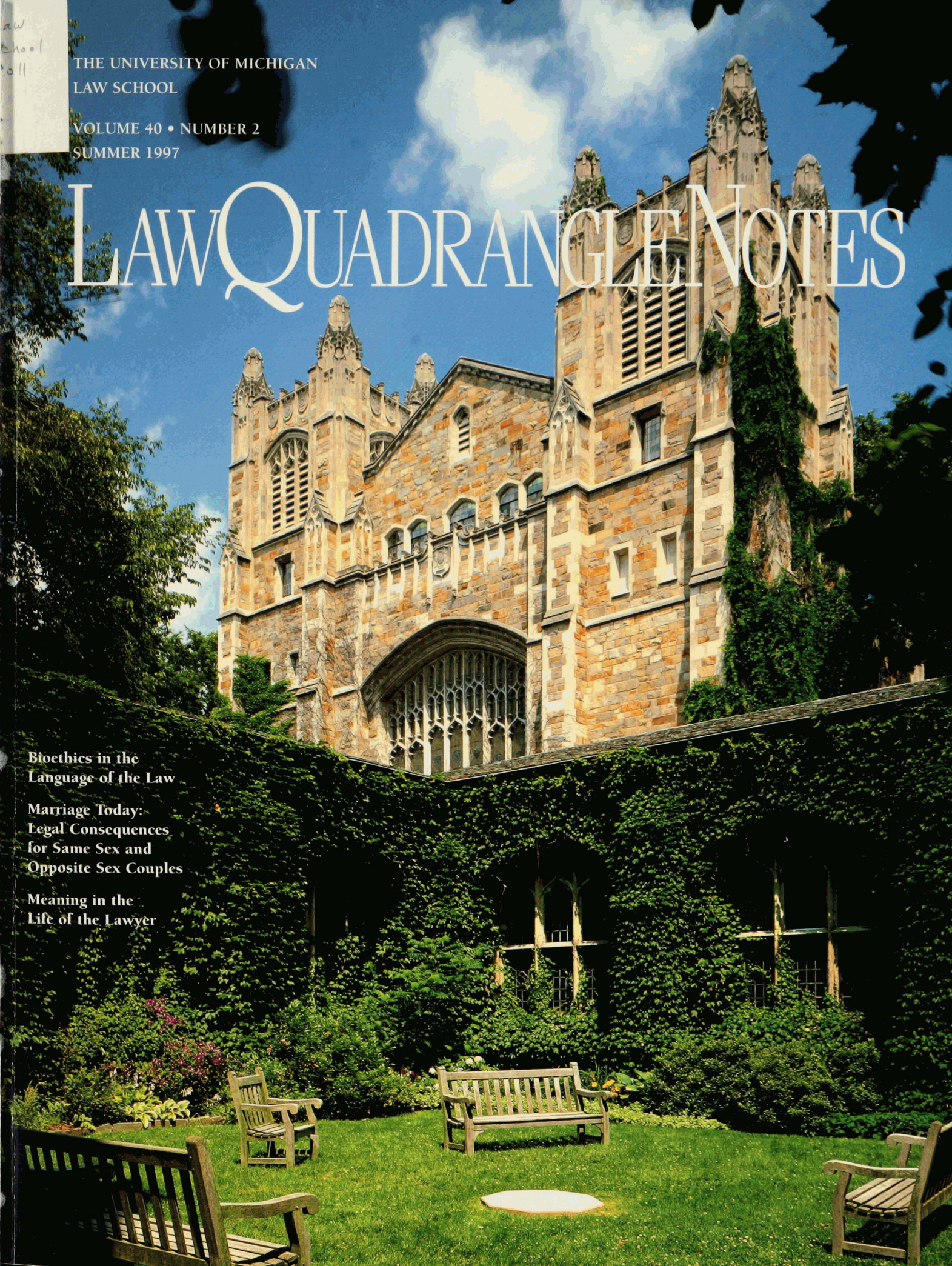
THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 40 • NUMBER 2
SUMMER 1997

LAW QUADRANGLE NOTES



Bioethics in the Language of the Law

Marriage Today: Legal Consequences for Same Sex and Opposite Sex Couples

Meaning in the Life of the Lawyer

UNIVERSITY OF MICHIGAN
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Upcoming Events

August 4	American Bar Association Annual Meeting, Alumni Reception, San Francisco
August 8	Colorado State Bar Meeting, Alumni Reception, Denver
September 11	California State Bar Meeting, Alumni Reception, San Diego
September 12-14	Reunions of Classes of '42, '46/'47, '52, '62, '67
September 18	Michigan State Bar Meeting, Alumni Breakfast, Detroit
September 19	Inauguration of U-M President Lee C. Bollinger
September 19-21	Reunions of Classes of '72, '77, '82, '87, '92
September 26-28	End of Campaign Celebration
October 6-7	Cooley Lectures: Mark Kelman, Professor of Law, Stanford Law School
October 16-19	Committee of Visitors, Ann Arbor International Alumni Reunion, Ann Arbor
October 31-November 2	Reunion of Class of '57
November 3-5	Cook Lectures: Joe Sax, University of California at Berkeley School of Law
November 6-9	Midwest Clinical Law Conference
December 6	Senior Day
January 19	Martin Luther King Day Observance
March 20-21	Jury Reform Symposium: "Do Juries Work?"
May 16	Senior Day

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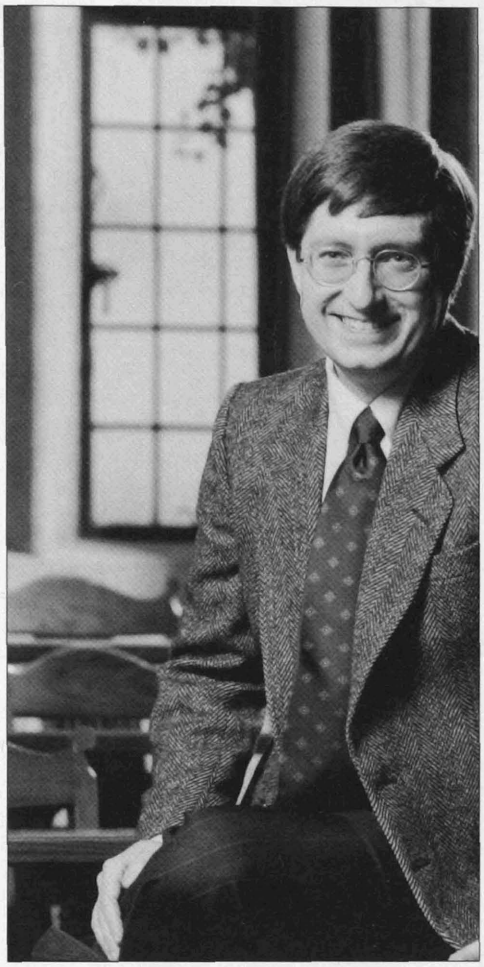
MESSAGE FROM DEAN LEHMAN

OVER THE PAST THREE YEARS, I have used my messages in *Law Quadrangle Notes* to comment on various qualities that I associate with an outstanding attorney. I have noted the great lawyer's commitments to intellectual growth and renewal, integrity, and teaching others about the law. During the coming year, I will explore a different theme: that of the great lawyer as citizen.

In approaching this theme, I am using the word "citizen" in a slightly idiosyncratic way. I am using it to invoke some of the special aspects of a lawyer's life that derive from membership in a community that extends beyond family. Membership often carries well-known privileges (such as the franchise, employment opportunities, or material support). In this discussion, however, I would like to pay special attention to a more complex privilege: the privilege of bearing the *responsibilities* of citizenship.

In his classic little book, *The Needs of Strangers*, Michael Ignatieff accurately observed that our ordinary language feels frustratingly weak whenever we try to talk about such topics. "Words like fraternity, belonging, and community are so soaked with nostalgia and utopianism that they are nearly useless as guides to the real possibilities of solidarity in modern society." Yet we all know that, even in modern society, those words point toward an underlying truth: we can and do take a special pleasure in our solidarity with others, with feeling personally responsible for other individual members of the community and for the community as a whole.

And so, despite the linguistic perils, I would like to suggest two ways in which lawyers seem to have succeeded in linking their *professional* identities to the satisfactions of responsibility for fellow citizens. One way, which I hope to explore in a future message, leads them, as lawyers, to engage their society *outside* the context of paying-client representation. The other, the one I want to raise here, expresses itself through the ways these lawyers counsel their paying clients.



I have no doubt that some lawyers experience their relationship with their paying clients as a simple sale of expert knowledge and services from vendor to customer. Most of us, however, have felt that relationship to be more complex. Over the years, two forms of thoughtful commentary have offered words to describe that impression.

One collection of commentary has clarified our sense of the lawyer-client relationship through the familiar categories of agency and fiduciary obligation. Far more than the arm's-length vendor of lawnmowing services, the lawyer is expected to be a fiduciary to the client. Even more, we understand that the duty to client exists in tension with a more diffuse set of duties as agent and fiduciary to the larger society.

In recent years, the complexity of the lawyer-client relationship has been further illuminated by a new group of commentators who have thought carefully about the act of giving legal advice. For example, in an article in this issue of *Law Quadrangle Notes*, Professor James Boyd White describes how a lawyer must "give meaning" to a client's experience (or proposed activities) within the language and categories of the law. The effort must, at once, respect similar efforts in the past and respond to the particular context of the present. It entails a special set of critical and intellectual challenges, and opportunities as well.

When I think about the best lawyers I have known, these ideas become concrete, and they ring true. Such lawyers have not been uncritical slaves to their clients' tastes and preferences. Nor have they encouraged their clients to distance themselves from the larger community by speaking of the law as a set of impersonal barriers with no interest in the client's particular situation. Rather, they have tried to help their clients understand the law as a point of engagement with their fellow citizens, through which tensions and competitions among goals and perspectives are, and can be, worked through.

At their best, these lawyers have learned to speak in a language with which they are personally comfortable. A language that is responsible to their clients. A language that is responsible to the community as a whole. A language that shows solidarity with the other individual members of that community. I believe that we should be grateful for a profession that calls upon us to struggle daily to find such a language. For it is an echo of the challenge identified by Ignatieff, and a special opportunity to experience profound satisfaction in our professional lives.

Johnson: *I will be guided by students' needs*

Charlotte Johnson, '88, the Law School's new Director of Academic Services, devoted her first day on the job last March to the University's required orientation for new employees. By morning of her second day, her office brightened with a vase of fresh flowers but otherwise still bare of the touches that will make it hers, she already has a stack of brochures on her desktop: "Campus Connections: 1996/97 Guide to Campus Resources for Students of Color."

"I will be guided by students' needs," she says. "The students here are so extraordinary." She says she also wants to make Law School students aware of the many services that the Law School offers and help them to use the wealth of assistance that is available to them. "There is a tremendous amount of opportunity during law school for growing on many different levels," she says. "I will encourage students to take advantage of the many resources and activities here at the Law School, which I believe foster such growth."

Before coming to the Law School, Johnson spent eight years as a litigator with the Detroit law firm Garan, Lucow, Miller, Seward & Becker, where she was a partner. "I enjoyed many aspects of litigation, enjoyed trial work and my colleagues at the firm," she says. "But this opportunity came along and I couldn't pass it up for lots of reasons. First, and foremost, it gives me a chance to have an impact on students.

"Dores McCree [who retired last year and served on the search committee that named Johnson] is my predecessor in a lot of ways. Mrs. McCree's legacy is one I hope to carry on. She was there 110 percent of the time for students. Where their needs took her is where she went."

Charlotte Johnson, '88

"I'm delighted to announce that Charlotte Johnson has accepted the position of Director of Academic Services," Dean Jeffrey Lehman, '81, said in announcing Johnson's hiring to the Law School community. "This is the new, more formal position that we created on the occasion of Dores McCree's retirement."

"Charlotte will take on a range of duties," Lehman explained. "Loosely defined, they include coordinating and supervising MAP [Minority Affairs Program] and other academic programs, counseling students, and working with faculty and administrators to ensure that all students feel free to take advantage of the considerable intellectual resources of the School."

Continued on page 4

BRIEFS

Continued from page 3

Johnson was active in the Law School as a student and continued her involvement after graduation. As a student, she participated in the Black Law Students Association, MAP and other activities; after graduation, as Vice President of the Black Alumni Association, she found her work with law students so rewarding that it heavily influenced her decision to seek her new job.

She knows well how a student sometimes can feel isolated or overwhelmed at law school. She also understands how unanticipated financial needs and other pressures can arise that divert a student from his or her studies. "There are services that I can provide or direct students to which will help to alleviate some stressful situations a student may experience," she says. "However, part of what students should be learning here are the ways to manage or deal with stress, since some form of stress is an unavoidable element of many aspects of the legal profession."

Much remains similar, but much also has changed at the Law School since Johnson (whom classmates will remember as Charlotte Hawkins) was a student. But her own accessibility and the rapid spread of word that she has moved into her office on the third floor of Hutchins Hall have been fueling her own skill as a quick study.

Two students stopped by midway through Johnson's second morning to discuss procedures for applying as instructors for MAP, which Johnson will oversee. Former classmate Susan Kalb Weinberg, '88, Director of the Office of Career Services, dropped by to say hello. Assistant Professor of Law Deborah Malamud, whose office on the third floor of Hutchins Hall makes her a neighbor, came by to introduce herself and to meet Johnson. Clinical Assistant Professor of Law Lance Jones, '89, whom Johnson had known when they both were law students, also came by to wish her well.

All this within three-quarters of an hour.

Assistant Professor of Law Peter J. Hammer, right, moderates discussion of "A Particular Vision of Democracy: Electing a Parliament with Proportional Representation," during the symposium on "Constitution-Making in South Africa" at the Law School in March. Panelists include, from left, Z. A. Yacoob, a practicing advocate in Durban and advisor to the Constitutional Assembly; Gay McDougall, Executive Director of the International Human Rights Law Group; and the Hon. Dion Basson, Judge of the Labour Court of South Africa. Panel discussions at the symposium were carried live on the Internet via the Law School's web page and have been saved so that they may be called up for listening by anyone with the appropriate computer hardware and software. The Law School's web page is at http://www.law.umich.edu.

CONSTITUTION-MAKING
in South Africa

South Africa has emerged from a time of legal separation of the races to a time of new equality guaranteed by a new national constitution adopted late last year — and now the business of nourishing this new, untried constitution into a living, flexible guideline for national justice has begun.

