(above) Dean Kent Syverud, right, and Associate Dean Toma Mayer Mersmann, JD ’91, meet with Steven Jackson, director of Washington University’s academic program in Washington, D.C., at the University’s new facilities in the nation’s capital.

(above) Law students, from left: Jera Oliver, Jessica Agarwal, and Sarah Herman discuss their summer placements in Washington, D.C.

(left) Anna Ulrich gained invaluable experience interning with Darrell West, head of Governance Studies at the Brookings Institution.
An Increasing National Impact

Washington University School of Law’s national presence is on the rise. A new academic partnership, a broad and growing network of strong professional relationships, recently launched programs and courses, national leadership, and exceptional scholarship all address the complex issues of justice today—as faculty and students contribute to legal thought, discussion, and practice nationwide.

(above) The law school is benefiting from the University’s new facilities in the Carnegie Endowment for International Peace building in Washington, D.C.

(left) The Brookings Institution–Washington University alliance is enhancing the law school’s opportunities for students in the nation’s capital.
Law School Reaching Out Nationally

YEA R-OLD ACADEMIC ALLIANCE between Washington University and the Brookings Institution—a nonprofit, public-policy think tank that advances independent research in Washington, D.C.—is a striking example of the law school’s expanded national impact. The Brookings affiliation presents remarkable opportunities for the law school to fortify its existing program in the nation’s capital. Joint programs, additional externships, faculty research collaborations and grants, scholar exchange programs, and a speaker series are among the benefits available to the law school and the University.

The law school is lending significant leadership to this endeavor with Kent Syverud, dean and the Ethan A.H. Shepley University Professor, taking on the added role of associate vice chancellor of Washington, D.C., programs. Tomoe Mayer Mersmann, JD ’91, associate dean for strategic initiatives and lecturer in law, also is helping to establish the University’s expanded Washington, D.C., initiatives.

“The new alliance with the Brookings Institution offers the law school an exceptional opportunity to build upon our existing, strong D.C. academic program and to expand our presence in Washington—a city of particularly strong interest to our students, faculty, and alumni,” says Syverud, who also leads the University’s D.C. programs advisory group. “Interdisciplinary and scholarly endeavors with Brookings, and among the Washington University schools and departments, are gaining momentum through this new alliance.”

A direct beneficiary of the University’s commitment to the nation’s capital, the law school’s Congressional & Administrative Law Program in Washington, D.C., has expanded from one semester to year-round offerings. Among the oldest legal externship programs in the country, it currently attracts nearly 10 percent of each third-year class at Washington University. Senior Lecturer Susan Kaplan, who has taught in the program for 14 years, has worked to expand placements to accommodate the dramatic increase in students. Beginning in 2011, second-year law students also will be eligible for placement in the externships on Capitol Hill and in federal agencies. In all, 36 law students will participate in the clinic during the course of the academic year.

“Law students are extremely interested in these placements,” says Mersmann, who is teaching the Congressional & Administrative Law Program this fall. “One of our fall clinic students, Theresa Mohin, is working with the Council on Environmental Quality, which advises the executive branch. Other placements this year are with the State Department, SEC, and HUD, and...
with congressional committee staffs, such as the Senate Judiciary Committee and the Committee on Foreign Relations."

Additionally, Mersmann helped recruit Steven I. Jackson from Cornell University to serve as director for Washington University’s academic program in D.C. (See page 11.) Mersmann, Kaplan, and Jackson are working closely to expand law school offerings and relationships as part of the broader University initiative.

Since the Brookings–Washington University academic affiliation began in July 2009, a dozen student fellows from around the University have already worked at the prominent D.C. think tank. Pooja Kadakia, JD ’09, who worked at the Brookings Institution following graduation, moved on to intern at the White House and then started a full-time position at the general counsel’s office of the Office of Management and Budget. Third-year law student Shannon Dobson, a 2010 summer fellow, worked for several different scholars in foreign policy at Brookings, building on her Dagen-Legomsky Fellowship in summer 2009, when she studied public international law at The Hague in the Netherlands.

"In addition to the academic programs, a variety of companion programs and events will be held in the new space to involve the entire University community, including alumni and friends of the University,” Mersmann says. Washington University also has arranged with the University of California for students to have access to its dormitory rooms nearby, making for convenient living accommodations.

