

THE UNIVERSITY OF MICHIGAN

LAW SCHOOL

VOLUME 37 • NUMBER 4

WINTER 1994

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# LAW QUADRANGLE NOTES



Law Goes Electronic  
Reflections on Welfare Reform  
The Frail Old Age of the Socratic Method



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UNIVERSITY OF MICHIGAN  
LAW SCHOOL

## ALUMNI EVENTS

- January 4-8      Association of American Law Schools  
New Orleans, Louisiana
- January 17-19    William W. Cook Lectures  
on American Institutions  
Jeffrey Sachs,  
Galen L. Stone Professor  
of International Trade  
Harvard University
- January 23-28    New York State Bar Annual Meeting  
New York, New York

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LAW SCHOOL

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Welfare reform efforts are cast in terms of the basic American values of work, family, responsibility, and opportunity. The Clinton plan to end "welfare as we know it" provides a framework for discussing how to strike a balance between the interests of needy parents and children and our social commitment to expressing those key values. — *Jeffrey Lehman and Sheldon Danziger*

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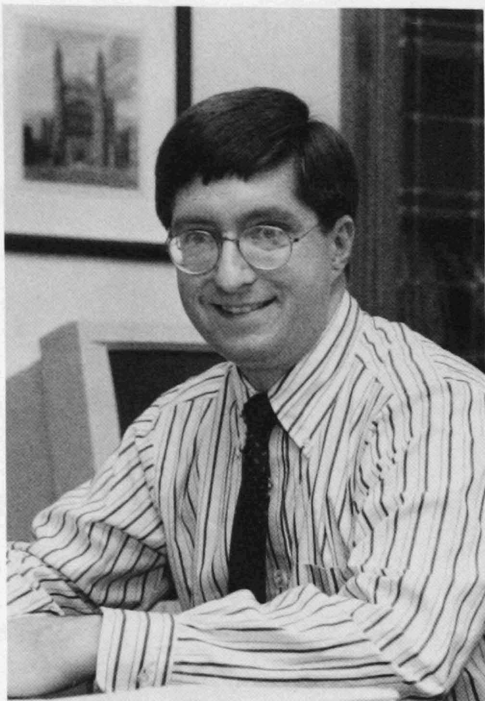
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In my last message, I indicated that I would be using this year to consider one of the character traits that distinguishes outstanding attorneys: the commitment to continuous intellectual growth and renewal.

What defines such a commitment? It has at least three layers. At its base, it involves nothing more than a thirst for experiences that are *new* — experiences that are capable of refreshing one's outlook.

But a simple search for novelty is not enough. It is not sufficient to eat a new food every day, or to walk a different path to the office, or to wake up at a different time of the morning, or even to read a new work. *Intellectual* renewal implies an ongoing effort to reflect about what one has encountered, and to incorporate it into the structures one uses to interpret and be effective in the world. That means viewing new experiences as an invitation to reconsider, with care, one's established practices, and one's ways of living in the world.

Finally, I conceive of this trait as having a third, somewhat conservative component. To speak of *growth* and renewal is to suggest that the new must not simply replace the old, but must also build upon it. As law students, we struggled to tame the intuitively attractive yet maddeningly elusive notion of precedent; as lawyers, we personalize that struggle when we try to reconcile periods of change and adaptation with our needs for continuity and integrity. We aspire to develop, not to indulge in a rootless peripateticism.

Over the past few months, I have had the privilege of speaking with many of our graduates, at different stages of their professional careers. I have learned about the dramatic changes in the profession since I left practice seven years ago. And I have learned the many different ways in which a commitment to continuous intellectual growth and renewal can express itself.

Many people have told me of their frustration with the extent to which their professional relationships seem to have degraded from a model of trust and mutual commitment to a model of distrust and short-term profit maximization. And yet, almost in the same breath, most of them have told me how much new gratification they are finding in their work. I have heard about our graduates' participation in the development of new financial products; I have heard about their decisions to undertake new public service roles; and I have heard about their efforts to use new technology to make their organizations more flexible and more responsive to the people who work there. In each case, the experience has been described to me not simply as a new *activity*, but also as involving the incorporation of a new set of *ideas* into one's professional life.

The Law School aspires to be a touchstone for its graduates' commitment to continuous intellectual growth and renewal. We intend that the newest generation of students will, like its predecessors, carry away from Ann Arbor an appetite for new and profoundly challenging ideas. And we hope to find new ways for former students to share their experiences with us, to challenge us to become even stronger with the passage of time.

A handwritten signature in dark ink, reading "Jeffrey S. Lehman". The signature is written in a cursive, flowing style.



## Steady diet of annual gifts nourishes the Law School

Among the top 10 law schools in the annual *U.S. News and World Report* graduate school rankings, there is only one public institution — the University of Michigan Law School.

In the survey's reputation rankings by academics and by lawyers and judges, Michigan earned first-place ratings equal to Yale, Harvard, Stanford, and the University of Chicago. This was a substantial improvement over Michigan's fourth place ranking in these categories in 1993. Overall, however, Michigan slipped to eighth place in 1994 because it dropped to 37th in the category for faculty resources.

While the survey is in many ways a badly flawed measure of law schools, it illustrates that Michigan is much like private schools, except when it comes to funding. To maintain its rank among the best schools, the Law School, like its peers, increasingly depends on private philanthropy.

In these pages, we often recognize major gifts to a specific fund or project. Just as important are all the unrestricted annual gifts.

They support every facet of the Law School — financial aid programs, permanent faculty, international scholars, library resources, and much more.

"Gifts no longer provide the little extras, but support core programs," says Dean Jeffrey S. Lehman. "They make the difference between a very good state law school and a world-renowned academic center that prepares its students for leadership in the profession."

The U-M Law School is fortunate to have a long tradition of successful fund raising. The Law School Fund began in the early 1960s, and some alumni developed the habit of regular giving then or even earlier. Indianapolis attorney William P. Wooden is among that faithful core of contributors.

"I graduated in 1958 and have given every year since then. I consider it a small return on a very helpful investment which has still done a lot more for me than I for it," says Wooden, a litigator with Wooden McLaughlin & Sterner.

"I feel that an unrestricted gift is better because the Law School has the best idea of what the money should be used for. The typical donor thinks in terms of things like brick and mortar, but I know there are a lot of other things to pay for as well."

Currently, unrestricted gifts comprise about 9 percent of the school's \$22 million budget; the rest comes from tuition, endowment income, and government or foundation grants. To remain at the pinnacle of American legal education, Lehman says the budget must expand to enhance key programs, increase student financial aid, and add new faculty members. However, while costs are

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**"I graduated in 1958 and have given every year since then. I consider it a small return on a very helpful investment which has still done a lot more for me than I for it."**

— WILLIAM P. WOODEN

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increasing, state appropriations to the University have dropped to a point where there is not enough funding to share with graduate programs like the Law School.

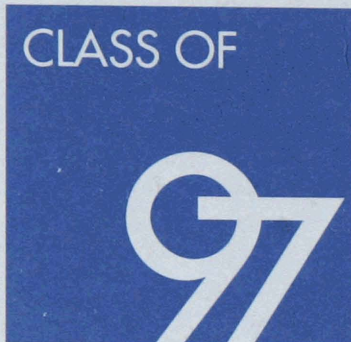
"Annual gifts are particularly significant because they fill the gap between the endowment income and tuition, to meet the ever-increasing needs of operating the Law School," explains Dick Katcher, J.D. '43, a long-time Law School Fund volunteer and steady donor. Alumni have recognized those needs and responded admirably. Annual unrestricted donations have increased by one-third since the 1990-91 academic year.

The Law School's corps of dedicated volunteers are working to increase annual unrestricted donations from \$2 million to \$3 million annually, according to John Nannes, J.D. '73, national chair of annual giving. Nannes says that special programs have been designed to encourage long-time Law School Fund supporters to increase their annual gifts and to attract new participants, including recent graduates. In addition, alumni will be urged to support the Law School in conjunction with their milestone reunion celebrations.

All those gifts count toward the five-year, \$75 million Law School Campaign target, which includes a goal of \$15 million in unrestricted gifts. Terrence Elkes, J.D. '58, national chair of the Law School Campaign, says the regular habit of contributing to the school is vital. "In my view, annual giving is more significant than the campaign and special contributions. It's what really sustains the Law School. It's the bread and butter of the school and the lifeblood of the whole area of giving."



# Snapshots of the



The Class of '97 comes to the Law School from forty-three states, four foreign countries, and a wide range of personal and academic backgrounds.

The class includes two students with M.D.s, six with Ph.D.s, four with M.B.A.s, and twenty-five with other graduate degrees.

Based on data gathered in late August, here is a statistical snapshot of the University of Michigan Law School's 1994 entering class.

TOTAL STUDENTS .....	376
WOMEN .....	169 (45%)
STUDENTS OF	
COLOR .....	90 (24%)
AVERAGE AGE .....	24
YOUNGEST .....	20
OLDEST .....	47
IN-STATE STUDENTS .....	130 (35%)



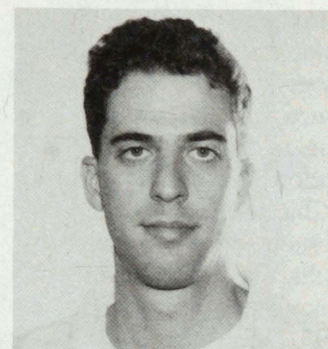
ADALE WALTERS

AGE: 37  
 HOMETOWN: DETROIT  
 EDUCATION:  
 R.Ph. (PHARMACY) '80;  
 M.D. '84;  
 M.P.H., '90, U-M

**BEFORE LAW SCHOOL:**  
 Walters was a child psychiatrist on the U-M Medical School faculty. A summer starter, she is on her way to her fourth U-M degree. She says law school is a greater challenge than medical school because now a large share of her energy goes to her husband and two children.

**CAREER PLANS:**  
 In law as in medicine, Walters plans to focus her practice on child welfare, with a particular interest on the juvenile justice system.

**BEST LAW SCHOOL EXPERIENCE SO FAR:**  
 "Property class, interacting with support personnel, and meeting a handful of humane lawyers."



DAVID MENDEL

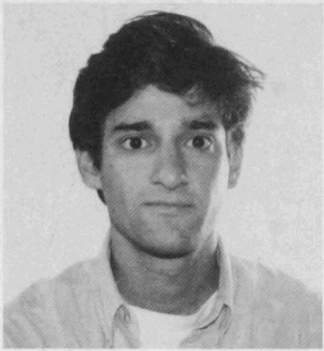
AGE: 25  
 HOMETOWN:  
 POUGHKEEPSIE, NY  
 EDUCATION:  
 B.A. IN HISTORY,  
 BROWN UNIVERSITY

**BEFORE LAW SCHOOL:**  
 Mendel was a Peace Corps volunteer, serving as a natural resources extension agent in Mali, West Africa. He spent the past six months working on health care reform issues as a staff assistant to Sen. Tom Daschle of South Dakota.

**CAREER PLANS:**  
 May pursue a doctorate in political theory or legal history; he's also interested in land use and land planning issues.

**BEST EXPERIENCE:**  
 "Being around people who are excited to study law as a discipline, but also are very diverse in their career and life goals."





MICHAEL GORDON

AGE: 25  
 HOMETOWN: CINCINNATI, OHIO  
 EDUCATION: B.A., HARVARD UNIVERSITY

**BEFORE LAW SCHOOL:** Gordon was a legislative assistant to U.S. Senator John Glenn for three years. He worked for Glenn and other senators on environment and trade issues related to the Great Lakes Region.

**CAREER PLANS:** Possibly law practice within the government.

**BEST EXPERIENCE:** "Four weeks of classes and not called on yet!"



MONICA AGUILAR

AGE: 23  
 HOMETOWN: MEXICO CITY  
 EDUCATION: LICENTIATE IN LAW, UNIVERSIDAD IBEROAMERICANA

**BEFORE LAW SCHOOL:** Aguilar worked for the legal advisory office to the Ministry of Foreign Affairs in Mexico, and for a law firm in Mexico City. She also taught high school and was an adjunct professor of law at Universidad Iberoamericana. She is one of very few foreign students to enroll in the J.D. program.

**CAREER PLANS:** A firm or government position involved with international business transactions under NAFTA.

**BEST EXPERIENCE:** "Meeting so many interesting people and making American friends."



ALISON LEISINGER

AGE: 22  
 HOMETOWN: MASON CITY, IOWA  
 EDUCATION: BBA, UNIVERSITY OF IOWA

**BEFORE LAW SCHOOL:** Leisinger volunteered with the Homeless Shelter in Iowa City and with Student Legal Services. Her senior honors thesis focused on finding a more effective method of enforcing and collecting child support payments.

**CAREER PLANS:** Public interest law

**BEST EXPERIENCE:** "Meeting people from all over the country."

## Students win asylum for Haitian refugees

The University of Michigan Haitian Refugee Project has won grants of asylum for 13 of 20 clients who fled their troubled country in the past three years.

This success surpasses the 30 percent average approval rate nationwide for Haitian political asylum applications, according to Jeff Dillman, attorney advisor to the project. "Currently, we have a 65 percent approval rate. That's a result of the students' excellent work on particularly compelling cases," he says.

The Haitian Refugee Project began at the Law School in 1992 when the student chapter of the National Lawyers Guild sent students to Miami as part of a nationwide response to the refugee crisis. Thousands of Haitians headed to Miami by boat to escape political repression and violence after the 1991 military coup against then-president Jean-Bertrand Aristide. The U.S. Coast Guard picked up refugees at sea and took them to Guantanamo Naval Base. From there, the Immigration and Naturalization Service paroled refugees with a plausible claim for protection to the United States so they could apply for political asylum. About 10,000 Haitians were paroled in before U.S. policy changed and all refugees were returned to Haiti.

That first summer in Miami, students helped prepare asylum applications, then returned to Ann Arbor in

the fall and developed volunteer training materials: a manual, mock interview sessions, and videotaped lectures with professors and practitioners knowledgeable about immigration law.

The multifaceted training program is an important factor in the project's success, according to Franz Herbert, one of its three student coordinators. "Legal asylum applications need to be well grounded in the factual circumstances of Haiti's recent political history," he says. The more facts a student can glean in an interview with a refugee, the better the chances that the client will win asylum. "Our prior training allows us to establish context for the legal claim by bridging the gap between the Haitians' experience and our legal system."

When the project discovered that a group of 20 parolees had settled in Michigan, students turned their attention to helping local refugees as well as those in Miami. They travelled to Lansing, where most of the refugees settled, to interview them about their lives in Haiti and their escape. Then they drafted statements requesting asylum. The cases were filed in the summer of 1993; the INS conducted interviews with the Haitians in the fall. An asylum officer at the Chicago INS office reviewed the cases and began handing down decisions in May 1994.

About 30 students paired up to work on 14 asylum cases; Clinical Assistant



Professor Nick Rine handled one case, and attorneys from Detroit volunteered to do five more. The project continues to represent five clients who received a notice of intent to deny their asylum application and will handle their exclusionary hearings this year.

Walter Lanier, a third-year student whose Lansing client won asylum, said handling the application was a valuable learning experience. "It was interesting to listen to his story, flesh out the details, and bridge the communication gap to put together the application," he says. "The most impressive thing was his psychological state. He recognized the realities of his situation, yet he remained strong. He was running for his life, but he was taking it in stride." That attitude served as inspiration to Lanier when he participated in the project's seven-day fast in support of Haitians.

Garth Van't Hul's Miami client also was granted asylum. Handling the application "was the most satisfying thing about my first year of law school," says Van't Hul, also a coordinator of the project. Hardy Vieux, the third coordinator, adds, "We worked hard, and we've seen a direct effect of our work, and that gave us a sense of meaning to what we've learned."

Vieux and Pascale Charlot, both second-year Haitian-American students who grew up in New York, appreciate experiencing their Haitian culture through the Project. Charlot says she gained a better understanding of the impact of gender when she

handled an asylum claim for a woman whose life was in danger because her father and brother were politically active. "Unfortunately, women generally do not play as dominant role politically as men; therefore, it is more difficult for women to prove 'political persecution' as a direct consequence of activity, as required by the INS."

In a letter to the project, the refugees granted asylum wrote: "We cannot find words to convey to you . . . our profound gratitude for the exceptional and unremitting struggle you have conducted on our behalf. In obtaining the legal status for us, you have given us a new lease on life after the traumatic circumstances which have caused our forced exodus from Haiti. We would like to extend our gratitude to the other attorneys, your staff, your students and every individual associated with the Haitian Refugee Project. Our heartfelt thanks go to all of them."

The project receives funding from the Law School, the National Lawyers Guild, and other student organizations to cover its travel costs and compensate attorney advisors. Its members are considering broadening its scope to assist refugees from all countries. The group has already been contacted by groups seeking help for Bosnians, Chinese and others. Dillman notes, "If funding and student interest allows, we may take on other nationalities in the future, but we first want to make sure we can pursue our current Haitian cases through their exclusion hearings."

# Day Care ON TRIAL

Again this summer, a Law School clinic took on a high-profile custody case over a little girl.

**Jennifer Ireland, a 20-year-old University of Michigan student, turned to the Women and the Law Clinic for help when a court granted custody of her 3-year-old daughter to the child's father because Ireland uses child care. Clinic director Julie Kunce Field and three students are challenging the ruling before the Michigan Court of Appeals. Meanwhile, they sought and won an emergency stay of the custody transfer order so the child would not be separated from her mother while the case is pending.**

Like the "Baby Jessica" adoption case the Child Advocacy Clinic handled in 1993, the Ireland case has aroused an emotional nationwide response fueled by the news media. Hundreds of alarmed or outraged working parents and child advocates have called the clinic to express support. Along with the appeal, a half dozen different amicus briefs will be filed by advocates for students, women, children, and domestic violence victims.

Ireland gave birth to Maranda in April 1991. The baby was in foster care for three weeks while Ireland considered adoption, but she decided to keep her daughter. She raised Maranda with help from her mother while finishing high school. Ireland says the child's father, Steven J. Smith, did not visit Maranda at all in the first year of her life, but later began visiting their daughter.

Early in 1993, Ireland, represented by Macomb County attorney Ronald Dixon, sought child support payments from Smith, who then petitioned the court for custody. Meanwhile, Ireland enrolled at the U-M on an academic scholarship in

September 1993, and brought her daughter along. While Ireland went to classes, Maranda went to a small licensed day care in a private home.

During the 1994 custody trial, Smith testified that Ireland was an inattentive mother who has abused and neglected her child. Ireland strongly denies those allegations.

In June, Macomb County Circuit Court Judge Raymond Cashen awarded physical custody to Smith because he lives at home with his parents, who would care for the child. While he found Ireland and Smith were equal in their ability to love, care for, and provide for Maranda, he ruled that a grandparent would provide a more stable environment for the child than a day care program.

"There is no way that a single parent, attending an academic program at an institution as prestigious as the University of Michigan, can do justice to their studies and the raising of an infant child. The permanence of a regular home and a regular program far outweigh the multitude of changes in housing and day care that one would necessarily experience year to year while a student at the university," Cashen wrote in his opinion. "Under the future plans of the mother, the minor child will be in essence raised and supervised



a great part of the time by strangers. Under the future plans of the father, the minor child will be raised and supervised by blood relatives."