That is the picture that participants in the symposium on "Constitution-Making in South Africa" drew during two days of discussions at the Law School in March. Sponsored by the *Michigan Journal of Race & Law*, the symposium had financial support from the Law School, the office of Interim University of Michigan President Homer A. Neal, the Andrew W. Mellon Foundation and Northwest Airlines.

The symposium brought together more than 30 prominent South Africans, including Nicholas Haysom, Legal Advisor to South African President Nelson Mandela, scholars from the United States and elsewhere, and others. Among them were three Law School graduates: Firoz Cachalia, LL.M. '96, Leader of the House in South Africa's Gauteng Province; Karthigasen Govender, LL.M. '88, a member of the South African Human Rights Commission and a member of the faculty of law, University of Natal-Durban; and Christina Murray, LL.M. '81, Professor of Constitutional and Human Rights Law, University of Capetown (see story page 31). Symposium sponsors also brought in academic leaders from outside of South Africa, including Japanese constitutional scholar Nobuo Kumamota, LL.M. '64, President of Hokkaigakuan University in Sapporo, Japan.

"Much can change in 10 years," Dean Jeffrey S. Lehman, '81, said in his welcoming remarks to participants. "In 1987, few if any would have predicted that only a decade later, today, the world would be filled with nations making a transition to constitutional democracy. And nobody would have predicted that we would be ready to study South Africa as an example of one way in which that transition can be accomplished."

"The participants in this symposium include many of the founding parents of the new South Africa," Lehman noted. "Twenty leaders have made the journey from South Africa to Michigan, to have this occasion to reflect on their experience. They include members of the provincial and national legislatures, the legal advisors to President Mandela, to the Executive Deputy Vice President, and to the Minister of Justice, the South African Consul General, judges and members of the Human Rights Commission, leaders of the National Party and of the ANC [African National Congress], practicing advocates, and constitutional scholars from leading universities of South Africa."

Indeed, Lehman noted, only a short time ago some of the participants who were sharing panel tables at the Law School had been bitter enemies who eschewed discussion with each other.

Z.M. Yacoob, a practicing advocate in Durban who was a member of the Panel of Independent Constitutional Experts that advised South Africa's Constitutional Assembly, laid out for participants the overriding question that faced South Africans who were trying to fashion a new national constitution. Apartheid had been maintained by law, he said, and that showed how the law could be used to defend injustice and make criminals of those who fought for justice.

"The real difficulty" of moving beyond South Africa's apartheid society is determining what parts of the old system should be preserved and defended and what parts should not be preserved because they are "utterly indefensible," he said.

Parliament was supreme during the apartheid era, but the new constitution now is supreme, Yacoob said. "I don't think it makes any difference if Parliament is supreme or the constitution is supreme. Those who struggle for justice became criminals and could be taken out of society. The more efficient the law, the greater the opportunity for struggle.

"Law is important for legal struggle, as important for the maintenance of the new South Africa as it was for the apartheid regime."

"During apartheid," he noted later in response to a question, "I worked less as a lawyer and more as an activist because I realized that that was the way that society was going to change."

Added Thuli Madonsela, Deputy Director of the Planning Unit of the South African Ministry of Justice: "The South African apartheid state used the law as the instrument to maintain apartheid. That made it more difficult to resist."

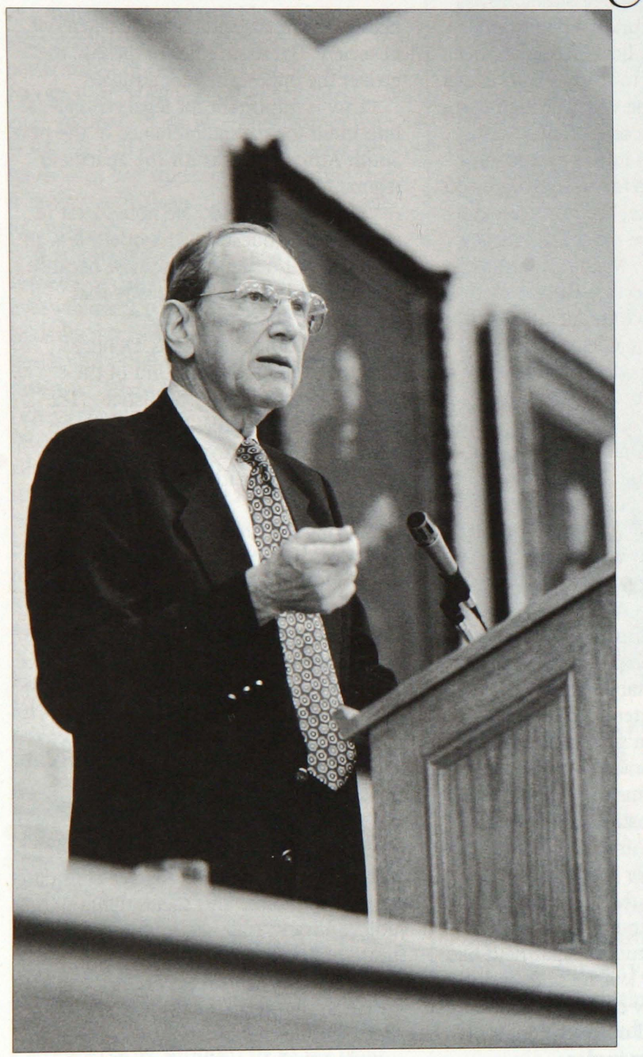
"During apartheid it became very difficult to see the law as being on your side. . . In my personal experience, the average person I know has been to jail."

"The judiciary," she said, "became an instrument for the administration of apartheid rules as opposed to an instrument for the administration of justice."

Symposium participants discussed many topics, among them: the constitution-making process, elections and representatives, cooperative governance, gender equality and indigenous law, the challenge of enforcing positive economic and social rights, judicial review, state security and the future of South Africa.

"The South African experience has important implications for nations across Africa and across the globe, especially nations torn by racial and ethnic conflict," according to symposium sponsors. "A decade ago, the obstacles to a peaceful transition from apartheid to democracy in South Africa seemed insurmountable. Now South Africa's remarkable success in making an orderly transition to constitutional democracy may make other nations less reticent to embark upon similar journeys."

Bridging ETHICS and alternative dispute resolution



Malpractice expert Asher Tilchin, '49, tells first-year students that "I see the profession of law as a calling, not just a profession," during Bridge Week last March. Tilchin is with Tilchin & Hall, Farmington Hills. "Let me tell you, what is good for the client is good for you," he said.

Thanks to the generosity of alumnus Thomas Ford, '49, the California real estate developer whose gift last year allowed the Law School to launch one of the few endowed programs in alternative dispute resolution (ADR) at a U.S. law school, this year's Bridge Week program introduced first-year law students to a variety of ways to settle cases outside of the courtroom. The ADR portion of Bridge Week also included a video prepared for the program by practicing attorneys who took part in an unrehearsed mediation prepared for Bridge Week.

The week of special classes also included an emphasis on ethics and ethical practices in the legal profession. Bridge Week was March 10-14, immediately after Spring Break.

In the video, veteran mediator Allyn D. Kantor, '64, of Miller, Canfield, Paddock & Stone in Ann Arbor, mediated between Lore A. Rogers, '83, representing a man whose son died after an automobile accident, and Richard A. Soble, counsel for the car repair firm that was being sued. Rogers teaches at Wayne State University Law School and works as an advocate for survivors of domestic violence. Soble is with Goodman, Eden, Millender & Bedrosian in Detroit.

Students watched as the attorneys, working through Kantor, finally reached a financial settlement that was a compromise between their original positions. Throughout, Kantor as mediator maintained confidences that he had promised yet still made each attorney aware of the opposing attorney's position.

Allyn D. Kantor, '64, explains his role as mediator in the simulated mediation proceeding that he videotaped for Bridge Week with Lore A. Rogers, '83, and Richard A. Soble, who are seated to his right. The simulation was part of Bridge Week's focus on Alternative Dispute Resolution. Other parts of the special week of classes in March dealt with ethics.

He also sometimes gently nudged the attorneys to move toward compromise.

Bridge Week this year was designed to introduce first-year students to a variety of methods of dispute resolution and expose them to the kinds of ethical problems they are likely to encounter during their first year of professional practice, according to Professor of Law Kent Syverud, '81, who organized the five days of special classes. Syverud's fellow teachers for the week included Asher N. Tilchin, '49, of Tilchin & Hall in Farmington Hills; The Hon. Steven D. Pepe, '68, U.S. Magistrate for the Eastern District of Michigan; and Charles W. Borgsdorf, '69, of Hooper, Hathaway, Price, Beuche & Wallace in Ann Arbor.

The classes are "intended to inject a conscious focus on professional responsibility and alternative dispute resolution as part of the larger curriculum," Syverud said. The topics can be further explored in second- and third-year courses, he said.

Faculty approve statement of educational policy

The 17 faculty, staff and student members of the Law School's Educational Environment Committee have devoted the past year to encouraging communication and understanding among different groups within the School. Efforts have ranged from individual and small group meetings and discussion sessions to policy proposals aimed at ensuring the mutual respect that is among the traditional hallmarks of the Law School.

The committee, chaired by Associate Dean Christina L.B. Whitman, '74, issued a report to the full faculty, which then voted to adopt the following statement of educational policy:

"All members of the community must be able to participate fully in the life of the Law School. Barriers to full participation can take many forms. Sometimes they fall along lines of race, gender, sexual orientation, and religion. Sometimes they reflect intolerance of certain political beliefs or social attitudes. These barriers can take the form of explicit conduct — such as rules of exclusion, acts of violence or intimidation, or anonymous declarations of hostility. Far more often, they are subtle — such as silences (e.g., omissions from the curriculum), failure to treat others with respect, or misunderstandings due to lack of a shared culture.

"In order to best educate our students, the Law School must be a place for full and frank discussion of difficult issues. Law school classrooms are places where ideas are supposed to be expressed and to be challenged, and policy issues are supposed to be appreciated for their complexity. Discussions of this sort may be painful and uncomfortable for students and faculty. For that reason, it is important to ensure that mutual respect and attentiveness to diverse perspectives are always a part of the exchange of ideas."

To futher the newly articulated policy, the faculty identified five areas of special commitment:

- New employees, when hired, will be informed about the School's commitment to making its resources fully available to all students.
- During orientation for new students, the faculty will discuss classroom dynamics, including issues of mutual respect.
- The School will continue to work to increase the diversity of the faculty through new hiring.
- Administrators will be encouraged to develop new vehicles for community-wide communication.
- Faculty members will be encouraged to develop innovative ways to support wide-ranging discussions from multiple perspectives within their classes.

BRIEFS

Human(e) Rights —

Visiting Professor Christopher McCrudden, below, Reader in Law, Oxford University and Fellow, Lincoln College, Oxford, gestures to emphasize his point during a discussion of "Pursuit of Social and Economic Rights: Constructing a Human Rights Practice" at the Law School in April. Right, other panelists are, from right: Roger Normand, Policy Director, The Center for Economic and Social Rights (CESR); Felix C. Morka, Executive Director of the Social and Economic Rights Action Centre in Lagos, Nigeria; and Chris Jochnick, co-founder with Normand of CESR in 1993. CESR addresses poverty as a human rights issue under international law. The discussion was presented by the Michigan Law and Development Society and the Law School and co-sponsored by the Law School Student Senate Speakers Committee, the Office of Public Service and the Office of Student Affairs. Discussion focused on issues of rights to health, housing, food, education, a living wage and other basic needs as emerging components of the concept of human rights.

A Good Bet? —

Melanie Benjamin, Secretary for the National Indian Gaming Association and Treasurer of the Minnesota Indian Gaming Association, makes a point during discussion of "Casino and Indian Gaming" in March as part of Native American Law Day at the Law School. At left is panelist Angeline Matson, a Sault Sainte Marie Chippewa and a Central Michigan University graduate student, who discussed her analysis of the National Gambling Impact and Policy Commission Act of 1996. Panelist Tom Foley, National Indian Gaming Commissioner, is not shown. The program, sponsored by the Native American Law Students Association, was a lead-in event to the annual Pow Wow at Ann Arbor.

A progress report on clinical programs

Clinical programs at the Law School have been growing and enrolling more and more students over the past few years, a fact that put the Law School ahead of the trend reflected by the American Bar Association's recent adoption of a requirement that every ABA-accredited school include a clinical component in its curriculum.

"The clinical program is big enough now to require a great deal of administrative attention, which keeps me busy in my new role," says Suellyn Scarnecchia, '81, whom Dean Jeffrey Lehman named last summer to the newly created position of Associate Dean for Clinical Affairs.

The Law School's clinical program includes six clinics and has a budget of more than $1 million, Scarnecchia told more than 100 alumni from southeastern Michigan who were attending the Law School's first luncheon for area alumni last March. The clinical program includes: the Michigan Clinical Law Program for civil and criminal law; the Child Advocacy Law Clinic; Legal Assistance for Urban Communities for community economic development law and other non-litigaton matters; the Environmental Law Clinic; Criminal Appellate Defense; and a new Poverty Law Clinic associated with the Law School's new Poverty Law Program. Some of the clinics are operated in cooperation with outside organizations like the State Appellate Defender Office, the National Wildlife Federation and Legal Services of Southeastern Michigan.

Several instructors on the clinical faculty now have long-term contracts with the Law School. Some instructors are affiliated with the organization that works with the Law School to sponsor the clinic, like Legal Services of Southeastern Michigan.

Some 150 students each year can enroll in a clinical program, but that still makes up only about half of each graduating class, Scarnecchia said. Student entry into the program remains competitive.

"The hallmark of the clinical program is that we place students in the role of an attorney," Scarnecchia said. "The student attorney actively gets an introduction to legal skills that he/she can't get in the classroom, gets a chance to practice public interest law, and gets an opportunity to take on the responsibilities of a lawyer.

"We do this in an atmosphere that encourages them and challenges them to be reflective practitioners," she said. The experience encourages students "to think about what kind of lawyers they will be" and "to begin to recognize the role of interpersonal relations in the practice of law."