This spring, the law school’s Crimes Against Humanity Initiative held its final conference for the project’s treaty draft in Brookings’ adjacent conference space. The project also was among the first to receive a grant from the new Brookings–Washington University Academic Venture Fund. This fall, the law school held its National Council meeting in the new facilities, focusing much of the meeting on exploring new opportunities for the law school in Washington.

New Washington, D.C., Facilities

**HE UNIVERSITY’S NEW FACILITIES** in the Carnegie Endowment for International Peace building, 1779 Massachusetts Ave., N.W., are a tremendous asset, notes Mersmann. The space is located next door to the Brookings Institution in the historic DuPont Circle neighborhood. Situated on the seventh floor of the Carnegie building, Washington University’s customized 3,900-square-foot space has a 30-person classroom, student workspace, a conference room and private offices, and a spacious outdoor terrace with tables and seating.

**Partnership’s First Faculty Scholar**

**ELISSA A. WATERS,** professor of law and a McDonnell International Scholars Academy Ambassador to Utrecht University, was a Brookings visiting scholar in fall 2009. Waters was pleased to be able to further strengthen her contacts in the State Department, which she had formed in 2000–01, as a senior advisor in the Bureau of Democracy, Human Rights, and Labor.

Waters’ scholarship centers on the role of international law in U.S. constitutional interpretation—the subject of often vociferous debate. The topic reached firestorm proportions, for example, when U.S. Supreme Court Justice Anthony Kennedy wrote the court’s controversial 2005 decision in *Roper v. Simmons*, she notes. The issue, which the justices decided 5-4 in the affirmative, was whether the death penalty when applied to juveniles under age 18 violated the Eighth Amendment’s
prohibition on cruel and unusual punishment. Kennedy relied heavily on domestic law, but also cited relevant international treaties. For months afterward, Justice Antonin Scalia decried Kennedy’s “reliance” on international law in every speech he gave, Waters says.

Waters explains that she sought to become a visiting scholar at Brookings after talking with its president, Nelson “Strobe” Talbott, following “a fantastic speech he gave at the law school.” Waters’ subsequent fellowship contributed to the growing, collaborative relationship between the University and Brookings scholars. Her project involved research for her forthcoming book about international law’s effects on the death penalty and its influence on the related U.S. debate. “During the last 20 to 30 years, we’ve witnessed the abolition of the death penalty worldwide,” she says.

“It’s an incredible transformation, and I’m trying to identify the causes behind it.”

Waters’ scholarship generally encourages international judicial dialogue. She hopes to expand the conversation about not only related domestic law, but also the development of customary international law, such as international human rights law. For example, she notes that U.S. laws on free speech are far more liberal than those in Europe. “If we want our views to become part of customary international law, we can only be influential if our judges are part of the transnational judicial dialogue on these issues,” she says.

Waters enjoyed the vibrancy at Brookings and engaging with other scholars. She calls the experience “invaluable to developing my project.” She is also creating a law course based on her book, which she will recast as a textbook to be widely distributed through Aspen Publishers.

Initiatives that Address Native Peoples’ Rights

Legal Assistance in Hawaii

Three Washington University law students spent summer 2010 in Hawaii—drawn not by beaches and tropical vistas, but by the opportunity to work for the Council for Native Hawaiian Advancement, a nonprofit organization that represents the Native Hawaiian people. Although recognized by the U.S. federal government as a native entity, Native Hawaiians have no federally recognized government. Yet as the students’ supervisor, Adjunct Professor of Law Steven J. Gunn, points out, the vibrant, native culture that visitors find so special is everywhere on the islands. Hawaiian is the official language, and the rich culture and traditions, to which the native people are tied, remain.

Law students worked on the Native Hawaiian Government Reorganization Act, which aims to restore to the indigenous Hawaiian people the sovereignty of the Kingdom of Hawaii. Students will also assist with the reorganization process, drafting organic documents and laws for the Native Hawaiian government. This experience, offered to Washington University students for the first time this past summer, is valuable to the law students as they hone hands-on skills. It also introduces them to comparative law within the United States, Gunn notes.

