THE UNIVERSITY OF MICHIGAN LAW SCHOOL VOL. 34, NO. 1, FALL, 1989

LAW QUADRANGLE

NOTES

GLOBAL CONNECTIONS

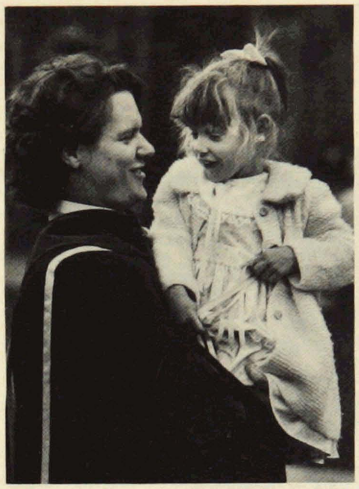
Strengthening ties with Japan and Europe

Reflections on the EEC

Jackson on World Trade

Weiler on Crimes of State

LAW QUADRANGLE



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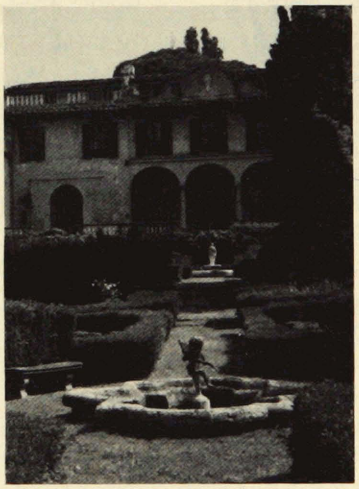

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International perspectives

A message from the dean

Last May, one week after Senior Day, the Law School hosted in Florence, Italy, a reunion for our European alumni. Eight members of the faculty and two members of the staff joined more than one hundred of our European graduates for a weekend that included discussions of 1992 and the Law School's foreign graduate program and a banquet honoring Professor Eric Stein.

In June we held a reception for Tokyo-area alumni at the International House in Tokyo. That event also marked the beginning of a major fund-raising drive in Japan. An alumni committee chaired by Ryuichi Hirano (visiting research scholar '67-'68), the retired president of Tokyo University, and Yoichiro Yamakawa (M.C.L. '69) will direct that development effort.

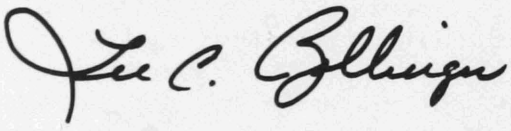
While in Japan, Professor Whit Gray and I met with officers of the Nippon Life Insurance Company, several of whom are Law School alumni. That meeting was in anticipation of the announcement the following month, in Ann Arbor, that Nippon Life would make a $1.2 million gift to the Law School to support Japanese legal studies.

This year we have inaugurated two additional programs in the international area. Professor Bruno Simma, who holds the Chair in International Law at University of Munich and who is now a Professor of Law at the University of Michigan during fall semesters, will be our first DeRoy Visiting Professor. That program permits us to invite distinguished foreign scholars to the Law School for a semester. We also have just established the William W. Bishop Fellowship. Mr. Francis Jacobs, Advocate General to the Court of Justice of the European Communities (and a former Cooley Lecturer), visited the Law School for two weeks as our first Bishop Fellow. Mr. Jacobs visited classes, spoke to the faculty and delivered a public lecture on "Constitutional Developments in the European Community and the Impact of the Single European Market after 1992."

All these events signal the Law School's efforts to expand upon our already distinguished tradition in the fields of international and comparative law. This issue of *Law Quad Notes* displays this glorious side of the School.

I am happy to announce that plans are under way to host, in Ann Arbor, a reunion for all foreign alumni in 1991.

Dean Lee C. Bollinger



Lee C. Bollinger
Dean

Bridging East and West

Nippon Life bestows major gift to strengthen Japanese legal studies at U-M

The Law School has received a $1.2 million gift from the Nippon Life Insurance Company of Japan to support teaching and research in Japanese legal studies. The gift will endow a professorship for the teaching of Japanese law. It also will fund grants to faculty and students who work with the holder of that professorship and provide money for the acquisition of additional Japanese legal texts for the Law Library.

The gift will enable the Law School to continue and enhance its longstanding and "close connection with Japan, which has involved courses in comparative and Japanese legal studies, a library collection of more than 10,000 Japanese legal texts, and a graduate law program that attracts top-notch Japanese legal scholars," noted Dean Lee C. Bollinger. Japanese students have been studying at the Law School almost since it first opened its doors. Two members of the class of 1878 were Japanese; two of the first six recipients of the Master of Laws degree in 1890 came from Japan.

Law School graduate Masatoshi Nishikawa, LL.M. '76, and Yoshinari Deshimaru, executive vice-president, Nippon Life Insurance Company, formally present the company's major gift to Dean Lee C. Bollinger.

Professor Whitmore Gray, who for more than 20 years has been active in the field of Japanese legal studies and has played a major role in building the Law School's reputation in that field, pointed out that the Law School has "a tradition of having Japanese students here, and that American students have become increasingly interested in Japan. Moreover, the U-M is well known in Japan as the place where the first center of Japanese studies was established in the United States."

Each year, six to ten Japanese come to the Law School to study as visiting research scholars or in the Master of Laws program. Over the years, 15 students have come from the Nippon Life Insurance Company. Others have come from trading and manufacturing companies, banks, and government agencies. Many Japanese law professors have also come for degree study or to conduct research.

The Law School offers a wide range of courses in Japanese law. Gray has taught an introductory course on Japanese law, and over the years teachers from Japan have come to the Law School to teach courses on Japanese criminal law, international litigation, and international trade. Last year Koichiro Fujikura, a leading scholar from the University of Tokyo, visited the Law School and taught an introductory course on Japanese law emphasizing environmental issues.

In recent years, Professors Gray, Bollinger, Jessica Litman, Alfred Conard, Theodore St. Antoine, and James J. White have visited Japan and have lectured to university and bar groups.

Michigan's alumni in Japan include members of the Japanese Supreme Court (including a former chief justice), many officials in the Ministry of Justice, and members of the leading law school faculties and law firms in Japan.

The Nippon Life Insurance Company's gift inaugurates a campaign by U-M alumni in Japan to raise funds to support legal studies at Michigan. Funding will be sought to support increased opportunities for U.S. students and faculty to visit Japan. Bollinger and Gray recently met with a committee of alumni in Japan to discuss plans for the fund-raising effort. New funding will make it possible to increase these opportunities for professional contacts. Michigan students have also gone on to do graduate work at Japanese universities, and funding is being sought to support such study.

Yearbook becomes journal

School's international law journal has new name, format

It used to be known as the *Michigan Yearbook of International Legal Studies* — a single, hardbound volume published annually, with articles grouped around a single theme.

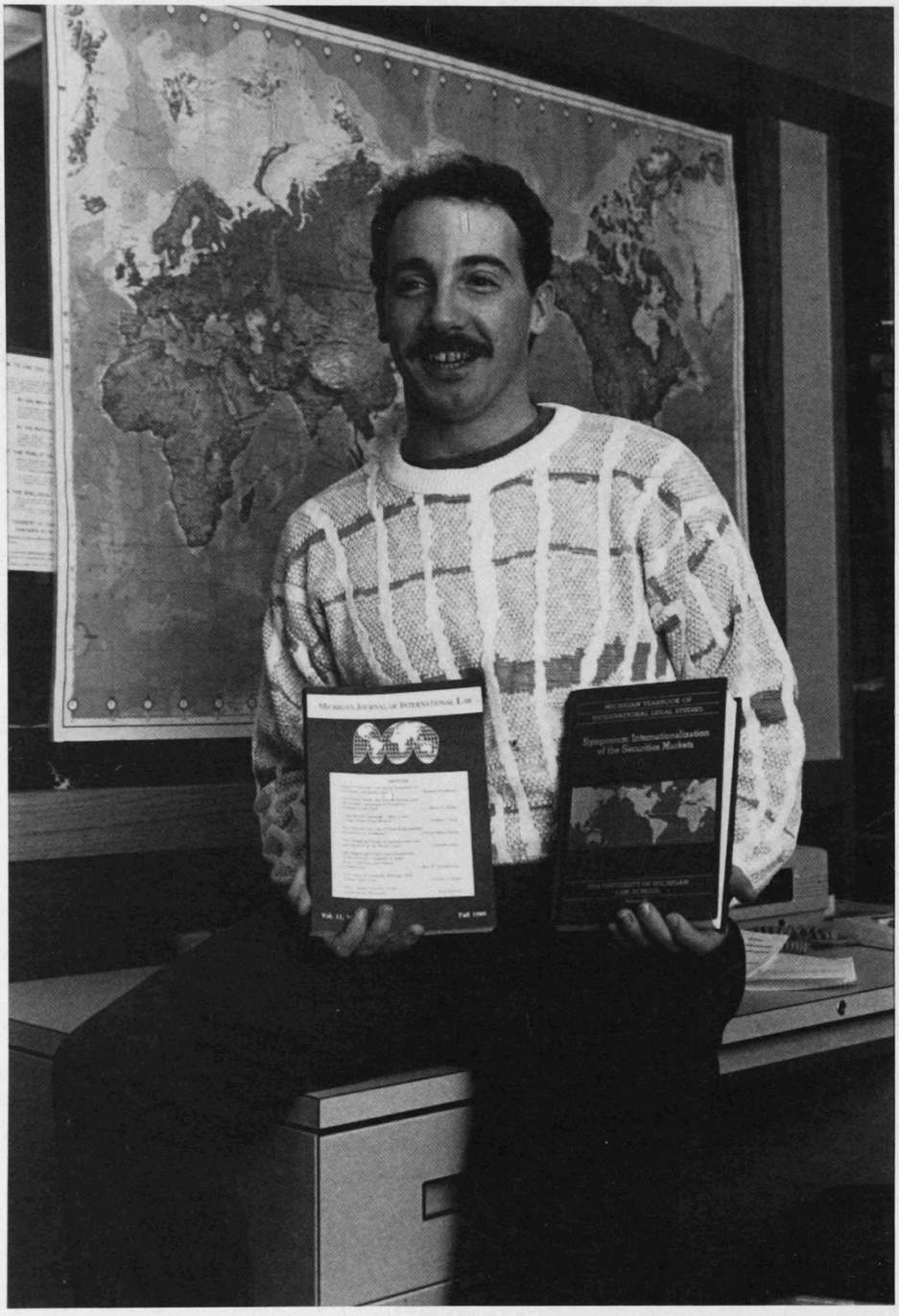
Now, the name has changed and the tempo quickened. With '89-'90, the publication has gone quarterly, under a new title: the *Michigan Journal of International Law.*

"The students and faculty are well pleased with this new launch, and we expect this journal to soon take its place among the three or four best international law journals in the country," said John H. Jackson, the Hessel E. Yntema Professor of Law and adviser to the journal.

The first two issues in the new format are tribute volumes dedicated to the late Professor William W. Bishop Jr., who was affiliated with the Law School for more than 50 years. Bishop was a co-director of International Legal Studies at the Law School, editor in chief of the *American Journal of International Law* for almost a decade, and author of *International Law Cases and Materials,* a widely used textbook on international law.

"Dedicating the first volume of the new format to him was a way of linking Michigan's great past with the new venture," said Thomas A. Brusstar, former journal editor in chief.

Brusstar said the new journal format, which was approved by the Law School faculty last year, will be more flexible, broaden the scope of the publication, and allow for more timely publication of articles.

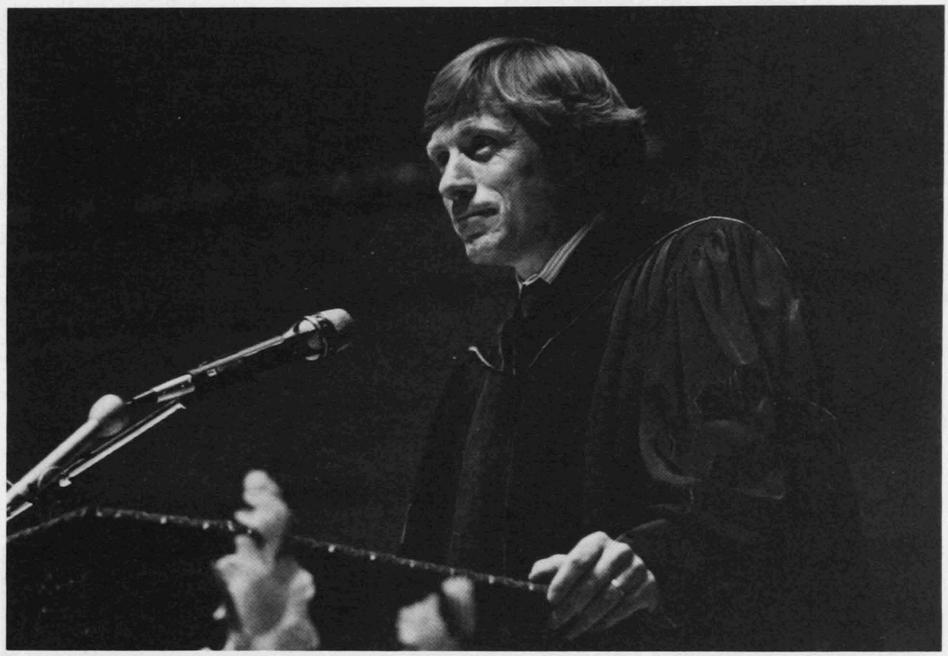


Current editor Andy Horne with copies of the journal then and now.

Breathless before Shakespeare

Bollinger delivers Senior Day remarks

The following piece is an abridged version of the address given by Dean Lee C. Bollinger on Senior Day, May 13, 1989.



Dean Lee C. Bollinger encouraged the graduates to commit themselves to a way of life that incorporates reflection.

We envy you. You are at the beginning of the journey; we are at the middle or near the end. You are, at just this moment, at a special point in time in life, a time when choices seem, and are, unlimited. You have the luck of the fresh start, and with that the glorious feeling of sensed but unknown potential, of intimations of talents and capacities yet to be discovered.

We, on the other hand, have made choices, not all that we can or will make, to be sure, but enough that we seem — and especially so in your presence — to have lost some of that feeling of endless possibilities you have right now. Our chickens are already coming home to roost. Some of them we could foresee when we made our choices, but some we could not — and we know what you may not, which is that you can only hope the good outnumber the bad, and then brace yourself for the bad.

Therefore your dreams are more expansive than ours; you, in an important way, dream better. We could, however, dream better than we do; we let the weight of our choices wear us down, until we are stooped and our horizons unnecessarily shortened. We should learn from you today that our choices, our horizons, are still greater than we might think.

But you can take some things from us, as well. There are comforts that come with choosing and trying. It is a fact that through the experience of making choices, of living life, one generally comes to expand — but also to test — the limits of one's capacities. There is no better way to appreciate the stuff of achievement than to try yourself and fall short. Listen to a passage from Virginia Woolf's diary, which she wrote at the age of 48 and from which I take the title and theme of my remarks to you this afternoon:

> "I read Shakespeare directly I have finished writing. When my mind is agape and red-hot. Then it is astonishing. I never yet knew how amazing his stretch and speed and word coining power is, until I felt it utterly outpace and outrace my own, seeming to start equal and then I see him draw ahead and do things I could not in my wildest tumult and utmost press of mind imagine."

If Virginia Woolf is breathless before Shakespeare (and there are many other great writers who say the same thing), it would seem that we ought to be gasping for breath. But it doesn't seem to work that way. As with eyesight, the farther away from an achievement, the less distinct it seems, the more blurred, and the less meaningful to us. The range of our sensibilities, and hence our enjoyment, is diminished by distance. Therefore, as you grow older, and as you try and come up short, nurture this inclination to enjoy what you aspire to but cannot do. Be careful not to let your ego kill the enjoyment. Learn to be *successfully inadequate,* with enhanced appreciation for and enjoyment of what you cannot do, and with the unstifled will to press ahead with what you can and might — which will always be, by any measure, considerable.

But this will be harder than it seems. The likely circumstances of your lives will conspire to stunt your growth, to block your vision, like the prison-house that Wordsworth saw closing in upon the growing child.

One source of constraints is obvious. You will soon, very soon, sooner than you could ever imagine, confront the busy life. Soon you will purchase, as my

twelve-year-old daughter recently wanted to, a Week-at-a-Glance calendar. At first it will be blank; few will want to see you. You will go home at five; arrive at nine. There will be time for reflection. Then the pages will start to fill. At first you will be pleased; it's nice to be wanted. But within a few months no space will be left; you will learn to dictate, a secretary will place your calls, and you will buy a speaker phone so you can continue to work while talking.

But there is another feature of your lives that will also constrain your intellectual growth, one you may not have yet considered. It is a problem that is perhaps peculiar to law. The problem, in short, is that in law we read too few Shakespeares. No one who graduates from this University this year, whatever the school or department, is better trained at the close reading of texts than you. But there is an important difference in kind between the texts you continually encounter and those read by, say, a graduate student in English. The Ph.D. in English reads Dante, Milton, and Shakespeare; you read McReynolds, Sanford, and Van Devanter.

There are, to be sure, many great minds in the law, whose opinions and writings are worth living with. But the nature of our enterprise necessarily entails spending much time with lesser talents. You should consider this an occupational hazard. Unless you are careful, and find ways to counter this feature of your lives, you may suffer serious consequences: In particular, you will too often feel too superior, and your aspirations will be dulled because your image of what's possible will become misshapen.

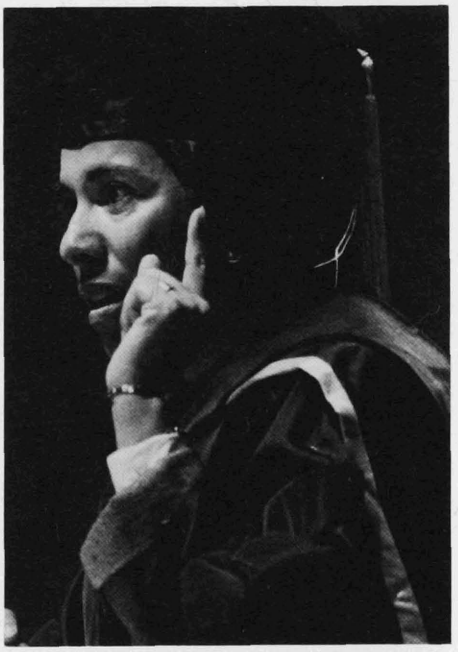
And so I say to you that in order to become and to stay breathless before achievement, you must do what you can to counter the crush of busyness and to avoid (and now I draw a phrase from a poem by Wallace Stevens) the "malady of the quotidian." You must commit yourself to a way of life that incorporates reflection into the life of action you are about to undertake.

I have a few modest suggestions.

One, from what I have said, is obvious, and that is to keep in contact, daily contact, with the works of individuals of great accomplishment. Read a poem of Coleridge every day.

But you must also develop the ability to draw knowledge from your own experiences in life. You must force yourself to think, whatever you are doing, what does this teach me about life? I warn you that unless you do this your life will become drudgery, a succession of tasks; your experience will be one of monotony. Accumulate ideas at least as fast as you accumulate money.

Keep a journal to record your thoughts and ideas. The act of writing, the act of



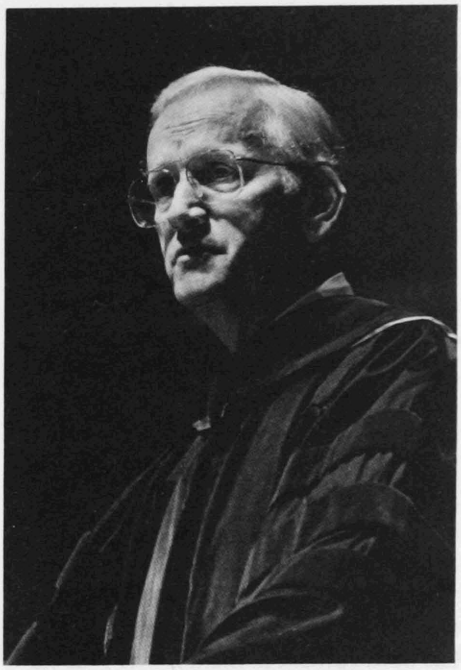
Antonia Hernandez, above, president and general counsel of the Mexican-American Legal Defense and Education Fund, introduced FBI Director William Sessions, and then urged the FBI to end discrimination in its hiring practices.

articulation, is the process by which we take possession of our thoughts. Unless you write it down, an idea will fly away. Language is our net for capturing and domesticating wild thoughts.

