

A Conversation with Kathleen Sebelius, Architect of the Affordable Care Act



Former HHS Secretary Kathleen Sebelius

GW LAW STUDENTS WERE treated to a privileged conversation with former U.S. Health and Human Services Secretary Kathleen Sebelius on March 2.

Sebelius, a main architect of the Affordable Care Act (ACA), one of the most consequential pieces of legislation in modern U.S. history, told a packed audience at the George Washington University Student Center Amphitheater about the behind-the-scenes strategies employed during the fight for ACA approval. Her presentation was part of the Kahan Health Law Initiative Distinguished Speaker Series, which was moderated by Dean Dayna Bowen Matthew.

President Barack Obama appointed Sebelius to his cabinet in 2009 to accelerate the passage of universal health care during

the emergence of the H1N1 influenza. Sebelius described the ACA as artfully crafted and said it took creative work and careful strategic communication to legally change wording and reallocate resources, ultimately leading to the measure's passage in March 2010.

"It would have never happened without that kind of effort and that kind of mission-driven work, and I think that's going on all over the place where, if you get stopped in front of one door, you figure out another," Sebelius said.

She advised GW Law students that they should always look at regulations and languages in order to exhaust all legal options in working to pass a bill. She also said that she knew the ACA would

GW LAW FIRESIDE CHAT: ARMY GENERAL COUNSEL CARRIE RICCI DISCUSSES DIVERSITY IN THE MILITARY

CARRIE RICCI, LL.M. '05, THE FIRST Black and Latina woman to serve as the Army's General Counsel, discussed diversity in the military with Dean Dayna Bowen Matthew in a fireside chat at GW Law hosted by the National Security, Cybersecurity, and Foreign Relations Law Program and the National Security Law Association.

During the April event, Ricci talked about diversity in the field of national security, the importance of role models, and the need to be persistent in seeking leadership roles.

Following a long career in the military and in public service, Ricci in January was appointed Army General Counsel by President Joe Biden. Seeing a woman serving as a military judge advocate set her on her path.

"It was incredibly important that the judge advocate was a woman," Ricci said. "I saw this person who reminded me of myself doing the job, and I wanted to do that, too."

Before her recent appointment, Ricci worked for the U.S. Department

eventually end up before the Supreme Court. In a landmark 5-4 decision in 2012, the Supreme Court ruled that the individual mandate provision of the ACA was constitutional.

Sebelius also noted that while the ACA faced opposition from members of Congress, it received a more favorable response from local government leaders who saw how it could help reduce their expenditures, such as on drug plans in jails and mental health services.

"What happened was as soon as we crossed that line, we had allies that ceased to be partisan and were much more interested in their constituencies," said Sebelius. "You have to get through the legislative fray in order to plant the flag, but once that flag is planted, you need everybody mobilized around what that means."



Dean Dayna Bowen Matthew and Army General Counsel Carrie Ricci (front row, flanking banner) engaged in a fireside chat in April.

of Agriculture, first as assistant general counsel, then as associate general counsel of marketing, regulatory, and food safety programs. Prior to that, her roles included assistant general counsel in the Office of General Counsel for education activity in the U.S. Department of Defense.

To minorities and other underrepresented groups in national security and the military, Ricci underscored the need for persistence.

“You may have to go after what you want more than once,” she said, adding that it is important to connect with mentors who can act as champions and advisors. “Seek [your champions] out. If someone’s not reaching down to you, reach up.”

Ricci spent more than two decades in the Army before she began her civilian career. She served as assistant general counsel in the Office of the General Counsel, deputy staff judge advocate with Army Intelligence and Security Command, chief of international law for U.S. Central Command, and administrative law attorney in the Office of the Judge Advocate General.

She was also a platoon leader during Operation Desert Shield and Operation Desert Storm.

At the GW Law event, Ricci also talked about the military’s progress in implementing recommendations of the Committee and Department of Defense Independent Review Commission, which undertook an assessment of the work climate at Fort Hood and its impact on soldiers and units. In particular, the five-member commission, which included Ricci, looked at sexual assault and sexual harassment prevention.

Ricci said it is crucial that more women and individuals from diverse backgrounds be involved in work such as that of the Fort Hood commission.

“For me, it’s all about the diversity of views. Everything that is different about human beings can be brought to bear in excellence. You need diversity to achieve excellence,” Ricci said. “It’s not just about race or ethnicity, but about including all humans as they are.”