Legal Assistance in the Dakotas

Since 2004, Gunn’s students also have traveled with him to North and South Dakota to live and work on Indian reservations in those states. Students have assisted tribal governments with legal efforts including litigation, drafting laws, and advising tribal councils on legal and policy matters. The experience is part of the American Indian Law Summer Program, one of the law school’s array of top-ranked clinical, externship, and summer opportunities in which future lawyers acquire skills in a real-world context. The preservation of land and natural resources, as well as economic development, is essential to Indian tribes’ viability, Gunn notes. The success of these efforts depends on strong native governments and the availability of lawyers to protect their legal rights.

Traditionally, law students have worked with the Cheyenne River Sioux Tribe in South Dakota and with the Standing Rock Sioux Tribe in North Dakota. “These are well-established tribal nations,” Gunn explains. “They have strong legal departments, and they are active, staunch defenders of Indian rights. Historically, they have been involved in a number of prominent, successful cases.”

Most students in the American Indian Law Summer Program first take Gunn’s course on American Indian Law, and many ultimately pursue careers in public interest law. Cynthia Wolken, JD ’05, a summer program participant, is one example. She received support for her public interest work as the law school’s first Skadden Fellow and now lives in Montana, where she runs her own consulting firm to help women seeking elected office.
Protecting Rights of Native Americans and Native Hawaiians

Steven Gunn, adjunct professor of law and director of the law school’s American Indian Law Summer Program, is a dedicated advocate for native peoples. As a Skadden Fellow at the Indian Law Resource Center in Washington, D.C., following his graduation from Yale Law School, he represented American Indian tribes in actions to protect their lands, resources, and cultures. He has practiced and taught Native American law ever since. Now through Gunn’s program at Washington University, law students have the opportunity to work on behalf of Native Americans in the Dakotas, as well as for Native Hawaiians in the 50th state.

In work that enhances his teaching, Gunn handles cases in which he defends native peoples’ rights. Recently, he testified before the Senate Indian Affairs Committee’s hearing on the Native Hawaiian Government Reorganization Act; appeared on a live television broadcast in Hawaii with the state attorney general and others to discuss the act; and submitted written comments to the Senate and House committees overseeing the legislation.

Although Missouri is no longer home to any federally recognized tribes, rigorous efforts to learn about and protect tribal cultures, resources, and rights continue at Washington University. The Katherine M. Buder Foundation funds the Buder Center for American Indian Studies at the George Warren Brown School of Social Work, and the Buder Foundation also provides scholarships for native students to attend the law school and the school of social work. Additionally, Gunn directs and teaches an interdisciplinary course, American Indian Societies, Cultures and Values, along with faculty from many disciplines at the University.

Such work demonstrates the law school’s notable national reach—which influences the caliber of the students’ education, the lawyers they become regardless of the field they choose, and indirectly, the quality of the democracy in which they live.
Addressing the Changing World of Corporate Law

HILLARY A. SALE, another professor well known in national legal circles, joined the law school in 2009 as the Walter D. Coles Professor of Law and a professor of management. Most of Sale’s work focuses on public companies, addressing how state law and federal law interact. She uses the keystone term, "corporate governance," in a considerably broader fashion than it has historically denoted. “I refer to the larger world of governance, how it grows and changes, and how the relationships have shifted over time,” she says.

The public companies Sale examines are those for which the national organization DirectWomen educates and trains women for board service. She currently chairs the DirectWomen Institute. Another national task is serving on the ABA’s Commission on Corporate Laws.

In addition to her focus on corporate law, Professor Hillary Sale works with the DirectWomen Institute in New York and is helping place students with the Delaware Supreme Court.

Hillary A. Sale

In addition to her involvement in academic corporate law and professional service, law professor Hillary A. Sale chairs the DirectWomen Institute, a unique organization that she says “identifies outstanding senior women attorneys who have honed business acumen, judgment across the spectrum, and a skill set that would make them valuable members of public company boards.”

Based in New York City, the DirectWomen Institute develops and supports about 20 women each year, who are selected from hundreds of applications drawn from a deep and qualified pool. It then works to help them obtain director positions in companies. The initiative is sponsored by the ABA and Catalyst Inc., a nonprofit organization that works with businesses and professions worldwide on behalf of opportunities for women and business.