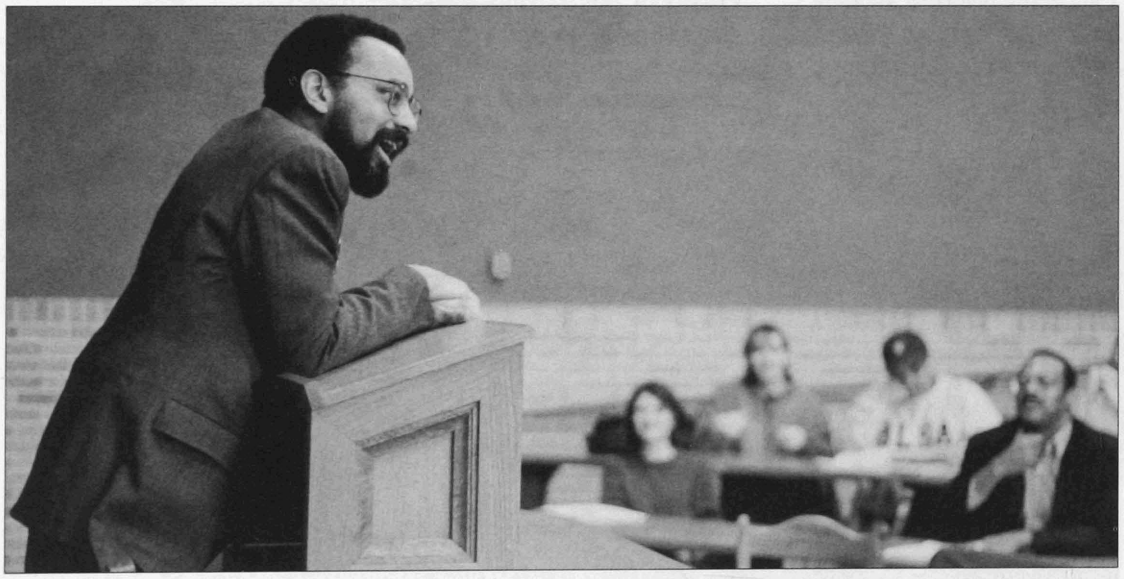
Nationally, Scarnecchia said, clinical programs have expanded in many law schools. Increasingly, students examine a school's clinical offerings as part of their decision about where to go to law school.

As for students who have clinical training, she said, "I think after having a clinic they have more confidence in their abilities. They can reflect in meaningful ways on themselves and on their careers."

Suellyn Scarnecchia, '81, Associate Dean for Clinical Affairs, outlines the growth of the Law School's clinical offerings for a gathering of alumni from southeastern Michigan at the Law School in March. More than 100 alumni attended the first-of-its-kind program.

Affirmative action looms large under the magnifying glass

Assistant Professor of Law Theodore Shaw, on leave as Associate Director/Counsel for the NAACP Legal Defense Fund, decries the current "distorted discourse" on affirmative action during a panel discussion at the Law School. At right is Michigan Student Assembly President Fiona Rose, who helped to moderate the discussion, held as part of the University of Michigan's Martin Luther King Day Symposium in January.



On Affirmative Action —
Christopher Edley, Harvard Law School professor and an architect of President Clinton's policy on affirmative action, discusses legal and political efforts to roll back affirmative action during a visit to the Law School in February. Edley, author of the recently published book, Not All Black and White: Affirmative Action, Race and American Values, *also spoke the same day for a University-wide audience. His visit was sponsored by the Black Law Student Alliance, Black Undergraduate Law Association and the African-American Programming Task Force.*

Law students got to examine both the maturation of affirmative action and the strategizing that goes into defending it during separate programs at the Law School during the Spring Term.

As part of the annual Martin Luther King Day Symposium last January, panelists presented a program at the Law School called "Affirmative Action in the Academy: Safeguarding the Gains Made." Later in the term, Visiting Professor Mark Rosenbaum, strategist for litigation against California's Proposition 209, outlined the strategies that had gone into fighting the voter initiative up to the time of his talk in February.

Panelists in the Martin Luther King Day Symposium

"We made it a very, very fact-laden case. This isn't about whether affirmative action is good or bad. Reasonable people can disagree."

program agreed on the goals of affirmative action but differed on the need for special programs to accomplish those aims. Theodore M. Shaw, Assistant Professor of Law on leave as Associate Director/Counsel for the NAACP Legal Defense Fund, decried the "distorted discourse" on the "small, modest remedy" that is affirmative action. He argued that race-conscious affirmative action is still necessary, but that the problem of race has metastasized to the point that a broader approach is necessary.

"Just as W.E.B. DuBois said that the problem of the twentieth century will be the color line, I think it is pretty clear that the problem of the twenty-first century will be the class line," Shaw predicted. "If we don't find a way to solve the problem of economic inequality...it will tear the fabric of this nation apart."

But B. Joseph White, Dean of the University of Michigan School of Business Administration and Professor of Business, said that "affirmative action has been dead for quite some time now [and] only recently has it been publicly buried."

However, he said, that does not mean that the goals of affirmative action are being ignored. Business leaders have known for many years that diverse workforces improve business and for that reason many companies have strived for the same goals as affirmative action. Similarly, he said, academic leaders believe that increasing the numbers of underrepresented minorities among students, faculty and staff improves the academic setting.

Dennis Hayashi, Director of the Office for Civil Rights of the U.S. Department of Health and Human Services, also was on the panel.

In his talk in February, Rosenbaum described the care that went into writing Proposition 209, which uses the words of the Civil Rights Act to prohibit the state from granting preferential treatment to anyone based on "race, sex, color, ethnicity or national origin." A Visiting Professor at the Law School since 1993, Rosenbaum was staff counsel for the American Civil Liberties Union from 1974-84.

"Nowhere does the proposal mention affirmative action," he said. "Who can argue against a non-discrimination measure? How do you argue against it?

"You have to go to the effects. Discrimination already is illegal. This is an empty gift. You have to strip this down as lawyers. You have to look at what is happening here."

"The only losers here are non-whites and women, because they are the only groups who are getting preferential treatment," he said.

Acknowledging that "if you make this an up or down vote on affirmative action you're going to lose," he said the litigation strategy was to compile "tons of evidence" that discrimination exists and how it works.

"We made it a very, very fact-laden case. This isn't about whether affirmative action is good or bad. Reasonable people can disagree.

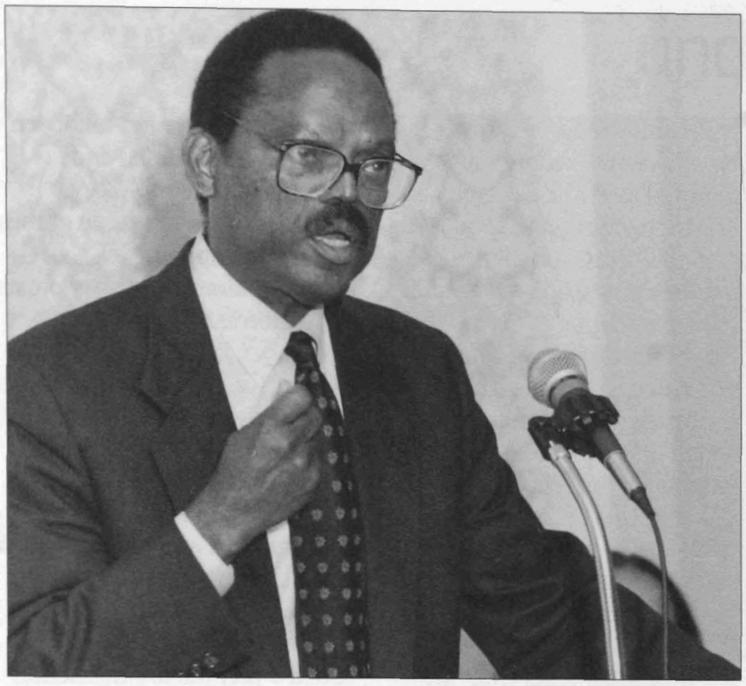
"What is this case about? It's about access to government. It's about a fair fight."

For tactical reasons, Rosenbaum and his team filed their case in San Francisco, where the police and fire departments and the school system had been found guilty of discrimination and had been forced to hire women and minorities. "The message is: If 209 goes into effect none of these things can happen."

Proposition 209 was approved by California's voters last November, but it was not in effect at the time of Rosenbaum's talk in Feburary. But in April the 9th Circuit Court of Appeals ruled that there is "no doubt" that Proposition 209 is constitutional and ordered that a lower court injunction against it be lifted. Federal Judge Thelton Henderson last December had issued a preliminary injunction to maintain the status quo of affirmative action programs at California's state universities.

Access for Everyone? —
From left, Temple University Professor of Law Nolan Bowie, William and Mary College Professor of Law Trotter Hardy and Carey Heckman of Stanford University, a Visiting Professor in Fall Term 1996, discuss "Internet Universal Access: Myth or Reality?" during the symposium on "Redefining Access to Information: Power, Politics, Law, and the New Technology" in April. Other symposium topics included "Using the Internet as a Political Tool," "Information and Communications Policy," "Cybertorts and Other Injuries Online" and "Commercial Use of the Internet: No More Spam?" The symposium was sponsored by the Michigan Telecommunications and Technology Law Review *in conjunction with The Park Foundation. Audio recordings of the symposium discussions are available to those with the appropriate computer hardware and software through the journal's web site: http://www.law.umich.edu/mttlr. The site also is accessible through the Law School's web site at http://www.law.umich.edu.*

BRIEFS

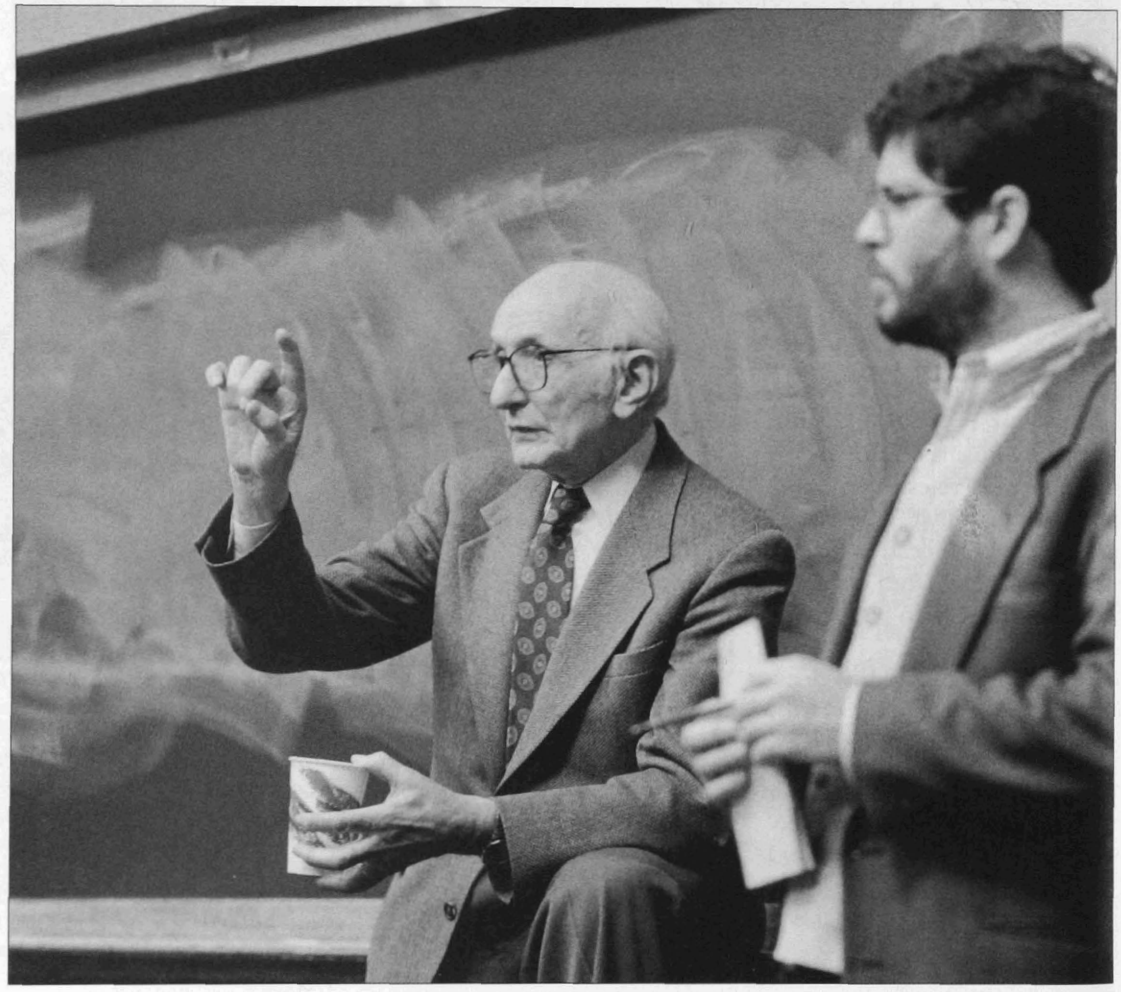


Help Needed —

William Julius Wilson, left, Malcolm Wiener Professor of Social Policy at the John F. Kennedy School of Government at Harvard University and author of the recently published book The Truly Disadvantaged, *outlines the devastating effects of poverty and unemployment as keynote speaker for the 19th annual Butch Carpenter Scholarship Banquet in April. Wilson, an opponent of current welfare reform, advocates public/private funding of a program similar to the depresson-era programs to provide jobs and training for impoverished ghetto dwellers. The annual banquet is named for Alden J. "Butch" Carpenter, a Law School student who tried to help economically depressed communities but died before graduation. "If Butch Carpenter were alive today, I'm sure that he would very strongly agree that as a nation there are things that we cannot and must not tolerate," Wilson said. The annual Butch Carpenter Scholarship winner was first-year law student Camille C. Logan; runnerup was first-year law student Gerard F. Brierre. The annual banquet and scholarships are sponsored by the Black Law Students Alliance.*

The Constitution and the World —

Louis Henken, left, Columbia University Law School Professor Emeritus, answers a listener's question as Michael A. Heller, Assistant Professor of Law and coordinator of the Inter-national Law Workshop, right, moderates. Although states soon may raise the issue of states' rights vis-a-vis international relations, "my own view is that foreign affairs will remain a federal monopoly," Henken said in his talk on "Constitutional Issues in Foreign Affairs." Henken, who also separately addressed the Law School faculty on "The War Powers Resolution: To Repeal, Amend or Let Lie," was one of seven speakers in the International Law Workshop during the Spring Term. Other speakers were: Eleonora Zielinska, of the Institute of Penal Law, Warsaw University School of Law; Nuala Mole, Director of the AIRE (Advice on Individual Rights in Europe) Center, London; Dinah L. Shelton, Professor of Law, Notre Dame Law School; Gennady M. Dannilenko, head of the Center for International Law, Russian Academy of Sciences, Institute of State and Law; and Visiting Professor Christopher McCrudden, Reader in Law, Oxford University and Fellow, Lincoln College, Oxford.