Demand for yourself regular opportunities for reflection. The pressures on you to act reflexively will be enormous. The world is not made for reflection. It is seen as lazy, self-indulgent, inefficient. Why this is so I don't exactly know. Perhaps it is jealousy, for most people certainly are not reflective, and yet, knowing they should be, begrudge those who are. So make sure you give yourself frequent rests and the chance to let your mind reflect, and to dream as it does now, which it will do quite naturally on its own, and with better results the more practiced it becomes. I urge you, therefore, to be prepared to be, if necessary — though I know this will be hard for you — mildly irresponsible.

Think about the importance of motion to good thinking. Take a walk every day. Not because it's good for your health, but because it's good for your ideas. Consider the possibility that movement gives you access to parts of your mind that are otherwise inaccessible. Keep in mind the image of Adam Smith, who, while working on *The Wealth of Nations,* which he did for 17 years, reported that he came to his ideas during his regular walks, which would frequently last for hours on end and which sometimes ended with the surprising realization that he had no idea where he was or how to return home, so absorbed had he become in his thoughts.

I am asking you to consider the interplay, the relationship, between three things: our sense and appreciation of what has been achieved by humanity, our aspirations for ourselves personally, and, finally, our understanding of our own abilities. They are important determinants



FBI Director William Sessions was the guest speaker at Senior Day.

Student Senate President Danielle Carr, above, represented the seniors in her address.

in the quality of our lives. I am asking you to worry, along with me, about the problem of lowered aspirations. And the remedy I propose is that we insist on continual or frequent contact with greatness, while simultaneously testing ourselves.

This, too, is complex, however, and I must enter a caveat about what I have thus far said. While it is important that we keep our aspirations high, we must be careful that they don't get *too* high. If the gap between what we think we *should* achieve and what we think we *can* achieve becomes too great, then our will to act is intimidated. The result is lethargy and procrastination and sloth.

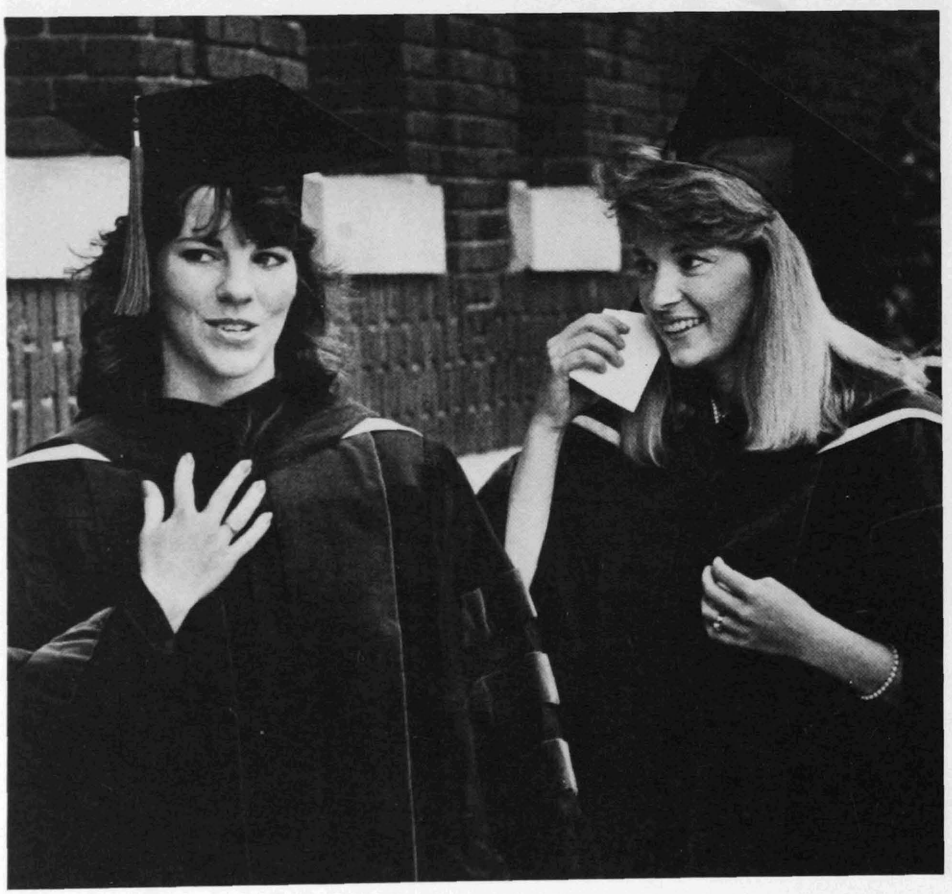
We have noted this tendency in many of you. But let us be clear about exactly what kind of lethargy, procrastination, and sloth I mean. Over the years, sloth has been defined in many ways. Francis Bacon once wrote an essay entitled "Of Studies," in which he said that "To spend too much time in studies, is sloth." I think it fair to say we will never accuse you of being slothful in that way.

Now, if we have trained you well, and provided you with that wondrous capacity to make any argument for any side, to make even a sow's ear of an argument into a credible silk purse — that capacity that I would bet anything has been the bane of the existence of your spouses and friends, as you no doubt have practiced it on them — if we, then, have trained you well and instilled this capacity, then you will surely say, insofar as you have been slothful, it is because you have been incapacitated by having *excessive aspirations,* and that *we — your parents and your faculty* — are ultimately responsible for your condition. We, the theory would go, have been too hard on you.

Well, if that is so, let us all take this opportunity to offer our sincere and heartfelt apologies and to ask your forgiveness.

So here's my argument in, say, a "nutshell" — a word I suspect has been part of your recent vocabulary:

I urge you to continue to develop your intellectual capacities, and to do that, you need to keep your aspirations high. But there will be many pressures against that (the busy life, the contact with the quotidian, trying and failing, and chickens coming home to roost). To keep your aspirations high you must stay in frequent contact with greatness, always trying to figure out what is the great in greatness. Be careful, however, not to let yourself be intimidated by it, or to let your aspirations get too far out of reach — that's where sloth comes in. And if you do all this, and do it successfully, you will not only scale high on the mountain of accomplishment, but you will also have a closer look at the summit — and share in Virginia Woolf's astonishment.



Once upon a time . . .

Law Review sponsors legal storytelling symposium

Steven Winter of Miami, right, makes a point during the symposium's final session, which took place in the faculty room.

Visiting scholars and members of the Law School faculty last spring joined the editors of the *Michigan Law Review* for a weekend of editing workshops as part of the *Review's* Legal Storytelling Symposium. The symposium, sponsored jointly by the Law School and the *Review,* focused on the uses of narrative in legal discourse. Contributors to the symposium were invited to Ann Arbor to present papers and to receive critical commentary from *Review* editors, Michigan faculty, and other contributors. The symposium papers were published as a group in the August 1989 issue of the *Michigan Law Review.*

The theme of the symposium, legal storytelling, was suggested to the editorial board of the *Review* by University of Wisconsin Professors Patricia Williams and Richard Delgado. In inviting the *Review* to sponsor the symposium, Williams and Delgado noted that issues relating to narrative had become increasingly prominent in legal literature and suggested that the time had come for a more focused discussion of the concrete uses of narrative in various legal settings.

The response to the *Review's* solicitations was enthusiastic. Although the deadline for submissions was unusually tight, more than two dozen scholars proposed paper topics or submitted drafts for consideration. From those, *Review* editors selected ten papers for publication; eight of the authors attended the series of editing workshops that took place the weekend of March 31 and April 1.

Those workshops proved to be a highly unusual experience for many of the authors, who are accustomed to the more solitary and less practical exercises generally employed by academics. Rather than the standard format where authors present their papers to an audience unfamiliar with their arguments and receive commentary in return, the *Review,* with the assistance of Professors Kim Scheppele of the Law School and Eric Rabkin of the English Department, organized small groups of readers to critique each piece. Each group included a contributor to the symposium, a Michigan faculty member, and a student editor. In addition to Professor Scheppele, Law School faculty members participating in the workshops as readers included Alex Aleinikoff, David Carlson, David Chambers, Richard Pildes, Frederick Schauer, and Kent Syverud.

Because readers received papers before the symposium, they had time to familiarize themselves with the authors' particular arguments, as well as with the overall themes emerging from the group of papers. Upon arriving in Ann Arbor on Friday, authors met with their small groups to comment upon, edit, and revise the drafts they had read. The authors also met as a group on Saturday morning to discuss the themes common to their papers before presenting the papers to an audience of Michigan faculty and students.

Presenters included Milner Ball of Georgia, Derrick Bell of Harvard, Clark Cunningham of Michigan, Richard Delgado of Wisconsin, Toni Massaro of Florida, Mari Matsuda of Hawaii, and Steven Winter of Miami. Patricia Williams of Wisconsin and Joseph Singer of Boston could not attend, but their papers were included in the symposium issue.

The topics covered by the contributors ranged from analyses of storytelling in particular arenas, such as the classroom or courtroom, to the uses of storytelling in particular circumstances, such as sanctioning racist speech or challenging racial discrimination. The authors employed both standard modes of textual analysis and more novel techniques (for example, creating their own original narratives) to illuminate their arguments.

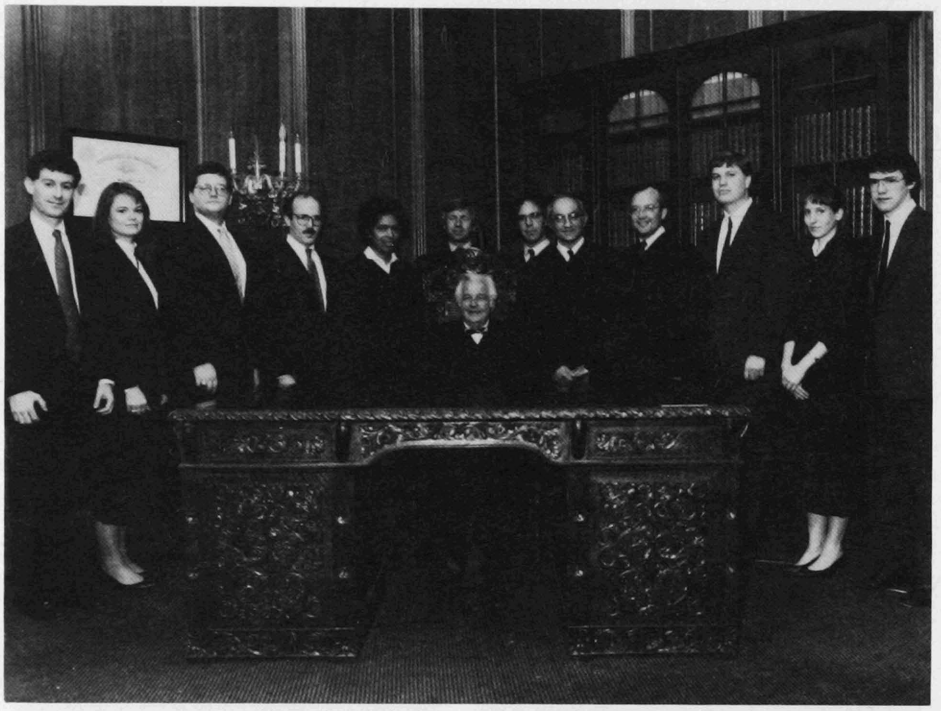
The publication of the final drafts of the papers is expected to receive a good deal of attention from the academic community. The symposium issue of the *Review* became available in late summer.

Kevin Kennedy, J.D. '89

Forfeited funds, forfeited rights?

Campbell competition probes questions of counsel

Final oral arguments in the Campbell Moot Court Competition were held on April 10, 1989, before a capacity crowd in Room 100 Hutchins Hall. The final arguments were judged by a distinguished panel of faculty members, federal judges, and Law School alumni. The visiting members of the bench included Judge Amalya Kearse '62 of the Second Circuit; U.S. Solicitor General Kenneth Starr, then a judge of the District of Columbia Circuit; and Mr. John Pickering '40, senior attorney with the Washington, D.C., law firm of Wilmer, Cutler and Pickering. Both Mr. Pickering and Judge Kearse are themselves veterans of the Campbell Competition, having participated in the competition during their Law School days. Dean Lee C. Bollinger and Professors Jerold Israel and Samuel Gross also served on the court.



Finalists and judges in the 1989 Henry M. Campbell Moot Court Competition. (Standing, left to right) Joseph Berman, Margaret Lattin, Robert Malchman, Mark Boulding, Judge Amalya Kearse (Second Circuit), Dean Lee Bollinger, Professor Sam Gross, Professor Jerold Israel, U.S. Solicitor General Kenneth Starr (then a judge of the D.C. Circuit), Michael Bazany, Martha James, Peter Hammer. (Seated) Mr. John Pickering.

The issue presented in this year's competition was whether a criminal defendant is deprived of his or her Sixth Amendment right to counsel when funds earmarked by the accused as attorneys' fees are subject to a temporary restraining order and possible forfeiture under the Federal Criminal Forfeiture Act.

The facts presented were as follows: Dr. Carol Kirk, a prominent physician who operated a medical clinic for the indigent, was indicted for alleged drug felonies. The assistant U.S. Attorney assigned to the case moved to freeze all of the doctor's assets as fruits or instrumentalities of a continuing criminal enterprise. The temporary restraining order was granted, leaving the doctor uncertain as to whether the funds would be available to pay defense counsel. As a result, her chosen counsel declined to represent her. Dr. Kirk challenged the TRO, arguing that it infringed upon her Sixth Amendment right to counsel. The selection of this issue was well-timed: Shortly after the Campbell board chose it, the United States Supreme Court granted *certiorari* to hear a case involving this issue.

In the judgment of the Campbell court, the United States prevailed. The competition winners, all of whom represented the government, were Peter Hammer and the team of Michael Bazany and Margaret Lattin. Second place was won by two teams representing Dr. Kirk: the team of Michael Berman and Martha James, and the team of Mark Boulding and Robert Malchman. Margaret Lattin and Michael Bazany won the S. Anthony Benton Best Brief Award.

This year's Campbell competition was organized by executive board members Ken Seavoy, Sharlene Deskins, Michael Wendorf, and Larry Brocchini. Ninety-seven second- and third-year students competed in the first round.

Conservatives convene at Law School

Symposium discusses abstract, practical issues of property

Judge Douglas H. Ginsburg, U.S. Court of Appeals for the D.C. Circuit, served as moderator for the panel, "Regulation and Property: Allies or Enemies?"

The Law School was the site this spring of the Eighth Annual National Symposium on Law and Public Policy presented by the Federalist Society for Law and Public Policy Studies. The symposium, held March 10 and 11, drew more than 600 law students, attorneys, judges, and teachers to Ann Arbor to hear an array of distinguished speakers address the subject of "Property: The Founding, the Welfare State, and Beyond."

The 28 participants in the symposium included a number of federal judges, such as Douglas Ginsburg and Stephen Williams of the D.C. Circuit, Frank Easterbrook of the Seventh Circuit, and Alex Kozinski of the Ninth Circuit; former Attorney General Edwin Meese III; former Solicitor General Charles Fried; and many well-known scholars and writers, such as Richard Epstein of the University of Chicago and Joseph Sobran of the *National Review.* Six members of the Michigan law faculty also participated, including Dean Lee C. Bollinger, who moderated one of the panels.

The speakers discussed both the theoretical foundations of property and contemporary issues raised by technological and societal changes. Topics included "The Idea of Property," "Liability: The New 'New Property,'" "Property and the Constitution," "Regulation and Property: Allies or Enemies," "Intellectual and Informational Property Rights," and "Ownership of Life." The questions addressed ranged from the abstract and historical to the urgently practical, from "How did the decline of feudalism change our conception of the role of property, and what aspects of that conception are still rooted in feudalism?" to "What aspect of a computer software program is the part that can be copyrighted?"

No clear answers emerged. Some participants doubted that a fundamental restoration of absolute property rights could come simply from a successful long-term litigation strategy. They felt instead that it would require political and legislative consensus-building. Others suggested, however, that that consensus might be a withdrawal of politics altogether from certain areas — that problems like pollution and land-use planning, which seem intractable despite increasingly sophisticated regulatory mechanisms, might best be addressed by a return to a private-law regime which could create a more workable method for society to strike the necessary balances.

The Federalist Society, founded in 1982, is a nationwide group of around 5,000 students and attorneys interested in approaching law from a conservative or libertarian perspective.

John W. Brewer, Special Projects Director, The Federalist Society

Former U.S. Attorney General Edwin Meese III, who presented the banquet address, listened to the welcoming remarks in the audience.

Changing marketplace

Bishop lecturer examines politics, economics of EEC

On a warm September afternoon, Francis Jacobs discussed the European Economic Community (EEC) and the "Europe 1992" project in the first William W. Bishop Lecture on International Law. The lecture series commemorates the late Professor William W. Bishop, long a distinguished faculty member of the University of Michigan Law School.

Mr. Jacobs' lecture was titled "Constitutional Developments in the European Community and the Impact of the Single Market After 1992." Because the creation of a Single European Market could have a far-reaching effect on American international trade and the European political situation, Americans have been paying close attention to developments in this area. Law School interest is similarly high, and a large crowd turned out to listen to Mr. Jacobs' lecture.

Mr. Jacobs is well qualified to discuss the European Economic Community and trade developments. In his introduction, Professor John H. Jackson extensively detailed Mr. Jacobs' practical and professional experience. Professor at the University of London King's College, Mr. Jacobs is currently an Advocate General at the European Court of Justice. This Court is composed of thirteen judges and six Advocate Generals. An Advocate General is responsible for presenting an opinion on all cases in a public session of the Court, which is free to adopt or reject his opinion.

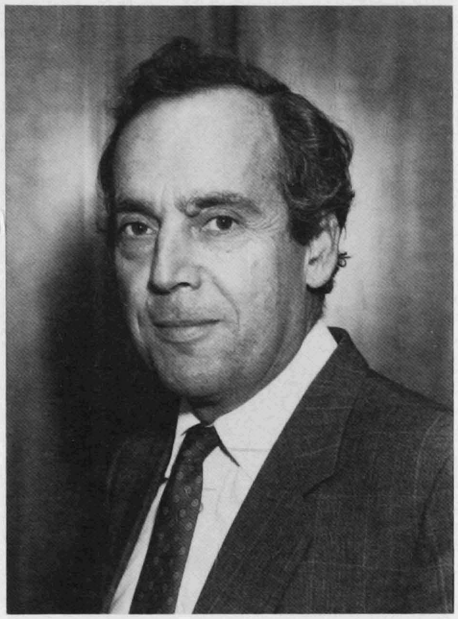
Mr. Jacobs began by discussing the history of the European Community and precursors of the present political and economic developments. The Common Market was established in 1958 with six countries. The European Community also created the Council of Ministers, European Parliament and the European Court of Justice.

The European Court guarantees individual freedoms for individual Europeans, specifically the four freedoms, trade in goods, movement of persons, free supply of services and establishment of companies and free movement of capital.

The European Court has expanded its protection of freedoms since its creation, giving great attention to individual human rights. For example, the European Community guarantees certain social rights, such as equal pay for equal work for men and women and social security for workers throughout the Community. If an individual feels that his or her rights have been violated, he or she can invoke European Community laws and file a lawsuit against his or her country. The national courts have original jurisdiction over this lawsuit, but the case is referred to the European Court of Justice to decide the Community-law issues. This example demonstrates the growing importance and unity of the European Community.

Mr. Jacobs touched on how the European Community will change after the 1992 Single European Market and beyond. In 1992 the European Community, today consisting of 12 members, will eliminate all non-tariff barriers (the customs duties have already been removed) and become a single market for goods and services. Many Americans are concerned that an economically united Europe will overshadow the United States in world trade, and that the Europeans will primarily trade among themselves, becoming a Fortress Europe.

Mr. Jacobs stated that he believed it was difficult to speculate on the future after 1992. Nonetheless, he feels the European Community will not be protectionist in general. In fact, Mr. Jacobs believes that the members will seek to liberalize in such areas as international trade



Francis Jacobs

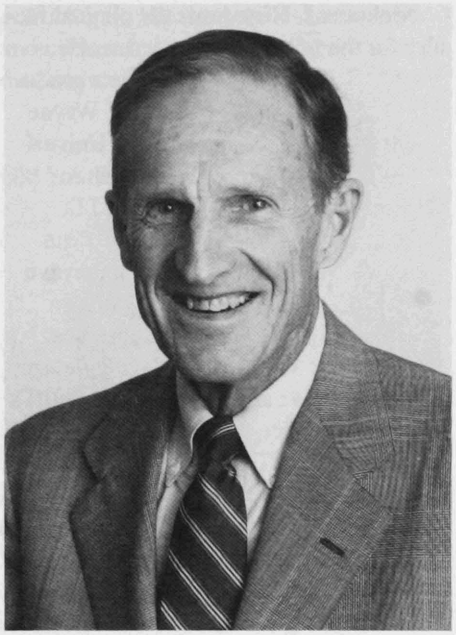
of services. In addition, Mr. Jacobs believes that the European Community may work for closer political and economic integration, for example, the possible creation of a common currency. Mr. Jacobs feels that the European Community should become even more dynamic in the future, since the treaty has been modified to allow for more cases of majority voting, rather than the previous requirement of unanimous agreement.