After Cashen ruled against Ireland, her attorney contacted the Law School seeking pro bono assistance with an appeal. Ireland agreed to retain Field in July. Working with Field on the case are third-year law students Caroline Padgett, Charlotte Croson, and Alicia Aiken.

Before Field even officially took the case, she found herself talking to reporters about it. Detroit newspapers and television stations reported Cashen's ruling; then *USA Today* picked up the story, and the rest of the national news media followed. Field and Ireland were flooded with interview requests and the Ireland family faced television cameras on their front lawn. Eventually, Field helped

Ireland find an agent to help sift through offers to buy television movie rights to her story.

Meanwhile, Field, an assistant clinical professor, petitioned first Cashen and then the Michigan Court of Appeals for a stay, which was granted just two days before Ireland was to relinquish the child to Smith on Aug. 11.

Students working on the case say the domestic violence will be an important point in their appeal. Ireland has alleged that Smith pushed, shoved, and choked her in December 1992 and January 1993. He was arraigned on those outstanding assault charges on the day he was to take custody of his daughter. (Smith was acquitted in October.)

*Women and the Law Clinic students (C-R) Caroline Padgett, Charlotte Croson, and Alicia Aiken discuss issues in the high-profile Ireland custody case with Clinical Assistant Professor Julie Field.*

A Michigan law adopted Jan. 1, 1994, added domestic violence to the list of factors that must be evaluated in determining child custody. Cashen dismissed the domestic violence incidents as "superfluous," saying that the couple "in their youthful way apparently crashed or mauled one another."

Field will ask the Court of Appeals to review the assault evidence and testimony presented in Cashen's courtroom. "Under Michigan law, domestic violence is *never* superfluous," Field wrote in the request for a stay, noting that experts believe even one incident of violence can

*(continued on page 9)*



## For the father's side

— BY PHILLIP J. HOLMAN,  
J.D. '81  
VICE PRESIDENT, NATIONAL  
CONGRESS FOR MEN  
AND CHILDREN

The incredible publicity surrounding the Macomb County, Michigan custody case of Steve Smith and Jennifer Ireland has given me a fascinating look from the fringes of a high profile court case, and opportunity to view the critically important role the media plays in such cases.

As the vice president of the National Congress for Men and Children (NCMC), I was contacted by the *Detroit Free Press* for my comments the day the trial court decision was made. Thereafter, I was interviewed by the Associated Press and ultimately appeared on numerous local and national radio talk shows and television broadcasts, including CNN and Current Affair, and was quoted in newspapers across the country. The father and his attorney avoided virtually all publicity for the first week to ten days. This allowed the mother'

attorney, Ron Dixon, to frame the issues for the media and created an indelible one-sided image of this case. NCMC finally convinced the father and his attorney to take a more public stance by agreeing to fund a press conference at the Detroit Press Club and to publicize a legal defense fund.

This article will attempt to present the father's side of the case (relying on information received from his attorney), address the public policies involved, and urge readers to help fathers combat the overwhelming gender bias that exists in most custody cases.

Many individuals have questioned why a fathers' advocacy group would support the court's ruling. Fathers are more dependent on day care than mothers and would not want courts to view day care unfavorably in a custody ruling. We became involved because we believe the father presented overwhelming evidence that the mother was not a proper custodial parent, but the judge was reluctant to say so. Judge Raymond R. Cashen is viewed by most attorneys who have practiced before him as an extremely compassionate jurist. He was quoted in the *Washington Post* as stating he intentionally wrote his

opinion as softly as possible so as not to stigmatize the parties (presumptively referring primarily to Ireland).

Furthermore, the issue of domestic violence in this case has been vastly distorted. Smith asserts that he grabbed Ireland in self-defense when she attempted to hit him during an argument over his parenting rights.

Ironically, the traditional justification for awarding custody to mothers was that fathers were busy working or going to school. Today, women spend approximately equal time outside the home. Virtually no one pretends that the prevalence of single-parent households with noncustodial parents forced out of their children's lives is working well.

Such children fill our prisons, become unwed teenage parents, commit most of the suicides, and populate our gangs, substance abuse clinics, and divorce courts. They constitute the vast majority of violent sex offenders, frequently become abusive husbands, and are the primary population suffering from virtually any social problem one can name.

Children from single-parent households exhibit such problems regardless of race or income. Such problems increase upon remarriage, even though the household income increases dramatically and a surrogate parent is available to serve as a role model. Like the tobacco lobby fighting a proposed health warning on cigarette labels, we ignore the extremely high correlation between such problems and father absence, refusing to accept the existence of any causal link.

NCMC believes it is time we grant fathers the equal rights to their children just as we insist on equal rights for women in education and in the work place. We need to recognize that children want and need two parents. We must end the devastation caused to children when judges award the child to one parent and virtually destroy the child's relationship with the other parent and his or her family. Similarly, isn't it time feminists join our cause, if for no other reason than they may someday lose all rights to any relationship with their sons' children?

We need your help, regardless of your area of practice.



(Continued from page 7)

traumatize a child. Croson adds, "It's important that we not allow judges to disregard domestic violence. We're unwilling to allow judges discretion in this area. It's exciting for us because we get the first crack at defining domestic abuse under this new law at the appellate level."

"Another strong issue is day care," says Aiken. Under Section 3 of the Child Custody Act, (MCLA 722.21), Cashen was required to find clear and convincing evidence that would justify changing Maranda's established custodial environment. "It's unrealistic to say that day care is a clear reason to switch custody," notes Aiken. "The implication is that a mother who puts a child in day care is a bad mother." In fact, Michigan law presumes paid day care will be a part of a custody arrangement, and factors child care costs as an element of support paid by the non-custodial parent.

Ireland's team also will argue that the circuit court, in effect, awarded custody not to Smith but to his mother, finding that she "would devote her entire time to raising the child when the father is not available" on an indefinite basis. Michigan law does not support such third-party custody arrangements. Aiken points out, "The court was saying that neither parent was fit to raise the child. Why some people think our advocacy for Jennifer is a blow against fathers is mystifying."

Their most important argument is that Maranda will face irreparable harm if she is separated from her mother. "The court erred in emphasizing geographic over emotional stability," says Field. She believes Cashen didn't give sufficient credit to a psychologist's evaluation stating that Ireland provided a stable home and that removing Maranda from the familiar custodial environment would create difficulties for her.

Although the students have all handled trials before, this is their first appeal. "There's a big difference between building the case from the beginning and writing an appellate brief where the case is already developed. It's harder to work from a case someone else has tried and not be in control of the issues," says Croson.

The case also gave them a lesson in how intense media attention can shape a case in the court of public opinion. "A case that gets this kind of media attention takes on a life of its own, and it's a completely different life than the one going on legally," says Padgett. Aiken agrees: "It's weird that the things that upset me about this case, like the domestic violence issue, are not the same things that upset the media and the people calling us."

Still, Ireland and her team are well aware that it's the Court of Appeals, not the court of public opinion, that counts. No hearing date has been set, but it's expected that the court will hear the appeal in late fall or early winter.

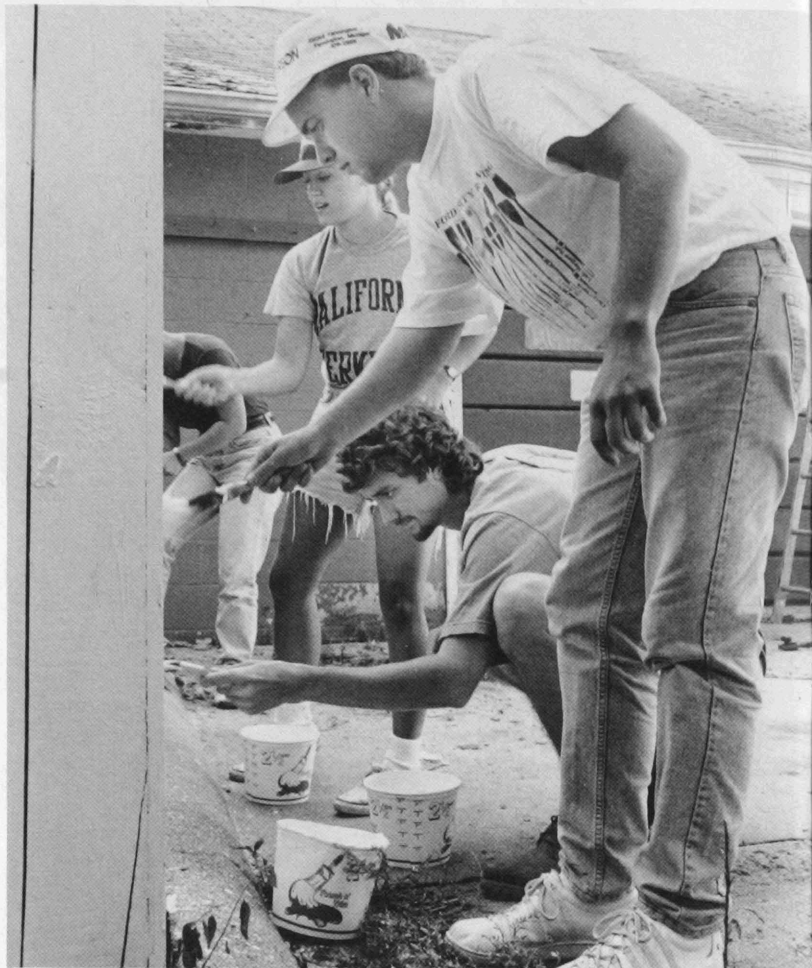
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**"It's weird that the things that upset me about this case, like the domestic violence issue, are not the same things that upset the media and the people calling us."**

— 3L ALICIA AIKEN

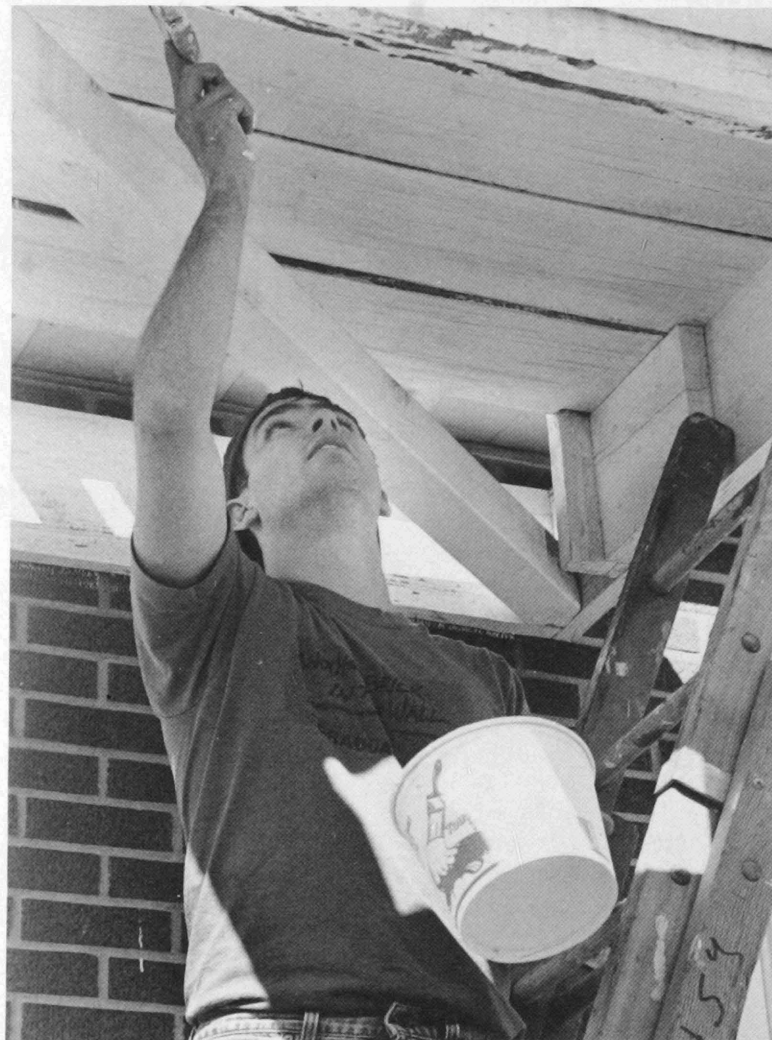


First-years were enthusiastic about Community Service Day. Wielding the paintbrushes are (from right) Matthew McQueen, Jordan Hansell, Saretta Coomes, and Alexandra Choe.



## Michigan law students learn to serve

Matthew Shebuski paints the underside of a staircase at a renovation project on Community Service Day during orientation.



Before they began to study together, new law students sweated together for good causes.

About 330 incoming students lent a helping hand to local nonprofit agencies on Community Service Day, a new volunteer event held during student orientation. Service with a smile was the order of the day as they painted barns and homes,

spruced up shelters, moved homeless families into lodgings, and entertained children from a Big Brother/Big Sister program all day on Friday, Sept. 2.

"The student response was very positive. There were a lot of smiles on the work sites," said Jack Bernard, a third-year law student who helped organize the new event. "The camaraderie and dedication of the students was phenomenal," added Roopal Shah,

another organizer who is also president of the Law School Student Senate. "Although they worked hard, all of the students I met at several worksites had a marvelous time."

Community Service Day originated with a handful of students — chiefly Bernard, Shah, Aimee Ginsberg and Melanie West — who were seeking ways to involve service in the Law School experience. They had a dual mission in mind: "Through service activity, students could get involved with the community, and more importantly, get involved with each other by working together in ways they wouldn't in the classroom," said Bernard.

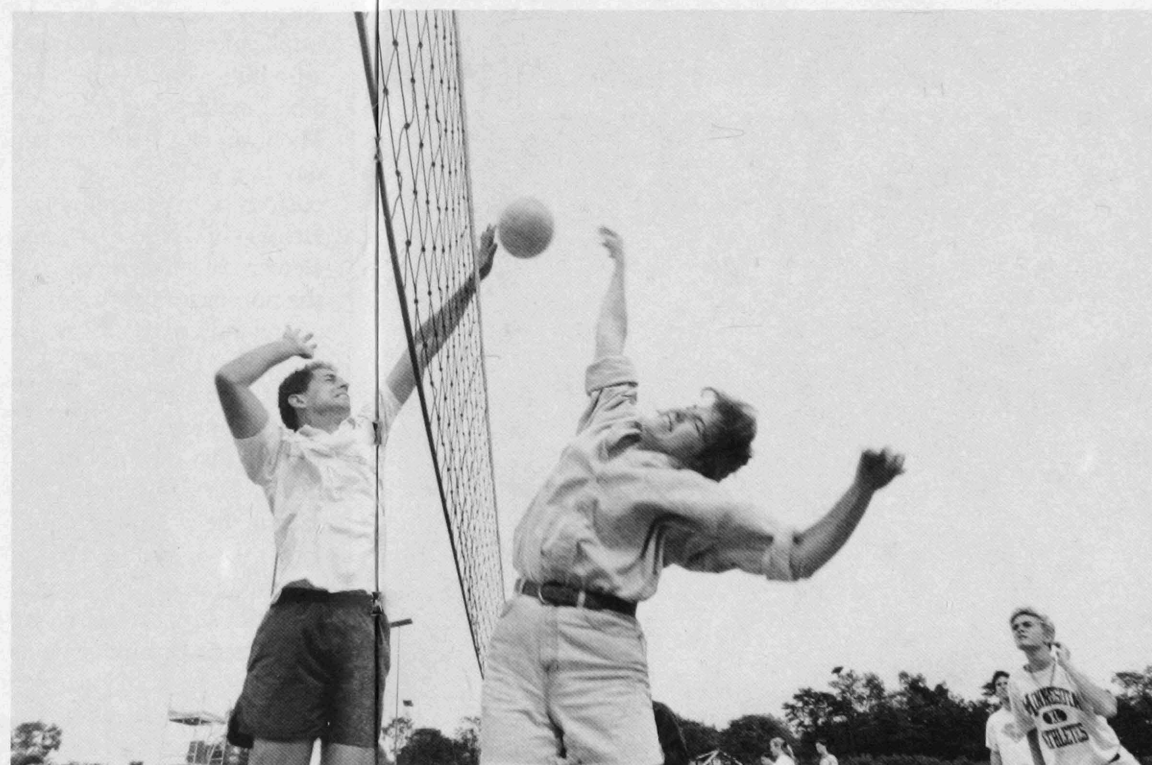
The idea to link a service program to orientation came from the University of Michigan School of Business Administration, which launched a similar program called Global Citizenship four years ago. While campus community service efforts are growing nationwide, Bernard says few, if any, law schools have arranged such volunteer programs.

Law students proved to be willing to work. Nearly 80 percent of the entering fall class, including international graduate students, participated. They worked for eight agencies, including a substance abuse treatment residence for teens, a home

for abused and neglected children, a shelter for battered women, the Humane Society, and two Detroit groups that renovate housing. Buses left the Law School for the work sites as early as 7 a.m., and some groups worked until after 6 p.m. Local sponsors donated pizza, subs, and beverages for the hungry work teams.

The agencies appreciated the assistance, especially at a family shelter called Prospect Place, where students helped avert a crisis. The agency had lost its lease on apartments used for emergency shelter and needed to relocate families immediately. Students helped move five families. "We couldn't have done it without their help," said Prospect Place's Nancy Edwards.

The student organizers recognize that Service Day may have a more lasting benefit. "We felt it was important to give back to the community. We hope fostering the idea of community service early in law school will make us all better lawyers and better citizens out in the real world," says Shah.



Orientation wasn't all work and no play. This rousing volleyball match was just one part of the fun and games arranged for incoming students.



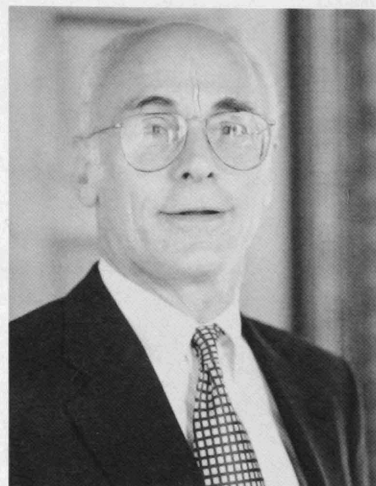


# Visiting faculty

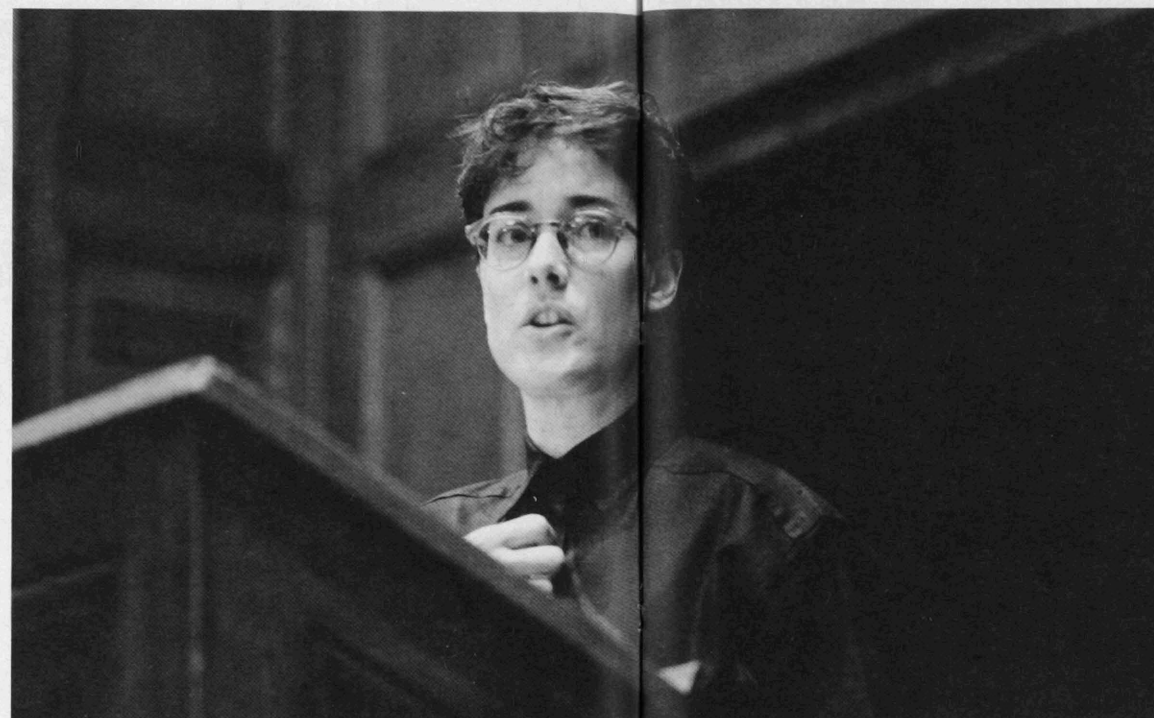
Some familiar faces and scholars from far afield are among the distinguished visitors enriching the Law School faculty this year.