Former prosecutor, defense attorney join forces

"Meet Andrea Lyon's Favorite Prosecutor." Seems an impossible promise, doesn't it?

Anyone who knows Lyon, Assistant Clinical Professor of Law, defense attorney and winner of the National Legal Aid and Defender Association's Reginald Heber Smith Award as the country's best advocate for the poor, would think so. After all, prosecutors more often are fodder than friends to the feisty Lyon.

But that's what the flyer advertising their program promised: "Meet Andrea Lyon's Favorite Prosecutor." And there they were, Lyon and former Cook County prosecutor Henry Lazzaro, sitting in the Lawyers Club Lounge swapping stories of their competitive, respectful past. For example, they fondly recalled the capital case in which Lyon had inherited a sketchy defense from her predecessor and Lazzaro revealed exculpatory material she would have never otherwise known about in the midst of trial. The judge declared a mistrial. The defendant later was convicted on an unrelated armed robbery charge.

Lazzaro left the prosecutor's office in 1989 after 13 years and now practices with Lazzaro & Lazzaro in the Chicago suburb of Waukegan. Lyon, a veteran of the Cook County Public Defender Office and founder of the Illinois Capital Resource Center, faced off against Lazzaro enough to measure him as a formidable, always-ethical opponent.

He lived up to that measure in answering questions from students during the lunch-time program with Lyon in February that was presented by the Office of Public Service.

"What I think doesn't matter," he told a questioner who wondered where his personal feelings stop and his professionalism begins. "What those 12 people [of the jury] think is what matters."

"The prosecutor has an ethical duty to be sure that the defendant gets a fair trial," he said. "My personal opinion has to be subservient to the interest of my client."

Usually, he told another questioner, if you oppose capital punishment you cannot be a good prosecutor in a state that has the death penalty.

Lazzaro and Lyon also encouraged students who are interested in prosecution or defense work to seek out clerkships to get a taste of these parts of the profession. When hiring time comes, "people who had clerked had a great advantage," Lyon said. "You can start knocking on the door now and it gives them the chance to look at you."

Assistant Clinical Professor of Law Andrea Lyon's "favorite prosecutor," Henry Lazzaro, right, answers a student's question during a midday program that he and Lyon presented at the Law School in February. Lyon is seated beyond Lazzaro.

Whose wetland is it, *anyway*?

How much can a state regulate the use of land before it must pay the landowner for the property rights the owner has lost? This thorny question of "takings" stalks environmental regulations like a ghost — whether a ghost that comes to life or not is a question that judges are deciding more and more often.

For close to 90 minutes, two opposing attorneys in a Michigan case that has drawn national attention detailed their positions in a debate at the Law School sponsored by the Environmental Law Society. In one corner: James M. Olson, LL.M. '77, of Olson, Noonan, Ursa & Riussmuth, counsel to the Michigan Environmental Council; in the opposing corner, David E. Pierson, of Dickinson, Wright, Moon, Van Dusen & Freeman and counsel to the Michigan Association of Realtors.

Both lawyers have been involved as *amicus curiae* in *K&K Construction Inc. v. Department of Natural Resources*, which involves a developer who has been denied a permit from the state to build a restaurant in a 28-acre area that the state designates as a wetland. The wetland is part of a 55-acre parcel, which in turn adjoins nearly 29 acres in three other parcels in which the same owner has an interest.

At the time of their debate in March, the case was pending before the Michigan Supreme Court for leave to appeal. The state had lost in the Court of Claims at the trial level and in its appeal to the Court of Appeals.

"I think [the case] is motivated more by ideology than it is by legal precedent," Olson said. "It is undermining all levels of regulation in the state of Michigan. What has happened is that property has been raised to a higher level of protection than life."

Noting that the trial court "took a fact-based approach and looked to the uses that the owner could make of his property," Pierson said that "from a property owner's perspective this is precisely the decision that should be reached in this case."

The two lawyers agreed that the U.S. Supreme Court ruling in the 1992 *Lucas v. S.C. Coastal Council* case need not have been used by the Michigan Court of Appeals to decide *K&K Construction*. In *Lucas*, the Supreme Court held that a regulation depriving a parcel of all economically beneficial use constitutes a taking unless it abates a common law nuisance.

"Since wetlands regulations often require land to be kept in its natural state, they deprive the owner of all economically productive use of at least some part of the land," Assistant Professor of Law Michael Heller noted in his introduction to the debate. "To what extent might *Lucas* invalidate such regulations? When is part of a parcel designated as a wetland to be regarded as the whole for takings analysis? In other words, what is the denominator against which we measure whether a loss is a deprivation of 100 percent of land's value?"

"So far, the U.S. Supreme Court has left it up to lower state and federal courts to figure out this 'denominator' problem. And this is just one of several conundra raised by the *Lucas* decision," Heller concluded. "One might also puzzle about whether wetlands regulations prevent a common-law nuisance and whether a landowner who buys land when it is already regulated should be entitled to challenge the regulation as a deprivation of investment-backed expectations."

Through Feminist Eyes — *Christina L.B. Whitman, '74, Associate Dean for Academic Affairs, Professor of Law and Women's Studies and the first woman to join the University of Michigan Law School faculty, discusses the teaching of feminist and gender issues with feminist law students from the University of Berlin (Humboldt) in February during the students' three-week fact-finding tour of U.S. law schools. Feminist legal studies are rare in German law schools, as are female professors. The students also visited law schools at UCLA, Harvard, NYU, Columbia, Cardozo, Yale, Georgetown and American universities. Their visit to the University of Michigan Law School was coordinated by the Internatonal and Graduate Office, the* Journal of Gender and Law, *the* Michigan Journal of International Law, *and the Women Law Students Association.*

Winning Argument —
Below, Alex Giscard Romain, 3L, addresses the court while his co-counsel for the petitioner, Hardy Vieux, 3L, listens at left, as part of the winning argument in the 73rd Annual Henry M. Campbell Moot Court Competition in April. At right are Jennifer L. Ouding, 3L, and Tracy L. Gonos, 3L, counsel for the respondent in the competition. In the photo at left, the Hon. Diane P. Wood, Judge of the U.S. Court of Appeals for the Seventh Circuit, questions counsel during the competition. Other members of the three-judge panel are the Hon. David S. Tatel of the U.S. Court of Appeals for the D.C. Circuit and the Hon. Julian A. Cook, Jr. of the U.S. District Court for the Eastern District of Michigan.

Graduation is a family affair

A Law School graduation is very much about families, as anyone who has attended knows. You can watch the generations that surround the graduates — the parents and grandparents of graduates; the spouses and contemporary well-wishers; the young children, some graduates' children, some younger siblings, some of whom someday also may walk across the stage as Law School graduates.

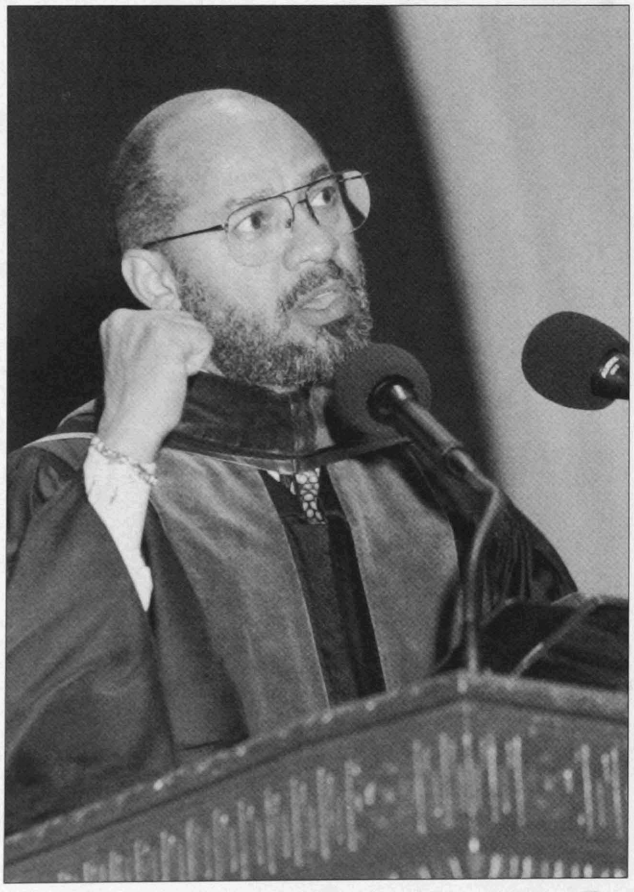
The Law School's May 10 commencement became a special reminder of the family ties that bind graduation as two fathers with special ties to the Law School waited on stage to congratulate their graduating sons. And later, as the line of graduates neared the end, the father of a graduate who had missed his own commencement walked across the stage — in full cap and gown — behind his daughter and her fiance.

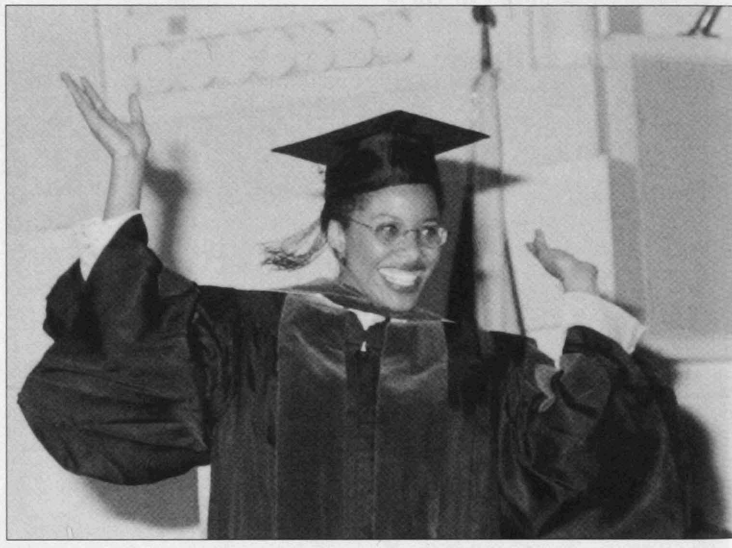
University of Michigan President Lee C. Bollinger, a former Dean of the Law School, sat quietly on stage until his son, Lee C. Bollinger, began moving across the stage to shake the hand of Dean Jeffrey Lehman, '81. President Bollinger stood and moved a few steps forward, and he and his son embraced in congratulations before the younger Bollinger resumed his way.

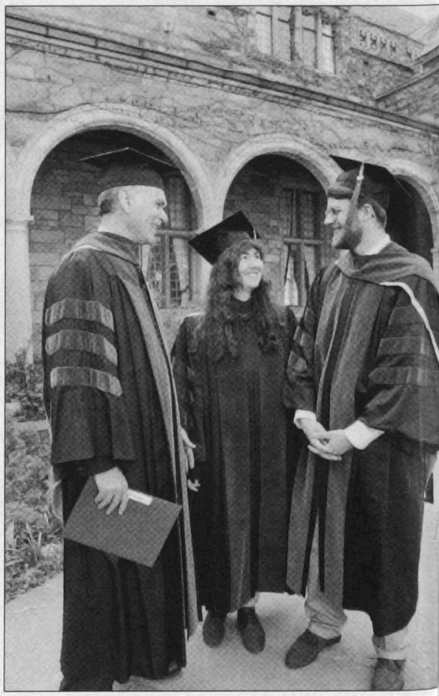
Elsewhere on the stage, Paul G. Kauper Professor of Law Douglas A. Kahn also sat quietly, awaiting the turn for his son, Jeffrey Hodges Kahn, to walk across the stage. When he did, Kahn the teacher rose to meet Kahn the former student for a handshake and hug of congratulation and to present to him the certificate that graduates receive.

And near the end of the line, engaged couple Steven Douglas Young and Gayle Kundol Zilber came across the stage together, followed by Zilber's father Norman, who had missed his own commencement in 1956 because he was studying for the bar examination.

The name of Norman Zilber, '56, who practices with Bancroft & McAlister in San







Clockwise, from left: Detroit Mayor Dennis Archer delivers the commencement address; graduate Lauren Francis reflects the exuberance that accompanies successful completion of three years of law school study; and Norman Zilber, '56, who finally made his own commencement walk across the stage 41 years after graduating, chats with his daughter, Gayle, and her fiance, Steven Young, after their graduation. Zilber followed the pair across the stage of Hill Auditorium as part of Law School commencement ceremonies in May.

Francisco, did not appear in the printed commencement program. He said afterward that the idea of taking part in his daughter's graduation had come from Dean Lehman as they talked during Zilber's visit to the Law School last fall for his 40th class reunion. Gayle Zilber's followup work put the pieces together for him.

As for graduating spouses-to-be Gayle Zilber and Steven Young, they said they met at orientation, became engaged last fall and have set Sept. 7 as their wedding date. Meanwhile, they're headed for work at the same firm, Fenwick and West, in Palo Alto.

In another surprise part of the program, two graduates, violist David Bray Hobbie and pianist Ilann Margalit Maazel, teamed up to perform the Vivace from Brahms' Sonata for Viola and Piano in f minor, op. 120, no. 1. As Lehman noted in introducing them, "the Class of 1997 is a class of many talents, and those talents extend well beyond the analysis of judicial opinions."

"Each of his years in law school, string musician David Hobbie offered his services for auction at the Student Funded Fellowships Auction, which led to three additional performance opportunities to add to his previous concerts in places such as Woods Hole, Massachusetts, and Silver Spring, Maryland," Lehman said. "And pianist Ilann Maazel's service to his fellow classmates today follows on the heels of previous performances at places such as the Kerrytown Concert House in Ann Arbor and Lincoln Center in New York."

In his commencement address, Detroit Mayor Dennis Archer congratulated the graduates on moving into the "world of tremendous prestige, privilege and responsibility" that follows graduation from the University of Michigan Law School, but he also offered a "reality check" to remind them that the test of a lawyer lies in "how we treat the person who has no position to hold" [and] "how we respond to the call of a person who has no power to command us. As lawyers, it is not how we treat the rich, but rather, what attitude we take toward the poor."