At the end of his prepared remarks, Mr. Jacobs answered a number of questions from students and faculty members. Dean Bollinger closed the Bishop Lecture by thanking Mr. Jacobs for his time and insights. During his stay, Mr. Jacobs met with a number of professors and student groups, including the International Law Society and the *Michigan Journal of International Law.* He also lectured in several classes.

Ed Heartney
Law '90

Faculty retirements

Two distinguished scholars become emeriti



Samuel D. Estep

Samuel D. Estep retired from active faculty status in spring 1989 after a dedicated career of teaching and research.

Professor Estep was born in Topeka, Kansas, and received his A.B. degree from Kansas State Teachers College in 1940. His legal studies at the University of Michigan were interrupted by service with the United States Navy; he received his J.D. from the University of Michigan in 1946. Estep practiced law in Detroit before beginning his academic career at the Law School in 1948.

Estep's career was devoted to teaching in diverse fields, including constitutional law, commercial law, and science and the law. His work as a scholar has been devoted primarily to topics drawn from his interest in science and the law. Together with Dean E. Blythe Stason and Professor William J. Pierce, he was author of a pathbreaking book, *Atoms and the Law.* Earlier, the same team published *State Regulation of Atomic Energy.* Estep published many law review articles on the legal problems that would emerge from the peacetime use of atomic energy. He also was one of the pioneers in the legal literature dealing with space communications. He has remained active in the broad field of science and the law.

Estep has been highly regarded, and in 1988, his final year as a full-time teacher, the Law School Student Senate recognized his contributions to the School with the Francis Allen Award. Over the years he also has contributed to the University and to outside constituencies by active participation in committee work and community projects.

William J. Pierce

William J. Pierce retired in spring 1989 from active faculty status, after a distinguished career of teaching, research, and administration.

Pierce has done work of unparalleled prominence in the field of legislation, in both the academic and the legislative spheres. He has served as executive secretary of the Michigan Law Revision Commission, chairman of the Juvenile Court Citizens Advisory Committee, president and executive director of the National Conference of Commissioners for Uniform State Laws, and chairman of the American Bar Foundation's American Statutory Law Committee. Pierce is the co-author of a highly successful book, *Materials on Legislation.*

In addition to his accomplishments in the area of legislation, Pierce has been in the forefront of emerging fields of law, and has co-authored *Atomic Energy and the Law* and *Apportionment and Representative Institutions.*

Professor Pierce also found time to serve on numerous committees in the Law School and the University. During his years as associate dean, for example, Pierce played a major role in planning the addition to the Law Library. His excellence as a teacher is reflected in the action of the Law School Student Senate in awarding him the 1989 Francis Allen Award for his outstanding contributions to legal education at Michigan.

Pierce is twice a graduate of the University of Michigan, receiving his A.B. in 1947 and his J.D. in 1949. Following graduation, he worked with the New York Law Revision Commission, the office of the United States Senate Legislative Counsel, and the Governor's Study Commission in Michigan. He began his career at the Law School in 1950. In addition to his teaching appointments, he has been director of the Legislative Research Center and served as associate dean from 1971 to 1979.

Achievements and additions

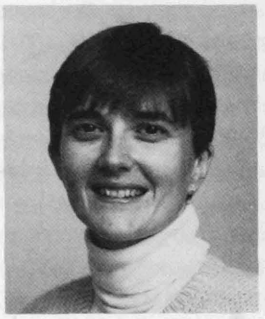
News notes on faculty at the School

A.W. Brian Simpson, the Charles F. and Edith J. Clyne Professor of Law, presented the 1989 Robert S. Marx Lecture at the University of Cincinnati College of Law last spring. Entitled "Legal Iconoclasts and Legal Ideals," the lecture examined the history of legal iconoclasm — the subtle and perverse wit of lawyers who have mocked and parodied the very legal system to which they have devoted their lives. Among the writers he discussed in his talk were Fortescue, Blackstone, and Dworkin.

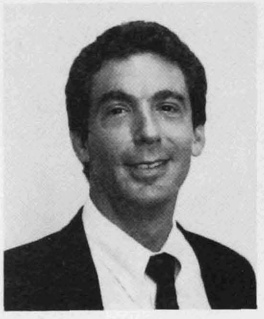
Frank Kennedy, the Thomas M. Cooley Professor of Law Emeritus, received the 1989 Distinguished Law Alumni Award at Washington University Law School, in St. Louis. The award recognizes outstanding professional contributions and service. Kennedy is widely regarded as the nation's leading expert on bankruptcy.

Three new clinical faculty are teaching at the Law School for the fall and winter semesters.

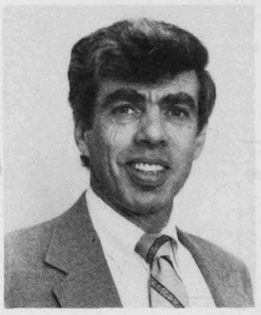
Julie M. Kunce-Field comes to Michigan from Boston, where she has been practicing as a litigation associate with the firm of Nutter, McClennen & Fish. A 1985 graduate of the University of Chicago Law School, Kunce-Field clerked for two years for Federal District Judge John W. Oliver in Kansas City, Missouri. Kunce-Field is teaching in the clinical law program.



Mark Mitshkun has also joined the clinical law program. Since 1981, Mitshkun has served on the faculty of Boston University's legal clinic. Prior to that, he worked for seven years in Seattle as a public defender, eventually directing the office's mental health division. Mitshkun graduated from the U-M's Residential College in 1971 and received his J.D. from Wayne State University in 1974.



Nicholas J. Rine joins the clinical faculty for the fall and winter terms. He is twice a graduate of Wayne State University (B.A. 1969; J.D. 1973). Rine has extensive litigation experience, having devoted 15 years of his career to a busy plaintiff's litigation practice. He served as president of the Michigan Trial Lawyers Association from 1985 to 1986. He has been a partner in the Detroit firms of Philo, Cockrel et al and Kelman, Loria et al. In 1988, Rine left his practice to try his hand at writing.



Visitors from around the country enrich the Law School's program.

Jerome Culp visited from Duke Law School, where he has taught since 1984. Professor Culp earned a B.A. in economics in 1972 from the University of Chicago and an M.A. in economics and a J.D. from Harvard. He worked as a research fellow at the Rockefeller Foundation in New York and clerked for Judge Nathaniel R. Jones.

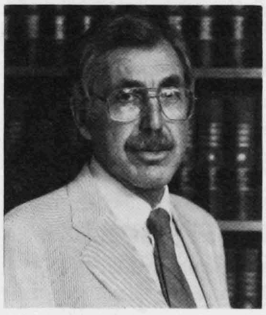
Professor Culp has been a lecturer in economics at the Department of Economics at the University of Maryland, College Park. He taught at Rutgers Law School in Newark for three years before

relocating at Duke. He visited as the MacArthur Distinguished Scholar at the Joint Center for Political Studies in Washington, D.C., in 1987. He is director of the John M. Olin Program in Law and Economics at Duke Law School.

Culp taught a seminar on Black legal scholarship and the basic labor law course at Michigan. He also teaches torts, law and economics, and employment discrimination.

Eugene Genovese, a historian of the Old South, was last semester's Sunderland Fellow. He has taught at the University of Rochester (Rochester, N.Y.) since 1969. A native of Brooklyn, N.Y., Professor Genovese earned a B.A. in history at Brooklyn College in 1953, and a doctorate in American and Latin American history at Columbia in 1959. Genovese has written numerous books on the political economy of slavery and related issues.

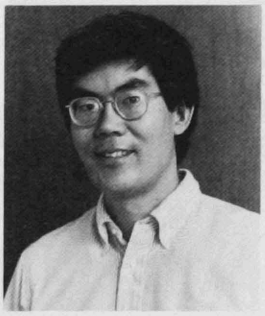
Robert J. Harris is combining regular practice of law with an Ann Arbor law firm with teaching at the University. This fall he taught two sections of Legal Profession and Legal Ethics at the Law School, and this winter he is teaching a course on governmental ethics at the University's Institute of Public Policy Studies.



Harris has been teaching part time at the Institute for the past 12 years, while practicing law. From 1959 to 1974 he taught full time at the Law School, regularly teaching the freshman contracts class.

A 1953 graduate of Wesleyan University, Harris received his LL.B. from Yale Law School in 1956.

Hiroshi Motomura visited from the University of Colorado in Boulder, where he has taught since 1982. Professor Motomura earned his B.A. in history at Yale College in 1974 and his J.D. at the University of California-Berkeley in 1978. After graduating from law school, he spent a year as a German Academic Exchange Service Fellow with the Max Planck Institute for Foreign and Private International Law in Hamburg. From 1979 to 1982 he was an attorney with the firm of Hogan & Hartson in Washington, D.C.



Professor Motomura has authored law review articles in a number of fields, including civil procedure, arbitration, civil rights, and comparative corporate and commercial law. His current research concerns the relationship between constitutional and statutory decision making in immigration cases. Motomura spent the 1987-88 academic year as a Fulbright lecturer at Hokkaido University in Sapporo, Japan. At the Law School, his fall courses were Civil Procedure I and a seminar on arbitration.

Peter F. Schlosser visited from the University of Munich Law Faculty, where he has taught since 1978. From 1986 to 1988 he served as the dean of its law school. He previously taught at the University of Augsburg and the University of Marburg (where he served as dean for two years). A specialist in civil procedure and civil law, Professor Schlosser has written extensively in German, English, and French on international arbitration. He taught a course on international litigation at the Law School.

Mary Twitchell visited from the University of Florida College of Law, where she has taught since 1982, specializing in civil procedure, federal courts, and complex litigation. Before beginning her academic career, she worked as an associate for Dell, Graham, Willcox, Barber, Henderson, Monaco and Cates in Gainesville. She previously served as a grants specialist for the Kern County Economic Opportunity Corporation in Bakersfield, California; as a writer/editor for the Carolina Population Center at the University of North Carolina; and as a teacher in Raleigh, North Carolina.

Professor Twitchell earned a B.A. in English at Hollins College, an M.A. in English at the University of North Carolina, a J.D. at the University of Florida, and a LL.M. at Yale Law School.

Patricia White, who visited the Law School in 1988-89, is again visiting this year. White has been on the law faculty at Georgetown University Law Center since 1979. Prior to that time, she practiced law with the Washington, D.C., firms of Steptoe & Johnson and Caplin & Drysdale.

White holds three degrees, including a J.D., from the U-M. She taught Tax I and a tax practice seminar this fall. This winter she is teaching Tax I and Trusts and Estates.

Florence festivities

Law School hosts first European alumni reunion

The following recapitulation of the Law School's first European alumni reunion was written by Professor Beverley J. Pooley, who attended the festive event along with guest of honor Eric Stein, Dean Lee C. Bollinger, Assistant Dean Virginia Gordan and other members of the faculty, including Alfred F. Conard, Whitmore Gray, John Jackson, Donald Regan, Mathias Reimann, and Joseph Weiler.

Jochen Frowein toasts Eric Stein at the dinner celebrating Stein's 75th birthday. At left, Virginia Stein; at right, Jean Magnano Bollinger.

The Villa di Montalto, overlooking the city of Florence, presented a splendid setting for a celebratory dinner held on May 20 to honor Eric Stein's 75th birthday. More than 150 European alumni and their spouses had gathered to express affection for Eric and Ginnie Stein and appreciation for their work over the years. The spectacular villa and its spacious grounds, the lofty dining hall, and the presence of alumni from almost every European country provided a most appropriate ambiance for the occasion. Jochen Frowein (LL.M. '58) spoke eloquently on behalf of our European alumni, noting that Eric had played a leading role in educating European lawyers who would be in the forefront of the European Community.

The prominence of Michigan graduates in the Community was demonstrated during one of the work sessions of the reunion. A distinguished panel consisting of Jacques Bourgeois, Jochen Frowein, Reinhard Quick (LL.M. '84), and Edwin Vermulst (S.J.D. '86) spoke on the subject of "1992" and the implications of further European economic integration planned for that year. (A report on the panel follows, on Page 17.)

Assistant Dean Virginia Gordan, who has significant contact with international students as the administrator of the Law School's graduate program, chaired a work session concerning graduate legal education at Michigan. During that discussion, the alumni expressed diverse views regarding their experiences at the Law School. Some alumni said that they had not felt as if they were full members of the Law School community in Ann Arbor, while others cited quite different experiences, pointing out that they had made more long-term friendships in Ann Arbor than at their home universities in Europe. A consensus regarding the curriculum emerged, however, with most of the European alumni agreeing that it was better for international students to attend "normal" classes designed for American students than to have special courses of their own.

The work sessions of the reunion, as well as the opening reception on Friday evening, were held in the Villa Schifanoia, near Fiesole, which was made available to us by arrangement with the European University Institute. The staff of the Institute played a major role in ensuring the success of the reunion

by taking care of all of the local arrangements.

We of the Michigan faculty consider the reunion to have been a great success. It was obvious that our European alumni greatly enjoyed seeing each other again and meeting the various Michigan faculty who attended. We, for our part, are happy that we have renewed our contacts with our European alumni. We enjoyed learning of the progress of their careers and keeping them abreast of events in Ann Arbor.

Our alumni expressed considerable enthusiasm for the idea of having regular reunions in the future, and Dean Bollinger announced that the next would be held in Ann Arbor in 1991. That reunion will be for alumni from all over the world. We expect to have future reunions in Europe and Asia on a regular basis.

The terrace at Villa Schifanoia was a fine gathering place for those attending the reunion. From left, in foreground: Jochen Frowein, Kelly Vlachos, Wolfgang Mayer, Spyros Vlachos, Lori Frowein, Federico Spantigati, Law School Professor Beverley Pooley, and Pat Pooley.

Europe 1992

Distinguished panel of European alumni addresses timely topic

A panel on "Europe 1992" opened to a standing-room-only audience on Saturday morning, May 20, in the enchanting surroundings of Villa di Schifanoia, in Florence, Italy. The distinguished panel participants represented three decades of the European alumni of the Michigan Law School and four discrete legal career areas.

The first speaker, introduced by the chairman, Professor Eric Stein, was Prof. Dr. Jochen A. Frowein, (LL.M. 1958, visiting professor 1978 and Cooley Lecturer 1983), director of the Max Planck Institute for Foreign Public and International Law at Heidelberg, Federal Republic of Germany, and vice-president of the European Commission of Human

Villa di Schifanoia was the site of reunion activities.

Rights. His topic was "1992 and the Development of European Constitutional Structures." In a broad-ranging comment on the Single European Act of 1986, the legal underpinning of the "Europe 1992" project for the completion of the internal market, Frowein reasoned that the Act "has added to the constitutional dimension of the [European Community] system. The system of cooperation with the [European] Parliament can be seen as a first step towards democratic legitimacy within the European Economic Community."

In a statement on "Europe 1992: The External Face," Jacques Bourgeois (visiting professor 1976), principal legal advisor at the Legal Service of the Commission of the European Communities, explored the impact of the completion of the European home market on countries not members of the Community. Will it give rise to the proverbial "fortress Europe"?

He noted that an American product that entered the Community at Rotterdam, for example, would, after payment of customs duties, be marketed freely not only in the Netherlands, but throughout the entire Community. It would be treated as a domestic product for internal tax and other purposes.

Similarly, an American company, once duly established in a Community member state, would be free to organize subsidiaries anywhere in the Community. It would be given nondiscriminatory treatment subject to showing, for instance, in the banking services field, that Community companies receive corresponding market access in the United States.

Edwin Vermulst, (LL.M. 1984, S.J.D. 1986), attorney at the Brussels firm of Van Bael (LL.M. 1963) and Bellis (LL.M. 1974), continued on the same topic of the international impact of "1992." Since the remaining national quotas against foreign imports must be abolished, the question is to what extent they will be replaced by Community import restrictions on such products as cars from Japan, textiles, shoes, etc. To what extent, if at all, will the Community anti-dumping and anti-subsidy legislation, rules of origin, and other instrumentalities be applied for protectionist purposes? Vermulst opined that internal liberalization of services, such as banking, will benefit non-member countries as well.

Whether "fortress Europe" will materialize was among the topics tackled by the panelists. From left: Reinhard Quick, Jochen A. Frowein, Eric Stein, Jacques Bourgeois, and Edwin Vermulst.

Dr. R. Quick (LL.M. 1984), head of the Legal Affairs Department of the European Council of the Federations of Chemical Industry (CEFIC) in Brussels, offered observations from the vantage point of a vital European industrial sector. With exports outside the Community amounting to some $56 billion, the chemical industry "cannot espouse protectionism." The few national import quotas must be abolished. Dr. Quick was critical of state price controls and of the tendency on the part of the Community institutions "to over-legislate," citing as an example certain aspects of the directive on product safety. The industry, he said, "though critical of this tendency, is unable to influence the decision-making process because of lack of consensus."

Some 14 audience members participated in the ensuing lively discussion. The questions concerned the limitations on certain activities of American subsidiaries in Europe, the current case law of the Court of Justice of the European Communities, the access to France of Japanese cars produced in the United Kingdom, the position of Austria, Switzerland, and other non-member countries in relation to the Community, the immigration problems in Germany, the transparency of the Commission's procedures and access to its officials, the role of the judiciary in trade matters, the reciprocity problem, the harmonization of technical standards, regulation of maritime and transportation trade, and generally the continuing obstacles to market integration.

The panel was organized by Professor Joseph Weiler. The complete record of the statements of the panelists and of the discussion appears in the February 1990 issue of the *Michigan Journal of International Law.*

Reminiscences of the Embrionic EEC

Stein addresses the period from 1950 to the present

The following remarks were given by Professor Emeritus Eric Stein at dinner, Villa Montalto, Florence, May 20, 1989.

I believe that this is the first time for me to meet most of you in my exalted position of emeritus. A few weeks ago I had an opportunity to explain the derivation of the word emeritus to our students, who of course are quite innocent of any knowledge of Latin. I told them the "e" in "emeritus" comes from the Latin "ex" which means "out" and "meritus" means "you deserve it," in other words, "you are out and you deserve it."

In a more serious vein, speaking of getting old, I want to confide to you that the rumors about old age bringing serenity, peace of mind and, above all, instant wisdom, are highly exaggerated. It is not easy to be wise, or even to pretend to know the truth in this complex world. Here is what W.B. Yeats said:

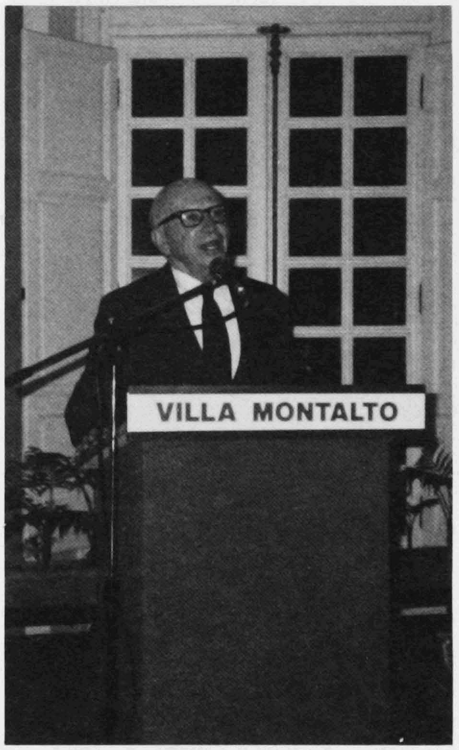
> *My temptation is quiet.*
> *Here at life's end*
> *Neither loose imagination*
> *Nor the mill of the mind*
> *Consuming its rag and bone*
> *Can make the truth known.*
> *Grant me an old man's frenzy . . .*

Old age — I am told — brings an irresistible compulsion to look back to the past. Therefore, I shall impose on you a few personal reminiscences.

In the early 1950s — this was A.D., I hasten to say — when I was on the staff of the Department of State in Washington, I became increasingly intrigued by the dispatches we were receiving from our Embassy in Luxembourg about the brand new, rather bizarre structure coming to life there, something in the shape of a "supranational" administrative agency established to regulate two economic sectors — coal and steel — artificially severed from the national economies of six countries and saddled with an elaborate political and judicial instrumentarium. This was in the halcyon days of international institution building, and I was fortunate that my assignment in the State Department was the shining new United Nations.