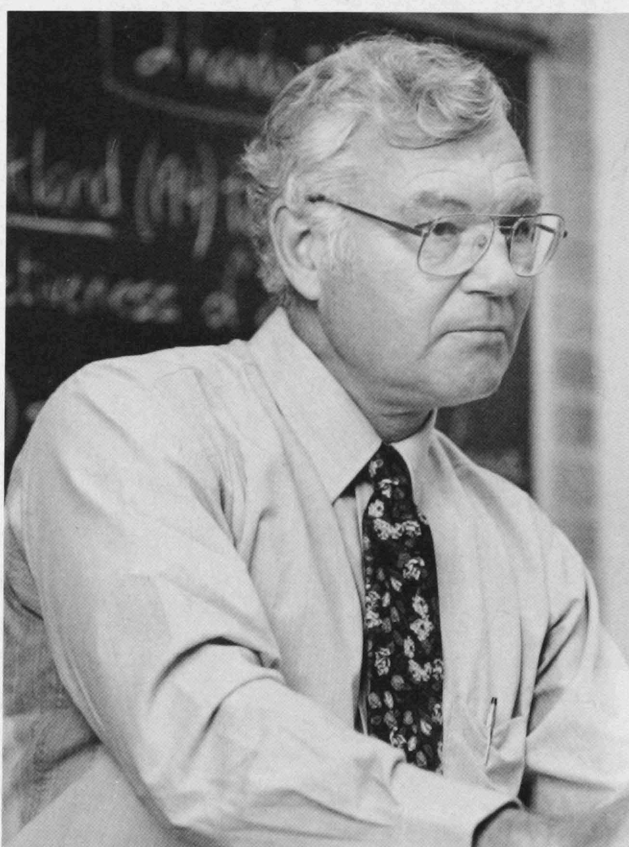
**Cynthia A. Baker**, a visiting assistant professor, is teaching Writing and Advocacy this fall and Real Estate Finance in the winter term. "The legal writing and research course reinforces and builds on analytical skills students are learning in other courses," she says. "It's a challenge to structure this course from that perspective so it fits in with other first-year courses." A 1988 U-M Law School graduate, she previously taught Bankruptcy and Creditors Rights, Contracts, and Torts at Wayne State University Law School. She also practiced with the New York firm of Fried, Frank, Harris, Shriver & Jacobson.



**Paul Borman**, J.D. '62, who is co-teaching a seminar on White Collar Crime with Jerry Israel this term, was just sworn in Sept. 12 as judge of the U.S. District Court for the Eastern District of Michigan. He formerly was chief of the Federal Defender's Office in Detroit.



**Paula Ettelbrick** (left), public policy director for the National Center for Lesbian Rights, is teaching a course called Sexuality and the Law. She was the DeRoy Fellow here in 1993. Ettelbrick holds a law degree from Wayne State University Law School, and is an adjunct professor at New York Law School. She was staff attorney and then legal director for Lambda Legal Defense and Education Fund from 1986-93. Before that, she was an associate in the Detroit office of Miller, Canfield, Paddock & Stone.



**Roger C. Cramton**, a member of the Law School faculty from 1961-70, is pleased to find himself back in Ann Arbor temporarily occupying the office of one of his former students, Professor Richard Lempert. In his academic career, Cramton has focused his teaching and scholarship primarily in the areas of administrative law, conflict of laws, legal ethics and torts. He was chairman of the Administrative Conference of the U.S. from 1970-72, then served as Assistant Attorney General in charge of the Office of Legal Counsel of the Justice Department. He was appointed Dean of the Cornell Law School in 1973; in 1982 he was named Cornell's Robert S. Stevens Professor of Law. The co-author of a leading textbook on lawyers' ethics, he is teaching a half-term course on Professional Responsibility.



**Susan Gzesh**, J.D. '77, is of counsel to Gessler Flynn Fleischmann Hughes and Socol in Chicago, where she represents clients on immigration matters. She was an adjunct professor at U-M in fall 1991, teaching a course on Immigration Law and Policy. She taught a course on Immigration and Nationality last year, and is offering the course again this fall.



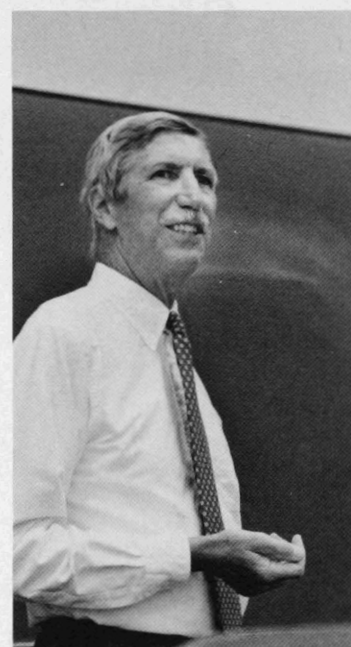


A globe-trotting academic, **Friedrich K. Juenger** is a U-M Law School graduate (M.C.L. '57) who has returned to Ann Arbor after teaching in many more exotic locations. His distinguished career includes tenured and visiting professorships in the U.S., Germany, France, Uruguay, Australia, Yugoslavia and Tahiti. He has taught Conflict of Laws, Comparative Law, International Transactions, Law and Institutions of the European Union, Introduction to Anglo-American Law, and Torts. Although he was born in Frankfurt, Germany, and completed a legal education there, he says, "The place responsible for the strength of my interest in comparative law is Ann Arbor. The Law School at the time was a center of international and comparative legal scholarship, with faculty like the great Hessel Yntema, William Bishop, Jack Dawson, Eric Stein, and Alfred Conard. They were an inspiration to me."

Juenger also holds a J.D. ('60) from Columbia University Law School. He is a former associate of the firms of Cahill, Gordon & Reindel and of Baker & McKenzie. Currently, he is the Barrett Professor of Law at the University of California at Davis. The most recent of his numerous articles and books is *Choice of Law and Multistate Justice* (1993). Juenger is past president and honorary president of the American Society of Comparative Law. At Michigan, he is teaching Torts and a conflict of laws course.



**Meinhard Hilf** is visiting from the University of Hamburg, where he has been a professor since 1992. He has been a research assistant at the Max Planck Institute, a legal advisor to the EC Commission, and a member of the faculty of the University of Bielefeld from 1982-92. He has written more than 80 publications in the fields of German constitutional law and international public law. He is teaching a course on the Law of the European Community and a seminar called International Trade Law: The Case of Europe.



**William R. Jentes** is visiting from Kirkland & Ellis in Chicago, where he is a partner. He taught Complex Litigation in 1991 and will do so again this fall. Jentes earned both his bachelor's and law degrees at Michigan. He has served as lead counsel on cases involving some of the nation's largest corporations and has been a lecturer at the University of Chicago Law School and for the American, Federal, Illinois, Texas and Chicago bar associations. Jentes is an alumni of the Law School's Committee of Visitors and is chair of the Chicago Major Gifts Committee.

**Blake D. Morant** is here from the University of Toledo College of Law, where he teaches Contracts and Administrative law. A 1978 graduate of the University of Virginia School of Law, he has been an attorney for the offices of the Judge Advocate, 18th Airborne Corps; U.S. Army Judge Advocate General's Corps Professional Recruiting Office; and Administrative Law Division of the U.S. Army Judge Advocate General. Morant was senior associate at the Washington, D.C. firm of Braue, Margulies & Rephan from 1985-87, and assistant general counsel for the Washington Metropolitan Area Transit Authority until 1992. He was also an adjunct faculty member at American University's Washington College of Law from 1988-92. Morant is teaching Contracts.



**Roberta Morris**, a frequent Law School instructor, is teaching Copyright this term. She holds a law degree from Harvard and a doctorate in physics from Columbia University. She practiced law at White & Case and at Mount Sinai Medical Center in New York. After completing her doctorate, she was an associate at Fish & Neave, a patent firm.



**Jeffrey Miro**, J.D. '67, is chairman at the firm of Miro Miro & Weiner, with offices in Southfield and New York City. He holds a bachelor's degree from Cornell University and an LL.M. from Harvard. He was a lecturer on taxation at the Detroit College of Law from 1968-69 and an adjunct professor of law at Wayne State University from 1969-89. He is teaching a seminar on Selected Problems in Real Estate Taxation. Miro is a member of the Law School's Committee of Visitors and co-chair of the Detroit Major Gifts Committee.



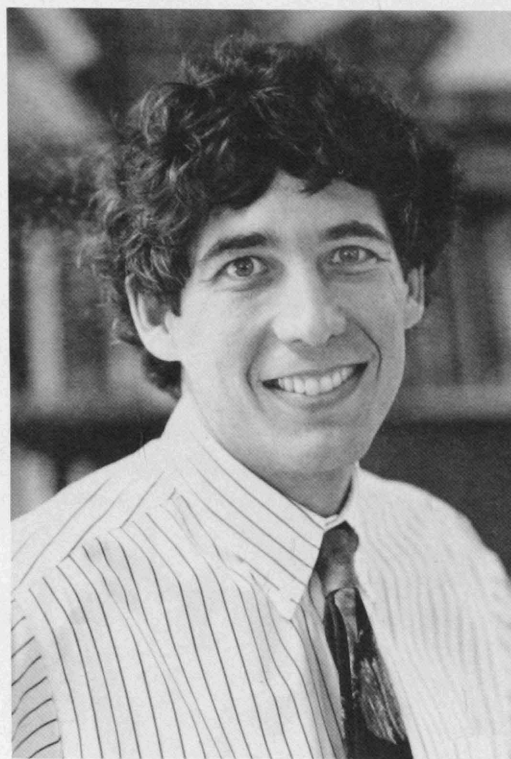


# FACULTY



**Cyril Moscow, J.D. '57**, is a specialist in securities law practicing in Detroit. Last winter term he taught Business Combinations and this term is teaching Corporate Governance. Moscow is also an alumni member of the Committee of Visitors.

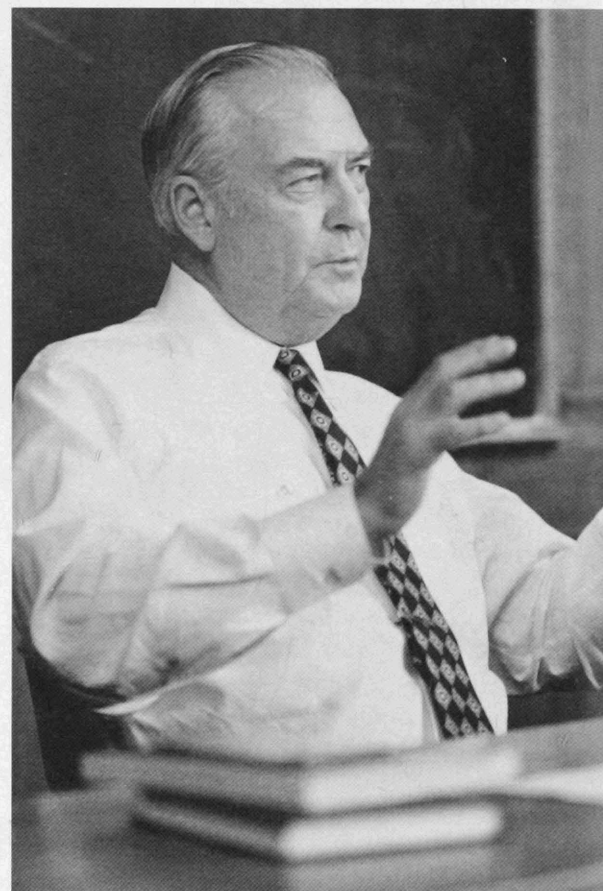
**Joseph Raz** is a distinguished legal and political philosopher visiting from Balliol College, Oxford University. Author of the recent prize-winning book *The Morality of Freedom*, he is co-teaching a course on Value and Politics with Professor Don Regan in October. (No photo was available at press time.)



**Robert K. Rasmussen** is visiting from Vanderbilt Law School, where he has taught since 1989. He earned his law degree at the University of Chicago Law School in 1985, then clerked for Chief Judge John C. Godbold, U.S. Court of Appeals for the Eleventh Circuit. From 1986-89, Rasmussen worked on the appellate staff of the Civil Division in the Department of Justice, handling litigation in the U.S. Court of Appeals and Supreme Court. He is teaching Commercial Transactions and a seminar in Advanced Contract Theory.

**Richard Pogue, J.D. '53**, is teaching a course entitled "The Business of Law" which he designed in 1993 at former Dean Lee Bollinger's request. It is intended as one response to the "Growing Disjunction" between legal academia and the profession articulated by Judge Harry Edwards in a 1993 *Michigan Law Review* article. From 1984 through 1992, Mr. Pogue was the managing partner of Jones, Day, Reavis & Pogue, the second largest law firm in the United States, with 1,200 lawyers in 20 offices around the world. From his extensive experience at the firm, he is well-equipped to introduce students to the real-life issues faced daily in private practice.

Pogue is presently senior advisor to Dix & Eaton, a major public relations firm; director of nine major business corporations; and a civic leader in Cleveland. Pogue is also an alumni member of the Committee of Visitors.





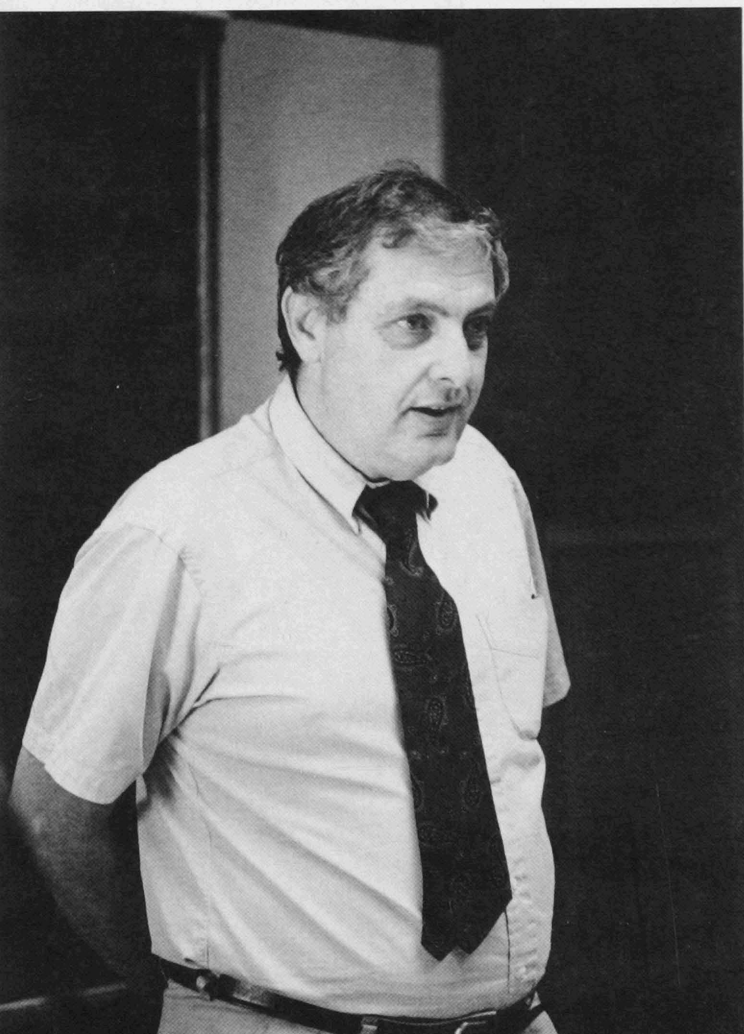
**Charles Silver** is the Cecil D. Redford Professor at the University of Texas Law School. His areas of expertise include federal civil procedure, law of professional responsibility, insurance law, remedies, attorneys' fees litigation, law and public choice, class actions, and jurisprudence. He received his law degree from Yale in 1987 and joined the Texas faculty that year. Silver is teaching Civil Procedure and co-teaching a seminar on Selected Problems in Litigation Ethics with Professor Kent Syverud.



**Andreas Reindl** holds a Magister Juris ('87) and Doctor Juris ('93), both from the University of Vienna Law School; he received an LL.M. from U-M Law School in 1989. He was with the Brussels office of Skadden, Arps, Slate, Meagher & Flom from 1991-93. He will be teaching International Intellectual Property.



**Lee D. Ross (left)** is visiting from Stanford University, where he is professor of psychology. He is the principal investigator and co-founder of the Stanford Center on Conflict and Negotiation. Ross received a doctorate in social psychology from Columbia University in 1969 and has been on the Stanford faculty since that time. Ross's current research interests are human inference and judgment; cognitive strategies and processes of "happy" versus "unhappy" people; issues in forensic psychology; and cognitive processes underlying intergroup hostility and social conflict. He was elected to the American Academy of Arts and Sciences in 1992. Ross will be teaching a seminar on Social/Psychological Perspectives and the Law. He is the Thomas E. Sunderland Fellow and Visiting Professor.

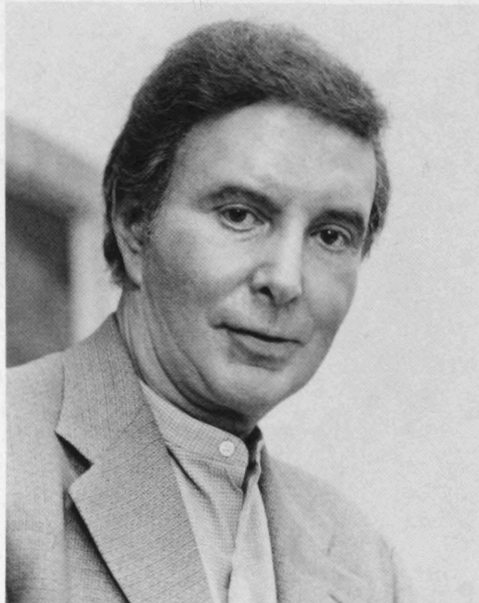


# FACULTY



**Stanley Schwartz, J.D. '55**, a shareholder in the firm of Sommers, Schwartz, Silver & Schwartz, P.C., has taught at the Law School for the last three years. This term he will teach Law and Medicine: Trial Advocacy.

