

TOURO COLLEGE JACOB D. FUCHSBERG LAW CENTER PRESENTS

CHARLES A. REICH

A COMMEMORATION OF HIS LIFE AND LEGACY



THURSDAY, JANUARY 30 • 9:30AM-4PM

CHARLES A. REICH (1928-2019)

Charles Reich was born in New York City in 1928. His father Carl was a doctor who specialized in hematology. His mother pursued a career in school administration. Charles' younger brother Peter was born in 1931.

At his mother's direction, Charles attended progressive schools in New York City. After high school, Charles attended Oberlin, where he excelled as a liberal arts student. Uncertain about what to do after graduation, he decided to apply to Yale Law School. This decision was made after speaking with Professor Tom Emerson, a family friend and professor at the law school.

Reich was admitted and matriculated in the fall of 1949. Although he often shied away from speaking in class, Reich was an excellent law student. His strong academic performance earned him an early slot on the Yale Law Journal. Later he was elected editor-in-chief of the Yale Law Journal.

During his last year of law school, Reich applied for a clerkship with Justice Hugo Black. He found Black's dissents in a number of civil liberties cases inspiring and enlisted support from Dean Wesley Sturges, Professor Emerson, and Professor David Haber for his application. In his letter of recommendation, Professor Haber noted that "despite an outer appearance of reticence and modesty, [Reich] proves to be an extremely warm and outgoing person, quite sensitive to, and aware of some of the problems of leading a life that has integrity and meaning."

Reich interviewed with Justice Black, and was offered the clerkship. Black was unable to hire Reich immediately after his graduation from law school in 1952, however. Reich worked at Cravath Swaine & Moore in New York for a year.

Reich appreciated his clerkship with Justice Black during the 1953-54 term as the realization of a dream. Black recently had become a widow. Because his children did not want him to live alone, his clerks lived with him at his house in Alexandria, Virginia. Reich's co-clerk that year was David Vann, who later became Mayor of Birmingham.

At the court, Reich and his co-clerk engaged in a year-long discussion with the justice. Much of the education and training from the clerkship came from that ongoing conversation. The most important case on the Supreme Court's docket during the term was *Brown v. Board of Education*, involving a challenge to the constitutionality of segregated public schools, which had been held over from the previous term.

There were a number of other important cases decided during the 1953-54 term. For Reich, the most influential was *Barsky v. Board of Regents*. In Barsky, the Court upheld by a 6-3 vote the suspension of a physician from the practice of medicine because he had been convicted of failing to produce documents in response to a subpoena from the House Un-American Activities Committee even though there had been no showing that he was not a competent doctor or that he had acted improperly towards his patients. Justice Black's dissent in Barsky - which insisted upon broad constitutional protection for an individual's rights against the state - contained the seeds for a set of ideas that Reich later developed in his law review article "The New Property."

In 1954, after his clerkship, Reich returned to private practice, working for Arnold, Fortas & Porter, in early 1955. The firm was small and respected and handled challenging cases, many involving complicated questions of administrative law.

While at Arnold Fortas & Porter, Reich cultivated a friendship with Justice William O. Douglas. At first blush, the pairing seems unlikely. Reich was shy, 30 years junior to Douglas, and had been raised in New York City. Douglas could be gruff, was often solitary (certainly in his work at the Supreme Court), and was an unmistakable Westerner. But they shared a passion for hiking and the outdoors and became friends on long Sunday walks along the Chesapeake and Ohio Canal. Douglas' second wife, Mercedes Eicholz, encouraged the friendship.

Since 1955, Reich had been invited to join the Yale Law School faculty and eventually he made the decision to leave the law firm and become a professor. In making his decision, Reich consulted Douglas, who provided encouragement. In a letter dated January 6, 1958, Douglas wrote: "I think I have been wrong in advising you not to return to Yale to teach. I think that is an attitude of retreat. I think it's time to seize some of the rampsarts."

Reich returned to Yale Law School in 1960. He was assigned to teach constitutional law and administrative law. Both classes dovetailed with his research interests and covered topics familiar from his experience practicing law. Reich also was assigned to teach property - a subject he had not considered since he was a law student. He immersed himself in the rules and legal principles of property and supplemented his work by offering seminars on the management of natural resources and the environment.