There is in all of us a need for a myth, a mythology that would help us "to escape the two-dimensional, stale image of the world"; and for those of us who grew up without tradition or ritual, there is a compelling longing for a substitute. In my case it was the idea whose time appeared to have come after the Second World War -- the idea, or myth, of a new international order under law. Again, there is in all of us — as Doctor Freud told us — a longing for returning, in reality or in memory, to the locale of our childhood dreams and affections. To see my old Europe attempting to shed its old ways for a new art of governance was an appealing prospect. Consequently, the search for a myth and the desire to return have been the sources of some forty years of my professional effort. For better or for worse, the product of this effort bears the evidence of the source.

On the positive side, another episode from about the same period — the early 1960s — had a lasting impact on my thinking about the Community. Michel Gaudet, the brilliant first director general of the Legal Service of the Commission, let me have an office not far from his in Rue Beliard, and I spent some 10 months watching the Commission lawyers do what we tried to do in Washington and New York in 1946, 1947: to get the United Nations off the ground. I felt that without an experience in Brussels I would not understand the microcosm of the Community institutions. At that same time, the legal service was in the throes of preparing the Commission's position in what was to become the European counterpart to *Marbury vs. Madison,* the celebrated *Van Gend and Loos* case before the Community Court of Justice. The overarching issue was wrapped up in a trivial controversy over the customs duties on chemicals made of horse urine, imported from Germany to the Netherlands. The real issue was, Is the constituent treaty of the Community an ordinary treaty to be interpreted by the traditional canons of public international law or is it a quasi-constitution to be interpreted in the mode of a national constitution? There was a sharp division



Eric Stein addressed the past — and the future — in his remarks.

between those who, like myself, were accustomed to think in terms of the public international law and international organization and those led by Michel Gaudet himself, supported among others by Gerhard Bebr, who urged the quasi-federal, constitutional approach. I confess that, listening to the intramural debate, it took me some time before I was able to understand the historic implication of the controversy. As Jacques Bourgeois testified in one of his remarkable essays, this experience at Rue Beliard informed my basic classroom approach to the nature of Community law and the role of the Court of Justice.

The dispatches from Luxembourg I mentioned earlier reported the first judgments of the Court of Justice of the European Coal and Steel Community. Although I didn't find the subject matter particularly appealing, I wrote an article about them. The piece appeared in the *Columbia Law Review* in 1955, and it was the first article about the Court, as far as I know, to appear in the English language anywhere.

Here is another first. In 1960 we helped the Federal Bar Association to organize the Institute on Legal Aspects of the European Community in Washington, D.C. Several hundred American lawyers crowded into a large hotel hall to listen to a star-studded delegation headed by Jean Rey, then Commissioner in charge of External Relations, and including Fernand Spaak, Michel Gaudet, Pieter Verloren Van Themaat and Theodor Vogelaar. The mood at the time was strikingly similar to the current optimistic outlook about Europe. In my opening address, entitled "An American Lawyer Views the Community," I said, if you allow me to quote myself: "As far as I am aware — this [that is, the Institute] is the first undertaking of its kind in the United States, if not in the Western Hemisphere." I ended my talk with a clarion call for American lawyers to learn about "the new economic law" and for a new way of dialogue and cooperation with Europe.

Jean Rey, the amiable, irrepressible talker, succeeded the apostolic, austere, ceremonial Dr. Hallstein as President of the Commission. On one occasion, when my wife and I visited the Reys at their home in Liège, we found Mr. Rey in a state of a higher than usual exhilaration: The Council of Ministers had just agreed on the cereal prices in the context of the common agricultural policy. The price agreement, Mr. Rey waxed enthusiastically, meant that common currency and a monetary union were just around the corner. What was in fact around the corner, as we all know in retrospect, was the tricky monetary compensation amounts, and a common currency is today still a distant goal. This encounter has remained grafted in my mind as a warning, a telling illustration of the myth intruding upon the stark reality, an ever-present danger for all devoted "pro-Europeans."

To continue in the typically American vein of robust competitiveness — of being the first — the most important first, of course, was Michigan's teaching program on the Community, the first such program introduced in the United States, preceding even most European universities. Even today, there are more law students in Joseph Weiler's class than in comparable courses of many European law faculties. Our teaching program — and my own work — has been marked from the outset by an idiosyncratic, some might say parochial, orientation: It has stressed the American concern in the broadest, most benign, most cooperative sense of the word, and it has been consistently comparative, projecting the European story not only against the American federal experience, but also against the discrete disciplines of American public and private law. Alfred Conard, for instance, in his time, was the master of comparing European and American company law.

There were two milestones separated by two decades. In 1960 we brought together for the first time a transatlantic group, resulting in the two volumes on *The American Enterprise in the European Common Market — A Legal Profile.* Twenty years later, another group including some of the second and third generation of Community lawyers assembled in the enchanting quarters of the Villa Serbeloni in Bellagio to produce our book, *Courts and Free Markets — Perspectives from the United States and Europe.* Some of you here were present at Bellagio on Lake Como and remember those of our friends who no longer are living: Otto Kahn-Freund of Oxford, Justice Stewart of the United States Supreme Court, and Paul Leleux of the Commission of the European Community.

Our first conception in teaching Community law was the Community as a part of the broad Atlantic area. As the law of the Community mushroomed and the idea of equal partnership between Europe and America — the two pillars idea — came to the fore, our focus has necessarily narrowed. Finally, with Japan entering the scene, new perspectives have emerged in the complex, triangular relationship of cooperation and competition that needed to be addressed. No wonder that Joseph Weiler's two-term course, which he calls "Trading in and with Europe," devotes a major portion to such topics as the anti-dumping law and rules of origin. James Adams, an expert on European industrial organization, deals with competition policy in Europe, and of course John Jackson, the master of GATT, provides the global context, with Bruno Simma bringing in the fundamental concerns of humanity, the European mechanisms for assuring basic individual human rights.

The interesting question I would like to leave with you to ponder is what will be our classroom context in 1993, in 2000, in 2010? Can we indulge for once in the best case scenario in which the 1992 Community's magnetism will bring about the unification of Germany within free Europe from the Atlantic to the Urals? To bowdlerize Jean-Francois Revel, Euroeuphoria may perhaps be as dangerous as Europessimism.

Looking at this distinguished audience, ladies and gentlemen, it is difficult to ward off a feeling of sentimental nostalgia. My wife and I have been warm friends with three generations of Europeans with a Michigan connection. Moreover, the fourth generation, fresh from the graduation in Ann Arbor a few days ago, is in the wings.

As for my own plans and prospects, allow me to conclude by quoting, at the risk of appearing immodest, a letter written by Mr. J. Oliver Wendell Holmes in 1923, when he was 82 years old:

> *"I may work on for a year or two, but I cannot hope to add much to what I have done. I am too skeptical to think that it matters much, but too conscious of the mystery of the universe to say that it or anything else does not. I bow my head, I think serenely, and I say, [as I told someone the other day,] Cosmos, Now lettest thou thy ganglion dissolve in peace."*

Virginia Stein joined her husband, Eric, at the podium to share some thoughts and some gifts.

A Million Footnotes

Following her husband's remarks, Virginia Stein offered these comments:

Behind every successful academic there is a . . . million footnotes. I'll bet you thought I was going to say a good wife! That may be, but not necessarily so. So I propose to add a very few footnotes to the remarks Eric has just made — to give you my behind-the-scenes look at some of these career highlights.

Footnote Number One: That first article on the Coal and Steel Community was written in the course of our courtship in Washington. When other couples were out picnicking or spooning under the moon on Saturday nights — where were we? Sorting documents and checking the footnotes on this new institution. The next time I was confronted with that article was on our honeymoon in Geneva at a luncheon with the Coal and Steel Community's chief lawyer, Michel Gaudet, and his wife. It was the chief topic of the lunch conversation. Little did I know that this was to be the pattern of so much of our social life in the thirty-odd years to come. But I've absorbed by long exposure a lot of information about that Rome Treaty: Article 85 — that's anti-trust; Article 177 — that's reference from national courts to the Luxembourg Court; and especially Article 173 — "Standing to Sue." It took me a long time to understand the idea of "Standing to Sue." Apropos, have you heard about the 77-year-old lady in West Germany who asked a German court last fall to enjoin the Weather Bureau from using in its weather reports the expression "Altweibersommer," "Old Women's Summer" (our Indian Summer) because she found it offensive to her senior sex. She didn't get her injunction. The court denied her standing to sue.

Footnote Number Two: During all our research leaves from the Law School I have become intimately acquainted with practically every postal clerk in Western Europe — from Stockholm to Bari I've shipped back the manuscripts for all those books and articles authored by E. Stein.

Footnote Number Three: All this has not been without some risk to our health. In London we were fifty feet away from an IRA bomb explosion. Bloodied victims were rushed into our restaurant and we were evacuated on the run — unhappily, after we'd paid our check. In Rome we were within close earshot of a terrorist bomb attack on a U.S. Marine barracks and at a concert when another U.S. installation next door was bombed by Italian extremists. In Frankfurt we were taken off on the double from our Alitalia plane and held incommunicado, surrounded by gun-toting policemen for hours, due to a threat of a bomb on the plane.

Footnote Number Four: Our stays in Europe have produced a very important spin-off for me with a new career in art history. I turned all those hours I spent in museums on this old continent to good effect when I began to teach art history back home. Indeed, this by-product has enriched both our lives. I think by now Eric could certainly pass one of my exams on the Flemish Primitives and probably on Florentine art work, too! And finally:

Footnote Number Five: On all our sojourns in Europe we have enjoyed such boundless hospitality from all our friends — and so many of you are here tonight. It has added a great variety to our Arkansas-Czech cuisine — with a recipe for waterzooi from Belgium when it was one of the *Six,* for English trifle from London when it became one of the *Nine,* and most recently a great gaspacho from Spain when it made one of the *Twelve.*

As a part of the Law School family, I have been happy to have been a side-line witness to the building of the European Community here and the study of its law at Michigan.

This has been a wonderful reunion, and we are just delighted to see you all. Thank you so much for this great occasion.

Alumni News

William R. Beasley

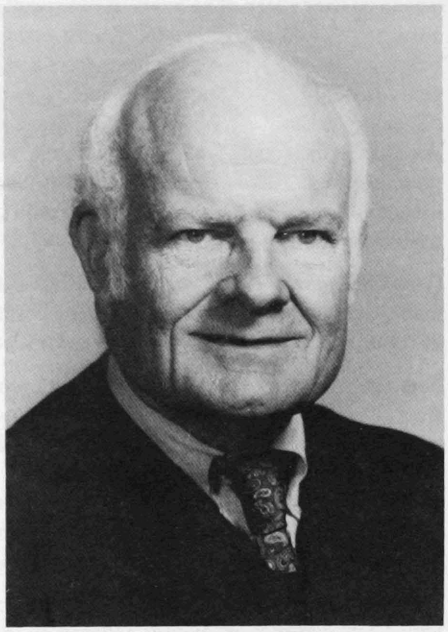
Judge William R. Beasley of the Michigan Court of Appeals retired from the bench on October 1, after serving more than 13 years.

A 1942 graduate of the Law School, Beasley served in the navy as an officer and practiced law for 20 years in Oakland County before being elected an Oakland County circuit judge in 1966.

Judge Beasley was appointed to the Court of Appeals by then-Governor William G. Milliken in April 1976. Most recently, he was appointed chair of the high court's Special Advisory Committee to evaluate videotaping of trials.

Charles B. Blackmar, J.D. '48, began serving as chief justice of the Supreme Court of Missouri on July 1. A native of Kansas City, Judge Blackmar graduated from Princeton University and served in the military for three and one-half years before entering law school. He practiced law with the firm of Swanson, Midgley, Jones, Blackmar and Eager in Kansas City from 1948 to 1966, when he accepted a position on the faculty of St. Louis University Law School, remaining until his appointment to the Supreme Court of Missouri in 1982.

Blackmar is the author of several books and numerous articles on legal subjects. He is the fourth graduate of the University of Michigan Law School to have served as chief justice of Missouri. His predecessors as chief justice were Henry I. Eager, '20, Clem F. Storckman, '22, and Albert L. Rendlen, '48.



Charles B. Blackmar

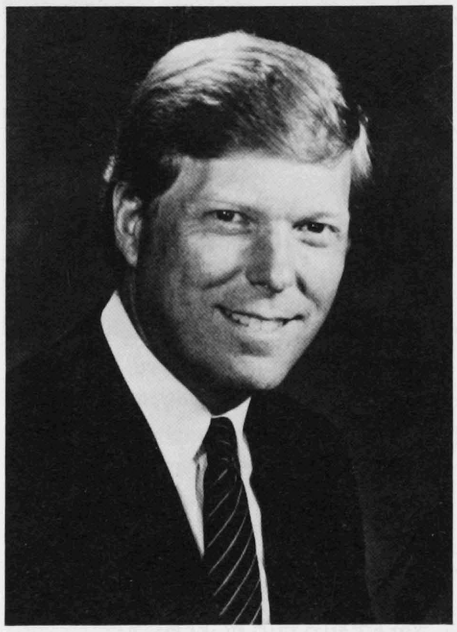
Ellen Borgersen has been named associate dean of academic affairs at Stanford University Law School, where she has been teaching since 1983. She will be responsible for overseeing the school's curriculum and academic standards.

A 1976 Law School graduate, Borgersen served two clerkships, first with then-Chief Judge Frank M. Coffin of the U.S. Court of Appeals for the First Circuit, in Washington, D.C., and next with U.S. Supreme Court Justice Potter Stewart. She then practiced with the San Francisco firm of Morrison and Foerster from 1978 to 1983.

Ellen Borgersen

Borgersen was born in New York City and earned her undergraduate degree in philosophy from Antioch College in Yellow Springs, Ohio.

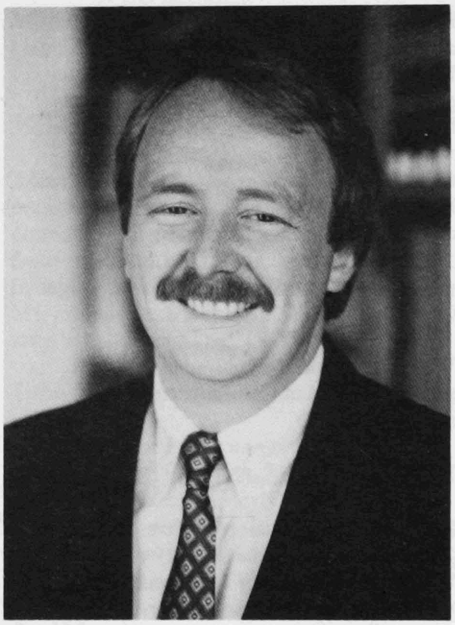
Richard A. Gephardt, J.D. '65, U.S. Congressman from Missouri, won election in June to the Number 2 House



Richard A. Gephardt

position of majority leader. He holds an undergraduate degree from Northwestern University.

Gephardt was first elected to Congress in 1976. In 1984 he was elected chairman of the House Democratic Caucus, the fourth-ranking Democratic leadership post. That same year he also became the founding chairman of the Democratic Leadership Council. In March 1989, Gephardt was appointed by the Speaker of the House to chair the Task Force of Trade and Competitiveness. The Task Force will advise the House leadership on international trade and economic issues.



Robert H. Jerry II

Robert H. Jerry II assumed the deanship of the University of Kansas School of Law on July 1, following a nationwide search. Jerry has been a member of the Kansas faculty since 1981 and a professor since 1985. His teaching and research specialties are contracts, insurance law, and banking law. He received the Rice Prize for Faculty Scholarship in 1988 for his book *Understanding Insurance Law,* published in 1987 by Matthew Bender, New York.

A 1977 U-M Law School alumnus, Jerry clerked for Judge George E. MacKinnon of the U.S. Court of Appeals for the D.C. Circuit. He practiced law in Indianapolis for three years before joining the University of Kansas law faculty.

Jean Ledwith King

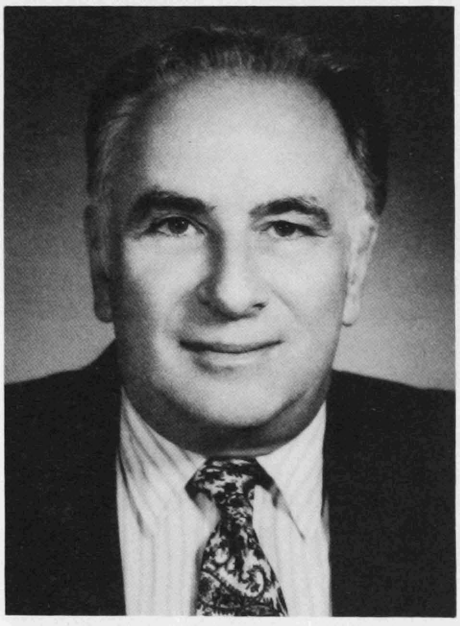
Jean Ledwith King, J.D. '68, an Ann Arbor attorney who has been active in human rights causes, has been inducted into the Michigan Women's Hall of Fame. An advocate of equal opportunity for women, King helped found the Women's Caucus of the Michigan Democratic Party, the first women's caucus in a major political party.

She also was instrumental in the 1973 founding of the Religious Coalition for Abortion Rights, brought the first major sex discrimination lawsuit against the University of Michigan, and was at the forefront of a nationwide campaign begun in 1974 to eliminate sexist stereotypes from elementary school textbooks.

King has practiced law in Ann Arbor since 1971. Much of her practice has been devoted to advocating equal opportunity for women athletes.

Boris Kozolchyk, LL.M. '60, S.J.D. '66, was recently honored with a tribute issue of the *Arizona Journal of International and Comparative Law,* a publication which he founded. (The tribute issue begins at 6 Ariz. J. Comparative & Int'l L. 1 (1989).) The journal also has established an award bearing his name to recognize outstanding student notes and comments it publishes.

A native of Cuba, Kozolchyk has degrees from the universities of Havana, Arizona, and Miami, as well as from Michigan. He is a professor of law at the University of Arizona, where he specializes in Latin America, comparative law, and commercial law. He is a world-renowned expert on international letters of credit and has published numerous articles and treatises on that and other subjects. Kozolchyk is president of the International Academy of Commercial and Consumer Law and was recently elected to membership in the American Law Institute. Beginning in March, he is representing the U.S. Council of International Banking and the U.S. Council of



Boris Kozolchyk

International Business at the International Chamber of Commerce in Paris, as it writes a new rule on letters of credit, bank guarantees and EDI transfers.

Class Notes

1935

Henry A. Bergstrom recently received a Presidential Societies Leadership Award for his extraordinary fund-raising efforts on behalf of the University of Michigan. This award is the highest honor given to University fund-raising volunteers.

1948

Dorothy A. Servis has retired from USX Corporation where she served as senior general attorney and assistant to the general counsel. She is now of counsel at the firm of Reed Smith Shaw & McClay and continues to do environmental work for USX Corporation.

Irving Slifkin recently retired from Consolidated Westway Group, Inc., where he was vice-president, secretary and general counsel. He now is a self-employed consultant for corporations needing temporary legal assistance.

1949

Robert F. Ellsworth has been elected to the board of trustees of The Aerospace Corporation in El Segundo, CA, which provides engineering and architecture for all military space design, production and operations.

Arthur C. Prine, Jr. has retired as vice-president of relations services for R.R. Donnelley & Sons where he had been since 1960.

Jack C. Rohrbaugh will retire from Emerson Electric Company in 1990 as senior vice-president for industrial relations. He will become of counsel to the St. Louis labor law firm of McMahon, Berger, Linihan, Hanna, Cody & McCarthy.

1950

Burton C. Agata has been named interim dean of the Hofstra School of Law in Hempstead, NY. Mr. Agata is the Max Schmertz Distinguished Professor of Law and a founding member of the faculty. His primary teaching areas include antitrust, criminal law, evidence and legislation.

James T. Corden has been re-elected to a six-year term as Circuit Judge for the 31st Judicial Circuit in Michigan.

Charles Hansen is an author of *Missouri Corporation Law and Practice,* a new book which explores corporate law developments in Missouri and other major corporate law states. Mr. Hansen is senior vice president, secretary and general counsel of Emerson Electric Co., St. Louis, MO.

Donald Patterson has been listed in the 1989 edition of *The Best Lawyers in America.* He currently is a senior partner specializing in business and personal injury litigation at Fisher, Patterson, Sayler & Smith in Topeka, KS.