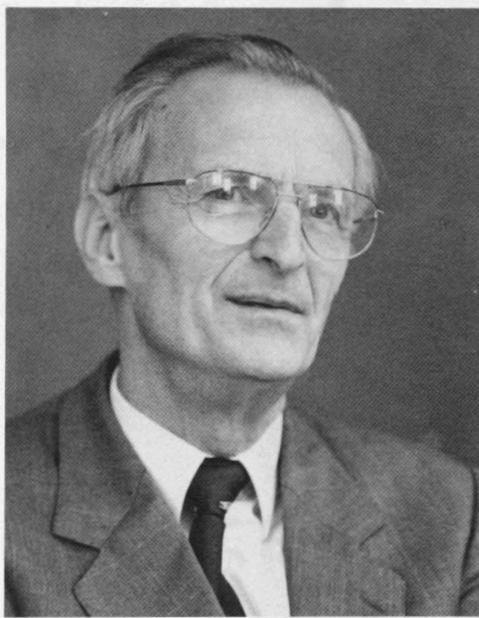
**Andreas Zimmerman** is visiting from the Max Planck Institute for International Law, where he is a research fellow. He received a law degree from the University of Tuebingen in 1986 and an LL.M. from Harvard Law School in 1989. He will be teaching a course called USSR, Yugoslavia and Beyond.



**Dan Sperber** is a research scholar at Centre Nationale de la Recherche Scientifique in Paris. He holds degrees in sociology and anthropology from the Sorbonne and Oxford University, respectively. The author and co-author of four books and dozens of articles, his most recent book is *Relevance: Communication and Cognition*. Sperber has held numerous visiting professorships and fellowships, including posts at Cambridge University, the Princeton Institute for Advanced Study, and the British Academy in London. He is teaching a course called Meaning in Context: Cognitive Perspective. He is the James B. and Grace J. Nelson Philosopher-in-Residence in the Department of Philosophy and the Helen DeRoy Visiting Professor at the Law School.



**Vicki Smith** has a doctorate in social psychology from Stanford University. She has been on the faculty at Northwestern University. Her research interests include psychology of law, jury decision-making, and eyewitness testimony. She is teaching Psychology of Litigation.



**Henry G. Schermers** is visiting from Leiden University Law School, where he has been a professor since 1978. He holds a master of laws and doctor of laws from Leiden as well as two honorary doctor of laws degrees, the most recent awarded this year. Author of numerous books and articles, he is teaching Human Rights.





## Eisenberg exploring patent policy

Professor Rebecca Eisenberg has won a grant from the Department of Energy, a co-sponsor of the Human Genome Project, to study the impact of patents on technology transfer.

Traditionally, the fruits of federally-funded biomedical research have been left in the public domain, on the theory that widespread sharing of results would speed scientific advances. "Since 1980, the federal government has made a 180-degree turnaround on this policy," says Eisenberg. Now, the government encourages researchers to seek patents on new compounds, processes, or even DNA sequences, assuming that patent protection will provide financial incentive for private industry to develop and market innovations.

There are indications that the pro-patent policy may oversimplify the complexities involved in technology transfer. Basing policy on faulty assumptions could have serious consequences for the success of the Human Genome Project, a massive multinational attempt to map and sequence all 23 human chromosomes. To see that this genetic information is used

most effectively in new products for the diagnosis and treatment of disease, it is important to understand when that information should be patented and what it should not.

With a \$140,000, 18-month grant, Eisenberg will conduct an empirical investigation to determine whether patents help or hinder a discovery's path from the lab to the marketplace in different circumstances.

First, she'll identify patented and unpatented discoveries springing from federally sponsored biomedical research that have or have not been successfully developed in the private sector. Next, she'll study selected inventions to determine the significance of patent protection in their commercial development.

From this data, she says, "I hope to offer a more nuanced account of when it makes sense to patent a discovery and when it makes sense to leave it in the public domain."

## Comparative law scholars honored

Professor Emeritus Al Conard and former research associate Vera Bolgar were elected honorary members of the American Society of Comparative Law at its annual meeting in Athens, Greece, this summer.

Conard was the third editor-in-chief American Journal of Comparative Law, succeeding Michigan Professors Hessel Yntema and B.J. George in that post. Conard edited the journal from 1968-1970, and remained a consulting editor for the next 20 years. The Henry M. Butzel Emeritus Professor, Conard officially retired in 1982, but continued to grace the Law School with his presence and scholarship until mid-1994, when he and his wife moved to Pennsylvania.

Yntema founded the journal in 1952 with the assistance of Bolgar, a research associate at the Law School who served as the journal's executive secretary until 1970. She was a skilled administrator who was dedicated to both Yntema and the journal, recalls Friedrich Juenger.

The immediate past president of the society, Juenger remembers both Conard and Bolgar warmly from his student days at the Law School in 1955-57.

Bolgar published several articles in the area of comparative law. She retired in

1978, and still resides in Ann Arbor.

A third honorary member, Rudolph Schlesinger of the Hastings Center in California, was elected at the meeting.

## Ellsworth named assistant to LS&A dean

Pheobe C. Ellsworth, the Kirkland and Ellis Professor of Law and professor of psychology, has been appointed assistant to the dean of the College of Literature, Science and the Arts for faculty appointment issues.

Dean Edie N. Goldenberg said Ellsworth will work closely with her and Associate Dean John R. Chamberlin on matters such as coordinating the college's efforts to implement the Michigan Agenda for Women. President James J. Duderstadt launched the agenda, an effort to improve the campus environment for women, last spring.

Ellsworth will play a key role in addressing sexual harassment problems within the college. She also will consider improvements in promotion procedures and faculty development opportunities.

— *The University Record* contributed to this report

# Super soccer

WorldCup  
USA94™



## Rothenberg kept the World Cup ball rolling

**T**he numbers are staggering: 52 soccer games in nine cities, 3.6 million spectators, 31 billion TV viewers, 24 corporate sponsors, \$276 million in advertising revenue, 12 regional organizing offices, 20,000 volunteers, and one host nation seemingly indifferent to soccer. By any measure, the 1994 World Cup tournament was a formidable undertaking — and a rousing success, according to Alan I. Rothenberg, B.A. '60, J.D. '63, chairman and chief executive officer of the U.S. World Cup Organizing Committee.



Alan Rothenberg

"I CAN'T IMAGINE how it could have gone better. It was magical," Rothenberg told *LQN* a month after the tournament ended. "It went better than anyone expected, including me. No one was more outspoken than I in predicting success, but it exceeded even my expectations."

The saavy Los Angeles sports attorney had specific, quantifiable goals for World Cup sponsorship, ticket sales, TV viewership, and so on. The event easily topped all those targets, including the bottom line. Although World Cup was a non-profit organization, Rothenberg says, "We were hoping for a \$20 million to \$25 million surplus for a U.S. Soccer Federation foundation that will support scholarships. All the figures aren't final yet, but we're going to end up more than doubling that."

Even more pleasing to Rothenberg were nonquantifiable signs of success, like the spirit with which Americans embraced the event.

Other nations objected when FIFA, world soccer's governing body, picked the United States to host the '94 World Cup games. Why hold the world's most watched sporting event in a nation with no professional soccer league and little interest in the sport? "There was amazing skepticism over whether the U.S. would



respond," Rothenberg says. "It was incredibly gratifying to see the outpouring of support from the American public, and a source of great pride. The American public was turned on to soccer. Visitors here from around the world loved what they saw and loved our country."

One uniquely American aspect of World Cup that impressed visitors was the corps of 20,000 volunteers who helped run the games. "Many were not even soccer fans; they just wanted to get involved with the event," said Rothenberg. "Visitors from countries without a tradition of volunteerism were overwhelmed because they could not believe all these happy, helpful people serving them were not being paid."

"The other thing that was amazing was that we always brag about our diversity in this country, but during this event, you could see it. For one month, we really were blended. When you went to stadiums, hotels, bars, and restaurants, you saw every kind of American blended with every other kind in a happy celebration, having a good time, with no hostility and no problems. It was beautiful for me to see, and I just hope we can find a way to continue it."

Post-World Cup, his challenge is to make sure that the support for soccer the tournament spawned continues as well. FIFA awarded the '94 games to the U.S. precisely because it hoped to develop a new soccer frontier. In 1990, FIFA officials grew worried about the tournament's prospects under U.S. Soccer Federation president Werner Fricker. They contacted Rothenberg, who coordinated the 1984 Los Angeles Olympic soccer tournament, to ask if he was interested in heading the organizing committee. He was, but he learned that to take that post he must also become

USSF president. He launched a last-minute campaign, and despite protests from USSF officials, he was elected. He took a partial leave of absence from his litigation practice at Latham & Watkins, installed a clock in the World Cup offices that counted down the days, minutes and seconds until kick-off on June 17, 1994, and went to work.

Rothenberg has become controversial in soccer circles because he dominates the sport. In addition to his World Cup and USSF roles, he is chairman of Major League Soccer, a professional outdoor soccer league expected to begin play in April 1995. Some opponents have charged that there is a conflict of interest in his overlapping roles; others complain that he's not a true "soccer guy" because he does not play or coach. (Rothenberg has played soccer only twice, in pick-up games with his Olympic Organizing Committee staff in 1984; he scored with a shot off his belly in the second game, and hasn't played since.) However, the Soccer Federation membership apparently is pleased with Rothenberg, electing him in August to another four-year term as president with the rank and file giving him 70 percent of its vote.

Few in the field have more experience in the business of soccer and sports than the Rothenberg. He started his career in law as a litigator; "there was no such thing as a sports lawyer at the time," he says. By 1967, he was general counsel for Jack Kent Cooke, then owner of the Los Angeles Lakers and L.A. Kings. In 1968, he became general manager of Cooke's soccer team, the L.A. Wolves, before he'd even seen a professional soccer game. Rothenberg himself later became president of the L.A. Clippers basketball team, and owner, with singer Linda Ronstadt and others, of the L.A. Aztecs soccer team. Also active in L.A.'s legal circles, he was president of the State Bar of California in 1989-90.

Rothenberg poured his considerable expertise and enthusiasm for sports into the World Cup effort. Legendary for working 18-hour days, he would leave staff members messages about details like

**"The other thing that was amazing was that we always brag about our diversity in this country, but during this event, you could see it. For one month, we really were blended. When you went to stadiums, hotels, bars, and restaurants, you saw every kind of American blended with every other kind in a happy celebration, having a good time, with no hostility and no problems."**

— ALAN I. ROTHENBERG

security or translators at 3 a.m. "I work to relax," he says. As soon as World Cup ended, Rothenberg simply switched his focus to Major League Soccer. "I took about a minute off, then rushed off to talk to cities and sponsors." Only seven of a dozen teams are established, so he is moving fast.

From the growing ranks of adult soccer players, he is trying to build a professional sport structure that will attract spectators and "stand side-by-side with other American sports." The federation will help the U.S. Women's National Team defend its world championship in 1995 and compete in the Olympics for the first time in 1996, while building the men's Olympic team. Rothenberg also will work to draw more players into the USSF.

"We need to expand our base. For example, we need to reach out to the Hispanic population that loves the game and plays ardently but is not part of the federation. The challenge is to seize the momentum gained over the past years with the focus on World Cup here and make sure gains we've made become permanent. There was a great peak of interest during the games, and we really need to capitalize on that."

**LQN**



## ABA honors alumni

University of Michigan Law School graduates were at center stage during the American Bar Association annual meeting. Two alumni won prestigious awards at the Judicial Administration Division's annual black-tie Dinner in Honor of the Judiciary. Three others were elected to serve in the highest leadership positions of the ABA Tort and Insurance Practice Section.

At the Judicial Administration dinner Aug. 8, the National Center for State Courts presented its prestigious Reardon Award for Outstanding Service to the Cause of Justice to John Pickering, J.D. '40. Only five people have ever received the award, and Pickering is the first private attorney to do so. In presenting the award, Chief Justice McKusick of Maine mentioned Pickering's hard work as a loyal alumnus of the Law School.

Next, 1994 graduate Michael R. Phillips received the Brown Award for Excellence in Legal Writing. The new award honors the memory of Judge John R. Brown, a 1932 Michigan Law graduate. He enjoyed an extraordinary career on the U.S. Court of Appeals Fifth Circuit, where he developed a reputation as a master writer. After his death in 1992, the Judge John R. Brown Scholarship Foundation established the \$5,000 prize in his honor. In announcing the award, the judge's widow, Mrs. Vera Brown, noted how happy Judge Brown would have been to know that the first winner was another Michigan graduate.

Phillips' *Michigan Law Review* note, selected for submission by the review's editorial board, was among 140 entries written by students from around the country. A panel of three experts (a judge, a law school dean, and a law professor) read all the submissions under a complex system of blind grading. Phillips' winning note is entitled, "The Constitutionality of Employer-Accessible Child Abuse Registries: Due Process Implications of Governmental Occupational Blacklisting" (92 Mich. L. Rev. 139, 1993). Phillips, now an associate at the Chicago firm of Ross & Hardies concentrating in real estate law, said he was surprised and thrilled that his note was selected.

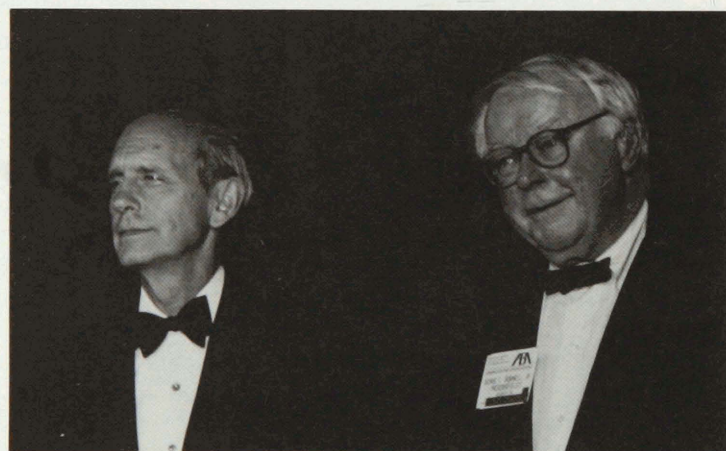
The guest speaker at the awards dinner was the U.S. Supreme Court's newest

*Supreme Court Justice Stephen Breyer and George Bushnell, J.D. '51, at the ABA annual meeting.*

associate justice, Steven Breyer. Of course, there on the dais, seated next to Justice Breyer, was none other than the incoming ABA president, George Bushnell, J.D. '51. Observed Dean Jeffrey S. Lehman, who was seated with Mrs. Brown at the event, "The entire evening seemed to be a tribute to the excellence of Michigan's alumni."

Also during the annual meeting, Hugh E. Reynolds Jr., J.D. '53, was elected chair of the Tort and Insurance Practice Section. Walter H.

Beckham III, M.B.A. '72, was named chair-elect, and Robert Hirshon, J.D. '73, was elected vice-chair. It is the first time Michigan graduates will hold all three top positions in the section. Reynolds is senior partner of the Indianapolis law firm of Locke, Reynolds, Boyd, & Weisell. Beckham, a plaintiff's trial lawyer, is of counsel at Kirwan, Goger, Chesin, & Parks. Hirshon is a member of the Portland, Maine firm of Drummond, Woodsum, Plimpton, and MacMahon.



(ABA/CARL LEBOWITZ)

(PHOTO COURTESY OF VERA BROWN)



*Vera Brown presents the John R. Brown Award for Excellence in Legal Writing to Michael Phillips, a 1994 graduate.*

## NBA honors Character

While several Michigan Law School graduates were collecting kudos at the American Bar Association annual meeting, another was honored at the National Bar Association annual convention.

The Hon. Carl J. Character, J.D. '54, was one of 14 distinguished African American attorneys to be inducted into the NBA's Hall of Fame. Character, of Shaker Heights, Ohio, is a judge of the Common Pleas Court in Cuyahoga County, Ohio, and a past president of the NBA.

Other notable Law School graduates in the association include Walter L. Sutton Jr., J.D. '70, also a past president, and Reginald M. Turner Jr., J.D. '87, president of the Wolverine Bar Association, one of the largest NBA affiliates.



1951

**Herbert M. Balin** recently published an article entitled "The Long Island Pine Barrens Protection Act, A Model of Compromise Between Home Rule and State Intervention in Land Use Control." The *New York State Bar Journal* article examines the compromises between the state and municipal government that made the passage of this act possible.

1956

California Gov. Pete Wilson named **Paul Haerle** to the First District Court of Appeals, Division Two in San Francisco. Haerle replaces retiring Justice John Benson.

1958

**Nick Yocca** is representing Offshore Pipelines Inc. in a merger with Panama's McDermott International to create one of the world's largest marine construction companies. The value of the deal is estimated at \$1 billion.

1959

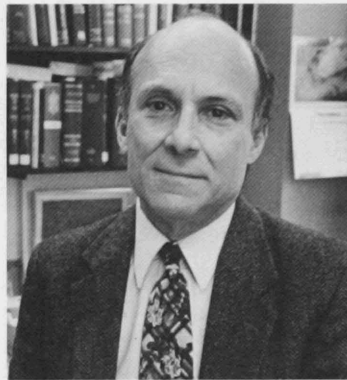
**Scott Hodes** was named to the Illinois Savings and Loan Board.

1961

**James M. Trapp, P.C.**, just completed a term as president of the American College of Trust and Estate Counsel. His classmate, Hansen Reynolds of Boston, also is a board member of ACTEC.

1963

**Paul L. Tractenberg**, a professor at the Rutgers Law School, has authored *New Jersey Dispute Resolution* (New Jersey Law Journal Books, 1994). The handbook contains information on alternate dispute resolution and complementary dispute resolution rules and programs.



Paul L. Tractenberg

1964

**J. Portis Hicks** recently represented the Killbar Corp. (formerly Remington Rand) in a lawsuit over electronic typewriter manufacturing trade secrets. The defendants — an Amsterdam bank and two Kuwaiti businessman — must pay Killbar \$339 million.

**Cheever Tyler** is leaving his post as partner at Wiggin & Dana to create the Partnership for Connecticut Cities, a nonprofit organization to address urban problems. Tyler recently was recognized for 30 years of volunteer efforts in New Haven.

**James D. Zirin** described the problems of China's new legal system in an article published in *FORBES* recently. He also lectured to a group of Chinese lawyers at Fudan University in Shanghai.

1965

**Rosemary Pooler** has been appointed U.S. District Judge for the Northern District of New York.

1966

**Robert E. Gilbert** has been named chief executive officer of the firm of Miller, Canfield, Paddock and Stone, P.L.C. Gilbert, whose practice area is finance and real estate law, was the firm's managing director from 1987-93 and resident director of its Ann Arbor office from 1986-94.

1967

**Joseph R. Seiger** was elected chairman of the board of Catellus Development Corp. Catellus is a major developer, manager, and owner of commercial and industrial property in the western United States.

1969

**Robert J. Millstone** was elected vice-president and general counsel of ARCO Chemical Co. of Pennsylvania.

**Arnold M. Nemirow** was appointed president and chief operating officer of Bowater Inc., a South Carolina manufacturer of recycled and virgin fiber newsprint. Nemirow formerly headed Wausau Paper Mills in Wisconsin.