The need is clear. Ilene H. Lang, president of Catalyst Inc., has been quoted as saying that at the current rate, 73 years will likely pass before women reach parity with men in Fortune 500 boardrooms. The 2009 Catalyst Census, cited in the online publication The Glass Hammer, showed that for the past five years, only about 15 percent of board directors have been women. Yet more than half of law school graduates are women, and according to Catalyst’s 2008 findings, “companies with the highest representation of women board directors and women corporate officers actually experience more financial success than boards with little to no female representation.”

Sale has been involved in the DirectWomen Institute since its first year, 2007. She has served as a member of its faculty, which includes both women and men—judges, prominent academic experts in corporate governance, and members of corporate boards and leading law firms. “Last year, we had another stunning faculty group—including Lew Coleman, president of DreamWorks, and Anne Mulcahy, former CEO and chair of the board at Xerox Corporation. And that is just to name two,” notes Sale.

Institute participants examine a range of topics such as independence, oversight, compensation, and compliance. Attending the classes are corporate counsel at a broad range of companies, partners from leading law firms, members of academia, and lawyers from associations and other affiliations—proven leaders, all.

Sale is also part of the six-member executive committee that is creating an advisory board to carry DirectWomen forward. The organization gained free-standing 501(c)(3) status during summer 2010 under the umbrella of the Tides Center, a nonprofit, fiscal sponsor. Headquartered in San Francisco, Tides provides infrastructure and services to nonprofit projects nationwide. Because DirectWomen has new graduates each year, the organization also is forming a DirectWomen Alumnae Institute.

The project is a natural tie to Sale’s work at the law school. “I organize the DirectWomen Institute sessions, participate in the panels, and talk with the women about corporate governance, and all of that has an impact in my classroom and on my scholarship interests,” Sale says. “In that sense too, DirectWomen is invaluable.”
The ABA called upon constitutional law scholar Gregory Magarian to lead a team of faculty evaluating Supreme Court Justice Elena Kagan’s writings during the recent nomination process.

**Gregory Magarian**, professor of law, is a renowned legal scholar who focuses primarily on First Amendment free-speech questions. He also engages with national questions of election law and of law and religion, using the First Amendment as a springboard. “I write about theory and doctrine,” he explains, “but what drives me on an underlying theoretical level is the question of why we have constitutional protection of speech. I believe it is substantially about democracy and self-government.”

Although he says the idea is an old one, Magarian is testing it in a contemporary setting in an effort to make it relevant for contemporary free-speech problems. More deeply, “it seems intuitive and desirable to me that free-speech protection should be a vehicle for social change,” he adds. “That links back very directly to the idea of the relationship between free-speech protection and democracy—the notion that democratic process should, at the least, create opportunities for progressive change.”

The two biggest doctrinal areas in which Magarian’s interests lie in the national realm are media regulation and political regulation, because both are important to shaping democracy. He has published widely on such issues and brings a portfolio of ideas and closely reasoned thinking to his law classes. He also educates the public at large, through media interviews and presentations based on his ability to apply his expertise to contemporary issues. “I like the public intellectual model,” he explains. “Some of my scholarship is rather obscure, but most of it is important to people’s lives. I don’t want to lose sight of that.”

A special project Magarian and 13 colleagues completed in June 2010 also had great national significance. The ABA, which provides an evaluation of federal judicial nominees to the U.S. Senate Judiciary Committee, invited Washington University School of Law—one of two law schools nationwide—to form an academic reading group to evaluate the writings of Supreme Court nominee Elena Kagan. Magarian led the team, whom he selected based on their wide range of subject-matter expertise.

The readers were tasked with commenting on Kagan’s professional competence, integrity, and temperament. “To a lesser extent, we described what her writings might indicate about her philosophy or approach, but not in an evaluative way,” he says.

After the committee wrote its memoranda (Magarian wrote one, as well), he drafted an extensive executive summary of the findings. Several hundred pages consisting of the summative memorandum and accompanying memos went to the ABA, where they joined reports from other groups, such as practitioners, to be combined with the association’s internal work on the subject. The result: the ABA’s recommendation of “well qualified” by vote of the Standing Committee on the Federal Judiciary.