After private practice, Reich was delighted with life in the academy. He was temperamentally suited to be a teacher – patient, diligent in his preparation, and intellectually curious and rigorous. Reich quickly became an impressive legal scholar, publishing articles in the leading law reviews. In 1964, Reich received tenure and was promoted to full professor.

Reich's passion for his work during this time is evident in his legal scholarship. His law review articles covered a number of diverse topics. The most well-known of Reich's law review articles from this period was (and continues to be) "The New Property."

In the mid-1960s, Reich began to shift his attention away from the law school. Developments outside the law school – in particular the emerging youth movement, which opposed the Vietnam War and rejected the life and institutions of "the establishment" – engaged his attention at the same time he became disappointed with what he viewed as the limits of traditional legal scholarship in bringing about reform.

Reich began teaching an undergraduate course, "The Individual in America," offered through Yale's American Studies department. Eventually Reich gathered his lectures into a book manuscript, published in 1970 as *The Greening of America*. Lengthy excerpts were first published in *The New Yorker* that year and the book became a best-seller, striking a chord with readers. The book drew an extensive and divided critical response. To everyone's surprise, including his own, Reich became a celebrity author.

The experience turned Reich's life upside down. Although he continued to be a professor at Yale Law School, he also was drawn to San Francisco, where he had lived in 1967 and visited after *The Greening* was published. In 1974, he resigned from Yale Law School and moved to San Francisco, where he lived until the end of his life. In 1976, he wrote *The Sorcerer of Bolinas Reef*, an autobiographical book that he saw as a counterpart of sorts to *The Greening*.

Reich continued to write and teach while living in San Francisco. In 1991, then-Dean Guido Calabresi brought Reich back to Yale Law School as a visiting professor for four years. This teaching experience helped him write another book, *Opposing the System*, published in 1995. Charles wrote a number of short articles in the years that followed. He died on June 15, 2019.

—Rodger D. Citron

This account of Charles Reich's life and work draws on my article, "Charles Reich's Journey from the Yale Law Journal to the New York Times Best-Seller List: The Personal History of the Greening of America," 52 N.Y.L. Sch. L. Rev. 387 (2008).

PROGRAM

9:30 AM

WELCOME

Dean Elena B. Langan

9:45–11:00 AM

FIRST SESSION

Panelists: Professors Koh, Metzger, and Resnik

Moderator: Professor Citron

11:15 AM–12:30 PM

SECOND SESSION

Panelists: Professors Barrett, Kysar, and Tani

Moderator: Professor Seplowitz

12:45–1:40 PM

LUNCH

1:45–3:00 PM

THIRD SESSION

Panelists: Professors Brescia, Citron, and Seo

Moderator: Professor Roig

SPEAKER BIOS

John Q. Barrett

John Q. Barrett is a Professor of Law at St. John's University in New York City, where he teaches Constitutional Law, Criminal Procedure, and Legal History. He also is Elizabeth S. Lenna Fellow and a Board member at the Robert H. Jackson Center in Jamestown, New York. He is a graduate of Georgetown University and Harvard Law School.

Professor Barrett is a renowned teacher, writer, commentator, and lecturer, in the United States and internationally. He is writing a biography of U.S. Supreme Court Justice and Nuremberg prosecutor Robert H. Jackson (1892-1954). It will include the first inside account of Jackson's service following World War II, by appointment of President Truman, as the chief prosecutor of the principal surviving Nazi leaders. Professor Barrett discovered, edited, and published Justice Jackson's now-acclaimed memoir *THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT*, which is both F.D.R. biography and Jackson autobiography. Professor Barrett also is author of numerous articles and chapters, including on Justice Jackson and Nuremberg. Professor Barrett's regular "Jackson List" emails—hundreds are archived at thejacksonlist.com—reach well over 100,000 readers around the world.

Before joining the St. John's faculty, Barrett was Counselor to Inspector General Michael R. Bromwich in the U.S. Department of Justice from 1994-95. From 1988-93, Barrett was Associate Counsel in the Office of Iran-Contra Independent Counsel Lawrence E. Walsh. From 1986-88, Barrett was a law clerk to Judge A. Leon Higginbotham, Jr., of the U.S. Court of Appeals for the Third Circuit.