**Charles Platto** has joined Salans Hertzfeld & Heilbronn as head of its New York office. He will handle domestic and international commercial litigation, arbitration, and insurance matters.

1972

British Telecommunications named **James E. Graf II** president of BT North America. Formerly the vice-president of government relations for BT North America, Graf was instrumental in steering the corporation's \$4.3 billion alliance with MCI through the U.S. regulatory process.



James E. Graf II

**J. Bryan Williams** was elected to a one-year term on the Greater Detroit Chamber of Commerce Board of Directors.

1973

**Michael F. Nuechterlein** was elected chairman-designate of the American Bar Association's Forum on the Construction Industry. He is head of the Construction Law Department at Carlton, Fields, Ward, Emmanuel, Smith and Cutler, a Tampa, Florida law firm.

**Edward H. Pappas** was appointed secretary of the Oakland County (Michigan) Bar Association.

1974

**Bruce F. Howell** has joined the firm of McKenna & Cuneo in Dallas as a partner. He specializes in health care reimbursement and managed care.

# CLASS notes

1975

**Edsell M. (Chip) Eady Jr.** has joined the bond counsel team at the firm of Carroll, Burdick & McDonough of San Francisco.

**Susan Low Bloch** argued for granting President Clinton temporary immunity from Paula Jones' sexual harassment lawsuit in an *ABA Journal* article entitled "Yes: Nation's Agenda More Important Than a Speedy Trial."

**David Stanley** has resigned his post as executive director of the First District Appellate Project in San Francisco and returned to private practice as a court-appointed appellate attorney for indigent clients.

1976

**Ronald F. Graham** recently advised marriage counselors about their likelihood of being called to testify in court at a Michigan Association for Marriage and Family Therapy conference. He discussed issues related to testifying in court, either for a client or as a defendant in a malpractice suit. Graham is a shareholder in the firm of Buesser, Buesser, Black, Lynch, Fryhoff & Graham, P.C., of Bloomfield Hills and Detroit.

**Alan J. Kreczko** is special assistant to the president of the United States and legal counsel, National Security Council. He formerly was a deputy legal advisor at the Department of State.

1977

**Robert H. Jerry II** has been named to the Herbert Herff Chair of Excellence in Law at Memphis State University. An authority on insurance, health insurance and banking law, Jerry is a former dean of the University of Kansas School of Law.

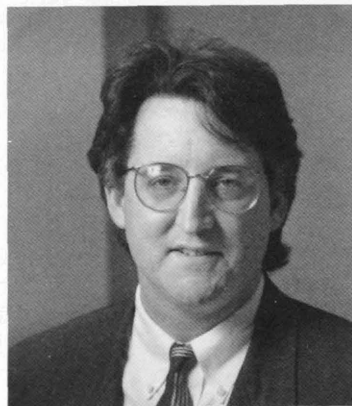
**Ross D. Petty** received tenure at Babson College, where he is an associate professor of law and the Roger A. Enrico Term Chair. Last year, he published a book, *The Impact of Advertising Law on Business and Public Policy*. He and his family will be spending the 1994-95 academic year in Scotland while he is a visiting professor at the University of Stirling.

**David Westin** was promoted to president of the ABC Television Network Group.

1978

**Dennis W. Flichman** has left the San Diego law firm he co-founded to become the associate director of the Michigan State University Alumni Association. He oversees more than 100 regional alumni clubs worldwide.

**Stafford Matthews** has joined the San Francisco law firm of Landels, Ripley & Diamond as a senior transactional and tax partner. Previously, he was a partner in the Los Angeles law firm of Mitchell, Silberberg & Knupp.



Stafford Matthews

1979

**Elaine Mittleman** is continuing her eight-year lawsuit against the U.S. Treasury Department and Roger C. Altman. She alleges that in 1981, Altman fired her unfairly from her post with the Treasury's Chrysler Loan Guarantee Program after she questioned the department's monitoring of financial reports Chrysler was required to file.

**Vicki Lafer Abrahamson** has been named a member of the American Bar Association's Council for the Section of Labor and Employment Law. She is the sole employment attorney who represents plaintiffs to occupy a seat on this 19-member council.



G. A. Finch

1980

**G. A. Finch** has been appointed to the Agricultural Export Advisory Committee in Illinois. This committee provides consulting services related to the export of farm products. Finch is a partner with the law firm of Querrey & Harrow.

**Beatriz M. Olivera** has joined the Chicago area firm of Vigil Berkley Schulz & Gordon, P.C., as a shareholder. She concentrates her practice on business, insurance, and entertainment litigation matters.

**James L. Stengel** and **Andrew M. Calamari** have published a single-volume treatise entitled *Complex Litigation* (Practicing Law Institute, 1994). It outlines a simple, logical approach to managing multifaceted cases from the initial investigation through trial, settlement and appeal. Stengel is a partner in the New York firm of Donovan Leisure Newton & Irvine.

1982

**Lawrence Savell** published an article entitled "Affirming the Value of Criticism" in the July 22, 1994 *New York Law Journal*. The article discusses the significance of the U.S. Court of Appeals for the D.C. Circuit's unusual retraction of its own ruling in *Moldea v. New York Times Co.* The appellate court first ruled that the *Times'* unfavorable book review attacked author Dan Moldea's professional competence and was therefore subject to the law of defamation. Three months later, the same three-judge panel amended its initial ruling to allow greater "breathing space" for literary reviews. Savell wrote that the revised opinion recognizes both the value of literary criticism and the "analogous element of respectful criticism and comment inherent in the appellate process itself." (**Roger Simmons**, J.D. '72, is chief counsel for Moldea in the libel suit.)

1983

**Helen Currie Foster** is serving as managing partner of the Birmingham, Alabama law firm of Walston, Stabler, Wells, Anderson & Bains. She continues to practice environmental law and litigation.



**Irasema T. Garza** has been appointed secretary of the U.S. National Administrative Office. She is charged with handling complaints about non-enforcement of labor law in the North American Free Trade Agreement signatory nations.

#### 1984

**Henry Zheng** now is a partner at Sidley & Austin in New York.

#### 1985

**Tom Bulleit** has been elected chair of the Health Law Section of the District of Columbia Bar. He is a partner in the health care practice group of Hogan & Hartson in Washington.

**John D. Hertzberg** has become a principal in the firm of Shefferly & Silverman in Southfield, Michigan. He practices in the area of creditors' rights, commercial bankruptcy, and commercial litigation.

#### 1986

**Maureen Crough** and **Andrew Klevorn** have become partners at Sidley & Austin in Chicago.

**Mike Johnson** has been appointed vice-president and general counsel for Ameritech Michigan's telephone industry services unit.

**Thomas R. Morris** has become a principal in the firm of Shefferly & Silverman, where he practices in the area of creditors' rights, commercial bankruptcy, and commercial litigation.

**Randall S. Thomas** has been promoted to full professor at the University of Iowa College of Law. He teaches corporate/securities law, specializing in the field of proxy contests.

#### 1987

**Laurie A. Wright** recently was named second vice-president at the Northern Trust Co. of Chicago. She is manager of the Estate Tax Services Division in the Personal Fiduciary Services Group.

#### 1989

**Kelly Morton** has taken a position at Central California Legal Services.

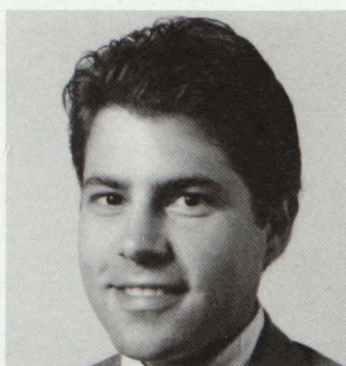
#### 1991

**David Bulbow** has been promoted from misdemeanor public defender to felony public defender within the Dallas County Public Defenders Office.

**Lisa A. Crooms** is a visiting associate professor at Howard University School of Law for the 1994-95 academic year.

#### 1993

**Jeffrey D. Adelman** has joined the Detroit office of the law firm of Miller, Canfield, Paddock and Stone, P.L.C. As an associate in the Business Services Department, he will be involved in local and national business and security matters.



Jeffrey D. Adelman

**Adam F. Scales** has joined the Minneapolis-based law firm of Faegre & Benson as an associate. He will practice in the general litigation group.

## I N M E M O R I A M

The Law School notes with regret the passing of these graduates:

'29	Richard J. Shaull	May 24, 1994
'32	Ephraim R. Gomberg	
	Verle C. Witham	Feb. 9, 1994
'33	Lynne F. Linn	May 24, 1994
'35	James W. Coultrap	July 17, 1994
	James E. O'Brien Sr.	June 13, 1994
'36	John M. Pikkaart	June 16, 1994
'37	Dwight C. Pond	April 22, 1994
'38	Norman J. Fredericks	Nov. 26, 1993
'39	Thomas C. Van Sluyters	March 18, 1994
'41	William G. Lerchen Jr.	Aug. 18, 1994
	David Loeb	May 20, 1994
'48	Jesse D. Willmott	June 18, 1994
'49	Thomas Circle	July 23, 1994
	Hon. Marvin W. Foote	July 30, 1994
	Karl E. Kraft	Oct. 23, 1993
'50	Otis M. Smith	June 29, 1994
'53	John A. Fillion	Aug. 8, 1994
'82	David H. Lapeza	July 2, 1994
'91	Edna M. Flores	July 21, 1994

### KEEP IN TOUCH

Take a moment to let your classmates know what you're up to. Send news to Class Notes, *Law Quadrangle Notes*, 727 Legal Research, Ann Arbor, MI 48109. Send items by Internet e-mail to [toni.l.shears@umich.edu](mailto:toni.l.shears@umich.edu).



# Fellowships give graduates Alumni abroad a wider world view

AT LEAST THREE University of Michigan Law School graduates have enjoyed immersing themselves in the German legal and social system under the auspices of the Robert Bosch Foundation Fellowship Program.

Craig Smith, J.D. '91, and Birgit Seifert, J.D. '89, spent the 1993-94 year in Germany, where they worked and lectured in courts and elsewhere. Joseph Blum, J.D. '82, now an attorney with Latham and Watkins' London office, won a Bosch Fellowship in 1985-86.

The Bosch Foundation, established by the founder of the German auto parts manufacturer, offers the fellowships to maintain ties of friendship and understanding between the Federal Republic of Germany and the United States. The fellowships allow Americans in the early stages of their career to spend about nine months at posts in both federal and state or private jobs, so they gain a broad view of German law and society.

The prestigious fellowships "open doors all over Germany. As a Bosch Fellow, you are able to find work for yourself in all kinds of interesting positions," Smith says. For Seifert, comparing aspects of the German and American legal systems gave her greater appreciation of certain aspects of both.

Seifert, who formerly worked at the Mexican American Legal Defense and Educational Fund, chose posts where she could explore her interests in property ownership issues and in hate crimes and civil rights. First, she went through intensive language training in Cologne and a September seminar in Bonn to learn about Germany's political and economic system. Then she worked for the Bundesgerichtshof, a federal Supreme Court in Karlsruhe dedicated to general civil and criminal matters.

PHOTO COURTESY OF CRAIG SMITH



*Bosch fellows Craig Smith and Birgit Seifert (center) and Smith's wife, Ann Harrison, at dinner in Germany.*



There Seifert was involved in cases in which the state had repossessed land after owners fled to the West to escape the Communist regime. Today, Eastern Bloc residents have been living 40 or 45 years on land that technically belonged to western owners who had been unlawfully dispossessed. "There are a lot of administrative issues of ownership that are starting to bubble up now. It's complicated but fascinating," she says.

While in Karlsruhe, Seifert also worked with the federal prosecutor's office and observed its case against two defendants who had allegedly firebombed a house and killed two Turks. "The case was what we would have classified a hate crime. In Germany they don't see this as a civil rights issue, but more as a terrorist issue, a crime against the state. The paradigm they used is what they used against left-wing terrorists."

In the second half of her fellowship, Seifert worked at labor court in Dresden. She gave lectures in German on American civil rights law and class action suits at universities, non-profit centers, and several courts. Smith coached her preparations for her lecture at Germany's highest Supreme Court, which was later published in a German law journal. She also travelled around meeting with officials and groups interested in establishing anti-discrimination laws to protect persons of color. Some American strategies, such as methods of testing for housing discrimination, might prove to be useful tools in Germany. However, she feels that other factors like Germany's restrictive citizenship policies work against an American-style civil rights movement there.

"The civil rights movement in the U.S. was very powerful because there were so many people involved. I worry that in Germany there is not the critical mass needed to move a country of 80 million people forward in education and legislative solutions," she says. "Germany is very restrictive on citizenship, so persons of color in most cases are not citizens and are basically shut out of the political system. That makes it very difficult for persons of color and immigrants to bring about change.

"I had a great year, and I'm thrilled that I went. I learned a tremendous amount about their legal system, their social welfare system, and the role of the government in a social market economy. There were things that I was attracted to in their system, and things I wasn't so enamored with," she says.

Smith, formerly an associate at the Portland, Maine firm of Pierce, Atwood, Scribner, Allen, Smith & Lancaster, spent the fall working for the German Justice Ministry, primarily in the department responsible for European Union matters. He wrote memoranda on several issues, including one in a case bound for the European Court of Justice. He also met a judge of that court and heard oral arguments. "It was fascinating to watch Europe growing together," he says. "I feel as though I witnessed the moment the European *Union* was born out of the European *Community*. I was at a meeting in Brussels where all twelve member states were hashing out a legal issue, with banks of interpreters translating every sentence into all the other languages. Suddenly the news arrived that the German constitutional court had OK'd the Maastricht Treaty. The whole room broke into applause as the final hurdle to the evolution of the European Union fell."

Later, Smith worked as a clerk in a trial court (Landgericht) in Freiburg for a judge recommended by Professor Mathias Reimann. He attended trials and

judges' conferences, wrote opinions in German, and developed a close personal and professional relationship with the judge.

At the same time, he lectured at the German Supreme Court on the niceties of collateral estoppel and began translating opinions for the Federal Constitutional Court in Karlsruhe. Through this work he met Professor Dieter Umbach, an appellate judge and professor at the University of Potsdam near Berlin. Umbach hired Smith to return in 1994-95, to work as his research assistant and to teach American law. From Potsdam, Smith reports that his students, having grown up under Communist rule, have little concept of individual constitutional rights — or the Socratic method of teaching those rights. "I hope to involve students who are used to being lectured at, to challenge them to articulate their thoughts," he says. At the same time, he is working toward an LL.M. and assisting the Federal Constitutional Court as a part-time translator.

"These are terrific opportunities I never would have had if not for the Bosch fellowship," he says. "It gave me a 'business card' that people recognized throughout Germany. This allowed me to seek out contacts, knock on doors, and be allowed in."

Blum spent his fellowship at the Ministry of Justice and in the Legal Department of the Robert Bosch Corporation. Based on his observations and reading, he published a paper on insider trading of German securities. "It's a great program," says Blum. "Much of what I learned has a direct relationship on my international practice, both in relation to Germany and generally."

#### LQN

# LAW goes ELECTRONIC

Computer technology and its advocates help revolutionize legal practice

— BY TONI SHEARS

When James DeVries was practicing law in the 1970s, he was his firm's "computer guy" — an early advocate for the advantages of new technology. "I was the person who convinced the firm to move to a computerized billing system and to use computers for legal research," he says. Today, DeVries, J.D. '61, is still a technology visionary, but now he's actually in the business of helping law firms enhance their litigation practices electronically. He is president of Legal Technologies Inc. LTI is composed of four companies which serve the full range of worldwide litigation support needs for the legal and judicial communities. "We're the biggest provider of litigation technology in the country," DeVries says.

He is only one of several Michigan Law School graduates who have staked their careers at the intersection of law and information technology. Some, like DeVries, are involved in the computerization of legal practice; others handle wide-ranging business and legal affairs for major computer firms. In the academy and private practice, others are dealing with complex legal issues that arise from ever-expanding electronic communication capabilities.

## TURNING TO TECHNOLOGY

When DeVries earned his law degree, there were no computers at the Law School or at firms. They began appearing both at the Law School and in practice in the late 1960s. One graduate who helped spread their use was James Sprowl, J.D. '67.

Sprowl came to the Law School with a double baccalaureate degree in engineering and a career goal of automating the

legal profession. By his third year, he was teaching a six-session computer course for both students and faculty. Since then, he has split his career between patent law practice focusing on technology and more direct efforts to automate the legal profession. In 1970, he started teaching a computer law seminar that he has offered at various law schools ever since. "Then, there were no statutes, no cases, no articles about law related to computers. Students were totally frustrated because

PHOTO BY JOHN REILLY PHOTOGRAPHY



James DeVries



Right: Judge Carl B. Rubin's courtroom at Federal District Court in Cincinnati is wired for cybertrials.

PHOTO BY ROBERT YOUNG





there was nothing to cite in footnotes,” he recalls. “Now, there is way too much material. I’ve watched this area grow into a substantive field of law.”

Sprowl also spent nine years with the American Bar Foundation developing and promoting computer applications for legal practice, and over the years, he’s seen those efforts pay off as well. However, it wasn’t until affordable machines, intuitive software, and truly time-saving applications like the LEXIS® electronic data retrieval system became available that lawyers turned to technology en masse.

“LEXIS® really started over a dinner conversation at (then Law School Assistant Dean) Roy Proffitt’s house,” recalls Professor Layman Allen, an expert in logic and law with an interest in computers dating back to the mid-1950s. Fortuitously, Gerald Rapp, a 1958 graduate with ties to Mead Corp. in Ohio, was seated for dinner between Allen and Arthur Miller, who had worked together on a federal committee on privacy standards and safeguards for computer information. The three men found that they shared an interest in legal information technology.

“At the time, Rapp was one of two lawyers in the world making practical use of computers for drafting briefs,” recalls Allen. “He had punched up some boilerplate legal text on punch cards and fed it into a computer. He was doing this on his own within his firm because he thought it was useful.” Allen and Miller encouraged Rapp to look into an Ohio Bar Association effort to adapt existing computer programs for legal research purposes. That effort was floundering technically and financially, so Rapp convinced Mead to invest in designing a system specifically for law. The company (now Mead Data Central) saw the potential and hired a research group from the Arthur D. Little Co. to create what became LEXIS®.

When LEXIS® was ready for testing, “All the early shoot-outs were done here at the Law School, because they wanted a comparison between electronic retrieval and getting materials manually by pulling books from a law library shelf,” says Allen. “We learned that the idea of what was relevant was much more complicated than anyone thought. They were not any easy yes/no answers to questions of relevance; it depended on who was going to use the information, and how.”

Bart Timberlin Thomas, J.D. ’79, now corporate counsel for Texas Instruments, clearly remembers the advent of electronic legal research at the Law School. “I was the first LEXIS® instructor at the Law School. As soon as I heard it was coming, I volunteered to teach it, and I helped hire the first set of other instructors,” recalls Thomas. Like Sprowl, he earned degrees in computer science and engineering before law school. As a student, he also did some research on logic and law for Layman Allen and served as associate director and then director of the computer facility. “The computer facility at the time had two terminals and a Data General machine,” he recalls with a laugh.