In a striking coincidence, Magarian in 1994 clerked for the Supreme Court associate justice whom Kagan was nominated to replace: the Honorable John Paul Stevens.

**Defending the Nation’s Law School Clinics**

**Robert R. Kuehn**, professor of law and co-director of the Interdisciplinary Environmental Clinic, brought vast experience in environmental law and clinical legal education to the law school when he joined its faculty in July 2009. The innovative clinic, co-directed by senior lecturer and founder Maxine Lipeles, exposes law students to advanced, cross-disciplinary ideas and methods about how to effectively serve clients facing environmental harms.
The clinic draws both law students and individuals from other disciplines, such as environmental studies, engineering, social work, and medicine, so that “clients receive not only legal assistance, but also help with some of the scientific and technical issues that arise in environmental representation,” Kuehn says. He notes that clinical work teaches the day-to-day professional skills and professional values expected of all lawyers. His scholarship also centers on professional responsibility, or legal ethics; environmental law; and aspects of clinical legal education.

Kuehn's teaching, scholarship, and advocacy recently joined together when criticizing an increasingly national pattern of judicial and legislative interference in clinical cases. In an article accepted for publication in the *Georgetown Journal of Legal Ethics*, Kuehn examines 40 years of efforts to interfere with law school clinics. It covers how issues arise and the form in which they tend to appear. Kuehn and his co-author, University of Michigan law professor Bridget M. McCormack, surveyed law clinic faculty at the nation's law schools in 2005 and 2008 about the effects of outside interference on professors and students' decisions about which cases to take on and what they may do in representing a client. The surveys found that about 12 percent, or 1 in 8, of law professors had suffered interference in their law clinic casework. A far greater number, more than 36 percent, worried about intrusion, and as a consequence, changed what they did—a finding cited in a *New York Times* article (April 3, 2010) that quoted Kuehn. Of professors who had not been directly confronted, 1 in 6 had actually self-censored their clinic work.

As president of the Clinical Legal Education Association (CLEA), the nation's largest association of law professors from more than 160 law schools in the United States, Kuehn issued a compelling statement in March 2010 about a legislative attack on a University of Maryland law school clinic, made “at the bidding of wealthy, powerful poultry interests.” In May 2010, he sent a letter to the senator chairing the Louisiana Senate Commerce, Consumer Protection, and International Affairs Committee about a senate bill attacking clinical programs at that state's four law schools. In it, CLEA accused the bill's supporters of being "more concerned about protecting favored business from compliance with the law and punishing the state's universities than about higher education and access to justice.”

Kuehn, and Peter Joy, vice dean and co-director of the Criminal Justice Clinic, also recently published an article on clinical interference in the *Journal of Legal Education*. Additionally, Joy participated in fighting Maryland's legislative effort by circulating a letter addressed to the Maryland General Assembly that was signed by nearly 500 law faculty and more than 50 law school deans. Joy and Kuehn observe that the outside interference faced by clinics is similar to that experienced by other lawyers who represent poor or unpopular clients. However, despite this history of frequent interference, very little scholarship on the issue exists outside the work co-authored by Kuehn.

(Left) Clinical students at Washington University handle a full range of cases.
Jackson Named Director of Washington, D.C., Academic Program

As program director, Jackson will teach at least one course each semester, supervise and assist with internship placements for students from throughout the University, and supervise management of the new D.C. facilities, located in the Carnegie Endowment for International Peace building.

Jackson holds a PhD, MPhil, and MA in political science, all from Yale University; an MSc in international relations from London School of Economics; and a bachelor’s degree in international relations from Stanford University. In addition to numerous articles, he is the author of Doing Research Right: A Textbook for the Study of Qualitative and Quantitative Research Design, Analyzing American Government, and Growth with Fairness: A Program to Rebuild the American Economy. His broad teaching experience includes courses on public policy, foreign policy, and research methods.

The search committee for the new program director position was chaired by Syverud, dean of the law school, the Ethan A.H. Shepley University Professor, and associate vice chancellor for Washington, D.C., programs. Other members were Professor Andrew Rehfeld (Political Science) and Dean Jeff Cannon (Olin Business School).

By Rachel Wisdom