William P. Sutter has become of counsel to Hopkins & Sutter in Chicago, IL. He remains active as president and trustee of the Lucille P. Markey Charitable Trust, which makes research program grants for basic medical research.

George W. Watson has been named acting general counsel of the Federal Emergency Management Agency. In this position he is responsible for overseeing all agency legal services, including litigation, administrative law, and legislation.

1951

Donald G. Leavitt has completed 33 years as adjunct professor of patent law at St. Louis University School of Law. He continues to practice patent and trademark law with his firm, Senniger, Powers, Leavitt and Roedel.

George A. Leonard received the Cincinnati Bar Association's Trustees Award for Dedicated Service to the Community in April, 1989. Leonard recently retired as vice-president and general counsel of the Kroger Co. after 33 years.

Walter Potoroka has retired as assistant general counsel of Colt Industries, Inc., in New York, NY.

1953

Richard M. Donaldson is currently adjunct professor of management policy at the Weatherhead School of Management at Case Western Reserve University, Cleveland, OH.

Stanley M. Fisher has been elected president of the American Counsel Association for 1989-90. He also was reappointed to a third three-year term as National Uniform Law Commissioner.

1954

William K. Van't Hof has been elected chairman of the board of the American Heart Association. Mr. Van't Hof is a partner in the Grand Rapids, MI, law firm of Varnum, Riddering, Schmidt & Howlett, specializing in condominium law and real estate development.

Marvin O. Young, a partner in the St. Louis law firm of Gallop, Johnson & Neuman, has been re-elected to a fourth consecutive one-year term as chairman of the Westminster College Board of Trustees.

1955

Lawrence I. Brown, whose private practice deals primarily with international law and admiralty with a specialization in registration of vessels under foreign flags, recently received the honorary title of Knight Commander of the Liberian Humane Order of African Redemption at a formal ceremony in Monrovia, Liberia.

Harvey Silets is president-elect of the Seventh Circuit Bar Association. He is a past president of the Federal Bar Association.

1956

Myron J. Resnick has become senior vice-president and treasurer of Allstate Insurance Co. in Northbrook, IL.

1957

Robert B. Webster took office as the 55th president of the State Bar of Michigan at the close of the bar's annual meeting in Lansing, September 20-22. Mr. Webster is a partner in the law firm of Hill Lewis in Birmingham, MI, and succeeds Donald L. Reisig, '58, as state bar president.

1958

Robert James Henderson is managing partner of the Port Huron, MI, firm of Luce, Henderson, Bankson, Heyboer, Lane, Burleigh, Currier & Martinek, with his practice concentrated on the trial of fire and explosion cases.

David Lee Nixon, practicing in New Boston, NH, since 1960, received the New Hampshire Trial Lawyers' Association Award for Leading Trial Lawyer of the Decade.

1961

Michael E. Barber was elected chair of the Family Law Section of the American Bar Association at its annual meeting in August, 1989.

Warren E. Eagle has become an adjunct professor of law at Illinois Institute of Technology — Kent College of Law in Chicago, IL.

Richard M. Leslie serves on the board of directors of the Federation of Insurance and Corporate Counsel, a national organization, and on the board of the Dade County (FL) Bar Association.

J. Bruce McCubbrey has formed the firm of McCubbrey, Bartels, Meyer & Ward in San Francisco where he will continue to practice patent, trademark and copyright law.

John Edward Porter is in the midst of his sixth term as a member of Congress representing the 10th District of Illinois. He is a member of the House Appropriations Committee and co-chair of the Congressional Human Rights Caucus.

1962

Conrad W. Kreger has been elected managing principal of Stringari, Fritz, Kreger, Ahearn, Bennett & Hunsinger, P.C., in Detroit.

Garo Partoyan was recently elected executive vice-president of the United States Trademark Association, a 111-year-old association representing the interests of trademark owners. He continues as general counsel, marketing and technology, at Mars, Inc.

Galen Powers is president-elect of the National Health Lawyers Association, which has 6,000 members who practice in the health-care field.

1963

Murray J. Feiwell was recently awarded a Presidential Societies Service Citation in recognition of his outstanding fund-raising efforts on behalf of the University of Michigan. He currently is national chair of the Law School Fund.

Peter W. Forsythe was recently elected president of the board of trustees of the Council on Accreditation of Services for Families and Children in New York. The Council is the major national accreditation body for both public and private social service agencies.

Robert Harmon recently had his patent law treatise, entitled *Patents and the Federal Circuit,* published by BNA.

Richard J. Higgins, former deputy special coordinator at the U.S. Department of State, has been named executive director of the Immigration Reform Law Institute (IRLI).

John A. Krsul was elected chair of the Section of General Practice of the American Bar Association at its annual meeting in August 1989.

Alan I. Rothenberg, a senior partner of the Los Angeles firm of Manatt, Phelps, Rothenberg & Phillips, has been elected to serve as president of the State Bar of California for 1989-90.

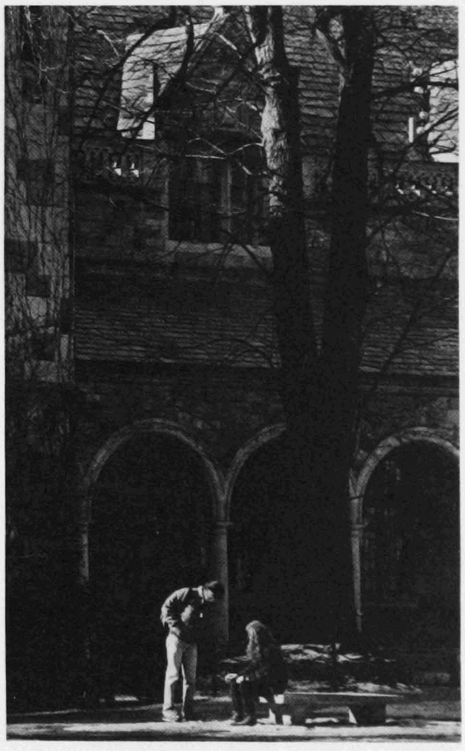
1964

Brian Mark Gray was a delegate to the recent US/Japan Bilateral Session on Economics, Trade and the Law held in Tokyo, Japan.

E.N. Harland has become executive director of finance at Caltex Australia Ltd., a Chevron/Texaco affiliate in Sydney, Australia.

Herbert M. Kohn is currently chair of the board of directors of Linde Thomson Langworthy Kohn & Van Dyke, P.C., in Kansas City, MO. He also is chair of the Missouri State Cancer Commission.

Stephen W. Roberts was given the Special Service Award by the National Feed Ingredients Association for serving as its legal counsel since 1977.



Stephen M. Wittenberg has become of counsel to the firm of Epstein, Becker & Green in Detroit, specializing in the areas of environmental and insurance law.

1965

C. Douglas Kranwinkle has joined the firm of O'Melveny & Myers, in Los Angeles, as a senior partner in their corporate law department.

Fred L. Woodworth has taken office as vice-president of the State Bar of Michigan. Mr. Woodworth formerly served as treasurer of the state bar and is a partner in the Detroit law firm of Dykema Gossett.

1966

Barbara Handschu is chair-elect of the Family Law Section of the New York State Bar Association. She currently is chair of the custody committee of the Family Law Section of the American Bar Association and is in private practice in Buffalo, NY.

Charles Jehle has been appointed vice-president of finance at Chivas Products, Ltd., an automotive parts manufacturer in Sterling Heights, MI.

Lucy A. Marsh is teaching at the Santa Clara University School of Law.

1967

Haradon J. Beatty is a partner at Holland & Hart in Denver, CO, working on mergers, acquisitions and financings.

Ahmed Bulia is teaching conflicts and international law at Seton Hall Law School in New Jersey.

Herbert Bernstein is a professor of law at Duke University Law School, in Durham, NC.

Christopher B. Cohen has been appointed to the Illinois Hospital Licensing Board.

Ronald J. DeLisle (LL.M.) and **C. Gordon Simmons** (LL.M.) are both members of the law faculty of Queens University in Kingston, Ontario. Mr. DeLisle teaches in the areas of criminal law, criminal procedure, and evidence, and is currently on sabbatical at Arizona State University in Tempe. Mr. Simmons teaches labor-management relations and has taken a three-year leave of absence from Queens University to serve as a neutral arbitrator.

Edwin Greenebaum is a professor at Indiana University where he teaches clinical law courses.

George M. Humphrey is chair of Philips Container Company, a manufacturer of plastics for industrial and commercial products.

Robert S. Katz, a partner at the Honolulu firm of Torkildson, Katz, Jossem, Fonseca, Jaffe & Moore, has become co-chair of the American Bar Association's Labor Law Section Committee on Antitrust and Labor Law.

Michael J. Levin is a partner at Boyle, Bogeler & Haines in New York, NY, specializing in commercial litigation.

Travis H.D. Lewin gave the principal address to the New York State Association of Criminal Court Judges in May 1989. He is a professor of law at Syracuse University College of Law.

Richard D. McLellan has been reappointed chair of the Michigan Law Revision Commission.

Harlan E. Van Wye is a California deputy attorney general specializing in writs and appeals in the Health, Education and Welfare section of the Civil Division's San Francisco office.

1968

Larry R. Eaton was re-elected to the Illinois State Bar Association's Assembly for a three-year term beginning in 1989.

Ronald R. Glancz has become a partner in the Washington office of Drinker Biddle & Reath, specializing in banking, regulation of financial institutions, and litigation.

Ronald M. Harwith has joined Computer Business Applications, Inc. of Los Angeles as its president and chief operating officer. CBA develops and sells mainframe software to large retailers.

Dick Sawdey has started his own practice, concentrating in corporations, general commercial matters, securities, and executive compensation. He also is of counsel with Hoogendoorn, Talbot, Davids, Godfrey & Milligan in Chicago, IL.

1969

Barry Adelman is a partner and member of the executive committee of Rubin, Baum, Levin, Constant & Friedman in New York, NY.

Stuart Friedman has begun his six-year term on the Cuyahoga County Common Pleas Court in Cleveland, OH.

William S. Moore has written a mystery novel entitled *The Last Surprise,* to be published by St. Martin's Press in March 1990. The novel is set in Washington, D.C., where he practices with Shea & Gardner, and involves espionage by an allied government, the murder of a Senator, and a complicated sting operation.

Charles Platto is currently chair of the International Litigation Committee of the International Bar Association and has recently published a book on obtaining evidence in foreign jurisdiction business disputes.

1970

Dennis Lumsden is practicing as a sole practitioner in Fort Myers, FL.

Robert Sammis is vice-president of GATX Leasing where he is responsible for cross-border tax leases.

Steve Schember, a partner at Dykema Gossett in Sarasota, FL, is a member of the board of directors of the Academy of Florida Trial Lawyers.

1971

Ronald F. Brot has opened his office in Woodland Hills, CA, concentrating in civil litigation in all state and federal courts in California.

Harvey L. Frutkin has written a three-volume set entitled *Pension and Profit-sharing Plans: Forms & Practice* which was recently published by Matthew Bender & Co.

Connie R. Gale serves as general counsel and secretary of ALC Communications Corporation in Birmingham, MI.

Geoffrey L. Gifford recently opened his new firm, Pavalon & Gifford, in Chicago, IL, specializing in plaintiff's medical negligence and product liability.

Charles M. Lax, a principal in the Southfield, MI, firm of Rubenstein, Isaacs, Lax & Borman, P.C., has been selected a member of the Employee Plans Ad Hoc Group for the Internal Revenue Service.

Steven H. Levinson has been appointed a judge on the First Circuit Court of the State of Hawaii.

A. Peter Lubitz has become of counsel to the firm of Donovan Leisure Newton & Irvine in New York, NY, concentrating in the areas of business reorganization and debtors' and creditors' rights law.

Thomas P. McMahon, who served as chief of the Antitrust Unit for the State of Colorado from 1981-1989, has entered private practice in Denver, becoming special counsel to Pendleton & Sabian, P.C., specializing in antitrust litigation, counseling and complex litigation.

Donald Silverman has become assistant chief attorney, County Court Bureau, New York State Supreme Court. He is engaged in defense of narcotics and white collar crime at the trial level.

Robert Stone currently is chair of United Model Distributors, Inc., the largest wholesale hobby distribution company in the United States.

1972

Thomas J. Cresswell has been appointed to the position of general counsel of the Pacific Area of the Dow Chemical Company. In his new position, Mr. Cresswell will be based in Hong Kong.

1973

Robert Abrams is a professor of law at Wayne State University where he specializes in water law. He has taught at the University of Michigan Law School on three occasions.

Rupert M. Barkoff, a partner in the Atlanta firm of Kilpatrick & Cody, has become chairperson of the American Bar Association's Forum on Franchising.

Robert M. Bellatti is currently chair of the Tax Section Agriculture Committee of the American Bar Association.

Ronald Gould has been elected to a three-year term on the Washington State Bar Association Board of Governors.

Gary L. Nakarado serves as a Colorado Public Utilities Commissioner in Denver.

William B. Raymer has been elected president of the Jackson, MI, County Bar Association for the 1989-1990 term.

Kenneth L. Robinson, Jr. has become executive vice-president and assistant to the president and corporate secretary of Blue Cross and Blue Shield of West Virginia. He also is chair of the Health Care Coalition of West Virginia.

Iris E. Sholder is a supervisor of the Labor and Employment Division (Civil Actions Bureau) of the Cook County State Attorney's office in Chicago.

Gary G. Stevens has joined the firm of Bogle & Gates as a partner in its Washington, D.C., office.

Pamela B. Stuart recently became a member of the firm of Lobel, Novins, Lamont & Flug in Washington, D.C., where she practices civil, international and white collar criminal litigation with a specialty in international extradition.

1974

William S. Jordan III has been promoted to full professor at the University of Akron (OH) School of Law.

Harriet Landau recently accepted the position of general counsel of Racetrac Petroleum, Inc., an independent marketer of gasoline in the southeastern United States.

Donald S. Mitchell has been named a judge of the Municipal Court, City and County of San Francisco.

Ivan J. Schell has joined the firm of Hirn Reed Harper and Eisinger in Louisville, KY, as a partner focusing on employee benefits law, estate planning and professional corporation law.

F. Wallace Strong, on active duty in the Judge Advocate General's Corps, U.S. Navy, has been transferred to Submarine Group Six, Charleston, SC, where he will be staff Judge Advocate.

Dana L. Trier has joined the firm of Cleary, Gottlieb, Steen & Hamilton as a tax partner in the Washington, D.C., office. He leaves the position of Acting Deputy Assistant Secretary of the Treasury for Tax Policy.

Barry Zaretsky, professor of law at Brooklyn Law School, has become of counsel to Kelley Drye and Warren concentrating on creditors' rights, bankruptcy and commercial law.

1975

Susan Low Bloch has been promoted to full professor at Georgetown University Law Center in Washington, D.C.

Steven Goldstein, a partner at Husch, Eppenberger, Donahue, Cornfeld, & Jenkins in St. Louis, MO, was listed in the 1989 edition of *The Best Lawyers in America* in the bankruptcy section.

Hurticene Hardaway-Shepard, city attorney for the City of Pontiac (MI) since 1986, has been reappointed by Governor Blanchard to the Ferris State University Board of Control. She has also been elected to the boards of directors of the Michigan Municipal League Legal Defense Fund and of the Michigan Association of Municipal Attorneys, the first female or black member so appointed to either board.

Richard S. Kanter has been appointed assistant commercial attache in the U.S. Embassy in Tokyo. He joined the U.S. and Foreign Commercial Service of the Department of Commerce in 1989. U.S. & F.C.S. promotes American exports and investment overseas.

Robert Lloyd, a professor at the University of Tennessee College of Law, recently had his casebook, *Secured Transactions,* published.

Wayne D. Parsons has been elected president of the Association of Plaintiff Lawyers of Hawaii and has been named a member and governor of the President's Council of the Association of Trial Lawyers of America.

Adrian L. Steel, Jr., a partner at Mayer, Brown & Platt in Washington, D.C., has been elected chair of the policy board of Legal Counsel for the Elderly, an organization which provides free legal assistance to needy D.C. residents age 60 or older.

Barbara Timmer serves as general counsel for the Committee on Banking, Finance & Urban Affairs, U.S. House of Representatives.

Michael J. Williams, a foreign service officer with the Agency for International Development (AID), has been stationed in Tegucigalpa, Honduras, where he provides legal advice to AID offices in Honduras, Guatemala and Belize.

1976

Howard M. Bernstein has become a senior assistant county attorney for Pinellas County, FL.

Stephen C. Corwin recently joined the firm of Vander Ploeg, Ruck, Luyendyk & Wells in Muskegon, MI. He also serves as corporate counsel for the County of Muskegon.

James R. Peterson has joined National Fuel Gas Supply Corporation in Buffalo, NY, as a senior attorney.

Nancy R. Schauer has been elected president of the Los Angeles Chapter of the Association for Corporate Growth, a group of merger and acquisition professionals.

Robert B. Stevenson is chair of the Michigan State Bar Tax Section Employee Benefits Committee and has twice been cited in *The Best Lawyers in America* for his expertise in employee benefits law.

1977

Susan Gzesh has been granted a Fulbright Lectureship Award to teach U.S. labor and immigration law in Mexico. She will take a leave from the Chicago Lawyer's Committee for Civil Rights where she has been since 1986.

Joseph C. Marshall III has been named by the *National Law Journal* as one of the country's 50 most powerful lawyers of tomorrow. He currently practices in the employment relations group of the Detroit law firm of Dickinson, Wright, Moon, Van Dusen and Freeman.

1978

Mary Coombs was recently granted tenure at the University of Miami Law School where she specializes in criminal law, family law and feminist jurisprudence.

John E. Grenke has become a shareholder in the firm of Monaghan, LoPrete, McDonald, Sogge & Yakima in Bloomfield Hills, MI. He also is chair of the Oakland County American Civil Liberties Union.

Chris E. Limperis was recently named general counsel and secretary of Rush-Presbyterian-St. Luke's Health Plans, Inc., in Chicago.

Stephen H. Rosenbaum has been promoted to deputy chief of the Voting Section, Civil Rights Division of the U.S. Department of Justice, where he is responsible for supervising litigation under the Voting Rights Act of 1965 as amended.

1979

Michael J. Quinley has returned to local prosecution work in St. Louis after a year fighting organized crime in the Brooklyn, NY, District Attorney's Rackets Bureau.

Susan Segal has received the Bench & Bar Authors Award as an author of the best article published in *Bench & Bar* for 1989. Ms. Segal heads the labor and employee relations law group of the Minneapolis law firm of Gray, Plant, Mooty, Mooty & Bennett.

John S. Vento was awarded the Defense Meritorious Service Medal on April 27, 1989, the second highest award that can be received for non-combat achievement, for his international law work pertaining to the deployment of U.S. forces to the Persian Gulf area. He is a major in the Air Force Reserve Judge Advocate General Corps and currently practices in Tampa, FL, specializing in complex corporate and international litigation.

Theodore J. Vogel recently became tax counsel for Consumers Power Co. and CMS Energy Corporation in Jackson, MI.

1980

Peggy L. Brown serves as chief of nursing home policy for the Washington Department of Social and Health Services in Olympia, WA.

Keith L. Carson has become a partner at Thompson, Hine and Flory, in Cleveland, OH.

Debi D. Kirsch has become senior international tax attorney at General Motors.

Ronald Nessim has joined the firm of Bird, Marella, Boxer, Wolpert & Matz in Los Angeles as a partner. Previously he had served as assistant U.S. attorney, Major Frauds Unit, U.S. Attorney's Office in the central district of California.

Patricia Ramsey serves as regional legal advisor for Bangladesh and Nepal at the Agency for International Development.

Dean Rocheleau has become a partner at the CPA firm of Plante & Moran.

Stephanie Smith has become a shareholder of Jolley, Urga, Wirth & Woodbury in Las Vegas, NV, specializing in commercial litigation and bankruptcy law.

Elizabeth C. Yen has joined the firm of Pullman, Comley, Bradley & Reeves, in Bridgeport and Southport, CT, as a partner. She will work in the areas of banking and labor law.

1981

Scott Bassett is teaching family law as an adjunct faculty member at Wayne State University Law School. He continues practicing with Victor, Robbins & Bassett in Birmingham, MI.

John R. Foote has become a partner at Thelen, Marrin, Johnson & Bridges in San Francisco, CA.

David R. Hazelton has been named a partner in the Washington office of Latham & Watkins, where he practices administrative and government contract law.

Douglas B. Levene is now associated with Skadden, Arps, Slate, Meagher & Flom in New York, NY, where he specializes in mergers and acquisitions.

Stuart Logan has become a partner at Dykema Gossett in Detroit, MI.