Today, about 80 percent of law students have their own computers, and many bring them to class. A recent National Law Journal survey of 69 large firms revealed that 94 percent are embracing automation tools “somewhat” or “very much,” and achieving increased productivity with computers. Still, attorneys’ actual computer use varies by age and technology comfort level, according to Sprowl.

“You really see three generations of lawyers in firms now: those not using computers; those using computer-assisted research; and those using PCs for word processing and more. It depends on what the standard of use was when they were in law school,” he says. The busiest trial lawyers and the biggest computer enthusiasts are using word processing, electronic mail, computer-assisted legal research, text searching, and computer conferencing, all on lightweight notebook computers they take anywhere they go — including the courtroom.

## TECHNOLOGY ON TRIAL

In an era of increasingly complex litigation, computers offer easy access to information that would fill millions of pages of paper. DeVries sensed their power to manage those mountains of paper years ago. In 1982, he left McBride, Baker, Wienke & Schlosser to join Quixote Corp., a highway safety company he had co-founded in 1969. With DeVries on board, Quixote soon began acquiring firms that specialized in technology for the legal marketplace. The first was Stenograph, a leading manufacturer of computer systems and software for the court reporting profession. Another company, Discovery Products, developed Discovery ZX, software that can search and annotate text, videotaped depositions, or both.

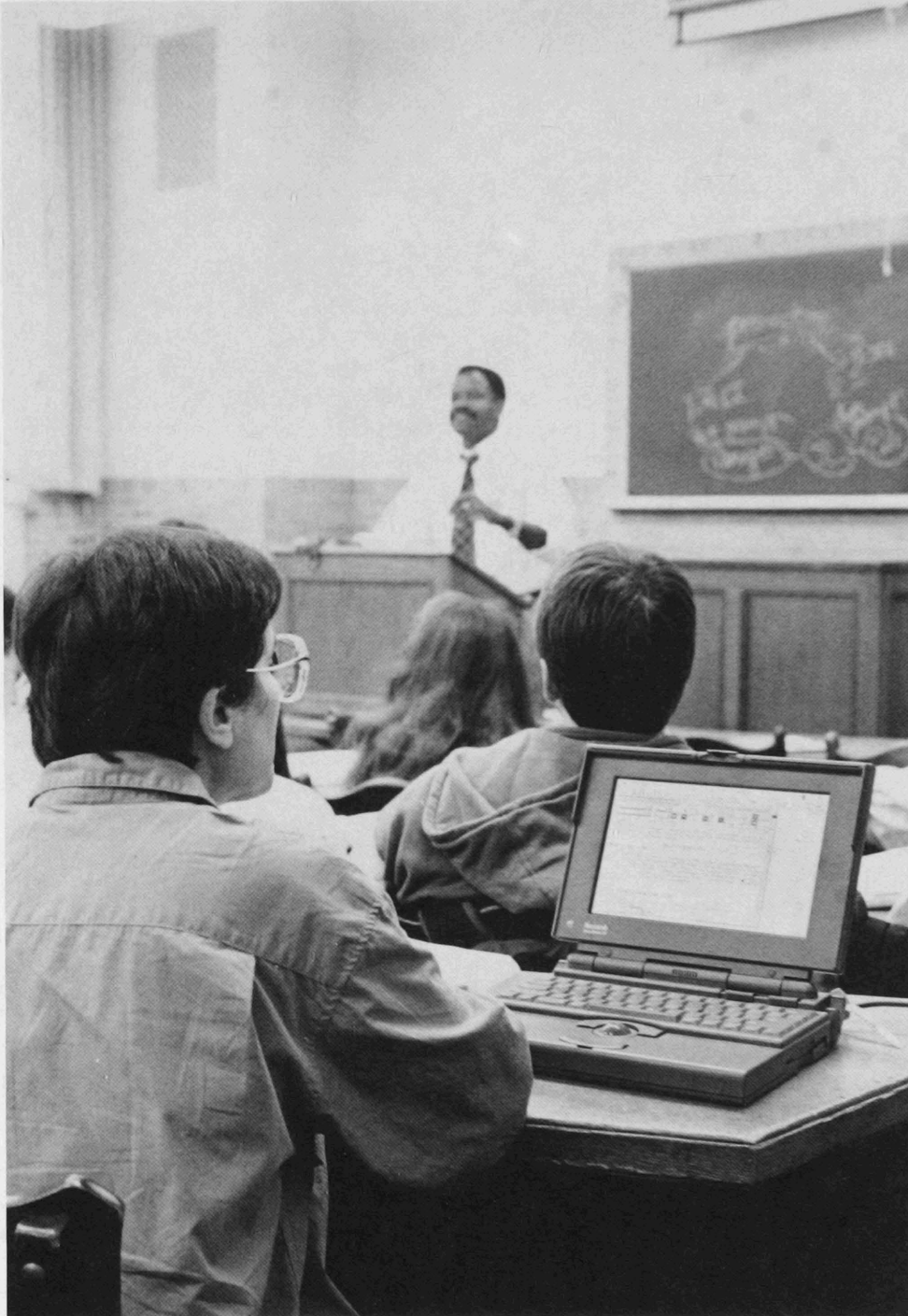
Next came Integrated Information Services, a company offering document management, imaging and coding technology and service for the litigation, corporate and government markets. The latest addition was Litigation Sciences Inc., the nation’s largest litigation consulting firm, which specializes in jury consulting and preparing exhibits and multimedia courtroom presentations. In 1993, the four firms were integrated as Legal Technologies Inc.

All these technologies put together produce a high-tech trial like the major fraud case DeVries witnessed in London in May. Litigation Sciences helped British prosecutors prepare charts and diagrams that were displayed on computer monitors for the judge, the attorneys and every two jurors. All court documents could be pulled up on the screens, and the court reporter’s transcript was available for instant review. The attorneys’ opening statements were displayed on monitors with key points highlighted by charts on the monitors.

Jurors weren’t overwhelmed by all the technology, DeVries says. “People are so used to seeing something appear on a TV



Students now take notes in class on laptop computers.



**Today,** about 80 percent of law students have their own computers, and many bring them to class. A recent National Law Journal survey of 69 large firms revealed that 94 percent are embracing automation tools "somewhat" or "very much," and achieving increased productivity with computers.

screen that they don't think it's high-tech anymore. The technology was transparent to them." Some judges also favor electronic documentation, he adds.

Only a handful of courts in the United States now are wired for cybertrials, but experts familiar with the systems in use predict that they will quickly convince more attorneys and judges to turn to electronic aids. In 1992, Judge Carl B. Rubin installed a sophisticated 10-screen system at the Federal District Court in Cincinnati to deal with a massive securities fraud case involving more than 60 defendants. The plaintiff's attorneys used the system and found that it cut trial time by eliminating a lot of paper-shuffling, and simplified complex issues for jurors. The defense team learned the hard way that it was a liability not to use the system when the jury awarded the plaintiff \$15 million.

"Once one side uses a computer system, the other side is compelled to use it no matter what they think of it," says DeVries. "The client or the jury will say, 'How come the other guys have all of this?'"

## GROWTH AND INNOVATION

Computers are moving into the courtrooms chiefly because the machines themselves are smaller, cheaper, more powerful and easier to use. That's a result of constant evolution in the competitive computer industry, and computer companies rely on attorneys like Thomas at Texas Instruments to protect their innovations.

Thomas specializes in software licensing, but intellectual property is a prominent part of all aspects of his practice. "When we develop a chip for a customer or a customer develops something for us, we have to decide who is going to control development, who owns the intellectual property rights, how we are going to market the product, and which way royalties are going to flow," he explains. He also handles antitrust, product liability, strategic planning, and strategic partnership issues.

Thanks to constant innovation, the worldwide computer market is red-hot, and many computer companies are enjoying phenomenal growth. The booming industry offers dynamic careers for graduates like Cheryl Fackler Hug, J.D. '87, and Richard D. Snyder, J.D. '82.

Fackler Hug, formerly with Gibson, Dunn & Crutcher, joined Sun Microsystems Computer Company in January as counsel for its Intercontinental Sales Division. She is one of three Michigan-trained attorneys at Sun; Michael H. Morris, J.D. '74, is vice-president, general counsel and secretary, and John D. Croll, J.D. '81, is deputy general counsel for a subsidiary called SunSoft.

Fackler Hug's division is responsible for selling computer systems to the developing world, with offices in Russia, Eastern Europe, Mexico, South America, Southeast Asia, and Africa. Sun is opening a significant number of new offices around the world each year. Her duties include deciding what type of legal entity will be created, then preparing documents to register the office, often with the help of local counsel in the host country.

"Our business in the former Soviet Union is growing quickly and we may be opening offices in places other than Moscow fairly soon," she reported to LQN via e-mail. Because Fackler Hug speaks Russian, she has served as a consultant on Russian legal issues for other Sun companies. She also recently helped re-establish operations in South Africa.

Fackler Hug also negotiates and implements equity investments in transactions with other companies or organizations. "Our division is beginning to become more involved in joint ventures and World Bank-funded transactions, which usually involve three or more parties. These projects are challenging; each is unique and involve the resolution of new business and legal issues, as well as many logistical issues,"

she says. She recently worked on registering a joint venture with three Russian companies and another U.S. firm to develop and distribute software for the oil and gas industry.

International expansion is also a major focus for Rick Snyder, executive vice-president, secretary and director at Gateway 2000, Inc. Now ranked fifth in personal computer sales, "Gateway is growing in Europe; we just opened up operations in the United Kingdom and France, and we're adding Germany," says Snyder.

In just 10 years, Gateway has grown from a family operation with offices in a farmhouse to a billion dollar operation. In 1991 when Snyder joined the firm, revenues were \$626 million; this year they topped \$1.2 billion in the first six months alone. "My major challenge is managing the growth curve," he says.

Susan Swantek, J.D. '78, finds rate of growth and change in the computer industry "exciting and a little scary." She works for Advanced Legal Applications, an Ann Arbor firm that designs private legal databases for corporate clients who need easy access to regulations within a specific area of law. "The computer industry changes fast, and people's expectations rise even faster," she says. "We find that we'll design with the latest technology, and before long, our clients are saying, 'Why can't we do this?' They are coming up with new uses that outstrip the technology."

## THE FUTURE IS THINKING MACHINES

Professor Allen says the next advance in legal technology is to develop computer systems that enrich legal analysis. His research focuses on using computers' capabilities for logical analysis as tools for lawyers. Currently, he is developing systems that offer assistance in interpreting the logical structure of legal rules. When analyzing the natural language statement of legal rules, lawyers might intuitively sense one logical relationship between parts of these statements while missing other alternatives, he explains. "The language

commonly used for expressing relationships is highly ambiguous — mostly inadvertently so (in sharp contrast with the uncertainty that occurs in the expression of legal substantive concepts where the vagueness and generality is usually deliberate.) We, as lawyers, are not as well trained to be sensitive to relationship as we deal with the semantics of legal terms."

Allen and colleague Charles Saxon, who holds five Michigan degrees and teaches programming at Eastern Michigan University, are creating software capable of automatically generating multiple alternative structural interpretations of legal texts. Allen says such systems are "usefully considered as a secondary source of legal literature." While they are subject to the same critical evaluation as any other treatise, law review article, or other secondary source, "in the future they are likely to become a source so powerful that those who fail to use them will do so at their own peril."

Students can start building such systems as part of their legal education, and leave them online through a Law School network where they will be accessible to interested users while simultaneously enriching the body of teaching material. "Computers are likely to alter law schools drastically. Three years of study at school and then up and out is just not going to be enough anymore. Career-long law schools will be in style in the next century. Collaborative efforts will provide functional reasons for practicing lawyers to maintain an electronic link to the Law School." Likewise, Allen says, the link to practicing graduates "will help us teach better, using more relevant problems and issues." The necessary technology is readily available, and Dean Jeffrey S. Lehman is planning to launch a network that will allow continuous substantive dialogue among alumni and the Law School.



# Because computer networks

traditionally have little or no regulation and users can remain anonymous, they've become a whole new uncontrolled arena for libel, intellectual property infringement, hate mail, and pornography.

Computers may be on the brink of changing legal publishing, as well. *Securities Regulation*, the eleven-volume treatise Professor Joel Seligman authored with Harvard's Louis Loss, became available on LEXIS® in September.

Seligman says it's the first treatise Little Brown Co. has published electronically.

"Basically, it's an experiment. I have no idea if this will be useful or not," says Seligman, who views computers as a useful tool, but not the "be all and end all" of legal research. "The value of a treatise lies in the extent to which it helps people understand law. Increasingly, practitioners are not going to have extensive libraries. Electronic publishing makes the treatise available to those who don't. In all fairness, however, the one-volume summary of the treatise may be a more useful way to make it available to those who are not going to buy all eleven volumes."

In a review of *Securities Regulation*, Brooklyn Law School Professor Norman Poser suggests that electronic legal research signals the end of the traditional treatise. He likens the task of updating printed volumes to trying to keep the windows of the World Trade Center clean. "In an age when law changes so quickly, such monumental works are bound for almost instant obsolescence," Poser writes in the *Michigan Law Review*. "Electronic research services, kept current almost on a real-time basis and immediately available via desktop computer, have largely supplanted traditional research methods, and, it may be argued, have also made the treatise obsolete."

## COMMUNICATION WITHOUT LIMITS

Increasingly, electronic bulletin boards and conferences on legal topics let lawyers discuss cases or theories any time, from any place. While these time-saving, often entertaining technologies can enhance the quality of life, they also raise issues that stretch the boundaries of current law, says George Trubow, J.D. '58.

"The whole field of information

technology law is a complex and fascinating area because, by and large, our common law hasn't accommodated the digital environment. Principles of law developed in the Norman Conquest don't fit anymore," says Trubow, a professor of law and director of the Center for Informatics Law at John Marshall Law School in Chicago.

For example, American communication law is based on distinctions between traditional print and broadcast media. "We knew what a newspaper was, and we knew what a radio or television broadcast was. Now the lines between electronic and print media are blurring," he says. "There are online versions of newspapers. Rules to regulate the content of broadcasts based on the scarcity of the airwaves no longer apply when you have unlimited cable channels."

Likewise, existing laws offer little precedent to work from when it comes to offensive language or pornographic software online. For example, how do we classify software distributed over a network that allows users to manipulate ordinary photos of children so that they depict children in unnatural sex acts? "The justification the courts have used to regulate child pornography was that children were endangered in the production of the materials because they had to participate in the acts. With this kind of software, the children are not directly involved," Trubow points out.

"The software developer can argue that he produces only innocent pictures; the user makes them pornographic. Is producing the software akin to publishing a list of the ingredients for a bomb? If we use the community standards test to determine if the results are pornographic, what are the boundaries of the community on a network? What is the network operator's responsibility?" Trubow asks. Students searched for answers to these tough questions when he used this as a moot court case in the 1994 National Competition on Information Technology and Privacy held annually at John Marshall Law School.

In the 1970s, Trubow worked for the U.S. Department of Justice on an effort to develop privacy and security guidelines for computerized criminal records. He was general counsel to the Privacy Committee in the Office of the President during the Ford Administration. Ever since, he has been "absolutely hooked" on information technology and the whole range of privacy questions surrounding an individual's right and ability to control personal information. He joined the John Marshall faculty in 1976, and explores that and many other issues in his courses on Computers and Law, Information Law & Policy, Privacy, and Torts. He also publishes the John Marshall Journal of Computer and Information Law.

The recent explosion of electronic communication across the Internet and other networks has given him new sets of issues to worry about. Because computer networks traditionally have little or no regulation and users can remain anonymous, they've become a whole new uncontrolled arena for libel, intellectual property infringement, hate mail, and pornography. Trubow personally feels networks need a bit more control. "Right now, people can say almost anything online. As a result, the tolerant are victimized by the intolerant. That doesn't add to the quality of life or the value of society," he says. The trick is to develop legal standards and ethical rules for online communication that will pass constitutional muster. That challenge is addressed in a project for the American Association for the Advancement of Science and the National Council of Lawyers and Scientists in which Trubow is involved. "I think we must have some restructuring of the standards of mass communication because we're talking about communication in unmeasurable proportions," he notes.

**LQN**

# Reflections on Welfare Reform

— BY JEFFREY LEHMAN  
AND SHELDON DANZIGER

During the 1992 presidential campaign, Candidate Clinton promised, in *Putting People First*, "to make work pay" and to "end welfare as we know it":

*"It's time to honor and reward people who work hard and play by the rules. That means ending welfare as we know it not by punishing the poor or preaching to them, but by empowering Americans to take care of their children and improve their lives. No one who works full-time and has children at home should be poor anymore. No one who can work should be able to stay on welfare forever."*

Shortly after taking office, President Clinton created a Welfare Reform Task Force to translate the campaign rhetoric into draft legislation. The Task Force interpreted its mandate to be to craft a reform of the program that most people know as "welfare" — Aid to Families with Dependent Children (AFDC). The reform was expected to resonate with "the basic American values of work, family, responsibility, and opportunity."<sup>1</sup>

Welfare reform debates have always been, at least implicitly, about the four values invoked by the Task Force. Since AFDC was first created by the Social Security Act of 1935, each generation has changed the program to reestablish its understanding of what is required to respect those values while providing cash assistance for the "truly needy." Each round of statutory amendments has recalibrated the balance among (i) the interests of needy single parents, (ii) the interests of needy children, and (iii) the interests of the larger society in expressing its commitment to all four values.

To be sure, it is not easy to forge a legislative consensus (much less a societal consensus) on how the balance should be recalibrated. In the middle of 1994, the administration sent to



PHOTO BY THOMAS TREUTER

Congress a proposed Work and Responsibility Act (hereafter, the Clinton Plan). Other legislators offered alternative plans during the 103rd Congress, both more liberal and more conservative. Ultimately, however, the first two years of the Clinton Administration elapsed without either house giving even serious com-

mittee consideration to a welfare reform bill.

When the new Congress convenes in 1995, it is more likely that welfare reform will be an early and important item on the legislative agenda. And the debates will be cast in terms of the key values of work, family, responsibility, and opportunity. Many observers would

like there to be a simple answer to the question, "How should we want our legislators to act?" In this article, we suggest why no simple answer is available. We instead set forth some of the background empirical and analytic considerations that we hope will inform our next round of difficult collective self-definition.

## AFDC Today

Aid to Families with Dependent Children is an income support program that responds to immediate financial hardship. It embodies a commitment to support a subgroup of the poor that was, at one time, thought blameless: low-income families with young children and a missing or financially incapacitated breadwinner. To qualify for benefits, a family must generally show that it has virtually no assets, that it has very low income (each state sets its own ceiling), and that a child in the family is deprived of at least one parent's support because the parent is (a) not living with the child, (b) incapacitated, or (c) a recently unemployed primary breadwinner.

AFDC is almost entirely a program for single mothers and their children. A few single fathers participate, and a somewhat larger number of two-parent families satisfy the stringent requirements for two-parent eligibility. But among the roughly 4.8 million families receiving AFDC benefits in a typical month in fiscal year 1992, about 90 percent were fatherless.

As for mother-only families, AFDC has two aspects: an insurance aspect and a long-term support aspect. Many people fail to appreciate the extent to which AFDC is, today, a form of short-term insurance for disrupted families. Roughly half of all families that begin a welfare spell leave the rolls within one or two years. For those families, AFDC ensures a meager but potentially vital safety net. In 1994, a welfare mother with two children and no earnings received \$366 in cash and \$295 in Food Stamps in the median state, or about 69 percent of the poverty line. Importantly, AFDC also qualifies the family for health insurance in the form of Medicaid.

