Civil Procedures, received enthusiastic reviews from his audiences. “Tyrrell Williams was beloved and respected by all of us,” a former student recalled years later in Recollections: School of Law, 1928–1931.