DEAN MATTHEW KEYNOTES HEALTH LAW SYMPOSIUM

GOOD HEALTH IS A BYPRODUCT of justice, and the health of minority populations is undermined by racial inequality, Dean Dayna Bowen Matthew said in her keynote address at GW Law’s 2022 Health Law Symposium.

Matthew, the Harold H. Greene Professor of Law, told an audience of national health law experts that Black and brown people die sooner than white people with the same ailments, the result of inequities that undermine health. Matthew is recognized as an expert on disparities in health, health care, and the social determinants of health. Her new book, “Just Health: Treating Structural

Racism to Heal America,” was published in February. In brief remarks to introduce the keynote address at the March 18 symposium, Professor Spencer Overton said Matthew’s work on health inequalities has created a roadmap for policymakers to improve the lives of citizens.

Structural racism affects where you eat, where you live, where you work, and where you go to school, Matthew said. It determines how resources, opportunities, and power are allocated. She noted that in the United States, people of color are more likely to live in densely crowded neighborhoods, work at jobs that can’t be done remotely, and, during the COVID-19 pandemic, die at higher rates than whites.

“Law is the mechanism that institutionalizes white superiority,” Matthew said. “Law is the mechanism that can dismantle it.”

GW LAW ROUNDTABLE: FDA-PTO PANELISTS ADDRESS KEY NATIONAL ISSUES

A GW LAW ROUNDTABLE BROUGHT together representatives from the U.S. Food and Drug Administration (FDA) and the Patent and Trademark Office (PTO) for a lively four-hour discussion on the complex relationship between drug patents and the cost and availability of pharmaceutical products.

Twenty expert panelists—including past and present government officials, industry professionals, and academics specializing in patent law and public health—joined more than 200 participants at the Jan. 21 Zoom webinar.

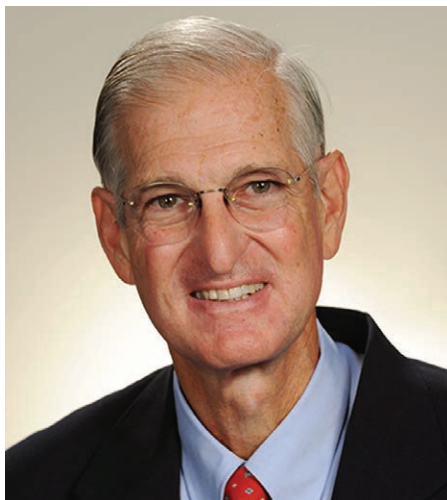
“We were pleased to host this premier roundtable spotlighting timely issues at the intersection of the FDA and the PTO,” said Dean Dayna Bowen Matthew. “GW Law plays a vital role in bringing together preeminent scholars, government officials, and industry leaders for important discussions that help forge solutions to important issues impacting our nation and our world.”

Senior Associate Dean Michael Abramowicz and David Kappos, former director of the PTO and a partner at Cravath, Swaine & Moore, welcomed the panelists. Associate Dean for IP Law John Whealan and Teresa Rea, a partner at Crowell & Moring and former PTO acting director, served as moderators.

The discussion addressed the value and cost of secondary pharmaceutical patents and the interplay between the timing of drug patenting and drug development and approval. Panelists also talked about the Orange Book, the comprehensive publication of FDA-approved drugs and the patents that protect them.

“Programs like this one are a shining example of our law school’s influence and impact both within and outside the legal academy,” Dean Matthew said.

GW Law Scholars Awarded Emeriti Status



Charles B. Craver

THREE GW LAW PROFESSORS WHO retired at the end of the 2021-2022 academic year have been honored with emeriti status. Freda H. Alverson Professor of Law Charles B. Craver, Henry St. George Tucker III Research Professor of Law Lawrence A. Cunningham, and Associate Professor Miriam Galston were given the special status in recognition of their contributions to the legal field and legal education.

Both Craver and Galston have been at GW Law for more than three decades.

Craver is a global expert in labor law, employment discrimination law, and legal and international negotiating. He has written or coauthored more than 16 books, among them “Alternative Dispute Resolution: The Advocate’s Perspective”; “Skills & Values: Alternative Dispute Resolution”; “Legal Negotiating”; and “Employment Law Treatise.”

“During my 36 years at GW I had the pleasure of working with such wonderful and stimulating students. I also was associated with such accomplished and kind colleagues,” says Craver. “My most

memorable external activity was the honor of being a mediator in South Africa in late 1993 when they were ending apartheid and establishing their interim constitution.”