The long-term support aspect of AFDC is reflected in the fact that almost half of all recipients remain beneficiaries for more than two years. States have small programs to help longer-term recipients make a transition back to the paid work force. Those transitional programs fall under the umbrella of JOBS, the Job Opportunities and Basic Skills Training program created by the 1988 Family Support Act.

1. *Los Angeles Times*, Jan. 17, 1994.





Some AFDC recipients are exempt from the obligation to participate in JOBS (most notably, mothers of children under 3 years old, although some states have limited the exemption to mothers of children under 1 year old). A non-exempt recipient may continue to receive benefits only by complying with all legitimately imposed JOBS requirements. But, if the state has not appropriated sufficient funds to provide a JOBS slot, the recipient need not do anything more. As of 1992, on average states were providing JOBS slots for only about 16 percent of their non-exempt participants.<sup>2</sup> Under current law, each state will have to place at least 20 percent of non-exempt participants during fiscal year 1995 or face the prospect of losing some federal funds.

### The Economic Context of Welfare Reform

Perhaps the most significant change in America's welfare programs over the past two decades is the decline in the level of cash benefits they provide. Throughout that period, inflation has eroded the effective purchasing power of a welfare grant; moreover, during the 1990s, many states have even cut benefits in nominal terms. Thus, in the median state, the combined AFDC and Food Stamp benefit was about 70 percent of the poverty line for a nonworking mother with two children in the early 1990s—down from about 85 percent in the mid-1970s.<sup>3</sup>

The declining economic position of AFDC recipients is, to be sure, not unique. The past two decades have been characterized by economic distress for the middle class, the working poor, and the unemployed, as well as for welfare recipients. We have had relatively little economic growth over the past generation, and the gains from growth have been very uneven. In the two decades following World War II, a rising tide lifted all boats.

2. House Ways and Means Committee, 1994, pp. 357-59.

3. In addition, a smaller percentage of poor children now receive welfare benefits. The ratio of children receiving AFDC benefits to the total number of poor children rose from about 20 percent in 1965 to about 80 percent in 1973 as a result of the program expansions set in motion by the War on Poverty and Great Society legislation. This ratio fell to about 50 percent in 1982 as the Reagan budgetary retrenchment went into effect, before rising to about 63 percent in 1992.

4. See Sheldon Danziger and Peter Gottschalk, eds., *Uneven Tides: Rising Inequality in America*, Russell Sage Foundation, 1993.

During economic recoveries, all gained—the poor as well as the rich, the less skilled as well as the most skilled. During the 1980s recovery, however, a rising tide became an “uneven tide,” as the gaps widened between the rich and the poor and between the most skilled workers and the least skilled workers.<sup>4</sup>

**It is thus simply not the case that most of today's welfare recipients could obtain jobs that would lift them and their children out of poverty, if only they would try harder.**

In America today, economic hardship is remarkably wide spread. Popular portrayals of economic hardship often focus on inner-city poverty or single-mother families or displaced factory workers, and associate poverty with their lack of work effort or lack of skills.

But during the 1980s, inequalities increased within most broader groups across the population as well. While white-collar workers fared better on average than blue-collar workers, and married-couple families fared better on average than mother-only families, many white-collar workers and many workers in married-couple families were also laid off or experienced lower real earnings.

Not even the most educated groups were spared. To be sure, the average college graduate continues to earn much more than less educated workers, and the earnings of the average college graduate grew much faster than the earnings of other workers in the 1980s. Nonetheless, a college degree no longer guarantees high wages. In 1991, among 25-to-34 year old college graduates (without post-college degrees), 16 percent of men and 26 percent of women worked at some time during the year but earned less than the poverty line for a family of four persons.<sup>5</sup>

The general structure of today's labor market has important implications for current debates about welfare reform. Because most welfare recipients have limited education and labor market experience, the contemporary economy offers them fewer opportunities even when unemployment rates are low. Moreover, in many communities, the unemployment rate has exceeded 6 percent for most of the past 15 years; in many inner cities, the unemployment rate is well above 10 percent. And the shift in the skill mix required in today's economy means that, even if an employer extends a job

offer to a welfare recipient with low skills and experience, that employer is not likely to pay very much.

It is thus simply not the case that most of today's welfare recipients could obtain jobs that would lift them and their children out of poverty, if only they would try harder. Fear of destitution is obviously a powerful incentive to survive; it is not, however, adequate to give an unskilled worker a legal way to earn her family out of poverty. The harsh realities of today's labor market mean that changes in welfare mothers' economic incentives are unlikely to make much of a difference unless they are accompanied by changes in their economic opportunities.

As long as America remains committed to the view that a child should not have to live in poverty merely because his or her single parent is unemployable, debates about welfare reform should continue to be primarily debates about *what kind* of government intervention we would like to support. Do we want to continue to support families *outside* the paid work force? Or do we want to try to *improve* the labor market prospects for welfare recipients? In the first instance, these are questions about whether a single parent's care for her own child is a sufficiently important contribution to the larger society, in and of itself, to warrant public support.

### Welfare Reform, Work, and Opportunity

The most widely discussed aspect of the current welfare reform debates is “two years and out”: the proposal that, after two years, an AFDC parent's obligations would change so much that one could appropriately say that they are no longer on welfare. When it is suggested that the Clinton proposal would end welfare as we know it, the implicit claim is that such a change in the structure of AFDC would signal a radical shift in society's expectations of single mothers. It is useful to situate such a claim in a broader historical context of legislative reform. The evolution of AFDC since 1935 has reflected a steady change in the implicit understanding of what it means for a single mother to work.

In AFDC's early years, the implicit concept of work was linked to other markers of social status. A stylized interpretation of conditions during the 1930s and 1940s might run as follows: White widows “worked” vicariously through their late husbands and directly by maintaining a “suitable home” for their children. Over time, more white divorcees and unwed mothers claimed welfare benefits; they “worked” by satisfying the suitable home stan-



ard and, if the caseworker thought they were capable, by accepting "appropriate" work for wages. During that same time period, and especially in the south, black single mothers were expected to do whatever house or field work was demanded by local employers. In all cases, the mother, through her "appropriate behavior," justified public support for the fatherless child.

During the late 1960s, the federal AFDC statute began to embody a different notion of what kind of work was required from single mothers in return for welfare. In response to growing public dissatisfaction over the rising welfare caseload — one which coincided with a rapid increase in married white women's participation in the paid labor force — Congress amended the statute to provide greater economic incentives for maternal labor force participation and to provide that some women (although, admittedly, few at first) would be required to participate in work training programs.

Since 1967, the statutory expectation for work force participation by single mothers has steadily expanded. Traditionally, mothers of very young children were exempted. But over time, the definition of a "very young" child has fallen from under 6 to under 3 (and, at state option, to under 1). At the same time, Congress has appropriated progressively larger amounts of money to fund state programs that attempt to move mothers off welfare and into a job.

Thus, contemporary discussions of two years and out might be viewed as a straightforward extension of the trends from the recent past. On the other hand, the current proposals might also be seen as an attempt to accelerate the historical trend by putting a strict two-year limit on the time during which single mothers may fulfill their societal responsibility merely by rearing their own children.

One can capture some of the cultural stakes behind two years and out with an analogy to the world of insurance. The proposition that welfare should not be a way of life implies that the "premium" a household pays to society by rearing its own children is a limited one — one that will only allow it to collect a limited "insurance benefit" should it suddenly be struck by the calamity of poverty. In other words, proposals to create time-limited AFDC are effectively proposals to make AFDC more like time-limited unemployment insurance and less like Social Security, whose benefits continue indefinitely.

Would some version of two years and out constitute an improvement over the status quo, or would it constitute an intolerable reduction in the quality of our safety net for the

poor? The question requires an integration of the symbolic message behind two years and out with an appraisal of who is likely to be helped and who is likely to be harmed by a given proposal to implement the change. Before we outline how such an appraisal might be conducted, let us consider the *other* important value that is implicated in welfare reform debates.

### **Welfare Reform, Family Structure, and Responsibility**

The other value that has long been central to welfare reform debates is the value of two-parent families. Can welfare protect children from some of the economic costs of divorce without encouraging divorce? Can welfare protect children from some of the economic costs of being born out of wedlock without encouraging nonmarital births?

Such questions have always been an important part of welfare policy discussions. During the 1980s and early 1990s, however, a broad political consensus emerged that treated *other* issues as paramount. The dominant concern was the challenge of maintaining a social safety net while fighting the alienation of welfare recipients from the paid work force; family structure was a real, but decidedly secondary issue. The past twelve months, however, have seen a crack in the consensus, as some politicians have begun to take the position that a concern with out-of-wedlock childbirth should take precedence over child poverty and non-participation in the work force.

The number of young children who live with only one parent has skyrocketed during the second half of the twentieth century. In 1960, only 9 percent of children under 18 lived with one parent, and less than 0.5 percent lived with a single parent who had never married. In 1992, 27 percent of children under 18 lived with one parent, and 9 percent lived with a single parent who had never married.

Because AFDC is a program designed to assist low-income children in one-parent households, the demographics of AFDC recipient families have changed in tandem with the changes in society as a whole. In 1935, the "typical" AFDC family was headed by a widow. In the 1950s, the AFDC parent was typically a divorced or separated mother. But since the mid-1980s, a majority of AFDC-recipient children have lived with a never-married parent.

In the past year, several legislators have proposed denying AFDC benefits to children born out of wedlock.<sup>6</sup> They have often justified such proposals by invoking a *Wall Street Journal* column that Charles Murray published last year under the headline, "The Coming White

Underclass."<sup>7</sup> The column has proven to have sufficient political importance to warrant a thorough discussion.

In "White Underclass," Murray revived the polemical style that he had deployed in *Losing Ground* a decade earlier,<sup>8</sup> constructing an argument with eight structural characteristics:

(1) Murray presented a troublesome social fact. In *Losing Ground*, the troublesome fact had been the increasing rate of pre-transfer poverty. In "White Underclass", it was the increasing rate of out-of-wedlock childbearing.

(2) Murray presented the troublesome social fact in a variety of ways, using quantitative measures from several different data sets.

(3) Murray speculated in apocalyptic terms about the future implications of the troublesome social fact.

(4) Murray hinted darkly that the troublesome social fact had been concealed from the average American. While "headlines" reported one thing, Murray suggested that the "real news" had been suppressed.

(5) Murray expressed his vision of society in quotable aphorisms. ("In the calculus of illegitimacy, the constants are that boys like to sleep with girls and that girls think babies are endearing. . . . Bringing a child into the world when one is not emotionally or financially prepared to be a parent is wrong. The child deserves society's support. The parent does not.")

(6) Murray offered a simple account of how the troublesome social fact could (in theory) have resulted from the rational responses of self-interested individuals to government social welfare programs.

(7) Murray insisted that the troublesome social fact would disappear if government disappeared (in this case, by eliminating many social welfare programs and denying an unwed mother any right to collect child support from the child's father).

(8) Finally, Murray offered assurances that the costs of his recommendation would be minimal because the world of private, voluntary exchange would be an effective substitute

5. In 1991, the poverty line for a family of four was \$13,924. College graduates do indeed fare much better than high school graduates. In 1991, 30 percent of the male and 57 percent of the female high school graduates earned less than \$13,924.

6. See, e.g., The Welfare Reform Act of 1994, H.R. 4566, 103rd Cong., 2d Sess.

7. *Wall Street Journal*, Oct. 23, 1993; see also Charles Murray, "Keep It In the Family," *London Sunday Times*, Nov. 14, 1993.

8. Charles Murray, *Losing Ground: American Social Policy, 1950-1980*, New York: Basic Books, 1984.

for the public safety net. (How does a poor young mother survive without government support? The same way she has since time immemorial.)

An important part of what makes Murray's polemic effective is the clever way it baits academics. The structural characteristics (3), (4), and (5) in the list above seem calculated to goad professorial critics into making analytically sound but politically unpersuasive criticisms.

Consider an example. In Murray's argument, a key premise is that having a child out of wedlock is detrimental to both the mother and the child — a premise that would meet little resistance with the general public and that would seem to be supported by data showing a correlation between nonmarital births and unfavorable measured outcomes. To an academic reader, however, Murray's claim seems to cry out for one of two responses. First, any observed correlations between out-of-wedlock childbearing and, say, poverty might be *spurious*. Nonmarital birth might not be the *cause* of poverty; it could be the *consequence* when young people grow up in impoverished surroundings and see little potential for escaping their conditions. Alternatively, both nonmarital births *and* poverty might be caused by some other pernicious social force.

Second, even a supposedly causal connection could be *contingent*. In other words, even if illegitimacy is harmful under today's conditions, it might not be so harmful if social programs or educational or economic opportunities could be changed.

As a theoretical matter, these responses to Murray are completely sound. Social science methods are too limited to provide incontrovertible proof of social causation. And social phenomena are virtually all contingent. Our point, however, is that, while such responses might expose *theoretical* weaknesses in Murray's argument, they do not present counter-evidence to demonstrate that the relationship between out-of-wedlock births and poverty is *in fact* spurious. Nor do they demonstrate that American society could realistically be transformed to make the phenomenon benign. For policymakers, the knowledge that a social fact might not be *inevitably* troublesome is worth very little, especially if Murray's "troublesome" thesis (if not the "apocalypse" thesis) resonates with most people's intuitions about how the world works and is likely to continue to work.

Yet it would be terribly unfortunate if academic criticism of Murray's argument got bogged down in the logical failings of the way he used characteristics (3), (4), and (5). The danger is that the serious flaws reflected in

characteristics (6), (7), and (8) would remain unexposed. Accordingly, for purposes of discussion, let us stipulate that out-of-wedlock birth is a troublesome social phenomenon and that its recent rise is a troublesome social fact. Let us even stipulate that government might consider supplementing the War on Poverty with Murray's War on Illegitimacy. The problem is that Murray has not even remotely begun to make the case for the idea that the first step in his War should be to deny unwed mothers all access to the social safety net.

Here it is Murray who indulges in theoretically interesting but practically irrelevant speculation. As a matter of pure theory, Murray could well have been right that the structure of AFDC eligibility brought about the rise in out-of-wedlock births. But it is just as easy to construct a story on the theoretical plane about why Murray's account of the rise in nonmarital childbearing is *completely wrong*.

The keypoint, ignored by Murray in "White Underclass" just as he ignored it in *Losing Ground*, is that merely knowing the *direction* of an economic incentive does not tell us anything about how *big an effect* the incentive actually has. When it comes to the decisions to have sex, to bear a child, and to raise a child, a host of other factors can easily dominate or dwarf the effects of AFDC's benefit structure. If we offered you a dollar to jump off a building, the direction of the economic incentive would be clear, but we would not expect to see much of an effect in the real world. Likewise, we know that an increase in the tax on cigarettes will reduce the incentive to smoke, but it has not been shown that taxation is the most effective way to reduce smoking.

Even more importantly, we do not need to resign ourselves to this stand-off in the world of purely theoretical speculation. For many years, social scientists have been diligently measuring the effects of welfare's incentives on family structure. In a recent comprehensive review of the literature, Robert Moffitt considered the time-series data.<sup>9</sup> He concluded, "the evidence does not support the hypothesis that the welfare system has been responsible for the time-series growth in female headship and illegitimacy."

He then considered the econometric analyses of the effects of variations in the level of welfare benefits on the likelihood that a child lives with two parents.<sup>10</sup> Moffitt concluded that, while studies undertaken during the 1980s had begun to show some evidence of a detectable effect on rates of female headship, the magnitude of the effect was small. "The failure to find strong benefit effects is the most notable characteristic of this literature [on the relationship between welfare and female

headship]." Summarizing the studies that looked specifically at the relationship between welfare benefits and nonmarital childbearing, Moffitt concluded that there was mixed evidence of any effect at all.

In sum, the statistical evidence fails to support Murray's strong historical claims that the current "crisis of illegitimacy" resulted from the structure of AFDC. It offers even less reason to believe Murray's suggestion that we could dramatically reduce out-of-wedlock births by denying unwed mothers access to public support and by freeing unwed fathers of all child support obligations.

If one were serious about reducing nonmarital childbearing, what kinds of reforms might one consider? What changes might increase the relative benefits (or reduce the relative costs) of deferring childbearing, without significant attendant social harms? For any high school graduate who had not borne or fathered a child out of wedlock, the government might subsidize higher education, or provide a guaranteed job, or do more to ensure that any opportunity provided for single mothers trying to get off welfare will be equally available to young women who avoided welfare by not having a child.

## Thinking about Welfare Reform in 1995

One way to frame the ultimate policy question is as follows: Should a member of Congress endorse the Clinton Plan? That question raises a number of difficult considerations of political strategy that we can only note here. For example:

- The "crowding" problem. One might rationally believe that the Clinton Plan is an improvement over the status quo, but nonetheless oppose it because one believes an even *bigger* improvement is politically attainable if the Clinton Plan is rejected, but will be crowded off the policy agenda if the Clinton Plan is adopted.
- The "Frankenstein" problem. One might rationally believe that the Clinton Plan is an improvement over the status quo, but nonetheless believe that it will inevitably be transformed by the legislative process into a mutant that is worse than the status quo.
- The "shifting baseline" problem. Even if

9. "Incentive Effects of the U.S. Welfare System: A Review," *Journal of Economic Literature*, 1992.

10. Much of that literature is based on interstate variations in the level of benefits. In 1992 the combined value of AFDC and Food Stamps for a family of three ranged from \$456 to \$798 in the contiguous 48 states.



the next Congress does nothing, the status quo will not continue. Over the past three years, the image of a coherent national AFDC program has become less and less accurate, as governors have received waivers to implement their own versions of welfare reform.<sup>11</sup> Thus, a legislator should be comparing the Clinton Plan not with the status quo, but rather with a projection of how AFDC will continue to evolve in the absence of Congressional action.

Before one begins to undertake such complex tactical judgments, however, one must come to terms with simpler questions. Given the general framework of welfare reform issues that is on the table at the present time, how might one recognize a package of changes that could plausibly constitute an improvement over the status quo?

The Clinton Plan introduced in 1994 set the initial terms for negotiation. It proposed that a young parent should be given a complete exemption from work force participation for only twelve months after the birth of a first child, and twelve weeks after the birth of a child conceived while the parent was on AFDC. (Exemptions would also be available for a limited number of others.) Outside of exempt periods, the parent would have a lifetime "bank" of 24 months during which she could participate in AFDC and JOBS. By working in the paid work force, a parent could replenish that bank to provide emergency "cushions" of up to six months at a time. Once the time for AFDC and JOBS participation was exhausted, the parent would either have to find a job in the paid work force or else participate in a special program known as WORK.<sup>12</sup>

WORK would offer subsidies to public or private employers to encourage them to take on AFDC recipients in work-like positions; the employer would pay a "paycheck" in an amount that equaled the former welfare check, in exchange for however many hours of work that amount could buy at the minimum wage (or, if higher, at the wage the employer otherwise paid for comparable work). The WORKer would be eligible for special child care subsidies and for Medicaid, but not for the Earned Income Tax Credit that is made available to holders of mainstream jobs.

The Clinton Plan would also increase child support enforcement efforts. It would not deny benefits to unmarried mothers, but it would deny benefits to mothers who are unable to identify all possible fathers or are unwilling to help locate them. And it would require all teenage parents to live with an adult relative unless the home circumstances were dangerous or no adult relatives were willing to have the teenager in the home.