Ray Brescia

Ray Brescia is the Hon. Harold R. Tyler Chair in Law and Technology and Professor of Law at Albany Law School. Previously he was the Associate Director of the Urban Justice Center in New York City, a staff attorney at New Haven Legal Assistance, and a Skadden Fellow at the Legal Aid Society. He was also clerk to the Hon. Constance Baker Motley, U.S. District Judge for the Southern District of New York. He is a graduate of Fordham University and Yale Law School. His forthcoming book, *The Future of Change: How Technology Shapes Social Revolutions*, will be published in the spring by Cornell University Press.

The Hon. Guido Calabresi

Judge Calabresi was appointed United States Circuit Judge in July, 1994, and entered into duty on September 16, 1994. Prior to his appointment, he was Dean and Sterling Professor at the Yale Law School where he began teaching in 1959 and became a full professor in 1961. He continues to serve as a member of that faculty as Sterling Professor Emeritus and Professorial Lecturer.

Judge Calabresi received his B.S. degree, *summa cum laude*, from Yale College in 1953, a B.A. degree with First Class Honors from Magdalen College, Oxford University, in 1955, an LL.B. degree, *magna cum laude*, in 1958 from Yale Law School, and an M.A. in Politics, Philosophy and Economics from Oxford University in 1959. A Rhodes Scholar and member of Phi Beta Kappa and Order of the Coif, Judge Calabresi served as the Note Editor of the Yale Law Journal, 1957-58, while graduating first in his law school class.

Following graduation, Judge Calabresi clerked for Justice Hugo Black of the United States Supreme Court. He has been awarded more than fifty honorary degrees from universities in the United States and abroad, and is the author of seven books and over a hundred articles on law and related subjects.

Rodger D. Citron

Rodger D. Citron is the Associate Dean for Research and Scholarship and a Professor of Law at Touro College, Jacob D. Fuchsberg Law Center. He is a graduate of Yale College and Yale Law School and, among other things, worked as a trial

attorney at the Department of Justice and was a law clerk to the Hon. Thomas N. O'Neill, Jr. in the United States District Court for the Eastern District of Pennsylvania before becoming a law professor.

Professor Citron's law review articles have been published in a number of law reviews, including the Stanford Journal of Complex Litigation, the South Carolina Law Review, and the Administrative Law Review, and his student note in the Yale Law Journal has been cited by four courts and in more than 30 law review articles. He is a co-author of *A Documentary Companion to Storming the Court* (2009) and his articles also have been published on Slate, Justia, and SCOTUS blog and in *The National Law Journal*, *The Legal Times*, and *The Hartford Courant*.

Harold Hongju Koh

Harold Hongju Koh is Sterling Professor of International Law at Yale Law School, where he has taught since 1985 and served as Dean from 2004-09. A graduate of Harvard, Oxford, and Harvard Law School, before joining the Yale faculty, he clerked for Justice Harry A. Blackmun and Judge Malcolm Richard Wilkey of the DC Circuit before entering private practice, and working as an Attorney-Adviser to the Office of Legal Counsel from 1983-85. He served from 2009-13 as Legal Adviser to the State Department and from 1998-2001 as Assistant Secretary of State for Democracy, Human Rights and Labor. The author or co-author of 8 books and more than 200 articles, he is the recipient of 17 honorary degrees, and more than 30 human rights awards, including awards from Columbia Law School and the American Bar Association for his lifetime achievements in international law. He is an Honorary Fellow of Magdalen College Oxford, and a member of the Council of the American Law Institute, the American Philosophical Society, and the American Academy of Arts and Sciences.

Douglas Kysar

Professor Douglas Kysar is Deputy Dean and Joseph M. Field '55 Professor of Law at Yale Law School. His teaching and research areas include torts, animal law, environmental law, climate change, products liability, and risk regulation. He received his B.A. summa cum laude from Indiana University in 1995 and his J.D. magna cum laude from Harvard Law School in 1998. He has published articles on a wide array of environmental law and tort law topics, and is co-author of two leading casebooks, *The Torts Process* (9th ed. 2017) and *Products Liability: Problems and Process* (8th ed. 2016). In addition to his many articles and chapters, Kysar's monograph, *Regulating from Nowhere: Environmental Law and the Search for Objectivity* (Yale University Press, 2010), seeks to reinvigorate animal and environmental protection and by offering novel theoretical insights on standing and inclusion, cost-benefit analysis, the precautionary principle, and sustainable development.