"There is so much you can do with a law degree, whether you try a case or not," he said. Much of what draws attention in our time comes from legal work, he said, citing cases like the Rodney King and O.J. Simpson trials and the tobacco industry and presidential immunity and assisted suicide issues.

And he offered some down-to-earth tips:

- Return telephone calls the day you receive them if possible.
- If you are away from the office for a day, call back.
- Be on time — and early, if possible.
- Get up from your chair and go to the waiting room and greet your client, new or old.
- Keep a clean desk so your client feels that the only thing you have to do is to service his or her needs.
- Be polite and talk in plain language.
- Put your fee arrangement in writing — and charge a reasonable fee.
- Have a diary system so that your cases cross your desk at least every 30 days, if not more frequently.
- Keep a visible list of time deadlines.
- Get malpractice insurance.

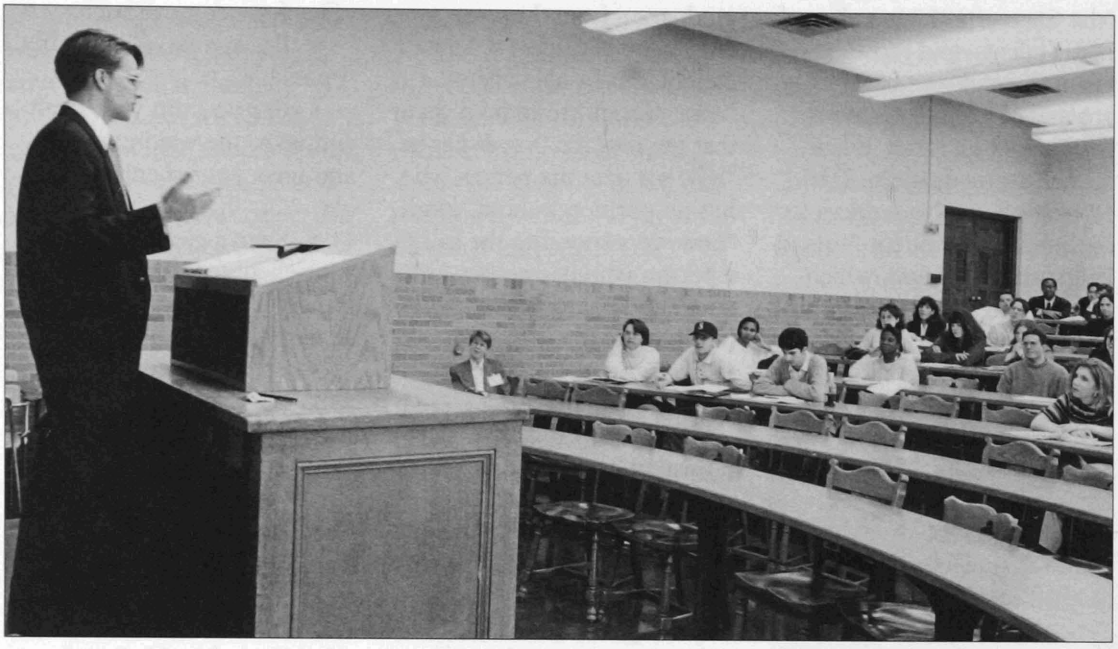
"You all have been given the best education possible," Archer said. "You are some of the brightest stars in America. We need you."

Graduate Kathleen Allen, who served as Law School Student Senate President and twice won the Marie Hartwig Award as the University of Michigan's best intramural athlete, advised that "we must stick our neck out, not only in service to others, but in redeeming a profession held in contempt by too many Americans. We can do so by living a life of integrity, in our jobs and in our daily lives. We can also do so by giving back to society through pro bono or public interest work.

"We are fortunate that this world is not a perfect place. If it were, we would not be needed. But we are needed, and we must give back to society all that we can with

Continued on page 18

Graduating law students Jessica Lind, D.J. Sardella and Christopher Taylor complete address forms during Senior Celebration in April so that the Law School can remain in contact with them after their graduation. Senior Celebration participants also receive lists of Law School alumni who are living and working in the areas the students plan to move to after graduation.



Preview —
Assistant Professor Steven P. Croley, left, lectures in a demonstration class as part of a Preview Weekend for future Law School students. Participants in the Law School's two Preview Weekends, hosted by the Admissions Office in March and in April, visited classrooms, met with faculty, toured the Law School and acquainted themselves with Law School life. The weekends also included sessions on careers and public interest work. A total of more than 150 students participated in the two weekends. The weekends give students who have been admitted but not yet committed to attending a chance to explore and learn of the Law School first-hand.

Continued from page 17

the power that this degree confers upon us in order to leave this world in a little better position than when we arrived in it."

In his comments to graduates, Dean Lehman noted that "you have come to see that good and admirable people may hold different and inconsistent perspectives on a complex problem. But you must not be content with that insight. You must take it and use it to make choices, to develop nuanced ideals and reflective commitments of your own.

"You must use it to decide what you truly believe, why you believe it, where your doubts lie, and how you feel conflicted. When you know yourself to be more than just a sophisticated spokesperson for the ideals of others, then good lawyers will you be."

Bates winners work in three regions of the world

The Scholarships and Awards Committee has awarded five Clara Belfield-Henry Bates Law Student Overseas Fellowships for study and/or work abroad. The fellowship winners will work in Africa, Europe and Palestine. The winners are:

- **Pascale Charlot**, '97, to work at a labor law internship this summer in Namibia in an assignment developed in conjunction with the African Business Development Corporation.
- **David R. Karasik**, '97, to spend this summer at Birzeit University Law Center helping students prepare research papers and draw statutes on banking law in Palestine.
- **Timothy R. MacDonald**, '97, for a six-month internship that began last March with South Africa's Legal Resources Council.
- **Peter J. Schwartz**, '97, to study restitution laws in the Czech Republic for four months beginning this October.
- **Pamela Shifman**, '96, for an October 1996-May 1997 internship with the Reproductive Rights Alliance in South Africa.

The Clara Belfield-Henry Bates Overseas Student Travel Fellowships, endowed by Helen Bates Van Thyne, are available competitively for Law School graduates and students with two or more years of law study. Applicants may seek grants to pursue legal studies abroad or independently designed research projects or to accept professional internships in foreign countries.

"The Clara Belfield-Henry Bates Overseas Student Travel Fellowships fund is an absolutely wonderful resource that makes it possible for our students with international and comparative interests to carry out projects, such as legal internships or research studies, in other countries," says Virginia Gordan, Assistant Dean for International Programs.

"We have many students who are eager for exposure to legal institutions overseas and the Bates Fund makes this exciting opportunity financially feasible for those who are selected to receive awards."

Jessup team wins regional competition

PHOTO COURTESY JESSUP INTERNATIONAL MOOT COURT TEAM

Jessup International Moot Court Team members, from left, include: Erinn Weeks, Paul Bavier, coach Bryan Walters, Miriam Moore and Jeff Silver.

As always, the case presented for the Jessup International Moot Court competitions was a thorny one on the cutting edge of world issues. This time it involved thousands of children who had fled a volcanic eruption in one country for safety in another country; then, after the volcanic danger had passed, many found themselves separated from their parents and living in the host country, sometimes with families that wanted to adopt them.

But their home country passed a law outlawing such adoptions and ordering the children to be returned. Complicate this with issues like a cigarette trade cessation, and you have the makings for the case that occupied four Law School students, their coach and their faculty advisor for the Fall Term and part of the Spring Term. The work paid off when the Law School team won the regional competition at the University of Toledo Law School in February.

By winning a coin toss, the Law School team got to choose whether to argue the applicant's or respondent's case. Team members chose the applicant's rather than the respondent's side, although two team members had prepared for each position.

"I had a gut feeling that it was better to come out and argue forcefully for the return of the children. That put us on the offensive," said team coach Bryan Walters, 2L, a member of the Law School team that had won the previous year's Jessup regionals.

"When you're the applicant you set the issues, you set the tone. The respondents respond to you," added team member Erinn Weeks, 2L, who paired with first-year law student Paul Bavier to argue the position.

Team members earned their spots through competitive brief writing and oral arguments early last fall. The rest of the Fall Term went into research and brief writing, followed by preparation of their oral argument. "It was a major endeavor," said Walters, who complimented Professor of Law José Alvarez for his help in advising the team.

Team member Jeff Silver, 1L, won third place for speaking, and Bavier captured a fourth place award. The team's brief won a third place award.

Silver, who had done international tax work for 10 years before entering the Law School, said he was drawn to the competition because it is open to first-year students. He said he does not plan to practice internatonal law — but he will be back with the Jessups next year as coach.

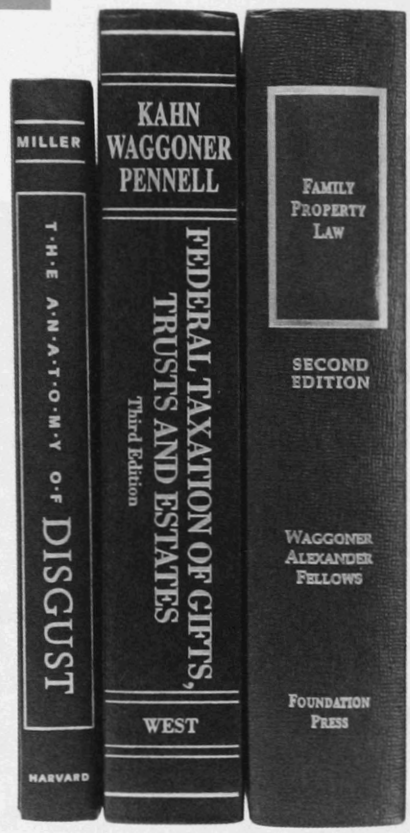
The annual competition is sponsored by the International Law Students Association and co-sponsored by the American Society of International Law (ASIL) and the European Law Students Association. Regional winners competed in the international finals in April in conjunction with ASIL's annual meeting at Washington, D.C.

In other competition involving Law School students, Jessup team alternate Randi Vickers, 1L, and Jill Basinger, 2L, won first place in the annual Law School Client Counseling Competition in February.

"Contracts" was the subject for this year's competition, in which law students, acting as attorneys, interviewed a person playing the role of a client and then explained how they would proceed in the situation.

Patrick Curley, 3L, and Saretta Coomes, 3L, were runnersup. Honorable mentions went to the team of Freeman Farrow, 3L, and Nicole Vercruysse, 2L, and the team of Benjamin Hodgson, 3L, and Ellen Bass, 3L.

David Baum, '89, Special Assistant to Associate Dean for Student Affairs Susan M. Eklund, '73, organized the competition and advised the winning team in its subsequent participation in the regional competition, which took place in London, Ontario, Canada.



Miller dissects disgust

Discussing disgust, Professor of Law William Ian Miller readily admits, raises "a problem of tone that I have struggled with in this book: how to maintain decorum without seeming prissy." Undeterred, Miller has written *The Anatomy of Disgust*, published this year by Harvard University Press.

Miller's dissection of disgust touches many bases, producing chapters with titles like "Darwin's Disgust," "The Senses," "Warriors, Saints, and Delicacy," "Mutual Contempt and Democracy" and "Orwell's Sense of Smell." In some ways his *Anatomy of Disgust* extends his earlier *Humiliation: And Other Essays on Honor, Social Discomfort, and Violence*, published by Cornell University Press in 1993.

"Both this book and *Humiliation* run counter to some of the dominant strands in Western social thought over the past three centuries, which try to explain most social action by reference to self-interest, greed, or a psychologically thin notion of the quest for power," he writes in the Preface to *Anatomy*.

"My own sensibility drives me to a more anxiety-ridden account, privileging defensive and reactive passions, such as humiliation and disgust, at the expense of more offensive and assertive ones. Nevertheless, these lowly passions help preserve our dignity, in fact enable the very possibility of dignity, often at great cost to our more acquisitive and purely egoistic designs."

Says Harvard University Press: "Disgust and contempt, Miller argues, play crucial political roles in creating and maintaining social hierarchy. Democracy depends less on respect for persons than on an equal distribution of contempt. Disgust, however, signals dangerous division. The high's belief that the low actually smell bad, or are sources of pollution, seriously threatens democracy."

Reimann examines American law, earns honors for earlier book

Professor of Law Mathias Reimann has written a new book on American law for overseas readers and has won recognition in Europe for an earlier book, *Historical School and Common Law*, published in 1993.

Reimann's most recent book, *Einführung in das US-amerikanische Privatrecth (An Introduction to U.S.-American Private Law)*, was published this year in German by C.H. Beck of Munich.

Last year, a German panel included Reimann's *Historical School and Common Law* in its annual list of the most important contributions to legal literature on topics extending beyond the discipline of law. The jury named Reimann's book among its "outstanding five," according to the German daily newspaper *Frankfurther Allgemeine Zeitung*.

Faculty members author two new casebooks

Law School faculty members Lawrence Waggoner, '63, and Douglas Kahn have written new editions of two casebooks, one on family property law and the other on federal taxation of gifts.

Waggoner, Lewis M. Simes Professor of Law, teamed with Gregory S. Alexander of Cornell Law School and Mary Louise Fellows of the University of Minnesota Law School to write the second edition of *Family Property Law: Cases and Materials on Wills, Trusts, and Future Interests*, published by The Foundation Press in April.

Waggoner and Kahn, Paul G. Kauper Professor of Law, joined with Jeffrey N. Pennell, Richard H. Clark Professor of Law at Emory University, to write *Federal Taxation of Gifts, Trusts, and Estates*, Third Edition, published by West Publishing Company earlier this year. This is the first time that Pennell has joined Kahn and Waggoner on the book.

Family Property Law "continues the tradition of being the first to identify new themes and report on new developments," according to West Publishing. Among its new features:

- A streamlined introductory chapter and coverage of the 1997 U.S. Supreme Court's *Youpee* decision.
- More demographic information to help in analyzing legal responses to change.
- A separate chapter on the changing American family, with new material on Oregon's intestacy statute for domestic partners, reproductive

technologies and legal developments concerning same-sex couples with children.

• A new chapter on elder law.

• Internet references.

• A teacher's manual that, on request, is available on computer disk.

Federal Taxation of Gifts is divided into three parts: testamentary transfers, income taxation of estates and trusts, and transfers made during life.