## **There could be enormous social benefits associated with a meaningful expansion of opportunity for people who are currently unable to participate effectively in the work force.**

Without necessarily endorsing the Clinton Plan as written, we can comfortably conclude that it provides an appropriate framework for discussion. On the one hand, there are profound social costs associated with any changes that risk reducing support to needy children. On the other hand, the status quo has proven inadequate to meet the needs and desires of AFDC parents to participate in the paid work force. The Clinton Plan proposes to invest an additional \$9 billion to \$11 billion over five years in child care, WORK wage subsidies, education, training, and job placement. There could be enormous social benefits associated with a meaningful expansion of opportunity for people who are currently unable to participate effectively in the work force.

Five of the key analytic questions are these:

(1) Will the daily care experiences of children whose parents are affected by a time-limited welfare system be better or worse? The empirical literature on this point is inconclusive. We are aware of no studies that consider the effects of different forms of child care (maternal or paid) on the children of welfare recipients. One can imagine that the 2-year-old child of a disadvantaged welfare recipient might benefit from the stimulation of a day care center; one could as easily imagine that she might suffer from disruption in her intimate relationships. Ultimately, the effects on children will necessarily reflect both (a) the quality of the AFDC recipient child's new care environment and (b) the extent to which increased experience in the paid work force provides the mother with a transition to a higher standard of living and with a set of life opportunities that make her a more successful parent.

2) Will the new WORK positions provide more effective pathways into the work force than currently exist for welfare parents? Over the years, the federal government has supported many different forms of job creation and job training, from CETA through the WIN Demonstration projects. Evaluations of those programs have rarely shown huge long-term benefits, but they have often shown noticeable

marginal improvements. Much will depend on the details of program design and implementation.

3) Will the changes in young people's opportunity sets that might result from welfare reform lead them to defer childbearing until more appropriate times? This is a question both about the substance of reform and about the way in which that substance comes to be understood by ordinary citizens. To the extent the impetus for welfare reform is a desire to shape behavior, the effectiveness with which reform is explained to the larger public may be as important as its actual content.

4) What about universal health care? There is some evidence for the proposition that the loss of Medicaid is one of the biggest concerns of welfare recipients considering work in the paid work force. Under current law, people who leave welfare are entitled to retain transitional Medicaid benefits for a year. If one of the aims of reform is to make paid work more attractive than welfare, further discussion of health insurance remains a necessity.

5) How many people will fall through the cracks, and how far will they fall? In most states, AFDC is the last meaningful safety net for children who live in poverty. Under a reformed system, what will happen to those children whose parents are unable or unwilling to comply with the greater demands of that system?

Any reform package that aspires to make a significant change along the dimensions of work, family, responsibility, and opportunity will be expensive. In the current economy, it will cost a lot to create meaningfully expanded work opportunities for single parents who may lack marketable skills. But if welfare reform is to be worth pursuing, it must proceed on a principle of balanced responsibility: welfare recipients and prospective parents must take responsibility for themselves and their children; the government must take responsibility for providing meaningful employment opportunities for all. Only when everyone, regardless of fortune, has agreed to do more, will it be appropriate to speak of a new social contract.

### **LQN**

11. See Susan Bennett and Kathleen Sullivan, *Disentitling the Poor: Waivers and Welfare Reform*, *Michigan Journal of Law Reform*, forthcoming, 1994, and Michael Wiseman, *Welfare Reform in the States: the Bush Legacy*, *Focus*, Institute for Research in Poverty, University of Wisconsin, Spring 1993.

12. For any month in which a recipient worked a specified number of hours, generally about half-time, her 24-month lifetime allocation would not be reduced.

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PROFESSOR SCHNEIDER  
GAVE THIS TALK  
AT HONORS CONVOCATION  
IN MAY 1994.

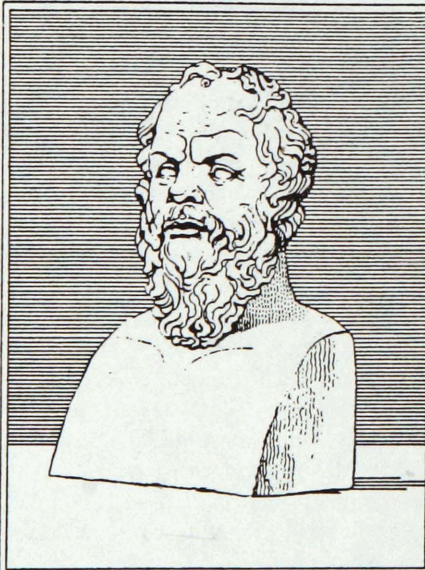
T H E

*f r a i l o l d a g e*

O F • T H E

SOCRATIC  
METHOD

—BY CARL E. SCHNEIDER



SOCRATES.

ARTWORK FROM *SOCRATES*, BY N. MITCHINSON  
AND R.H. S. CROSSMAN (HARRISBURG, PENNSYLVANIA:  
THE TELEGRAPH PRESS, 1938).



**We are gathered here to honor you for your seriousness about and success in your legal education. It is fitting and proper that we should do this, for law is a learned profession, and mastery of it is a critical and continuing duty, as well, I hope, as a pleasure. But this convocation is also, as Holmes put it, a time when the Law School “becomes conscious of itself and its meaning.”<sup>1</sup> I want to combine these two purposes by discussing with you our common enterprise of education for a learned profession. Specifically, I want to consider a distinctive feature of legal education, the Socratic method.**

**My thesis is this: The Socratic method is not dead. Perhaps it is not even dying. But it has entered a frail and faltering old age. Fewer and fewer classes are taught Socratically. And when they are, it is often in ways that effectively limit the method’s range, so that, for example, only volunteers or students warned in advance are called on.<sup>2</sup> I want to ask how this change has come about and whether it matters.**

#### NEW SUBSTANCE, NEW STYLE



As you might suppose, two groups have contributed to the present infirmity of the Socratic method — the faculty and the students. Let us begin with the faculty’s role.

Many professors use the Socratic method less than their predecessors because they are teaching a different subject. The Socratic method arose when the law’s doctrines — especially the common law’s doctrines — dominated not just the work of courts and legislatures, but also law schools. Today, doctrine has lost some of its dignity. Our conventional wisdom is that the best preparation a law school like ours can give its students is one that does more than train them in the substance of specific legal doctrines and the traditional techniques of doctrinal analysis. It also should attempt to teach students to appreciate the larger principles that underlie legal doctrines, to grasp the non-doctrinal ways of reasoning the law employs, and to understand law as a social actor.

In consequence, law professors today are likelier than their predecessors to draw on disciplines other than law — disciplines like economics, psychology, and sociology. For one thing, lawyers, legislators, and judges now speak those languages. Woe betide the antitrust lawyer who is ignorant of economics, the mergers-and-acquisitions lawyer who knows no corporate finance, or the family lawyer who is a stranger to psychology. For another thing, the social sciences and the humanities provide systematic ways of analyzing the law’s behavior. Thus the contemporary law professor moves beyond legal doctrine because doctrine itself has overflowed its traditional boundaries and because legal education is thought to demand a grasp of “why” as well as “how.”

This change in substance animates a change in pedagogy: It propels teachers away from the Socratic method and toward the lecture. In principle, perhaps it need not and even ought not. But in

practice, I think it does. The trend toward a more interdisciplinary curriculum means a more interdisciplinary professoriate. Many of my colleagues have Ph.D.s as well as J.D.s. They were thus trained in fields which historically have relied primarily on the lecture, not the Socratic dialogue, and they find it natural to follow suit.

The inclusion of “law and” subjects in the curriculum conduces toward lecturing for another reason. Because “law and” disciplines have their own substantial bodies of knowledge, law students often need to acquire a grounding in them before discussion becomes feasible. And because “law and” subjects have their own esoteric forms of analysis, students often lack the skill to engage in Socratic discussion in those fields. For both reasons, lectures supplant dialogue.

The faculty resist the Socratic method for yet another kind of reason. Law teaching is now peopled by members of a generation that first encountered the Socratic method when it was practiced more sternly than it is now. They, of all generations, most vehemently rejected Socraticism as competitive and hierarchical, brutal and vicious. These onetime students, now professors, may have moderated their views somewhat, but I think they are still uneasy with any method of instruction that places public demands on students and that seems to invite public distinctions between them.

Finally, the faculty incentive structure of law schools has changed in ways that diminish the appeal of the Socratic

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1. Oliver Wendell Holmes, *Brown University Commencement 1897*, in *Collected Legal papers* 164, 164 (Harcourt, Brace, 1920).
  2. I find some confirmation for this conclusion, which is based on impressions I have formed over the last twenty years in law schools, in Thomas L. Shaffer & Robert S. Redmount, *Legal Education: The Classroom Experience*, 52 *Notre Dame Lawyer* 190, 199 (1976), which reports the results of a modest empirical study that concludes that “lecture is almost a universal teaching method in law school.”



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method. Traditionally, the ethos of law schools has been that teaching is a truly cherished part of a professor's job. I doubt that anywhere in the university is teaching taken more seriously or more consistently done skillfully. Law professors commonly spend more time preparing for class, invest more energy in class, and devote more time to grading exams than the generality of professors in American universities.

However, this ethos is under pressure. Once you could be a respectable law professor without writing overmuch. Today, tenure is a good deal harder to come by and demands more writing. And there is a fiercer expectation that you will continue to publish after tenure. This is not just a local condition. It is part of the national competition of law schools. A school that wants to be esteemed must have a prolific faculty. Were this not such a faculty, you wouldn't want to come here.

But time for writing has to come from some place, and teaching is the obvious source. Lecturing is the obvious way of honorably borrowing time from teaching. The Socratic method continually prods professors to prepare for each class. But once you have written a lecture, you have only to browse through your notes before class, making whatever adjustments developments in the law may require. And because lecturing is, over the years, less stimulating for the professor than class discussion, it is, over the years, likely to evoke less intense effort.

#### THE STUDENTS' SIDE



Pressure to abandon or dilute the Socratic method comes from students as well as faculty. The Socratic method, after all, relies at least as much on students as on teachers. If students have not read and thought meticulously about a subject, a rewarding discussion of it is most unlikely. However, in the years I have been a student and professor here, the customary standard of preparation has become markedly less onerous.

The reasons for this begin with the job market. That incubus now dominates life even in a school far enough from a large city that relatively few students work during the term. Interviews for summer and permanent jobs, fly-backs, and the joys and tears of discussing them swallow up time and energy that was once devoted to class. This trend persists despite our graduates' triumphant success in finding desirable jobs. Indeed, exactly because our students have such fine job prospects, they begin to suspect in their second year that their performance in class may not affect their careers crucially. Further, the trend persists in bad times and good. The bad times create alarm that leads people to interview more. The good times give people more chances to savor the delights of being courted.

In addition, our incentive structure does not greatly encourage strong class preparation. For example, many classes are so big that, even if you want to, you can't talk very often or very long. The pass-fail option and the late deadline for exercising it dull the spur that grades provide to do the reading on time. For that matter, few professors directly reward good class performance with higher grades. Finally, many students discover that they can do tolerably well on final exams even if they postpone most of their studying until the end of the semester.

Finally, many students prefer lectures to the Socratic method because they conceive of their task only as learning the substance of the law. The most frequent comment I hear from students who come to see me about an exam is "I don't see why I didn't do better; I'm sure I really knew the material." When the goal of mastering legal analysis is thus scanted, the Socratic method can seem merely perverse, obscuring what ought to be



clarified, complicating what ought to be simplified, questioning what ought to be confirmed. Professors hear this view in talking with students, in the student newspaper, and in course evaluations, and it does not go unnoticed.

There are, then, both faculty and student disincentives to the Socratic method. What is more, they continually reinforce each other. As the faculty lectures more and calls on students less, students quite understandably respond by preparing less for class. As students come to class less thoroughly prepared, the faculty quite understandably adapts by lecturing more.

#### SICK BUT WORTH SAVING



Well, so what? Does it matter that we're using the Socratic method less and enjoying it less? The Socratic method was always better at some things than others. It was always open to the objection that it is a clumsy way of communicating information and ideas. Students, of course, must learn some of the law's substance, and insofar as class is intended to help them do so, the Socratic method may not always be optimal. Further, I have already suggested some reasons the Socratic method may seem less attractive in a world in which law teaching is less doctrinal and more interdisciplinary. Finally, some professors enjoy the Socratic method more than others, and some are better at it than others. For all these reasons, the Socratic method is not apt for all times, places, people, and tasks.

Nevertheless, as you may have gathered, I think the Socratic method worth saving. Let me suggest several reasons. I will start with a crude, but not foolish, one. Dr. Johnson once said, "Depend upon it, Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." When a student knows that he may be

called on in class the next day, he has a wonderful reason to study. When a student knows that she may be called on the next minute, she has a wonderful reason to stay engaged and intent during the long and — I admit it — sometimes wearying hours of class.

To be sure, it is here that the criticism I described earlier — that the Socratic method invites professorial savagery — enters in. I freely stipulate that that way of teaching gives the professor more opportunity and scope for belligerence, sarcasm, and derision than lecturing. And some of my friends who are slightly older than I say that as students they encountered professors who seized the opportunity and relished its scope. But my sense is that times have changed, and that such unpleasantness is inflicted far less frequently and primarily by inadvertence. At least I cannot recall such an incident when I was a student here.

#### THE RIGHT TOOL FOR OUR TASK



My next point in favor of the Socratic method is that, while it may not be ideal for the exposition of factual material, or even for helping students straighten out complicated doctrines, work of that sort should not be the main business of a law school class. For one thing, such ideas are most efficiently communicated and assimilated through texts. For another, it is the student's very labor of grappling with case and statute, with precedent and doctrine, that is the best teacher, which is why professors are always urging students to write their own course outlines. Law school classes, then, should be primarily devoted to work that can not be done so well elsewhere.

What cannot be done so well elsewhere is what we claim as our principal task — teaching students to think like lawyers. I believe the Socratic method is, despite its limits, generally a good, and even brilliant, way of doing so. It shines at helping students learn to read and criticize the standard sources of legal doctrine (for, after all, doctrine is hardly

dead, even though it may be understood more broadly) and to detect and dissect the legal problems, public questions, and jurisprudential issues they present. The Socratic method works by offering students an opportunity that (given the size of law school classes) they have all too rarely — the chance to practice legal analysis and to receive the personal attention and assistance of a professor. It invites students to study selected cases, problems, or issues intensively and to construe them in class under the guidance of an experienced analyst. The professor offers examples of the right kinds of questions to ask, and demonstrates by more questions the weaknesses of the wrong kinds of answers and the advantages of the right kinds. This demanding regimen can also inculcate a sense of the demanding standards of attention, care, and rigor which have characterized the best legal reasoning. The process is repeated over and over again until students become experienced, skilled, and confident. The principle is that practice makes perfect.

Furthermore, whatever the limits of the Socratic method, they are modest next to the drawbacks of the lecture method. At least in a field that is not changing rapidly, lectures are open to one crushing question — if you have something to tell us, why don't you write it down and let us study it carefully and conveniently? I remember asking that question in my freshman year in college, when one of the assigned books in my Government 1 class comprised the lectures the previous Gov 1 professor had given when he taught the course, and I still think it is a good question.

More positively, the Socratic method on the whole conduces to better teaching than the lecture method. I first began to believe this when I was a law student at Michigan and found class more inspiring and rewarding than in college. Today I remember vividly only two of my undergraduate lecture courses but many of my law courses. The difference is not



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due to the relative quality of the schools, since my undergraduate institution was as eminent as this one. Rather, I think (perhaps controversially) it is easier to teach a good Socratic class than to lecture well. A good lecture is a thing of beauty and a joy forever, but it is painfully hard to craft. Leading a good discussion certainly requires considerable preparation beforehand, considerable attention at the time, and considerable evaluation afterward. But because it asks students to learn by doing, because it corrects errors and rewards insights, because it challenges students to react and reflect, because it more deeply engages the minds of the students, and because it draws them into the work of learning and thus induces them to learn more richly and deeply, it commonly repays — and thus invites — pedagogical effort better than lecturing.

I have been describing the forces that impel us away from the Socratic method and trying to suggest why we should resist them. Every summer, I learn a little lesson about what lies at the bottom of the path we are treading when I teach a course in American law for German law students. There I am invariably assailed by complaints about German legal education. These complaints sound odd to an American. In German law schools, I am bitterly told, no professor ever calls on a student. No student need attend

class. No grades are given. The curriculum need not be completed in any set number of years. It's even free.

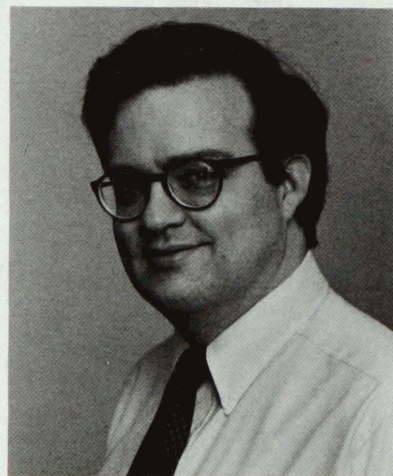
Following German academic tradition, all courses are taught by the lecture method. If my German students are right, these lectures are commonly not just uninspired. Sometimes the professor simply reads from a book he has published, or even sends his assistant to do so. Students rarely attend class, and before taking the single exam which evaluates their entire law-school performance, they attend commercial review courses. They detest law school, and their professors detest teaching.

Of course, we are a long way from this sorry state. On the contrary, we continue to enjoy what may be the best system of legal education in the world. And whatever the method of instruction, the quality of your education will finally depend on you. As Holmes said of the time when he embarked on the ocean of the law,

There were few of the charts and lights for which one longed . . . . One found oneself plunged in a thick fog of details — in a black and frozen night, in which there were no flowers, no spring, no easy joys. Voices of authority warned that in the crush of that ice any craft might sink. One heard Burke saying that law sharpens the mind by narrowing it. One heard in Thackeray of a lawyer bending all the powers of a great mind to a mean profession. One saw that artists and poets shrank from it as from an alien world. One doubted oneself how it could be worthy of the interest of an intelligent mind. And yet one said to oneself, law is human — it is a part of man, and of one world with all the rest. There must be a drift, if one will go prepared and have patience, which will bring one out to daylight and a worthy end.<sup>3</sup>

Ultimately, I believe the Socratic method is preferable to the lecture method because it is easier to learn navigation by practicing under expert guidance than by studying a sailing manual. But ultimately, you have to steer your own craft, to educate yourself. However much guidance and stimulation you receive in school, you can only learn the law by the prolonged and solitary study and the kinds of extra-curricular activities for which you are being recognized today. And part of what it means to enter a learned profession is that your education only begins with law school, that you will continue to teach yourself to understand your calling more deeply, to serve your clients more wisely, and to wield your profession's influence more justly. Your presence here today testifies how far you have already come in doing so. I salute you with pleasure in the past and hope for the future.

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Professor Carl Schneider graduated from the U-M Law School in 1979. He writes and teaches primarily on the topics of law and medicine, family law, and constitutional law.

3. Oliver Wendell Holmes, *Brown University — Commencement 1897*, in *Collected Legal papers* 164 - 65 (Harcourt, Brace, 1920).



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