Scott G. Mackin has become managing director and general counsel of Odgen Martin Systems, Inc., a leading waste-to-energy company.

Jeffrey B. McCombs, who teaches tax at the University of Nebraska College of Law, recently published his second article, *Tax Incentives for Investment: A Free Market Future vs. Our Pork Barrel Past,* in the Indiana Law Journal.

Kenneth C. Mennemeier has become a partner at Orrick, Herrington & Sutcliffe, working in the firm's Sacramento office.

Christopher H. Meyer serves as counsel to the National Wildlife Federation's Rocky Mountain Natural Resources Center in Boulder, CO. He also is an associate faculty member at the University of Colorado School of Law.

Gregg Vignos has become a partner at Pillsbury, Madison & Sutro in San Francisco, CA.

1982

Betsy Baker has been promoted to associate dean for administration at the University of Minnesota Law School.

Sara Elizabeth Bartlett has been named a partner in Sidley & Austin, Chicago, where she practices with the banking and commercial law group.

Mark E. Haynes has become a partner at Morrison & Foerster in Denver, CO.

David S. Inglis has become a partner at Benesch, Friedlander, Coplan & Aronoff in Cleveland, OH.

Robert D. Kraus is associate counsel of American Express in New York, NY.

Janet E. Lanyon has become a shareholder at Mosher, Vondale, Gierak & Baumbart, P.C., in Bloomfield Hills, MI, concentrating on labor and employment law.

Deborah Lewis was elected to the 36th District Court in Detroit. Previously she had been Macomb County Prosecutor, the first minority in that position in the county's history.

Suzanne Mitchell has been named associate university counsel at Hahnemann University in Philadelphia, PA.

James R. Patterson has established and is a managing partner of the Columbus and Zanesville, OH, firm of Patterson & Rouch. The firm is engaged in the general practice of law.

Carolyn Rosenberg, a partner at Sachnoff & Weaver, Ltd. in Chicago, was chosen "Young Careerist of Illinois" by the Business and Professional Women's Network, the oldest and largest women's organization in the country.

Raymond J. Sterling has become a shareholder in the Troy, MI, firm of Driggers, Schultz, Herbst & Patterson, P.C.

Thomas T. Tate recently established his own practice, Andersen & Tate, outside of Atlanta, GA. The five-member firm specializes in real estate, banking law and commercial litigation.

Peter H. Trembath has been elected vice-president of BMC Industries, Inc., which manufactures precision etched metal products, specialty printed circuits, and ophthalmic lenses. The firm is based in Minneapolis.

1983

Tim Butler has become an associate at Vorys, Sater, Seymour & Pease in Cincinnati, OH.

John D. Erdevig is managing attorney for the Monroe-Lenawee office of Legal Services of Southeastern Michigan. He specializes in preventing evictions and domestic violence.

Michael R. Huffstetler has become a special partner with Ivins, Phillips & Baker in Washington, D.C., specializing in federal income taxes and employee benefits.

Susan C. Kery is assistant general counsel for the New Mexico Environmental Improvement Division.

Michael R. Lied has become a partner at Sutkowski & Washkuhn in Peoria, IL, emphasizing employment and immigration law and general civil litigation.

William Perry recently gave a series of lectures on American product liability law in Beijing and Xian in the People's Republic of China, by invitation of the China National Machinery and Equipment Import and Export Corporation.

Sylvester Pieckowski is currently secretary and general counsel of Melex USA, Inc., in Raleigh, NC.

Dwight Rabuse is an appellate litigator for the Department of Justice in Washington, D.C.

Terri L. Stangl has become the director of training and litigation at Legal Services of Eastern Michigan. She has been elected chair of the board of directors of the Saginaw County Bar Association.

1984

Thomas J. Blessing has become the assistant city attorney for the City of Ann Arbor, MI.

Thomas J. Frederick has returned to practice at Winston & Strawn in Chicago after spending 1988-1989 as a Bigelow Fellow and Lecturer in Law at the University of Chicago Law School.

Gregory K. Frizzell has become an associate at Jones, Givens, Gotcher, Bogan & Hilborne in Tulsa, OK, after two years as a clerk to The Honorable Thomas R. Breet, U.S. District Judge for the Northern District of Oklahoma. He was recently selected a Barrister of the American Inns of Court.

Michael H. Hoffheimer has joined the faculty of the University of Mississippi Law School.

After six years in the United States, **David Knoll** (LL.M.) has transferred from the New York City office of Coudert Brothers to its Sydney office. He is continuing his practice in international banking law, focusing on investment in the Asia-Pacific region.

Donna Evensen Morgan has become an associate at Mayer, Brown & Platt in Chicago, IL.

John M. Ramsey has accepted a position with the Securities and Exchange Commission in Washington, D.C., in the Chief Counsel's Office, Division of Market Regulation.

Michael J. Rizzo has been appointed vice president and associate general counsel of Machine Tool Finance Corporation, a national equipment financing and leasing company.

Kurt G. Yost has been named a shareholder with the Grand Rapids, MI, firm of Law Weathers & Richardson, P.C., where he practices corporate law, specializing in mergers and acquisitions, corporate and real estate finance, and corporate and partnership taxation.

1985

Craig Jones has joined the New York firm of Chadbourne & Park in its Washington, D.C., office. He specializes in the federal tax area.

Donna Keifer has become an assistant regional counsel at the Environmental Protection Agency's Boston office, where she works with fellow alumni Mike Kenyon '85, Ellie Tonkin '84, Tim Williamson '83 and Jeremy Firestone '86.

James R. Lancaster, Jr. has joined the law firm of Loomis, Fuert, Ederer, Barsley, Davis & Gotting in Lansing, MI, specializing in litigation and administrative law.

Mark Q. Schmitt is in private practice in Bozeman, MT.

Ronald M. Yolles has become a fellow of the Financial Analysts Federation and has formed his own investment advisory firm, Ronald M. Yolles Investment Management, Inc., in Southfield, MI.

1986

John P. Barker has joined Graham & James in San Francisco as an associate in the corporate department. His practice focuses on international corporate and computer law.

Art Brannan has become an associate at Holland & Knight, Tampa, FL.

John S. Gibson has become an associate at the Los Angeles firm of Jones, Day, Reavis & Pogue.

Elizabeth Johnson is a staff attorney at the Southern Poverty Law Center. She is lead counsel on a voting rights case challenging Alabama's election scheme for trial judges.

J. Kachen Kimmell recently became associate regional real estate counsel for the Prudential Insurance Co. of America in Chicago, IL.

Mitchell Mondry has become vice-president for customer service at Highland Superstores in Plymouth, MI.

Megan Norris, an associate at Miller, Canfield, Paddock and Stone, has been appointed to the board of directors for the Detroit Barristers Association.

R. Jeffery Ward has joined Wiessmann, Wolfe, Bergman, Coleman & Silverman, in Beverly Hills, CA, as an entertainment litigation associate.

1987

Sufi Ahmad has completed his clerkship with The Honorable Benjamin Gibson, U.S. District Judge, and is now working with Miller, Bristow & Brown in Houston, TX.

Christine E. Brummer has joined the Detroit office of the accounting firm Coopers & Lybrand as a tax specialist.

David M. Carroll is an associate in the real estate department of Chapman and Cutler in Chicago.

Joseph G. Cosby recently joined the firm of Craig and Macauley in Boston, MA.

Laura Fitch Harrity is a law clerk to The Honorable Robert K. Martin of the U.S. Bankruptcy Court, Western District of Wisconsin.

Marcia McBrien is a litigation associate at Miller, Canfield, Paddock and Stone in its Bloomfield Hills, MI, office.

Mary Josephine Newborn is an associate at Ice, Miller, Donadio & Ryan in Indianapolis, IN, where she specializes in medical malpractice litigation and insurance defense litigation.

Reginald Turner, Jr. has joined the firm of Sachs, Nunn, Kates, Kadushin, O'Hare, Helveston & Waldman, P.C., in Detroit. He will work in the areas of labor law and personal injury litigation.

1988

Gabriel J. Chin is clerking for The Honorable Richard P. Matsch, JD '53, at the U.S. District Court in Denver, CO.

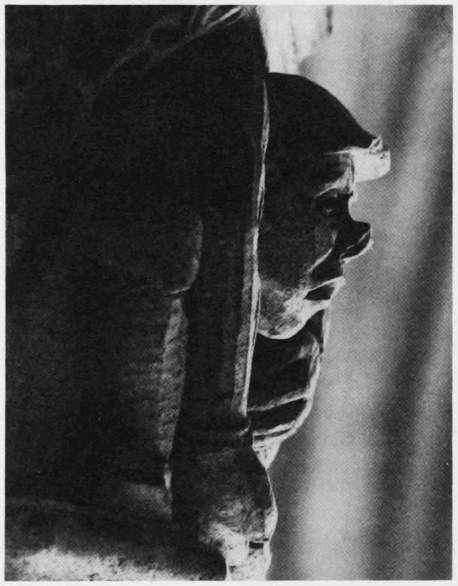
Denise C. Franklin is an associate with Brown, Rudnick, Freed & Gesmer in Boston, MA, where she is involved in implementing the firm's part-time policy.

Robert Labes has completed his clerkship at the U.S. Court of Appeals, Second Circuit, and has joined Squire, Sanders & Dempsey in Cleveland, OH.

Susan Pachota has become a staff attorney at the Children's Legal Clinic in Denver, CO, a non-profit agency which represents and lobbies for abused and neglected children in Colorado.

Ruth Rodriquez is an attorney for the Federal Deposit Insurance Corporation in Dallas, TX.

Nicholas J. Stasevich has completed an appointment as a research fellow with the Ministry of Foreign Trade and Commerce in Warsaw, Poland. He now practices at Butzel, Long, Gust, Klein & Van Zile in Detroit.



Alumni Deaths

'10 Gustave H. Hoelscher, March 23, 1989

'14 Henry Hart, March 13, 1989

'16 Harry Carstarphen, March 3, 1989

'23 Heinz-Peter Neumann, May 3, 1989

'24 Stewart R. Boyer, June 9, 1989, in Sun City Center, FL

'25 Florence Rouse, July 23, 1989

'26 Walter J. Maxey, July 4, 1989, in Fort Myers, FL

'29 Lester B. Orfield, July 6, 1989

'30 Harvey J. Gunderson, May 28, 1989
Hyman A. Kramer, July 3, 1989, in Detroit, MI
Walter E. Mueller

'32-'34 Herbert L. Draper

'34 Thomas A. Pedersen

'35 Douglas Sharp, July 3, 1989

'39 Robert O. Thomas, July 11, 1989, in Fort Madison, IA

'40 John J. Adams, July 23, 1989
Leonard F. Oberman, May 1, 1989, in Grand Rapids, MI

'41 Franklin C. Milliken
Frank B. Sanders, August 3, 1989

'42 Charles G. Schwartz, July 11, 1989

'43 Henry M. Spencer, Jr., April 7, 1989

'44 Satoshi Hoshi, January 21, 1989, in The Hague, Netherlands

'48 Vincent E. O'Toole, December 3, 1988
Robert D. Owen, September 14, 1989, in Decatur, IL

'49 George K. Heartwell, May 23, 1989, in Grand Rapids, MI
Daniel W. Reddin III, July 12, 1989

'50 Gerald R. Hegarty, June 3, 1989, in Springfield, MA
John H. Park, May 20, 1989

'51 George E. Siberell, May 22, 1989

'52 Edward C. Wilson, April 13, 1989, in Muskegon, MI

'54 Londo H. Brown, May 23, 1989, in Sebring, FL
Keith Wellington, June 16, 1989

'55 Robert F. Rolnick, May 11, 1989

'56 Lily M. Okamoto, April 2, 1989, in Honolulu, HI
David L. Wampler, April 25, 1989

'58 H. C. Eugen Ulmer

'59 William R. Mills, May 8, 1989

'63 Edward J. McArdle, June 2, 1989, in Saginaw, MI

'66 Robert Schwenk, September 16, 1989

'67 Robert F. Bender, Jr., June 26, in Greenwich, CT
David J. Lori, June 25, 1989

'79 Patrick James Leary, September 2, 1989

Auld Lang Syne . . .

Did you graduate in a year ending with either 5 or 0? Then 1990 is a reunion year for you! Whether it's your 50th or your fifth, you won't want to miss the fun. Plan now to join your classmates in Ann Arbor. Notices with dates and registration information will be mailed shortly.

Help us ensure that you receive reunion mailings by making certain that the alumni relations office has your current address. Likewise, if you were a summer starter who prefers to be identified with a class that is celebrating its reunion in 1990, just let us know and we'll be happy to make sure that you are included.

Questions? Write or call Clare Hansen in the Alumni Relations Office at 721 South State Street, Ann Arbor, MI 48104-3071 (313) 998-7973.

The World TRADING SYSTEM

Law and Policy of International Economic Relations

John H. Jackson

The following article is an edited excerpt from The World Trading System: Law and Policy of International Economic Relations, *published recently by the Massachusetts Institute of Technology Press. Reprinted with permission.*

The Policy Assumptions of the International Economic System

"Liberal Trade"

The starting point for any discussion of policy for the international economic system of today is the notion of "liberal trade," meaning the goal to minimize the amount of interference of governments in trade flows that cross national borders. The economic arguments concerning this central policy concept will be discussed below, but regardless of their validity or intellectual persuasiveness, there is no question that they have been influential. The basic "liberal-trade" philosophy is constantly reiterated by government and private persons, even in the context of a justification for departing from it!

The prominent economist, Paul Samuelson, says, "[T]here is essentially only one argument for free trade or freer trade, but it is an exceedingly powerful one, namely: Free trade promotes a mutually profitable division of labor, greatly enhances the potential real national product of all nations, and makes possible higher standards of living all over the globe."

Of course, this basic "economic goal" is not the only goal of international trade policy. A number of other goals can be articulated also. In some cases these other goals may be partly inconsistent with the central goal, requiring some "balancing" or "compromise." At least two more can be mentioned here.

During the years near the end and just after World War II, as leaders of the victorious nations began formulating post-war plans for international economic institutions, one could detect in speeches and documents a strong political goal that accompanied

the economic thinking of the day. The political goal stemmed from thinking that pointed to the interwar economic problems as partial causes for the disastrous Second World War. The Great Depression, the mishandling of policy toward Germany after World War I, and similar circumstances weighed heavily on the minds of policy makers who wanted to design post-World War II institutions that would prevent a recurrence of these problems. For example, Harry Hawkins of the U.S. said in a 1944 speech, "Trade conflict breeds noncooperation, suspicion, bitterness. Nations which are economic enemies are not likely to remain political friends for long." A 1945 presidential message stated that "The fundamental choice is whether countries will struggle against each other for wealth and power, or work together for security and mutual advantage. . . . The experience of cooperation in the task of earning a living promotes both the habit and the techniques of common effort and helps make permanent the mutual confidence on which the peace depends."

Another policy underlying contemporary international economic rules and institutions became more prominent in more recent decades. This is the policy of promoting economic development in those countries which were not industrialized at the end of World War II. Many of the corollaries of this policy goal appear to challenge the appropriateness of rules and institutions assumed to be desirable for general "liberal trade" goals, and this development goal has led some leaders to question the fairness of the economic institutions established during the 1940s.

The Level Playing Field as a Policy Goal

In connection with international trade policy, one often hears expressed the importance of the "level playing field."

The meaning and implications of this goal are anything but clear. To a certain degree it may imply preserving a competitive market atmosphere for world trade, just as some large societies (notably the U.S.) have such a goal for their internal markets. Thus, when foreign governments intervene in the world market to favor their own national objectives, or foreign manufacturers engage in various noncompetitive practices, these activities are thought to be unfair to competing producers in other countries.

But often something more is meant by the "level playing field" idea. Even "economically competitive" actions by foreign firms are considered in some cases to be "unfair," and thus to disturb the "level playing field." Certain categories of actions have for many decades been considered to be "unfair" by nations and the international rules of international trade. Among these are "dumping" and "subsidy" activities, as well as other actions, including patent, trademark, or copyright infringements. It is not always clear whether all the practices subsumed by trade policy experts under these categories really have a damaging impact on a world trading system, or whether they provide for uneven conditions of competition for producing firms in other nations. Yet the goal of promoting a "level playing field," through national and international policies designed to inhibit dumping or subsidies, seems to have a powerful political appeal.

International Law and International Economic Relations: An Introduction

International Economic Law

Increasingly in recent years one has heard references to "international economic law." Unfortunately, this phrase is not well defined. Various scholars and practitioners have differing ideas about the meaning of this term. Some would have it cast a very wide net, and embrace almost any aspect of international law that relates to any sort of economic matter. Considered this broadly, almost all international law could be called international economic law, because almost every aspect of international relations touches in one way or another on economics. Indeed, it can be argued from the latter observation that there cannot be any separate subject denominated as "international economic law."

Trade conflict breeds noncooperation, suspicion, bitterness. Nations which are economic enemies are not likely to remain political friends for long.

A more restrained definition of "international economic law" would, however, embrace trade, investment, services when they are involved in transactions that cross national borders, and those subjects that involve the establishment on national territory of economic activity of persons or firms originating from outside that territory.

In any event, the subject of international trade, whether in goods or in services (or both), is clearly at the core of international economic law. The rules of product trade, centrally served by the GATT, are the most complex and extensive international rules regarding any subject of international economic relations which exist. As such it is natural that they would have some influence on the potential development of rules for other international economic subjects. Already scholars and statesmen have mentioned a "GATT for Investment" and a "GATT for Services." For this reason there is considerable justification for focusing on the rules of product trade as they are reflected in the GATT system. This focus can be thought of as sort of a "case study" of the advantages and disadvantages, the positives and negatives, of an elaborate rule system at the international level.

The subject of international trade, whether in goods or in services (or both), is clearly at the core of international economic law.

There are two unfortunate bifurcations of the subject of international economic law, however. One is the distinction between monetary and trade affairs. Since both are, in a sense, "two sides of the same coin," there is a degree of artificiality in separating them as topics. Yet international organizations, national governments, and even university departments tend to indulge in the same separation, and since the whole world cannot be studied at once, there is great practical value in taking up the trade questions separately.

An even less fortunate distinction of subject matter is often made between international and domestic rules. In fact, domestic and international rules and legal institutions of economic affairs are inextricably intertwined. It is not possible to understand the real operation of either of these sets of rules in isolation from the other. The national rules (especially constitutional rules) have had enormous influence on the international institutions and rules. Likewise the reverse influence can often be observed. Consequently I shall try to treat them both.

The Tangled Web: Is There a Warp and a Woof?

Legal scholars sometimes refer to the "seamless web" of the law. The phrase connotes the notion that each legal concept is in some way related to virtually every other legal concept. It also connotes a certain skepticism of theory and of simplifying concepts — a skepticism which in many ways is characteristic of the legal profession, which often views itself as uniquely, among the learned professions, coming face to face with the complexity and coarseness of reality with the aim of solving real problems. It is sometimes said that the economist tells us what should be done, while the lawyer is left to figure out how to do it. This brings to mind the anecdote of the person on a desert island who finds a can of vegetables and asks the theorist how to open it. "Use a can opener," the theorist replies. "But where do I find one?" asks the other castaway. "Don't bother me with details!" responds the theorist.

The converse problem can also be dangerous: there is always the risk of losing sight of the forest because one's gaze focuses on particular trees. Watch a lawyer and a social scientist argue. The lawyer often cites specific cases — the "anecdotal evidence" — to make his point. The social scientist, on the other hand, will often use statistics to make his point. There are dangers with each approach. In order to formulate statistics it is often necessary to develop categories for counting which are over-simplified. The specific case history can be a useful way to avoid this kind of oversimplification. On the other hand, the use of anecdotes can often seriously mislead policy makers. "Once does not make always"; the anecdotes may be atypical.

Thus, we are faced with a dilemma. How can some meaningful generalizations be stated in the short space allotted for exposition of an extraordinarily complex subject? There is always the danger of an apparently "unifying hypothesis" seriously oversimplifying the subject and thereby misleading the policy-maker and problem-solver. Yet without some generalization it is difficult, if not impossible, to understand the subject.

Perhaps one way out of this difficulty is to state issues or questions raised by the material without in all cases trying to formulate answers. I have tried to do a little of both.

Conclusions and Perspectives

The "Trade Constitution"

What we may characterize as the "constitution" for international trade relations in the world today is a very complex mix of economic and governmental policies, political constraints, and above all (from my perspective) an intricate set of constraints imposed by a variety of "rules" or legal norms. It is these legal norms which provide the skeleton for the whole system. Attached to that skeleton are the softer tissues of policy and administrative discretion. Even the skeleton is not rigid or always successful in sustaining the weight placed upon it. Some of the "bones" bend and crack from time to time. And some of the tissues are unhealthy.