"Within the above framework, we have tried to integrate the material functionally, so that the income, estate, gift, and generation-skipping transfer tax consequences of a particular transaction are considered together," the authors say in the Preface. "This not only enables us to look at the materials in the way a practicing lawyer must approach planning problems, but it also facilitates a more sophisticated probe of the underlying policies, or lack thereof, of our tax system as a whole."

The new edition reflects developments through June 1996.

ACTIVITIES

Professor of Law **José Alvarez** has been elected to the Board of Editors of the *American Journal of International Law*. During Spring break in March he spoke on: "International Organizations and Compliance with International Law" as a participant in a colloquium on the occasion of the opening of the Louis B. Sohn Library at the University of Georgia Law School's Dean Rusk Center; "Constitutional Interpretation in International Organizations" at Princeton University; and "The New Nuremberg?" in a seminar at Harvard Law School and at Tufts University's Fletcher School. He delivered an earlier version of the Nuremberg talk as part of a panel on "Peaceful Resolution of Conflict in the Global Village" at the University of Michigan's Martin Luther King Symposium in January.

David L. Chambers, Wade H. McCree, Jr., Collegiate Professor of Law, has joined the nine-member executive committee of the Association of American Law Schools. His three-year term runs until January 2000.

Phoebe Ellsworth, Kirkland and Ellis Professor of Law and a Professor of Psychology, was an invited lecturer at Georgetown University in April to speak on the subject of juries.

In May, Professor of Law **Merritt B. Fox** presented a paper on "The Impact of Disclosure on Corporate Governance" at a conference at the Max Planck Institute in Hamburg, Germany. In April he spoke on U.S. insider trading law at the Catholic University in Santiago, Chile, and gave a paper, "The Political Economy of Statutory Reach: U.S. Disclosure Rules in a Globalizing Market for Securities," at a conference on the Regulation of International Activity at Georgetown University Law Center. In March, he gave a paper, "Reconsidering Liability with Enhanced Periodic Securities Disclosure in a Company Registration World," at a conference on "Markets and Information Gathering in an Electronic Age" at Washington University Law School in St. Louis. Fox is also the 1977 chairman of the American Association of Law Schools' Business Associations Section.

Professor of Law **Richard Friedman** delivered the first annual Lothar Tresp Lecture at the University of Georgia in April. He spoke on "Race, Religion, Sex, Drugs, Rock 'n' Roll, Jury Selection, and the O.J. Simpson Case."

Yale Kamisar, Clarence Darrow Distinguished University Professor of Law, has been named a member of the American Academy of Arts and Sciences. Founded in 1780, the Academy includes some 3500 Fellows and 600 Foreign Honorary Members.

Henry M. Butzel Professor of Law **Thomas E. Kauper**, '60, in April addressed the Spring Meeting of the Antitrust Section of the American Bar Association and in March spoke at the Conference Board Antitrust Symposium in New York City. Last fall he presented the paper "The Problem of Market Definition under EC Competition Law" at the Fordham Symposium on International Antitrust Policy, was principal speaker for the California Antitrust Law Institute at Los Angeles and was chairman and principal lecturer for the Antitrust Short Course at the Southwestern Legal Foundation in Dallas, Texas.

Richard O. Lempert, '68, Francis A. Allen Collegiate Professor of Law and Chairman of the University of Michigan's Sociology Department, recently presided over and participated in a panel discussion in honor of Stanton Wheeler at the Sociology of Law Conference at Yale Law School. During the winter he spoke on the *U.S. News* law school rankings at Indiana University at Indianapolis and California Western law schools, on DNA evidence at California Western, on the subject "Does Law Matter?" at the University of California at San Diego Law School, and on "Statistical Evidence in Title VII Cases" at the University of California at San Diego Law School. He also served with the Law School Admission Council's Committee on Test Development and Research.

Andrea Lyon, Clinical Assistant Professor of Law, in February addressed the National Association of Criminal Defense Attorneys

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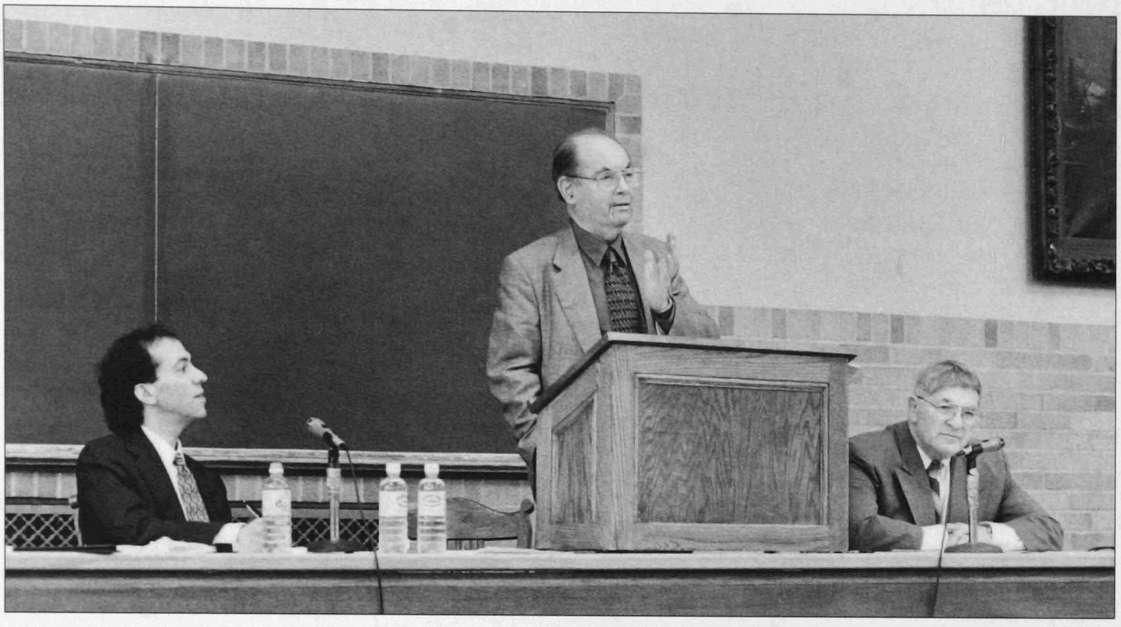

Yale Kamisar, Clarence Darrow Distinguished University Professor of Law, gestures during a debate with David Orentlichter, left, of Indiana University Law School on the question of end-of-life issues. Kamisar is an opponent of physician-assisted suicide. At right is Paul G. Kauper Professor of Law Douglas Kahn, who moderated the debate.

Debate topics:

physician-assisted suicide and Miranda

Twice during Spring Term, Clarence Darrow Distinguished University Professor of Law Yale Kamisar unlimbered his debater's skills on issues that loom large to him and to the country at large: physician-assisted suicide and the Miranda Rule that requires police officers to notify suspects in custody of their rights to an attorney and to remain silent and refuse to answer questions.

In the near future Kamisar will be discussing the assisted suicide issue again in venues where his audiences will include some of the top attorneys and law teachers in the United States:

- *At the American Bar Association's Annual Meeting at San Francisco in August, Kamisar will be a member of a panel moderated by John H. Pickering, '40, that will wrestle with the issue as part of the President's portion of the agenda.*
- *In January 1998, Kamisar will discuss the issue as part of the program for the Annual Meeting of the American Association of Law Schools, also at San Francisco.*

The U.S. Supreme Court heard cases on assisted suicide this spring from New York and Washington State. At deadline time the court had not yet issued its decision.

Constitutional law is "indeterminant" on the question of physician-assisted suicide, argues David Orentlichter, a physician and lawyer who is a faculty member of the Indiana University School of Law-Indianapolis and co-director of IU's Center for Law and Health. Courts allow competent patients or their agents to seek and receive removal of life-sustaining equipment, he points out. And there is no real distinction between that action and assisted suicide.

The right to terminate life support is "virtually unlimited,"agrees Clarence Darrow Distinguished University Professor of Law Yale Kamisar, but now it is bumping up against the opposing principle of anti-suicide. "I argue that the line is not perfectly clear or perfectly logical, but what line is?," Kamisar says. "If you legalize it [assisted suicide] for the terminally ill, it'll never stay there. It will keep spreading. . . . We need the line we have, not because it is a perfect line, but because there is no better one."

Kamisar and Orentlichter debated the issue in March in a forum sponsored by the Law School's Health Law Society.

As courts begin to recognize the legality of physician-assisted suicide for terminally ill people — as federal courts have done in the 2nd and 9th Circuits — "what we are seeing is a continuation of the principle of right to die law," Orentlichter said. Making physician-assisted suicide legally available to terminally ill people provides the "bright line" that is necessary for the law to be applied, he said. The line is not perfect, but such a line must be drawn for the law to apply.

"The moral sense is that when you are hopelessly ill you have the right to die," according to Orentlichter. "But we need a proxy — terminal illness. That's how we separate the morally justifiable from the morally unjustifiable. Once we allow non-terminally ill people to commit suicide, then we open the floodgates.

"We're searching for a proxy that will set out what is morally justified and morally unjustified. Whether it will hold or not, who knows?"

Kamisar said that media attention to physician-assisted suicide too often has focused on individual "heart-wrenching" stories and neglected the wider social implications of legalizing assisted suicide. He also said he is concerned that people who are old or poor might choose assisted suicide for the sake of their family or society.

"I'm really concerned about vulnerable people," he said. "I don't want a world where you're thought of as cowardly if you want to continue living."

In a debate in April at the Law School, Kamisar turned his attention to "*Miranda* and Protections Against Self-Incrimination: A Path or Roadblock to Justice?" His opponent was Professor of Law Paul G. Cassell of Utah College of Law. The student chapter of the Federalist Society for Law & Public Policy Studies sponsored their debate.

Cassell argued that Ernesto Miranda's brief never mentioned the 5th Amendment's protection against self-incrimination and that the Supreme Court's decision was "plain and simple judicial legislation." Adoption of the "Miranda Rule" of warning suspects of their rights has coincided with a decline in confession rates, he said.

Kamisar countered that the famous *amicus* brief filed in *Miranda* by Professors Anthony Amsterdam and Paul Mishkin had highlighted the self-incrimination clause and that Justice Byron White, who often dissented from the Warren Court's criminal procedure cases, had emphasized earlier that the Fifth Amendment, not the Sixth Amendment right to counsel, should govern the subject because the Fifth Amendment addresses itself to the essence of incriminating statements.

Fifth Amendment rights to protect yourself against self-incrimination are widely accepted in congressional hearings and elsewhere, Kamisar said. Why should they not be accepted in the police station?

Too often, observed Kamisar, the police had led suspects to believe that they must answer questions from them. "It was this misperception that *Miranda* was designed to remedy. The astounding thing is not *Miranda*, but how we kept *Miranda* out of the police station for so many years."

Cassell and Kamisar agreed that videotaping of interrogations would offer better protection for both suspects in custody and for police who are questioning them. As Kamisar put it: "Some combination of *Miranda* and videotaping would probably provide more protection than *Miranda*."

Physician-assisted suicide: a postmortem

Decisions in the two cases of physician-assisted suicide that came before the U.S. Supreme Court earlier this year will in turn create a host of questions that still must be answered. Or, as Professor of Law Carl E. Schneider, '79, has put it: "Whatever the Court decides, important questions of legal and medical policy will remain."

Schneider has worked with leaders of the Law School, the University of Michigan Medical School and the U-M Program in Society and Medicine to bring together some of the University's and the nation's top thinkers in this field to grapple with the questions that still remain after the Court's decision. The conference will be Nov. 14-15 at the University of Michigan and papers from it will be gathered into a book to be published by the University of Michigan Press.

Among the conference participants from the Law School will be law professors Peter Hammer, Yale Kamisar, Richard Pildes, Donald H. Regan and Schneider. Also taking part will be Sonia Suter, a Visiting Professor in 1996-97 and now a Fellow at Georgetown University Law Center, and Christopher McCrudden, Visiting Professor in Winter Term 1997 and Reader in Law, Oxford University and Fellow, Lincoln College, Oxford.

Other participants will be from the medical and public health areas of the University of Michigan and from universities and centers elsewhere in the United States. Participants will consider at least these issues, according to Schneider:

- What does the Supreme Court decision say?
- Was the decision correct as a matter of constitutional law?
- After this decision, how should we think about the ethical status of physician-assisted suicide and more generally of euthanasia?
- After this decision, what should medical practice in this area be?
- Which legal and political institutions have the competence and ought to have the authority to decide questions about euthanasia?
- How can this decision be understood in its larger historical and international context?

ACTIVITIES

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on "Humanizing the Inhumane Client" at New Orleans and did the Demonstration Opening Statement at the Penalty Phase for the annual death penalty conference of the California Attorneys for Criminal Justice in Monterey. Last fall she spoke on "New Opportunities for Defense Attorneys" at the 7th Belle R. and Joseph H. Brawn Memorial Distinguished Lecture Series at the John Marshall Law School.

Assistant Professor of Law **Deborah C. Malamud** in March presented her paper "Engineering the Middle Classes: The Origins and Early Development of the 'White-Collar Exemptions' to the Fair Labor Standards Act" as the Howard H. Rolapp Distinguished Visiting Scholar at the University of Utah Law School; she also presented the paper last November at a Harvard Law School faculty workshop. In February she presented her paper "Affirmative Action, Diversity, and the Black Middle Class" at the program "Affirmative Action: Diversity of Opinions" at Colorado Law School and in January spoke on "Socio-Economic Factors: The Next Wave in Educational Affirmative Action?" at the American Association of Law Schools Annual Meeting in Washington, DC.

Clinical Professor of Law **Paul D. Reingold**, Director of the Law School's Clinical Office, and Clinical Assistant Professor of Law **Nicholas J. Rine** have been named to the University of Michigan's Department of Public Safety Oversight Committee. The six-member committee oversees the University's police force and investigates complaints. In addition, Rine helped prepare the University of Michigan's mock trial teams of undergraduates for regional competition in Toledo in February; the U-M teams placed third and fourth and qualified for national competition.

James E. and Sarah A. Degan Professor of Law **Theodore J. St. Antoine**, '54, last May moderated a panel at the 50th Anniversary Meeting of the National Academy of Arbitrators at Chicago on "A First Look at the First Draft of *The Common Law of the Workplace*." St. Antoine is serving as Project Chairman — a role that corresponds with Editor-in-Chief — for *The Common Law of the Workplace*, which will be a book by 16 Academy members that sums up top labor arbitrators' rulings on the principal issues in union-management contract disputes in the United States over the last 50 years.