Over the past four decades, Craver has taught negotiation skills to more than 100,000 lawyers and professionals around the world. He is a member of the American Law Institute and the National Academy of Arbitrators. In 2018, he received the ABA Dispute Resolution Section Award for Outstanding Scholarly Work.

Cunningham, meanwhile, is the founding faculty director of GWNYS, GW Law’s semester-long business law program in New York City. He says developing the program was like “creating a dream factory, a program where scores of students have unlocked their professional potential.” He also led the Center for Law, Economics, and Finance (C-LEAF), which developed the Quality Shareholders Initiative.

Cunningham has published 20 books, including the bestsellers “The Essays of Warren Buffett: Lessons for Corporate America”; “The AIG Story”; and “Berkshire Beyond Buffett: The Enduring Value of



Lawrence A. Cunningham



Miriam Galston

Values.” In addition to his research articles, which have appeared in leading legal journals, he wrote “Cunningham’s Quality Investing,” a column featured on financial news and analysis website MarketWatch.

“Joining GW Law in 2007, I felt like a baseball player being called up to the major leagues. It put me in the top flight of law professors, as the faculty has among the deepest benches of leading scholars and teachers across virtually all subject areas,” Cunningham says.

Corporations, state debtor and creditor rights, federal bankruptcy law, state and federal law covering nonprofits, and jurisprudence count among the areas of expertise of Galston, who joined the GW Law faculty in 1990. She is also a noted political philosopher.

“I am proud of several articles I wrote in the area of political advocacy, as well as several in the area of medieval Arabic philosophy,” she says.

Galston’s book on early Islamic philosopher and jurist Alfarabi was translated into Farsi, earning her the Farabi International Award on the Humanities and Islamic Studies, conferred by the government of Iran; UNESCO; and the Islamic World Educational, Scientific, and Cultural Organization.

She served in several faculty leadership positions at the university and, in 2016, received the Trachtenberg Prize for Service. For several years she also co-chaired the Subcommittee on Political and Lobbying Activities of the Exempt Organizations Committee of the Tax Section of the ABA.

GW LAW PROFESSOR BRACEY NAMED PERMANENT PROVOST AT GW



PROFESSOR OF LAW CHRISTOPHER Alan Bracey has been named permanent provost of the George Washington University. As GW's chief academic officer, he is responsible for the strategic and operational leadership of the schools and colleges, their deans, all teaching and research activities, and libraries and other academic support units.

"Chris is an outstanding professor, legal scholar, and academic leader who has served our university with great distinction for many years," President Mark S. Wrighton said in announcing the

appointment on Feb. 18. "It is clear that he understands our university's history, culture and traditions, particularly in his work improving the student experience and collaborating closely with the faculty."

Bracey had served as interim provost and executive vice president for academic affairs since June 2021. He served as GW's vice provost for faculty affairs from 2016 to 2021.

"It is a true privilege to continue to collaborate with so many incredible colleagues as we confront new challenges in higher education and work to achieve our shared aspiration of academic preeminence," Bracey said.

A leading legal expert on U.S. race relations, individual rights and criminal procedure, Bracey joined the GW Law faculty in 2008. He served as GW Law's senior associate dean for academic affairs for four years and as interim dean from June 2019 to August 2020.

He is the author of "Saviors or Sellouts: The Promise and Peril of Black Conservatism, from Booker T. Washington to Condoleezza Rice" and co-author of "The Dred Scott Case: Historical and Contemporary Perspectives."



EMILY HAMMOND JOINS OFFICE OF THE PROVOST

GW LAW PROFESSOR EMILY Hammond is the university's new vice provost for faculty affairs. Hammond, who joined the GW Law faculty in 2014, most recently served as the law school's senior associate dean for academic affairs.

Hammond was on leave for the 2021-22 academic year, serving as deputy general counsel for litigation, regulation and enforcement at the U.S. Department of Energy.

DEAN MATTHEW RECEIVES NATIONAL HEALTH LAW TEACHING AWARD

IN RECOGNITION OF HER excellence in health law scholarship and teaching, Dean Dayna Bowen Matthew was named the 2022 recipient of the prestigious Jay Healey Teaching Award, presented by the American Society of Law, Medicine and Ethics (ASLME).