Elena Langan

Prior to her current position as Dean and Professor of Law at Touro Law, Elena B. Langan served as the Dean of Concordia University School of Law in Boise, Idaho and Interim Dean at Nova Southeastern University's Shepard Broad College of Law in Fort Lauderdale Florida, where she also served as the Associate Dean for Academic Affairs and Director of the first year lawyering skills and values program.

At Concordia University, Dean Langan served as a member of the student success subcommittee of the President's Advisory Council and was responsible for: creating, among other things, the 5th & Front Program, described as a place where law and social justice meet in service to the community; engaging in the strategic design and development of innovative JD and non-JD programs; and enhancing the reputation of the law school.

As Interim Dean at Nova she led the effort to more than double enrollment in online non-JD masters programs, increased opportunities for student experiential learning by expanding clinical offerings and led successful fundraising efforts to support student scholarships and law school programs. She had also served on

numerous task forces and committees including the Bar Pass Task Force, the law library and technology center strategic planning task force, and the professionalism curriculum committee. She also was responsible for curricular and assessment changes consistent with student learning outcomes and bar passage.

Prior to entering academia, Dean Langan practiced law in Maryland and in Florida. Her scholarship focuses on law school pedagogy and law school admissions, as well as family law. A student-centered Dean, Elena Langan has been active in the American Association of Law Schools, the Inns of Court, and state and national bar associations. She is a graduate of Johns Hopkins University and the University of Maryland School of Law.

Gillian Metzger

Gillian Metzger is the Harlan Fiske Stone Professor of Constitutional Law at Columbia Law School. She writes and teaches in the areas of constitutional law, administrative law, and federal courts. Her recent publications include: *The Roberts Court and Administrative Law*, *Supreme Court Review* (forthcoming 2020); *Supreme Court 2016 Term: Foreword—1930s Redux: The Administrative State Under Siege*, 131 *Harv. L. Rev.* 1, (2017); *The Constitutional Duty to Supervise*, 124 *Yale Law Journal* 1836 (2015); and *Agencies, Polarization, and the States*, 115 *Columbia Law Review* 1739 (2015). She is a co-editor of *Gellhorn & Byse's Administrative Law: Cases and Comments*, 12th ed., with Peter L. Strauss, Todd D. Rakoff, David Barron, and Anne Joseph O'Connell), Foundation Press, 2018. Metzger frequently files amicus briefs in major constitutional and administrative law challenges before the Supreme Court and other courts, including *Seila Law v. CFPB* in the 2019 Term. She served as a law clerk to Supreme Court Justice Ruth Bader Ginsburg and Judge Patricia M. Wald of the U.S. Circuit Court of Appeals for the District of Columbia and worked as a staff attorney at the Brennan Center for Justice.

Judith Resnik

Judith Resnik is the Arthur Liman Professor of Law at Yale Law School and the Founding Director of the Liman Center for Public Interest Law. She teaches courses on federalism, procedure, courts, prisons, equality, and citizenship. Her scholarship focuses on the relationship of democratic values to government services such as courts, prisons, and post offices; adjudication in its many forms including the roles of judges, the function of collective redress and class actions, and the impact of mandates to arbitrate; contemporary conflicts over privatization; the relationships of states to citizens and non-citizens; the forms and norms of federalism; and equality and gender. In 2018, Professor Resnik received an Andrew Carnegie Fellowship, a two-year award to enable her to complete research and write a new book, *Impermissible Punishments*, which explores the impact of the 1960s civil rights revolution on the kinds of punishments that governments can impose on people convicted of crimes. In 2018, she was also awarded an honorary doctorate from University College London.

Professor Resnik's other books include *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (with Dennis Curtis, Yale University Press, 2011); *Federal Courts Stories* (co-edited with Vicki C. Jackson, Foundation Press, 2010); and *Migrations and Mobilities: Citizenship, Borders, and Gender* (co-edited with Seyla Benhabib, NYU, 2009). In 2014, Resnik was the co-editor (with Linda Greenhouse) of the *Daedalus* volume, *The Invention of Courts*. Recent book chapters and articles include *The Functions of Publicity and of Privatization in Courts and Their Replacements* (from Jeremy Bentham to #MeToo and Google Spain) (Max Planck Institute, Luxembourg, Nomos, 2019); *Accommodations, Discounts, and Displacement: The Variability of Rights as a Norm of Federalism(s)* (*Jus Politicum*, 2017); *Bordering by Law: The Migration of Law, Crimes, Sovereignty, and the Mail* (*Nomos LVII: Immigration, Emigration, and Migration*, 2017); and *Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights* (*Yale Law Journal*, 2015). Her first article, *Managerial Judges* (*Harvard Law Review*, 1982), helped to frame debates about the changing work of federal judges.