Eric Stein, '42, Hessel E. Yntema Professor of Law Emeritus, in April organized and moderated a panel on International Law in Domestic Legal Order at the American Society of International Law annual meeting in Washington, DC. (Jochem A. Frowein, M.C.L. '58, Director of the Max Planck Institute for Foreign and International Public Law, Heidelberg, was a panel member.) Last September Stein addressed a panel on "Constitution Making and the Rule of Law" at American University. Stein's book, *Czecho-Slovakia, Ethnic Conflict, Constitutional Fissure, Negotiated Breakup*, is scheduled for publication this summer.

Lewis M. Simes Professor of Law **Lawrence W. Waggoner**, '63, was a visiting professor at Loyola Law School in Los Angeles during the Spring Term.

James Boyd White, L. Hart Wright Collegiate Professor of Law and Professor of English Language and Literature, delivered the keynote speech, "Talking About Religion in the Language of the Law," in April for a conference in Milwaukee sponsored by Marquette University School of Law on "Religion and the Judicial Process." In April he also spoke on "Justice and Community" at the annual meeting of the Simone Weil Society in Wooster, Ohio, and last fall he lectured at Carnegie Mellon University on "Authority and Persuasion."

White, Ponoroff win teaching awards

Robert A. Sullivan Professor of Law James J. White, '61, and Visiting Professor Lawrence Ponoroff have received the 1997 L. Hart Wright Award for teaching excellence. Law students select the winners.

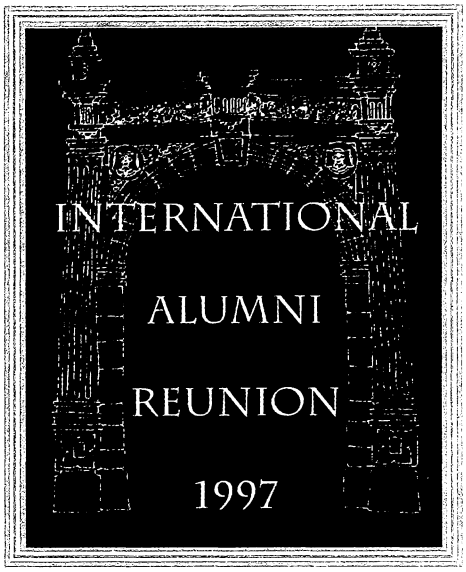
White has taught at the Law School since 1964. He has written widely on commercial law and has published two treatises, *Bankruptcy* (with Epstein and Nickles, 1992) and *Handbook of the Law Under the Uniform Commercial Code* (with Summers, 1988, 3rd ed.).

He also is the author of three casebooks: *Bankruptcy* (with Nimmer, 1992, 2nd ed.); *Banking Law Teaching Materials* (with Symons, 1990, 3rd ed.); and *Commercial Law* (with Speidel and Summers, 1987, 4th ed.). In addition, White is the reporter for the Revision of Article 5 of the Uniform Commercial Code.

Ponoroff, a Professor of Law at Tulane University Law School in New Orleans since 1995, previously taught for 10 years at Toledo College of Law. He also has been a partner at the Denver firm of Holme Roberts & Owen, where he specialized in commercial litigation and general corporate matters.

At the Law School, he taught Commercial Transactions.

Reunion participants can help shape international legal education



This fall's gathering of graduates from around the world at the Law School is reason enough for celebration, and there will be plenty of celebraton. But the wealth of international expertise and experience that alumni have also will be tapped to help legal education embrace the increasingly international legal profession that future Law School graduates will join.

"We plan to devote Friday afternoon to a discussion of our international curriculum and programs," Dean Jeffrey S. Lehman, '81, and Virginia B. Gordan, Assistant Dean for International Programs, say of the Friday, Oct. 17, plenary session that is part of the International Reunion Oct. 16-19. "We appreciate the opportunity that the Reunion offers to receive advice from our international alumni and the Committee of Visitors about how to best prepare our students for the practice of law in an economically interdependent world."

International Alumni Reunion events offer something for every frame of mind from the playful to the political. Emilio J. Cardenas, M.C.L. '66, Argentina's former ambassador to the United Nations and past president of the Security Council, will deliver the keynote address on "The Future Role of the United Nations Security Council." Assistant Professor of Law Michael Heller, who came to the Law School from the World Bank, will speak on "Property in the Transition from Marx to Markets."

Other faculty members will participate in panel discussion/workshops on a variety of topics. The sessions are designed to generate discussion among panelists and alumni and students in the audience. Among the topics and participants will be:

- "War Crimes at the National and International Level," with Professor of Law José Alvarez and Professor of Law Catharine MacKinnon.
- "The WTO and Its Dispute Procedures: Appraising the First Three Years," with Hessel E. Yntema Professor of Law John H. Jackson.
- "The Law and Ethics of Death and Dying," with Pieter van Dijk, Judge at the European Court of Human Rights and a former research scholar at the Law School; Clarence Darrow Distinguished University Professor of Law Yale Kamisar; and John Pickering, '40, of Wilmer, Cutler & Pickering in Washington, D.C., and an honorary degree recipient from the University of Michigan last December.
- "Reforming the Constitution for Europe," with Hessel N. Yntema Professor of Law Emeritus Eric Stein.
- "Culture Differences in Negotiation," with Robert A. Sullivan Professor of Law James J. White.
- "International Arbitration," with Professor Emeritus of Law Whitmore Gray.
- "The Globalization of Antitrust," with Henry M. Butzel Professor of Law Thomas E. Kauper, '60.

Each panel also will include graduates from around the world to bring first-hand international perspectives to the discussion.

In other Reunion activities, Law Library Director Margaret A. Leary will give a tour of the library and present a program on the change in legal research from being print-based to using microfilm and computers. Leary also will discuss the legal and policy issues posed by the transformation.

There also will be tours of the Law School, the University of Michigan campus and the University of Michigan Museum of Art.

Reunion participants will be able to take excursions to the Henry Ford Museum and Greenfield Village and the cider mill at nearby Dexter. A social gathering is planned at an Ann Arbor microbrewery/restaurant.

Saturday evening's formal Reunion banquet will be held in the recently restored Michigan Union Ballroom. Following the banquet will be an evening of American jazz.

And of course there will be football: Michigan vs. Iowa.

Registration information has been sent to overseas alumni and U.S.-based alumni who have expressed interest in attending the International Alumni Reunion. For further information, contact:

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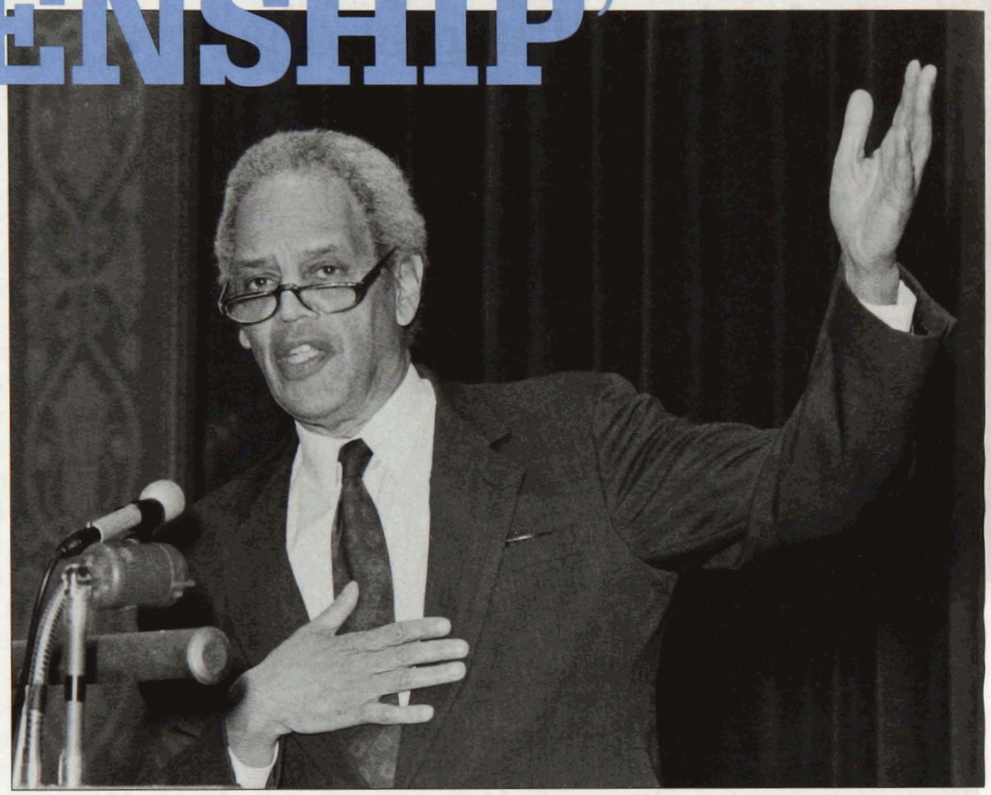
Roger Wilkins, '56:

'I want to talk about CITIZENSHIP'



Roger Wilkins, '56, delivers the seventh annual Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom at Rackham Auditorium in March.

After incoming freshman Roger Wilkins moved into his dormitory room, he and his family were directed for lunch to the Michigan Union basement, where they joined the line of people waiting to get into the cafeteria. "Someone came over and whispered something to my stepfather, and he said, 'Oh, okay.' Then he turned to us and said, 'We have to go.' There was another black freshman in the line near us, and he started to follow us out also. But my stepfather stopped him, and said, 'No, no, son. You're okay. It's women they won't serve here.'"

— FROM ROGER WOOD WILKINS, '56, SEVENTH ANNUAL DAVIS, MARKERT, NICKERSON LECTURE ON ACADEMIC AND INTELLECTUAL FREEDOM

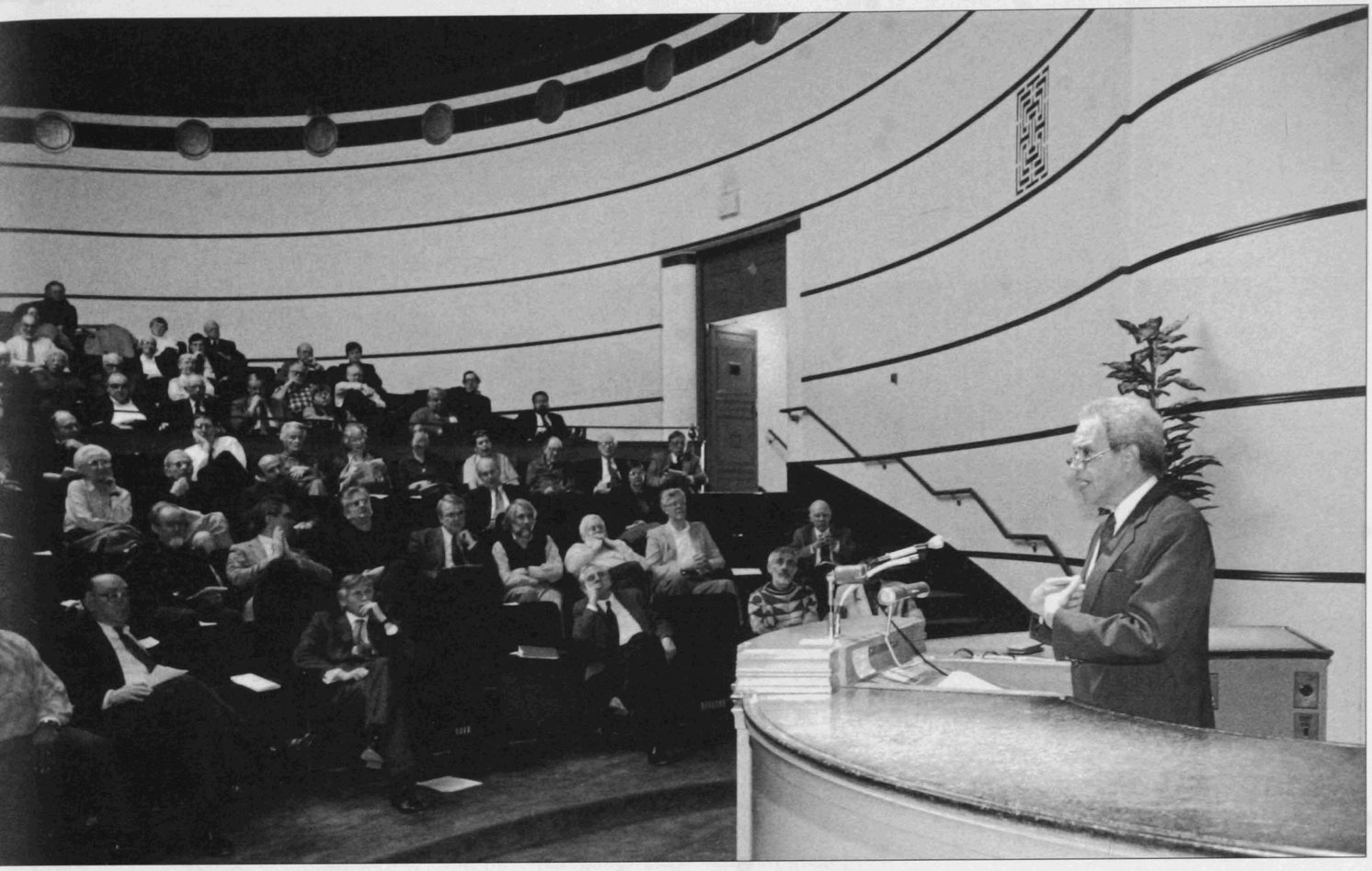
Roger Wilkins, '56, a member of the Law School's Committee of Visitors, Pulitzer Prize-winner, Assistant Attorney General to President Lyndon Johnson, currently Professor of History and American Culture at George Mason University, has wrestled for most of his life with who and what his country allows him to be. As he put it in March when he delivered the University of Michigan Senate's seventh annual Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom:

"I have spent the last 48 years trying to develop a suitable system in my soul for being a black person in a country that wants to be white. And I knew I had succeeded about one and one-half years ago when I defended a black man at George Mason University with whom I vehemently disagreed [Armstrong Williams, a friend of U.S. Supreme Court Justice Clarence Thomas].

"A black student said, 'He offends us as Africans in America.'