"Dayna Bowen Matthew is an extremely deserving winner of the Jay Healey Award. She has long been recognized as an outstanding teacher, scholar, researcher, and writer," says Edward J. Hutchinson, ASLME's executive director. "Her scores of admirers and friends in the health law community would agree she stands as an ideal of what the Healey Award was created to honor: the idea that teaching matters, and good teaching can make the world a better place. It was a great honor for everyone at ASLME to award the 2022 Jay Healey Award to Dayna Bowen Matthew."

GW LAW HONORS VANITA GUPTA WITH CHARLES R. RICHEY EQUAL JUSTICE AWARD

GW LAW RECOGNIZED THE LONG civil rights activism of Associate Attorney General of the United States Vanita Gupta by bestowing upon her the 2022 Honorable Charles R. Richey Equal Justice Award.

"Associate Attorney General Gupta symbolizes the kind of career that Judge Richey would have loved: a fierce advocate for civil rights both inside the government and out," Dean Dayna Bowen Matthew said at the April 18 award event. "Ever since she finished law school, equal justice under the law has been her beacon, and we are proud to honor her for her many achievements and those yet to come."

Gupta is the No. 3 ranking official at the U.S. Department of Justice, where she supervises multiple litigating divisions,



including the Civil Division, Civil Rights Division, Antitrust Division, Tax Division, and Environmental and Natural Resources Division.

Shapiro Environmental Law Symposium Addresses Clean Air and Clean Water

CLEAN AIR AND CLEAN WATER TOOK center stage at the 2022 J.B. & Maurice C. Shapiro Environmental Law Symposium: EPA's Regulatory Jurisdiction on Trial. The annual event, hosted by GW Law's Environmental and Energy Law Program, focused on two pending Supreme Court cases concerning the scope of the Environmental Protection Agency's (EPA) authority to regulate under the Clean Air Act and the Clean Water Act.

The annual symposium brings leading professors, scholars, policymakers, and environmental experts to GW to address pressing issues of environmental and energy law. This year's event, which took place on Zoom, featured three scholars who offered a balance of perspectives: Richard Lazarus of Harvard University, Jonathan Adler of Case Western Reserve Law School, and Robin Craig of the USC Gould School of Law.

Professor Robert Glicksman, the J.B. & Maurice C. Shapiro Professor of Environmental Law, and Richard Pierce, the Lyle T. Alverson Professor of Law, led

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– Robert Glicksman

a roundtable discussion on two headline-making Supreme Court cases.

The first case, *West Virginia v. EPA*, focuses on whether, and how, EPA can regulate greenhouse gas emissions that contribute to climate change from coal-fired power plants. “This case also has a broader issue that involves what the scope of federal administrative agency authority is to regulate in ways that address important economic, social, and political questions,” says Glicksman.

The second case, *Sackett v. EPA*, addresses the scope of EPA's authority to restrict discharges of pollutants into surface water bodies and wetlands.

“Both cases are important because of what they will tell us about the capacity of the two statutes involved to provide the health and environmental protections that Congress intended,” says Glicksman. “More broadly, the cases present opportunities for a Supreme Court that has a majority of justices who seem antagonistic to the administrative state to issue rulings that may constrain future efforts by agencies across the federal government to take actions to promote congressional goals and the public interest.”

The rulings in the two cases may also enhance the power of the federal courts to invalidate regulatory actions that infringe on the ability of businesses to operate in ways that create adverse effects for individuals and communities, Glicksman says. The Court is expected to issue a ruling in *West Virginia v. EPA* by June. A ruling in *Sackett v. EPA* is not expected until the fall or winter.

GW LAW ANNOUNCES MAJOR NEW ANIMAL LAW INITIATIVE

GW LAW HAS ENTERED A collaboration with the Animal Legal Defense Fund to develop innovative animal legal education initiatives through scholarship, curriculum, and policy. The Animal Legal Education Initiative (ALEI) seeks to elevate animal law as a stand-alone legal discipline that is fully integrated into legal education.

“ALEI will be a unique endeavor in legal education,” says Dean Dayna Bowen Matthew. “While there are a handful of other animal law programs, there is no

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program focused on the development of a discipline that comprehensively addresses animal law scholarship, curriculum development, and policy.

“ALEI is designed to fill this void, while simultaneously providing opportunities for students to learn and practice animal law,” the dean adds.

ALEI will enable local, regional, national, and international faculty and students to collaborate on the development and integration of a comprehensive body of animal law and increase the capacity for, and rigor of, animal law education.