This "constitution" imposes different levels of constraint on the policy options available to public or private leaders. Some of its "rules" are virtually immutable. Others can be changed more easily. Part of the complexity of the whole system is this variety of constraints, which limit the realistically available options for solving problems. In addition, there are different contexts or levels for these constraining rules. Some of these constraints come from national or sovereign-state governmental systems (e.g., the Constitution of the United States, or the statutes of a GATT member country). Other rules come from the international system and its treaty mosaic, centering for our purposes on the GATT system, but also influenced by other elements of the Bretton Woods system and indeed the entire structure of international law (weak as it may be).

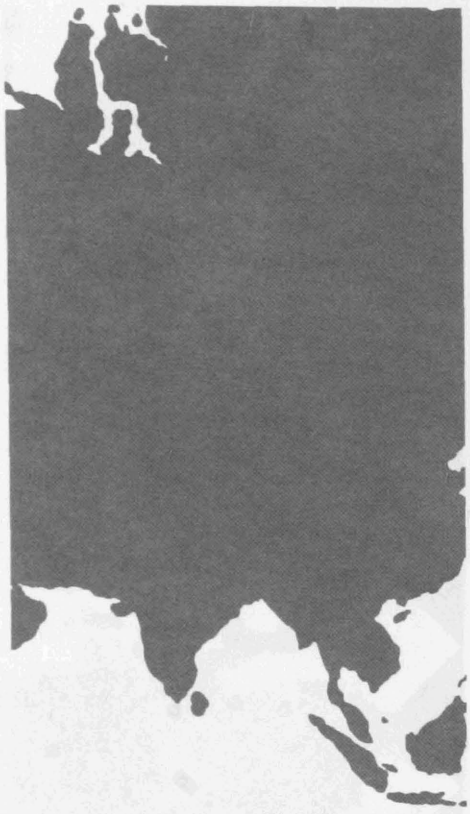
Some of these "constitutional" restraints are sources of great annoyance both to decision-makers and to economists. The rules, they will sometimes say, too often "get in the way." Indeed, with respect to the "trade constitution," they are probably right. As I will explain, there is considerable reason to be discontented with that "constitution" as it exists today, and to worry about its weaknesses and defects in the context of the type of interdependent world with which we are faced.

However, some of the constraints are the result of important and necessary principles, resulting from competing policy goals of the total system (not just those of international trade). For example, there is no doubt that the U.S. constitutional "separation of powers" principles are the source of great annoyance for decision-makers, who must struggle with the constant tensions of the executive–Congress power struggles. Yet the great genius of the draftsmen of this Constitution was their understanding of the need to disperse power so as to avoid its abuse. Thus, in a broader context, the separation-of-powers principle can be seen to have greater importance than the needs for short-term solutions to disagreeable international economic and trade problems.

Likewise, a rule-oriented structure of the portion of the skeleton devoted to international treaties for trade (GATT) is often a source of annoyance and aggravation. Yet that rule structure itself has potential value for creating greater predictability, redressing unfair power imbalances, and preventing escalating international tensions. In some instances it is more important that international disputes be settled quietly and peacefully than that they conform to all correct economic policy goals, although the long-term impact of a "settlement" on the rule structure must also be considered.

Like almost all government activity, the international trading system and its constitution contain conflicting and competing policy goals. Thus, like most government institutions, methods of resolving or "compromising" these competing goals are crucial to the potential long-range success of the system. For example, the worthy objectives of liberal trade (based on economic principles such as comparative advantage) will often conflict (at least in the short run) with goals of protecting poorer or weaker parts of a society's citizenry. Thus, the "pureness" of liberal trade policies is relaxed somewhat to accommodate some competing goals of helping those who are poorer to adjust. (Of course, the constitutional structure of the system sometimes perversely also assists the more privileged of the world's producers to perpetrate that privilege at the expense of others — merely illustrating one of the many imperfections

There is considerable reason to be discontented with the "trade constitution" as it exists today, and to worry about its weaknesses and defects in the context of the type of interdependent world with which we are faced.



The worthy objectives of liberal trade (based on economic principles such as comparative advantage) will often conflict (at least in the short run) with goals of protecting poorer or weaker parts of a society's citizenry.

in the system.) The "conservative social welfare function" so ably described by Max Corden realistically explains the approach of many national governments in today's world. Even if Corden and his admirers (including me) do not always think that this function is wisely administered, yet it can be defended in some circumstances as an appropriate governmental goal which also competes with purer versions of liberal trade policy.

With these observations we can now see some approaches to solving various trade puzzles. How vulnerable is a small country to blocking by other nations of the small country's exports? At the moment almost the only recourse or inhibition of such an action by importing nations is the GATT system. Defective as it is, it nevertheless plays a crucial role in constraining some of the more rampant national governmental actions which would otherwise restrict trade and defeat important expectations of small (and large) exporting countries.

Likewise, the investor who needs some long-term dependability of export markets in order for his new plant to be a viable investment will also find the GATT system crucial (and not necessarily too comforting!). Without this system, the degree of predictability would be even considerably less.

Why do governments choose fourth-best economic policy options? The intricate interplay of international rules and national constitutions and norms gives us the necessary clues. National executives prefer to avoid going to Congress or parliaments in order to obtain the necessary authority for certain approaches, and this may rule out some options. The international rules provide in some circumstances the onus of "compensation" or rebalancing of negotiated benefits, which impose constraints. Thus governments may pursue "informal" measures or other approaches which are less advantageous in economic terms in order to avoid some of the national or international rule-imposed "costs" of particular actions. The use of export-restraint arrangements particularly comes to mind.

How the System Works

We can now summarize, or at least characterize, how the world's "trade constitution" works, such as it is. This system is a complex interplay of both national and international norms, institutions and policies. It cannot be understood if only the international part is studied, nor can it be understood if only the sovereign national states are studied. The linkages are extremely significant: the GATT is what it is at least partly because of the United States constitutional structure and, more recently, because of the structure of the European Community. U.S. law is what it is at least partly because of the GATT. To explore how to achieve certain policy options, one must know not only the GATT procedures for the rule formulation or treaty change, but also the similar procedures of at least some of the key nation-state GATT members.

Within major GATT trading nations, a cardinal principle of the administrating (executive) authorities is often to avoid seeking legislation from the legislature. Thus the constitutional allocation of powers, embellished by existing legislation, often produces significant constraints on policy selection.

A core part of the system is the vast body of GATT tariff bindings, made significant and relatively enforceable because of the GATT and its institutional makeup. An additional part of the system (perhaps less effective) is the code of conduct established by the many other GATT rules and for at least some nations extended by the various "side codes" of the GATT.

Important additions to the system come from national government laws and institutions, particularly those relating to "unfair trade practices." In many cases national procedures provide for initiation of complaints by private entrepreneurs, and various nations have rules that differ in the extent to which government officials are "mandated" to carry out certain actions, or have discretion to choose among various possibilities. We have seen that, at least for dumping and subsidy countermeasures, the U.S. Congress has strongly pushed the U.S. law in the direction of mandatory import restraints, and this is posing certain threats to the liberal trade policies of the system. Part of the congressional impetus for this approach is the distrust by the Congress of executive-branch handling of trade policy in the past, but also some of the impetus

stems from the natural proclivity of members of Congress to please particular constituents.

All in all, however, the system does work; or perhaps it would be better to say that the GATT system operates better than anyone had reason to expect, given the uncertain beginnings and the various gaps in this "trade constitution."

Weaknesses of the "Trade Constitution"

Although it works (sort of), there is plenty of reason for much of the concern expressed about this system. What are these concerns?

Most fundamental (and perhaps most difficult to remedy) is the basic constitutional infirmity of the GATT as a treaty and an organization. It was never intended to be what it has become, and as we have seen, the GATT has become what it is largely through an evolutionary and pragmatic adaptation to the role thrust upon it when the ITO failed to come into being. This has meant that:

- Changes in the trade rules are hard to achieve; amending the GATT is almost impossible, and so the trading nations have turned to other measures such as "side codes" (which have some troublesome side effects) to establish changes in the trading rules.
- The GATT membership is changing and expanding; different types of societies are entering the GATT fold, and some are still left out.
- Loopholes or lacunae in the GATT rules have been troublesome, partly because of the difficulty of changing GATT rules.
- The GATT has not yet manifested its ability to house amicably under its single roof vastly different economic systems, including those called "nonmarket."
- Problems of agriculture trade have so far been intractable.
- Some urge the GATT approach to be extended to areas of international economic endeavor (such as trade in services) not heretofore covered by the GATT system.
- Rule implementation has sometimes been troublesome in GATT, as a number of nations avoid GATT rules by subterfuge, exploiting lacunae in the rules, or merely exercising their power.
- The procedures for dispute settlement have been heavily criticized and need attention.
- Subsidy rules in particular have been a source of great confusion, disagreement, and dissatisfaction.
- The GATT as an organization has probably not developed sufficiently to accomplish all the responsibilities heaped upon it; in particular the secretariat may be inadequate.

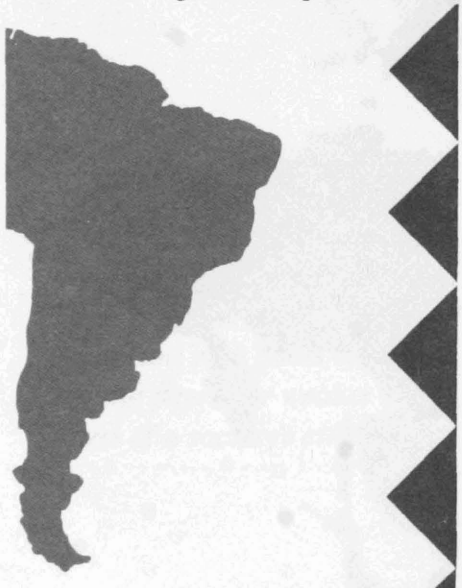
Not only the GATT can be criticized, however. The laws and procedures of national governments leave much to be desired. For example, in the United States there is much ambiguity and potential for troublesome delay in situations when a GATT dispute-settlement panel and procedure rules that the U.S. is obligated to change its law because of GATT rules. The Congress or the administration does not always efficiently implement such international rulings, a fact which tends to induce other countries also to resist such rulings and to generally reduce the respect for and predictability of the rules of the trading system.

In the United States there is some concern about the inefficiency of the U.S. national laws and procedures relating to "unfair trade practices," particularly those involving dumping or subsidies. This concern includes worry that the procedures are cumbersome, slow, and very costly, in some cases becoming themselves barriers to liberal trade among nations.

In addition, there is general concern about the functioning of the U.S. Congress. Its vulnerability to narrow local constitutional interests and to certain powerful lobbies, especially in the absence of strong presidential leadership, is a worry expressed by many about the U.S. Constitution. The performance of the Congress in trying to shape a trade bill during 1985, 1986, 1987, and 1988 must be seen as evidence of the weakness of some of the congressional processes, confirming those worries.

The GATT has not yet manifested its ability to house amicably under its single roof vastly different economic systems, including those called "nonmarket."

A particularly fundamental question, not often discussed, is the issue of what techniques are appropriate to "manage interdependence."



Concerns may also be expressed about the trade laws of other governments. The European Economic Community is in the process of an agonizing constitutional evolution which sometimes renders its relations to the GATT system less than satisfactory from the points of view of other nations.

Likewise, the influence of approaching national elections (and when is there none?) on international trade policy and negotiations, especially in Europe, often raises worries similar to those about the U.S. Congress.

More could obviously be said, but we need to turn to some key policy questions.

Some Fundamental Policy Questions

Clearly the implications of the preceding section are that considerable attention to the basic constitutional structure of GATT is warranted. New mechanisms for rulemaking and rule evolution would be welcome, and these may require some sort of "steering group" or other institution. Perhaps sometime governments will even be bold enough to consider a new OTC-type charter — i.e., a brief treaty of only institutional measures (not covering substantive obligations), such as that tried unsuccessfully during the mid-1950s.

The dispute-settlement procedures are also under close scrutiny. The critical question of whether such procedures should be tilted toward a "rule orientation" or a "power orientation" (or what should be the appropriate intermediate orientation) is still unresolved. To what extent are governments today willing to submit to "rules" and to rule-implementing procedures which effectively reduce the discretion of national officials? How far will governments trust dispute-settlement panels with "big issues" of trade policy? Can a rule system at least partly serve to replace the hegemonic system which many commentators suggest has been lost, as U.S. relative economic power has declined?

A particularly fundamental question, not often discussed, is the issue of what techniques are appropriate to "manage interdependence." Several alternative approaches can be suggested:

- Harmonization, a system that gradually induces nations toward uniform approaches to a variety of economic regulations and structures. An example would be standardization of certain product specifications. Another example would be uniformity of procedures for applying countervailing duties or escape-clause measures.
- Reciprocity, a system of continuous "trades" or "swaps" of measures to liberalize (or restrict) trade. GATT tariff negotiations follow this approach.
- Interface, which recognizes that different economic systems will always exist in the world and tries to create the institutional means to ameliorate international tensions caused by those differences, perhaps through buffering or escape-clause mechanisms.

Obviously a mixture of all these techniques is most likely to be acceptable, but that still leaves open the question of what is the appropriate mixture. For example, how much should the "trade constitution" pressure nations to conform to some uniform "harmonized" approaches, or is it better simply to establish buffering mechanisms that allow nations to preserve diversity but try to avoid situations in which one nation imposes burdens (economic or political) on other nations?

Closely connected to this previous point is an issue which may be loosely characterized as similar to federalism. This is the issue about the appropriate allocation of decision-making authority to different levels of government. Each federal nation faces this question—i.e., What is the appropriate allocation of power between the national government and subordinate state or municipal governments? The international system broadly, and the international trade system particularly, also face this question. As interdependence drives nations to more concerted action, there also arises the question of whether a gradual drift of decision-making authority upward to international institutions is always best for the world. How much power do we want to delegate to such international institutions? In what instances do we wish to preserve local or subordinate government control on the ground that such government is closer to the affected

constituents? To what degree does a "harmonization" approach to managing interdependence unduly interfere with these federalist principles of maintaining decision-making closer to affected individuals and firms?

One very perplexing issue is that of the appropriate linkage of international economic policies and measures to "noneconomic" policies such as human rights, or to geopolitical considerations.

There is an important policy issue in connection with the "trade constitution's" principles of nondiscrimination, particularly the MFN principle. It must be recognized that MFN policies have some costs as well as benefits. Thus the question arises, in connection with many trade measures, whether MFN principles should be observed or not. Closely related but not identical is the question of multilateralism versus bilateralism. Which of these approaches best promotes the long-term interests of the system?

Within national governments there are also a number of fundamental policy issues closely linked to the international "trade constitution." One of these is the degree to which a legalistic and adversarial system (such as the U.S. antidumping and countervailing duty systems) of administrating trade laws is best. A more legalistic or litigious approach has its costs, including attorney and consultant fees, time delay, and government costs. On the other hand, it may in some situations provide better information to decision-makers, allow interested parties to make their cases and give them the feeling that they have had their "day in court," and avoid corruption through transparency.

Also pertaining to national governments is the question of the appropriate distribution of power to courts and administrative officials. What is the appropriate role of courts in reviewing trade measures undertaken by administration officials? Should the courts exercise great deference toward the administrators on the grounds of the courts' relative lack of expertise and information-gathering techniques? Or will such deference result in increasing abdication of judicial responsibilities to maintain fairness and completeness of decisions, as interdependence extends to more human endeavors?

Prospects and Worries

More than 40 years after the current world "trade constitution" was launched as part of the immediate post-World War II Bretton Woods system, we still find that the central institution of this constitution is an organization which was not intended to be an organization, a treaty that is yet only "provisionally" in force, and an incredibly complex, tangled web of international agreements and provisions modifying, explaining, or escaping those agreements. That it works at all is truly surprising. Yet this GATT system does work, and as I have said, it works considerably better than anyone had reason to expect at the end of the 1940s.

But clearly it is defective. As the world becomes increasingly interdependent, and increasingly vulnerable to rapidly changing and rapidly transmitted economic forces, it is impossible not to worry about the question of whether the "trade constitution" can stand up to the stresses it is likely to face during the next few decades. One of the negotiating topics listed on the agenda for the Uruguay Round of trade negotiations is the "future of the GATT system," or FOGS for short. Whether this or other endeavors can succeed in time to bring into effect sufficient improvement in the "trade constitution" as to avoid a worldwide economic disaster, no one can say for certain. Yet the reasonable but surprising success of the past few decades, based largely on pragmatic and evolutionary problem-solving techniques, does give us some reason to be optimistic. Let us hope, therefore, that the world's economic diplomats will be able to continue to keep the system functioning. Let us also hope, however, that they can begin to develop changes that will move the trade constitution, even if slowly, toward a system that is not so vulnerable to short-term ad-hoc "fixes," but instead can establish the framework for mutual international cooperation in a manner creating both the predictability and stability needed not only for solid economic progress, but also for the flexibility necessary to avoid floundering on the shoals of parochial special national interests.

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On Prophets and Judges

*Some personal reflections on State Responsibility and Crimes of State**

Joseph H.H. Weiler

President of the International Court of Justice, Your Excellencies, Ladies and Gentlemen:

In 1976 the International Law Commission unanimously adopted, on first reading, Article 19 of the Draft Articles on State Responsibility, worded as follows:

ARTICLE 19

International Crimes and International Delicts

1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject-matter of the obligation breached.
2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole constitutes an international crime.
3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, *inter alia,* from:
   (a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
   (b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;
   (c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and *apartheid;*
   (d) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.
4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict.

* An abbreviated version of the closing speech to an international conference convened to discuss the International Law Commission's Draft Article on Crimes of States.

The Controversy Over Crimes of State: A Paradox

None of the Draft Articles on State Responsibility adopted by the International Law Commission has provoked as much controversy as Article 19 on Crimes of State. Yet, strangely enough, even if the issues themselves have received exhaustive treatment, the debate about the issues, the debate which divides proposers of, and opposers to, the adoption of the new category of State Responsibility, has remained largely unexplored. It is this second dimension which will be the focal point of these brief remarks — concluding the Florence Conference on State Responsibility and Crimes of State.

What interests me here, therefore, as distinct from most other contributions to the ongoing discussion, is *not* the notion of Crimes of State in itself but rather the international law *Weltanschauung* of those, states and particularly scholars, debating the concept. Why is it that some scholars and some states espouse, even enthusiastically, the concept whereas others reject it, at times as anathema?

In trying to understand the basic positions which divide supporters and opposers we face a perplexing paradox: Despite the fierceness with which opposition to, and support of, Article 19 is expressed, it is difficult to identify any systematic commonality among those who support and those who oppose Article 19.

If one looks at the various issues to which Article 19 gives rise, we would expect that in relation to each of these, supporters and opposers would find themselves holding opposing views. As I shall show, this is not the case. Indeed, it is not readily evident that holding any specific view about issues would lead necessarily to an acceptance or a rejection of the notion of Crimes of State.

The debate over the notion of Crimes of State involves many issues, but sufficient for our purposes will be to examine the most basic.

The first of these is the affirmation, encapsulated in Draft Article 19, that international wrongdoing is not all of one kind, that certain wrongs are more serious than others and, in particular, that the suppression of certain wrongs, like crimes in the domestic legal system — and we should not be afraid of making this basic analogy — is of interest not only to the directly harmed party but to the international community as a whole. This is perhaps the most basic notion on which the concept of state crimes is postulated.

And yet, surprisingly perhaps, there is widespread acceptance, even if not total consensus, among both scholars and states, of this basic proposition.

This means that we can readily find both states and scholars who *accept the differentiation of State Responsibility and yet reject the concept of Crimes of State.*

The second basic proposition encapsulated in the notion of Crimes of State relates to the modes of imposing responsibility on the wrongdoer (the State perpetrating the crime) and the permitted response of the "victim" state and the international community. For most international wrongs, the usual consequence is the emergence of a liability for *restitutio in pristinum* and/or reparations. "Sanctions" by the victim can only be applied if there is a secondary failure by the wrongdoer to undo the wrong. The debate about Crimes has revolved around the question whether in this case a (pacific) sanction may be applied in direct reaction to the crime.

It is impossible to draw the line between the Ayes and the Nays, between those who accept or reject the idea of state crimes, by looking at the positions adopted in relation to this issue. We will find that views differ on this point almost equally between those who accept and reject the concept.