Jorge Roig

Jorge R. Roig is Associate Professor of Law and Director of Neighborhood Programs at the Touro Law Center. Professor Roig did his undergraduate studies at Harvard University, where he concentrated in Economics, with a focus on Microeconomics, Finance, Game Theory, Derivative Pricing and Econometrics. He then obtained his Juris Doctor from the University of California at Berkeley School of Law, where he also received a “Boalt Hall Law & Technology Certificate” for his coursework in Copyrights and Trademarks, Cyberlaw, Entertainment Law, Sports Law and Art Law, and his thesis: “Speaking in Code: The Question of First Amendment Coverage of Computer Source Code.” Before becoming a professor, he served as Judicial Clerk to then Associate Justice, later Chief Justice, Federico Hernández Denton, at the Puerto Rico Supreme Court. He also served as Judicial Clerk to United States District Judge Salvador E. Casellas at the United States District Court for the District of Puerto Rico. Professor Roig then labored in private practice at Fiddler, González & Rodríguez, P.S.C. He also served as Assistant Secretary of Justice, in charge of the Office of Legal Counsel, the Legislative Liaison’s Office, and the Contracts and Law No. 9 Division, of the Puerto Rico Department of Justice. Professor Roig’s primary areas of teaching and research are: Constitutional Law; Internet and Technology Law; Intellectual Property; and Copyright Law.

Sarah Seo

Sarah Seo is Associate Professor of Law at Iowa Law School and a legal historian of criminal law and procedure in the twentieth-century United States. She is the author of *Policing the Open Road: How Cars Transformed American Freedom* (Harvard UP 2019). Her writing has appeared in a range of academic and general-interest publications, including the *Yale Law Journal*, *Law and Social Inquiry*, *The New York Review Daily*, *The Atlantic*, and *Washington Post*. Seo has received numerous grants and fellowships, most recently from the American Philosophical Society and the William Nelson Cromwell Foundation. In 2017, she was honored with the Professor Eric K. Yamamoto Emerging Scholar Award from the Conference of Asian Pacific American Law Faculty and the Dissertation Prize from Law & Society Association.

Seo received her A.B. and Ph.D., both in history, at Princeton University. After earning her law degree at Columbia Law School, she clerked for Judge Denny Chin and Judge Reena Raggi.

Rena Seplowitz

Rena C. Seplowitz is a Professor of Law at Touro College, Jacob D. Fuchsberg Law Center. She received her A.B. *summa cum laude* from Barnard College and her J.D. from Columbia Law School as a Harlan Fiske Stone Scholar. A recipient of the President’s Award for Excellence in Teaching, she teaches Honors Trusts and Estates, Property, Intellectual Property, Copyright and Trademark and is the faculty advisor to the Law Review. Her research and writing focus primarily on spousal rights at death, trusts, and copyright protection for industrial design and applied art. Her articles have been cited in both law reviews and case books. She has served as the associate editor of the ABA Real Property, Probate and Trust Journal and on bar committees on trusts and estates as well as legal education. Prior to joining the Touro faculty, she was in private practice with the firm of Kaye, Scholer.

Karen Tani

Karen Tani is a Professor of Law at the University of California, Berkeley. She is the author of *States of Dependency: Welfare, Rights, and American Governance, 1935-1972* (Cambridge University Press, 2016), which won the Cromwell Book Prize from the American Society for Legal History in 2017. Other published work has appeared in the *Yale Law Journal*, the *Law and History Review*, and *Publius: The Journal of Federalism*, among other venues. Her main research interests are social welfare law, administrative agencies, and rights guarantees. Her current project is a history of disability law in the late twentieth century. She holds a JD and a PhD in History from the University of Pennsylvania. Following her law school graduation, she clerked for the Honorable Guido Calabresi on the U.S. Court of Appeals for the Second Circuit.



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