“The Animal Legal Defense Fund recognizes the continued expansion of animal law requires knowledgeable and skilled attorneys in all facets of law, including civil, criminal, and regulatory law, and in academia,” says Stephen Wells, executive director for the Animal Legal Defense Fund. ALEI, he continues, will be foundational in ensuring that law schools have the resources they need to train animal law attorneys.

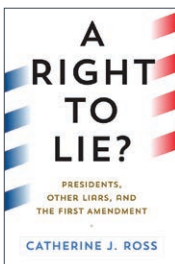
GW Law faculty members are already active in teaching and producing animal law scholarship, and its strong clinical program and centers make it well suited for the anticipated growth of ALEI.



DANIEL J. SOLOVE

Breached! Why Data Security Law Fails and How to Improve It

DIGITAL CONNECTIONS permeate our lives. So do data breaches—and the passage of data security laws has not prevented those breaches from rising at a record pace. In “Breached!”, Daniel J. Solove and Woodrow Hartzog, two of the world’s leading experts on privacy and data security, argue that the laws fail because, ironically, they focus too much on the breaches themselves. Solove, the John Marshall Harlan Research Professor of Law, writes that it is difficult to create rules for securing personal information. This challenge is a troubling concern given how much time people spend online engaged in communication, managing their finances, addressing their health care, and more.

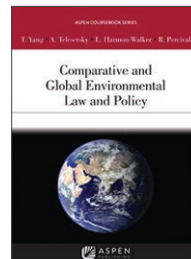


CATHERINE J. ROSS

A Right to Lie? Presidents, Other Liars, and the First Amendment

IS THERE A CONSTITUTIONAL path for stopping a president whose untruths endanger lives and threaten democracy? Legal scholar Catherine J. Ross, the Lyle T. Alverson Professor of Law, tackles that question in “A Right to Lie?” Ross addresses the urgent issue of whether the nation’s highest officials, including the president, have a right to lie under the Speech Clause of the U.S. Constitution regardless of the harm caused. Ross looks at the daunting constitutional

and practical obstacles to reining in public deception. She also shows the incalculable damage that can be caused by mendacity, as evidenced by President Donald Trump’s lies about COVID-19 and the 2020 election.



LIN HARMON-WALKER and co-authors Tseming Yang, Anastasia Telesetsky, and Robert V. Percival

Comparative and Global Environmental Law and Policy

LIN HARMON-WALKER, VISITING associate professor of law and interim director of the Environmental and Energy Law Program, joined other leading legal experts in developing a student-friendly approach to the study of global environmental law. “Comparative and Global Environmental Law and Policy” uses a multi-jurisdictional selection of judicial opinions and legal materials to familiarize students with governing and emerging legal principles in this rapidly evolving area of law. The book details how legal norms are applied to specific issues and provides exercises and discussion questions to reinforce the lessons.

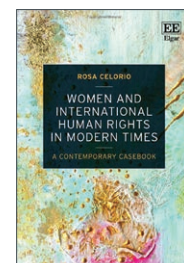


DAYNA BOWEN MATTHEW

Just Health: Treating Structural Racism to Heal America

HEALTH CARE LAW IS AN AREA of expertise for Dean Dayna Bowen Matthew. In “Just Health: Treating Structural Racism to Heal America,”

she explores how medical outcomes are worsened and life expectancies lowered by the deep structural racism in the United States. The dean presents evidence of discrimination in housing, education, employment, and the criminal justice system and then shows how those inequities undermine the health of minority populations. She also explores the unjust health care system and calls upon health care leaders and practitioners to dismantle barriers that are jeopardizing the wellbeing of millions of Americans. The book offers a pathway to ensure that everyone has an equal opportunity to be healthy. Dean Matthew is also the author of the bestselling book “Just Medicine: A Cure for Racial Inequality in American Health Care.”



ROSA CELORIO

Women and International Human Rights in Modern Times: A Contemporary Casebook

WITH THE REPRODUCTIVE rights of U.S. women in the news, this casebook is especially timely. Rosa Celorio, the Burnett Family Distinguished Professorial Lecturer in International and Comparative Law and Policy, offers an overview of global and regional legal standards related to women’s rights and explores their application to contemporary issues, including COVID-19, the #MeToo Movement, climate change, gender identity, and the digital world. In every country of the world, women and girls continue to experience daily violations of their civil, political, economic, social, and cultural rights. This book reflects Celorio’s work as a scholar and her 20 years of experience litigating cases. She has collaborated with several UN agencies and the Human Rights Commission of the Organization of American States to advance women’s rights.