The third basic issue on which opinions have differed sharply relates to the rights and duties of third parties vis-a-vis the perpetrator of the putative Crime. Do they have a "right of action"? Do they have a duty not to condone? And if the answer is in the affirmative, may they react by themselves, or must they wait for some collective decision

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making? Debate here is at its sharpest and the cleavage at its deepest — a matter to which I shall return below — but the riddle of trying to explain acceptance or rejection of the concept of Crimes of State is not directly helped by examining this cleavage. For as with the previous issue, the "battle lines" do not converge. You will find those who reject the notion of Crimes of State most strongly and yet accept that certain wrongs do give rights or impose duties on third parties — even on the international community as a whole; the notion of obligations *orga omnes* is invoked in this context. You will find those who accept the notion of Crimes of State and yet reject such an extension of international responsibility.

So much, then, for trying to explain the debate by reference to the basic issues.

As I have already noted, we draw the same *impasse* if we try to define the division of reference to the classical ideological trichotomy of the world order. The divisions between those who accept or reject the notion of Crimes of State is not directly traceable to this classical division of the international order. The Florence Conference brought together scholars "representing" all three "Worlds." And yet one found Occidentals who accepted the notion, Socialists who expressed some skepticism, and Third World scholars on both sides of the divide. This is also confirmed by examining the practice of states in the 6th Committee and the General Assembly.

The key to understanding the cleavage is, in my view, to realize that beneath the surface language of the debate about the concept of Crimes of State there is a more acute controversy touching on the deep structure of the international legal process.

In trying to explain this deeper controversy, I shall make use of the Biblical metaphors of Judges and Prophets as explicated at the moment of law giving and law making at Sinai. The precise meaning I attribute to these metaphors and their meaning to the Crimes of State debate will emerge in the remainder of this speech.

he very word Crime stimulates cleavage.

Unraveling the Paradox: What's in a Name?

To see this, we should look first at one parameter which is both trivial and important at the same time: the nomenclature. The very word Crime stimulates cleavage.

It is clear that the choice of the word has instigated much unnecessary debate. The rejection of Article 19 as an attempt to impute penal responsibility to States — a notion repugnant to the Special Rapporteur as well as to the ILC — would never have occurred if another word had been chosen. Likewise, the ferocity of the debate would never be as it has become if another word had been chosen. Try and imagine the reaction to a Draft Article which said something like: "Particularly serious wrongs affecting the international community as a whole may produce a different regime of responsibility." Certainly a formulation such as this would raise the very same issues which the actual Draft Article 19 raises, but just as certainly, the tone of the debate would be quite different.

It is not surprising that many of the discussants in the Florence Conference, even those who accept the notions embedded in the concept of Crimes of State, were critical of the label "crime." A very common charge has been that in some ways the triviality of a name has contributed to obscuring the *real* issues and creating false dilemmas.

If this were so, the recommended action would be to retain the concept — of a differentiated regime of international responsibility — and to jettison the unnecessarily emotive and confusing term — Crimes of State.

The cure is not so simple. In understanding why, we shall take the first step not only toward an understanding of the deeper issues which divide proposers and opposers of Article 19 but also toward affirming some important elements in the international legal

order which are reflected in the Crimes of State debate. In other words, I believe that the *term* crime is, at least in one profound sense, the real issue. I shall try to explain this by using another hypothetical case.

Let us imagine that the substantive issues were resolved; that agreement was found on a differentiated regime of responsibility corresponding to a differentiated regime of wrongs; that agreement was further found on the issues of sanctions and third-party reactions; but that the price of this agreement was the dropping of the *term* Crimes of State. I would not wish to anticipate the political outcome of such a scenario, but I believe that many of the proponents of the concept of Crimes of State would be bitterly disappointed with such an outcome.

The fact is that the concept of Crimes of States carries more than the simple technical construct of a differentiated regime of responsibility. It has a symbolic value which transcends this technicality. This may be trite, but it is still worth remembering.

Why is this symbolism important? I can see two issues of significance.

The Symbolic Value of the Word Crime: First Consideration

The first is the simple reaffirmation of the important value of words and behaviour characterization in the international legal order. This has been one of the permanent and most fascinating aspects of international life ever since the emergence of a cohesive international legal order. As skeptics of the very notion of international law never tire of reminding us, states may (and do) in many instances act in violation of international law with relative impunity. Binding resolutions or international organs are not infrequently flouted, the jurisdiction and decisions of international adjudicators are more than rarely disregarded and customary law is often violated. This, of course, is trite. And yet, curiously, we see again and again international actors maneuvering in all manner of ways to avoid characterization of their action as illicit. If they can, they will seek a Security Council Veto in order to avoid a condemnation, even if in practice the condemnation will amount to nought; they will avoid jurisdiction in order to prevent a negative outcome of a judicial deliberation, and they will argue tenaciously about the content of a customary rule rather than simply disregard it.

This, of course, suggests that words and the way they characterize behaviour serve as constraints on illicit international action. Almost all observers of the international legal order would agree. Indeed, this very fact motivates those on *both* sides of the Crimes of State debate.

For those who support Article 19 in its present form, it is the efficiency of language which justifies, even necessitates, the term Crime. The wrongful acts which they have in mind are so grave, so heinous (genocide, for example) that nothing less than the most abject condemnation, translated into the most powerful "negative" in the legal vocabulary, will suffice. By using the word Crime the international legal system will be doing its best, albeit its limited best (for it lacks the flexible capacity to "punish" that municipal systems enjoy), to contribute to a suppression of this behaviour.

If States care, as clearly they do, about being labeled by others as international wrongdoers, so much more will they care — the supporters of Article 19 will claim — about the attachment of the tag of a "criminal."

If one doubts the importance of this symbolism, one need simply read the comments at the Conference by many of those judges, diplomats and scholars supporting the present draft of Article 19. The emotionalism of many of the supporters is not only a response to the heinous nature of the crimes proscribed. It also reflects a deep-seated commitment to a strategy of developing the fragile world order. It is the first element in what I would like to call, if only for the purposes of those concluding remarks, the Prophetic *Weltanschauung* of international law.

Those who oppose Article 19 also feel deeply. It would be "unfair" and wrong to ascribe to them a callousness toward the commission of those wrongs the supporters would have us term Crimes. Defenders and rejectors share the same attitude toward aggression, genocide and other candidates for the term Crime. The criticism of the term Crimes is not bred by a lesser interest in having these wrongs suppressed.

ords and the way they characterize behaviour serve as constraints on illicit international action. This very fact motivates those on both sides of the Crimes of State debate.

rticle 19 supporters explicitly reject the operationalization of penal responsibility.

It is possible that some of those who reject or question the wisdom of Article 19 do so because they believe that the language we use to characterize behaviour has little or no value in the international order. But it is also possible that objection to using the term Crime may reflect a belief in the efficiency of language and a desire to *preserve the constraining power of the way in which the international legal order labels behaviour.*

In other words, precisely because the notion of Crimes of State cannot in the world order as perceived today have the connotation of penal responsibility — a fact which the adherents of Article 19 themselves are at great pains to emphasize — it would corrode the value of words to use the term Crime in this instance. To accentuate the label, without a meaningful possibility to augment the response, would be similar to printing money without increasing the corresponding quantity of wealth.

In the eyes of those who oppose the draft, this is an inherent contradiction of Article 19. It uses the term Crime in order to borrow the symbolic connotation which the term evokes from its usage in municipal law. At the same time, the supporters of Article 19 explicitly reject the operationalization of penal responsibility. Since the same behaviour has been characterized so far as simply wrongful, the simple addition of a new label, with nothing meaningful more, may lead to greater sanctioning but might equally lead to a diminution of the concept.

This second approach, which seeks to preserve the integrity of the use of legal terms, contains the first element for what, for the purposes of these concluding remarks, I define as the Judge *Weltanschauung* of international law.

The Symbolic Value of the Word Crime: Second Consideration

My second reflection has its genesis in the changing world of international legal scholarship in the last four decades.

My focus here is primarily on scholars and, to a lesser degree, on state practice. My thesis is simple enough: The creation of Crimes of State as a category of international wrongs and the intellectual debate surrounding this creation are a reflection of a growing disillusionment with what has been considered as the great breakthrough of the post-war era — the evolution of the Charter System — to many still the only valid framework of international law and world order.

The argument is a generational analysis. As with my first consideration, I shall argue that the same disillusionment may produce contrasting attitudes to the terminology — and perhaps to even more than the terminology — of Article 19.

In many ways, the era of the Charter Model of international law has been for many academic scholars and practitioners of international law a heroic achievement. The post-war generation was actively involved in system building on the ashes of that great conflagration which saw the ignoble demise of previous systems of collective security, the abject disregard of international norms and the greatest carnage of all times. The Charter era was characterized by the evolution of new norms, new institutions and new procedures — a story too well known to even bear repeating.

Scholars had great faith in the ability of the international legal process to provide adequate solutions — at least on the normative level — to the problems of this new world. These beliefs managed to endure for much of the post-war era despite the fact that legal positivism, or at least legal empiricism, became the only legitimate model of scientific jurisprudence; despite the fact that the rapidly growing number of states made determination of state practice all the more difficult (but still necessary in a consensual-positivistic model); and despite the consolidation of a growing ideological cleavage in the international order.

This faith was rooted in three kinds of belief:

- The belief that in the Charter and the Charter System one had a stable source of "higher law" which was consensual in origin and hence legitimate in a positivist model and yet, at the same time, able to give the kind of confidence that earlier generations drew from natural law models. The Charter was assimilated to a

Constitution in the municipal order which fulfills that very bridging function in municipal law.

- The belief in the emergence of the so-called "New Sources" of international law which would facilitate law making even in a numerically large and ideologically divided international society.
- A belief in the power of objective and scientific jurisprudence in making legal determinations — both by courts, state and other international actors, and scholars.

The decline of, and disillusionment with, the Charter System is again a phenomenon which does not need much elaboration. Whilst one need not be overly pessimistic, it is clear, as a minimum, that the system did not live up to expectations in many of its major facets. At the risk of being banal, I would mention some salient features of this decline. First and foremost was the abject failure of the system of maintenance of peace which remained largely ineffective; but also in the context of a normative center the UN fell very short of expectations. The very process of progressive codification, while scoring some important successes, still remains an exceptional and marginal law-making process.

The scientific community was slowly, and perhaps painfully, to rediscover that the inbuilt tensions and contradictions of international law were not swept away but simply swept under the carpet.

As a constitutional text of higher law, the Charter had the *inevitable* fate of all such constitutional texts: clay in the hands of the interpreters; a manipulable text, the result of a compromise which bred as much conflict as it did consensus; and when interpretative consensus was achieved, this was at a level of vagueness which could satisfy opposing notions. (The indeterminacy of interpretation is clearer in the international legal order, which does not enjoy the determinacy fiction generated by fully fledged, compulsory court systems typical of domestic law.)

The ideological cleavage, in reality, was simply to explain a series of statal *voltes-face* depending on the composition of international organs. Faith in the UN and its organs depended on the numeric composition of various bodies.

The "New Sources" were to occupy an increasing number of volumes of academic literature, but for their part, States — of all persuasions — were retracting increasingly to old models of State Practice and away from notions of, say, soft law. (Even the practice of Treaty Law can no longer be explained exclusively by reference to the Vienna Convention!)

And then, in the interpretation of State Practice, the age-old dilemma of interpreting practice as norm-setting or violative was to emerge with particular acuteness.

The list could be continued, but these phenomena are so well known as to obviate any further examples, save perhaps to mention one final factor in the process of disillusionment. The new reality was to be particularly cruel and unpleasant as almost anything in the past: hegemonic behavior of the Super Powers, new forms of Colonialism and oppression by the First and Second Worlds and a growing impatience with a Third World, the internal excesses of which began to overshadow its own past sufferings — even if this remains in many quarters a taboo subject.

It is not surprising that the decline led to a certain loss of the old faith in the system; it is equally not surprising that literature has begun to resonate with self-reflective disillusionment coming from both right and left.

It is possible — in my view — to relate these phenomena to the debate about Crimes of State. It is a debate in which the major exponents represent the principal figures of the "heroic period" and their disciples. In some sense, both sides are motivated by the above-mentioned disillusionment.

For the supporters of the concept, with the Prophetic *Weltanschauung*, the creation of the new category of wrongful acts is a reaction to this decline. It is an attempt to breathe new life into the Charter System where the old mechanisms have failed. (Could there be a stronger prohibition of, say, armed aggression than that found in the Charter, save by making it a Crime?) It is an attempt to resolve (the unresolvable) contradictions of the Charter without touching the original text. It also represents — to some, at least — a harking back to natural law or at least to some form of neo-natural law which

or the supporters of the concept, with the Prophetic Weltanschauung, *the creation of the new category of wrongful acts is a reaction to this decline. It is an attempt to breathe new life into the Charter System where the old mechanisms have failed.*

would seem to offer an Archimedian point in the extreme relativism which has reemerged in international legal scholarship.

For those opposed to Draft Article 19, with the Judge type *Weltanschauung*, the creation of the new category replicates everything that was wrong and bad with the Charter System. It seeks to create a "higher higher" law which will have the same shortcomings as existing formulations — vague, overly open-textured and open to excessive manipulation. The fact that the ILC in its commentary often utilizes a *"renvoi"* to the Charter both exemplifies this fact and, in the eyes of the detractors, ridicules the exercise. The procedural guarantees which the proponents insist on — for example, the need for collective decision making to legitimate third-party reaction toward the perpetrator of a crime — suffer from the same shortcoming: the subjection to the (inevitable) manipulation of collective decision making.

The *Prophets*, imbued with the grand deductive vision, see the new category as a means to arrest a process of decline. The *Judges*, suppressing the grand vision for an inductive view of reality, see the new category as an instrument for exacerbating this decline.

or those opposed to Draft Article 19, with the Judge type Weltanschauung, *the creation of the new category replicates everything that was wrong and bad with the Charter System.*

Prophets and Judges: Two Legal Strategies

I come now to my third and final explanation of the division between proponents and opponents of Crimes of State.

The two reactions to the concept of Crimes examined above may in fact represent two different visions as regards the meaning of law itself and its evolution. While I certainly do not propose to enter a jurisprudential analysis, it may be profitable to touch some of its outer contours.

In order to explain these visions I must make two digressions quite removed from international law in general and Crimes of State in particular.

The first digression is to what must be the single most important normative text in Western civilization and possibly in our entire civilization. I refer to Chapter 20 of the Book of Exodus. (All citations are to the King James Version.)

It is in this Chapter that we find the Decalogue: The Ten Commandments. The text is well known to all of us, or at least was well known in our childhood and youth. To bring out my point I wish to compare Chapter 20 to Chapter 21, a far less known text.

In Chapter 20 we find the following:

> *And God spake all these words, saying,*
> *Thou shalt have no other gods before me*
> . . .
> *Thou shalt not kill*
> . . .
> *Thou shalt not steal*

This is the language of the Prophets, spoken through Moses to the Children of Israel. The text is majestic and impressive; the context is solemn. The style is imperative. But we may still ask: Are the Commandments Law? And are the Commandments effective?

I cannot here give replies to these basic jurisprudential and sociological issues. I plan to use the text merely as a hanger for far less august and more banal affirmations.

But in order to make these affirmations I must turn to Chapter 21 — coming immediately after the Ten Commandments.

The Text begins:

Now these are the judgments which thou shalt set before them

Note that here the text speaks of judgments. What are these judgments? I shall give only a few examples from the long list contained in Chapter 21 and the following ten chapters.

He that sacrificeth unto any god, save unto the Lord only, he shall be utterly destroyed

He that smiteth a man, so that he die, shall be surely put to death

If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox and four sheep for a sheep

It will be immediately seen that I have chosen the Judgments corresponding to the previous three examples from the Commandments: The monotheistic affirmation, the prohibition of murder and the prohibition of theft.

Again the questions may be asked: Are these judgments laws? Are the judgments effective?

As stated, I wish to avoid substantial jurisprudential and sociological analysis. Still, it is clear that the two texts, the Prophetic and the Judgmental, represent different normative models.

The Prophetic model is closer to our notion of natural law. The quality of the norm as a binding law, if at all, derives from its source. Its majestic, laconic and imperative nature imbues it with a moral force which transcends peoples and generations.

The Judgmental model is closer to our notion of positive law, a precise legal text which is clearly to form part of a living legal system. Which of the models is more effective?

The Prophets will point to the timelessness of the Commandments, which have outlived the archaic judgments in the succeeding chapters. Who remembers Chapters 21 to 31? And yet the Commandments are indelibly written in our civilization — religious and secular.

The Judges will remind us that less than forty days after receiving the Ten Commandments in direct revelation, when Moses had returned to the mountain to receive the rudiments of the legal system — the Judgments — the Children of Israel abandoned the majestic words and violated their very essence — they built themselves the famous (or infamous) Golden Calf.

Even the direct word of the Deity, in the absence of a workable legal system, had little effect.

But we are still to define with greater precision the crucial differentiating factor between the Prophetic language of the Commandments and the Judgmental language of the subsequent norms. For it is this difference which will have a bearing on the discussion of Article 19 as a legal strategy.

In order to understand the differences, I must digress yet again. A fundamental legal text, albeit of a different order than the previous ones, which many students studying law in England, as I did, will meet in their first year, is called *Remedies in English Law* by Professor Lawson. Lawson writes: "At an early stage in his legal education the student encounters the Latin maxim *ubi ius ibi remedium;* where there's a right there's a remedy. To which the realist replies: *ubi remedium ibi ius;* where there's a remedy there's a right. And indeed a claim that cannot be enforced no lawyer can consider a right."

This, for me, is the fundamental difference between the Commandments and the Judgments. The Commandments are devoid of remedies; they are normative statements and claims with great authority, but lack a regime of responsibility. The Judgments, by contrast, are part of a legal matrix which is operational.

he Commandments are devoid of remedies; they are normative statements and claims with great authority, but lack a regime of responsibility. The Judgments, by contrast, are part of a legal matrix which is operational.

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In Lawson's deceptively simple phrases lies, in my view, yet another important way of articulating the cleavage between those who accept and those who reject the current formulation of Article 19.

I believe that everyone accepts the nexus between *ius* and *remedium*. This includes both supporters of, and objectors to, the concept of Crimes of State. But, to return to Lawson's formulation, the question is: *Who are the true realists?* Those who, as Lawson would have us believe, would insist on a full remedy before the assertion of the new norm, or those who would assert the norm and await the evolution of the full remedy?

For what it comes down to is really a question of priorities. Even the most ardent supporters of Article 19 would not contemplate its adoption and *nothing more*. Clearly the consequences of the concept in a differentiated regime of responsibility must be worked out — indeed, a task on which the International Law Commission and the new Special Rapporteur are expending much energy. But to the supporters of the concept, a regime encapsulating the consequences need not attain the completeness and the tightness of, say, a municipal code. The very acceptance of the concept of a Crime of State, "let loose" in the evolving international legal order and its law-making processes, will, according to this prophetic vision, generate and prod the international community to evolve, flesh out and perfect whatever rudimentary regime of consequences is initially worked out.

In other words, for the supporters of the concept, in terms of legal evolution, the *ius* may precede the *remedium*. The absence of a fully fledged system of remedies for the commission of Crimes of State should not be an obstacle to accepting the normative imperative.

Thus, many scholars who support Article 19 find themselves increasingly pushed into a posture of neo-naturalism, whereby basic norms of justice (with all the difficulties of determining these, without reverting to consensualism) must have a fundamental place in any construct of international law. Support of the concept is an expression of this trend. It is interesting since the concept does not formally depart from a positivist model: The proposers do after all stipulate the consensus of the international community as a whole in the creation of the Crime as well as in its effects. But the "higher" status of a Crime as an international norm would assimilate it to a quasi-natural law position.

By contrast, those who oppose the concept of Crimes of State regard the full and meticulous elaboration of the consequent regimes of responsibility a *conditio sine qua non* for acceptance of Article 19.

The skeptics view with alarm the creation of a legal norm for which there is no clear remedy. For them, Crimes of State raise the spectre of the Golden Calf. A norm without a remedy, which is embraced precisely because it has no remedy; because it cannot be enforced; because it is destined to remain — like *ius cogens* — at best a dead letter, at worst another source of normative abuse of the international system. This position is the rejection not only of neo-naturalism, but also of fuzzy positivism. For the opposers, the Judges, the bedrock of legality and the legal system rests not on statements and declarations of states accepting grand principles, nor even, perhaps, in solemn treaties which are then immediately violated, but in state practice following those principles. And for the skeptics, this state practice will simply *not be able to emerge* if the permissive consequences of putative criminal behavior are not clearly set out in advance. The hallmark of the legal norm is its self-sufficiency in legal terms: *ubi remedium — ibi ius.*

The eventual outcome of the debate on State Responsibility and Crimes of State will be an important indicator of the future orientation of the international legal system.

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