"I said, 'Son, I don't understand. As an American who has ties to Africa, who knows many of my ancestors are from Africa, I'm an American. And I am a concerned and active citizen of this country.'"

"I want to talk about citizenship," Wilkins said as he began the annual lecture that recalls the dismissal in the 1950s of three U-M faculty members after they refused to cooperate with congressional investigation into communism in the United States. Wilkins, who also received his A.B. from the U-M in 1953, chaired the student government's Human Relations committee. The committee developed a student government resolution asking the Board of Regents to resist investigators' pressure and honor standards of academic freedom.



"It was my first speech as a member of the student legislature, in the fall of 1952," he recalled. "I was the only black student legislator of 50 or 52 [student representatives], and I was nervous but I believed in what I was doing and we succeeded."

The Regents did not heed the students' petition, however, and three professors — Chandler Davis, Clement Markert and Mark Nickerson — were suspended. The Senate Assembly established the annual lecture in their name in 1990. Since then the Law School has been closely associated with the lectures:

■ Last Fall the Hon. Avern Cohn, '49, U.S. District Judge for the Southeastern District of Michigan, delivered the sixth annual lecture (see *Law Quadrangle Notes*, Spring 1997, p. 51).

■ Then-Dean and now University President Lee C. Bollinger delivered the second annual lecture in 1992 and serves on the Advisory Board for the lectures. ("The Open-Minded Soldier and the University," an adaptation of Bollinger's 1992 speech, appears in *Law Quadrangle Notes*, Summer 1994, pp.54-60.)

■ Former Dean Theodore J. St. Antoine, '54, James E. and Sarah A. Degan Professor of Law, is a member of the lecture series' Board of Directors.

Bollinger introduced Wilkins, noting that the two had served on several panels together. "When I see him on television, I stay on that channel because I want to hear what Roger has to say," Bollinger said.

What Wilkins had to impart was a sobering vision of the future delivered in his usual neighbor-talking-across-the-back-fence style. His recollections of life as a black student at the University in the 1950s were dark — and his view for the future is of a minefield of change that he fears many Americans are ill-prepared for.

"In all of the seven years I studied here I do not believe that I ever encountered one black adult who worked for the University," he said. "I truly never encountered a black instructor, a black assistant professor, associate professor, full professor. I'm not even sure I ever encountered a black janitor.

"I was never assigned a book, essay or poem by a person other than white."

As a result, he said, he was taught:

"Who am I?"

"A semi-person."

"Where do I fit?"

"At the margins."

"What is my role in America?"

"As an eternal supplicant."

As for the future, "It is my view that our current condition is screaming at us that we are either in or about to enter very dangerous times." By 2050 the American population will swell to 395 million, of whom only about 53 percent will be white, he predicted. "There will be more poor people riding the planet than we have people now," he said.

"The identity of our nation is changing. . . . And we cannot for very much longer think of ourselves as a white country or a new and improved version of Europe, because if it is not yet it soon will be the world's first global nation."

"Somehow," he said, "we have to figure out how to negotiate the next 50 years by teaching America that Americans come in all sorts of colors and we can't be afraid of each other or we'll tear ourselves and our country apart.

"Somehow we have to teach our kids that they will be safer by understanding each other rather than trying to subordinate each other."

Barbara Rom, '72, speaks during a discussion of "Games Our Mothers Never Taught Us: Strategies for Developing a Professional Identity and Clients," during the Women's Professional Development Workshop at the Law School in February. Other panelists, from left, are: Lore A. Rogers, '83; Denise Lewis, '83; Patricia Curtner, '78; and Susan Bart, '85, a Visiting Professor at the Law School in fall 1996. At right is moderator Susan M. Eklund, '73, Assistant Dean for Student Affairs.

LEADERSHIP:

alumnae share experiences, insights

For a full day last February, nearly 20 alumnae shared experiences, tips, and mentoring mantras with female Law School students looking ahead to how to succeed in the world after the classroom. The conference opened the previous evening with a social gathering and dinner.

More than 100 women attending the Women's Professional Development Workshop wrestled with topics like "Developing a Career Plan: Lessons Learned Along the Way" and "Games Our Mothers Never Taught Us: Strategies for Developing a Professional Identity and Clients." They heard from private practitioners, teachers, and judges. As Susan M. Eklund, '73, Assistant Dean for Student Affairs, put it: The conference was "a gift from people who came a few years ahead of current students."

Panelists described a world of hard work, long hours, and competition, aspects of the workplace that are familiar to all attorneys, male and female. They also discussed job satisfaction, flexible partnership arrangements and work schedules, making the choices that everyone faces in balancing personal and professional lives, and other subjects. Here is a sample of panelists' comments:

- From an East Coast-based lawyer with an international practice: "I used to joke about working all day in New York, half a day in Japan, and then going home."
- From a partner: "I'm an immigrant to the United States. I never intended to be here as a child. I'm conscious of the fact that life can take many turns, so my business plan is to keep my eyes open and to take one step at a time."
- "Nobody loves you but your family."
- "Mentors don't appear out of the mist. They have to be found."
- "I wouldn't have the clients I have today if it hadn't been for other women supporting me."
- "Find something you're really passionate about."

The workshop was sponsored by the Law School's Alumni Programs, First-Year Information Program, Office of Public Service, Office of Student Affairs and the Women Law Students Association.

Eight Law School graduates among Detroit area's 'Most Influential Women'

Eight of the Detroit area's 100 "Most Influential Women" are graduates of the Law School, according to a list published last spring by *Crain's Detroit Business*. The 100 women from the Detroit area were chosen by the editors of *Crain's* and representatives from the Michigan Women's Foundation and Executive Recruiters International. The list was published March 31.

The Law School graduates on the list are:

- **Donna Arey Bacon**, '83, Vice President and General Counsel, JPE, Inc., Ann Arbor. Bacon "sees herself as a businesswoman who has worked hard to achieve," *Crain's* said.
- **Susan Beale**, '76, Vice President and Corporate Secretary, Detroit Edison Co. and DTE Energy Co. *Crain's* noted that Beale is the "sole woman among [the] 17-member senior management team that runs the two companies."
- **Beverly Hall Burns**, '79, Principal and Deputy Executive Officer, Miller, Canfield, Paddock and Stone. Burns is "part of [the] management team for [a] law firm with 500 employees and annual revenue of $50 million to $100 million," *Crain's* said.
- **J. Kay Felt**, '67, Attorney and Member, Dykema Gossett. "Dykema Gossett's first woman partner," *Crain's* noted. Felt also is an alumna member of the Law School's Committee of Visitors.
- **Denise Lewis**, '83, Partner, Honigman Miller Schwartz and Cohn, and a member of the Law School's Committee of Visitors. "Represents clients in connection with acquisition, sale, development and financing for shopping centers, office buildings, industrial facilities, hospitals and residential complexes," said *Crain's*. "Also represents clients in labor arbitration."
- **Kathleen McCree Lewis**, '73, Member, Dykema Gossett. "Practice includes banking, bankruptcy, environmental, general commercial, insurance, intellectual property, land use, professional malpractice and product liability," *Crain's* noted.
- **Bella Marshall**, '75, President and CEO, Waycor Development Co. and President, Barden International. Said *Crain's*: "Best known as Detroit's financial director under then-Mayor Coleman Young."
- **Barbara Rom**, '72, Partner, Pepper, Hamilton & Sheetz and an alumna member of the Law School's Committee of Visitors. "Considered one of the top bankruptcy attorneys in the country," *Crain's* said.

Each woman on the list had to:

- Be considered a leader in her field.
- Be influential in her industry or her company.
- Have a record of board of directors or leadership skills.
- Have shown the ability to handle budgets, financial issues and strategic planning.
- Represent a good "corporate fit."
- Be nominated by or have references from prominent executives.

"The 100 selected were intended to provide a good sample of the talent represented in the larger pool of names in *The Michigan Women's Directory*, an ongoing database of accomplished women who are interested in serving on corporate or foundation boards," *Crain's* said.

"These women have been selected for their level of achievement, formidable experience and clout within their companies and industries," said Peg Talburtt, Executive Director of the Michigan Women's Foundation.

Nancy King, '87, and her mother, Jean Ledwith King, '68, share a free moment during the Women's Professional Development Workshop at the Law School. Nancy King teaches law at Vanderbilt University; Jean Ledwith King has a solo practice in Ann Arbor.

Two generations of Kings

Jean Ledwith King, '68, and her daughter Nancy King, '87, spar with the affection of teammates who play different positions. And indeed they do: mother and daughter, separated by a generation but only 19 years apart in their respective graduations from the Law School; one in the legal trenches as a solo practitioner who has helped to change the law and the other a law professor at Vanderbilt University who teaches about the law and how it is changing. Both women say they like the autonomy that their positions offer them.

Or, as Jean king says of herself: "I'm a bomb thrower." And as Nancy King says of herself: "You make changes more slowly as an academician."

Mother and daughter got together at the Law School in February for the Women's Professional Development Workshop (see story page 28). They took a few moments out to discuss their careers and recent changes in the way of life at law schools.

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Continued from page 29

"In the '30s, '40s and '50s law students were told, 'Look to your left and to your right; only one of you will be here next year,'" says Jean King. "You need handholders in a law school, and places where people can come and be assured that they're okay," Nancy King notes of today's approach.

"We sort of marginalized ourselves, sat at the edges of the class or the back of the room," Jean King recalled of women law students in the late '60s, when she worked on the *Michigan Law Review* as what she calls a "foot soldier." "Now we have supportive administrators."

King has kept her toe in the academic door; for the past 22 years she has taught her "Women and the Law" course at the University of Michigan's Institute for Labor and Industrial Relations, Eastern Michigan University and Washtenaw Community College.

Most of her work, however, has been in politics and her solo practice of law at Ann Arbor. She was a commissioner on the Federal Glass Ceiling Commission from 1992-95 and last year became a member of the Advisory Board of the Women's Sports Foundation. Founder and first spokesperson of the Women's Caucus of the Michigan Democratic Party, she was elected to the Michigan Women's Hall of Fame in 1989.

She co-chaired the Michigan Abortion Referendum Campaign in 1972 and was instrumental in founding the Religious Coalition for Abortion Reform in 1973. She chaired the Michigan delegation to the International Women's Year Conference in Houston, Texas, in 1977, and founded FOCUS on Equal Employment for Women, a group which filed the first successful administrative complaint against an American university.

Nancy King, who was managing editor of the *Michigan Law Review* as a student, recalls that current Associate Dean Christina Whitman was her first and only female law professor during her three years at the Law School. As a child, Nancy King had come to the Law School with her mother and recalled it then as "a boring, tedious place, with dark shelves, dusty books, legal talk and hard chairs."

Of course, she notes, "I was only six. We were raised in the Law School."

In her talk to workshop participants, Nancy King advised that they be sure to include teaching as one of the professional options open to law school graduates. "I want to tell you something about teaching — the most unique thing about the job is the autonomy," she said. "We can schedule time to make most of our lives fit. We work very hard, and also really enjoy it. As a teacher, you can make a difference in the lives of your students.

"I've had many mentors," said Nancy King. "Many of you are in this room. Teaching gives you the chance to be a mentor to others. You can make a difference in the law. And finally, you can make a difference in an institution that has a very long life of its own."

Talking Genes —

Bruce P. Bickner, '68, Chairman and CEO of Dekalb Genetics Corporation, talks with Law School students during a Dean's Forum luncheon in March. Dean's Forum luncheons give invited students the opportunity to talk with alumni who have succeeded in fields other than the practice of law. Other Dean's Forum guests during the Spring Term included: Calvin "Tink" Campbell, '61, Chairman, President and CEO of Goodman Equipment Corporation in Chicago; Robert Luciano, '58, Chairman of the Board, Schering-Plough Corporation; Scott Mackin, '82, COO of Ogden Energy Group; B. Lance Sauerteig, '69, Principal, Levett, Rockwood & Sanders, PC; and Richard Dale Snyder, '83, President and COO of Gateway 2000.

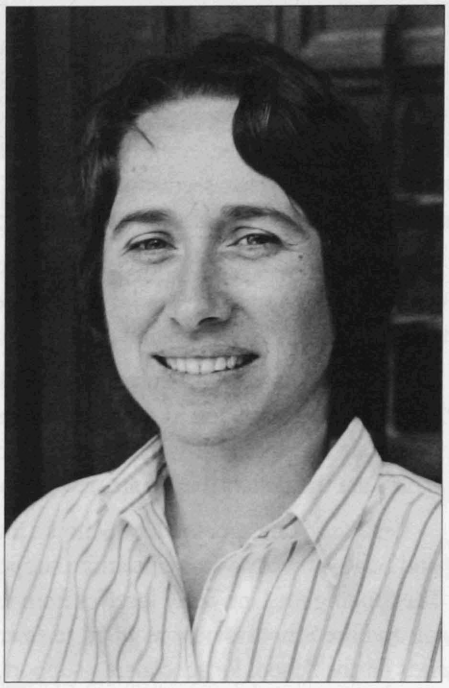
'A remarkable constitution'

Legal scholar Christina Murray, LL.M. '81, knows better than most of her fellow South Africans that "we have a remarkable constitution in many ways." Murray, professor of Constitutional and Human Rights Law at the University of Cape Town, was one of a panel of seven advisors that worked with the writers of the new South African constitution, which became the supreme law of the land last fall.

One of two women on the advisory panel, Murray says that "our presence there and the presence of women in every single part of the constitution-making process is truly remarkable and was attributable to South African women's struggle to end not only racism but also gender inequality."

Other countries' constitutions, like those in the United States, Canada and Germany, had "an enormous influence" on the new South African constitution, she says. The U.S. Bill of Rights, for example, provided the raw material for much of South Africa's Bill of Rights, which forms Chapter 2 in the country's constitution.

But the listing of rights isn't a simple, one-line-each listing similar to what the American constitution writers wrote more than 200 years ago. "I think one can almost state as a general fact that you couldn't draft as sparse a Bill of Rights now as you could then," Murray says. "As you think of any right, like freedom of speech, you immediately also think of the complex jurisprudence that has built up around it."



Christina Murray, LL.M. '81

(Indeed, when Murray spoke with *Law Quadrangle Notes* in March while she was at the Law School to participate in the symposium on Constitution-Making in South Africa [see story on page 4], the U.S. Supreme Court just had heard arguments for and against the Communications Decency Act, which Congress had passed to regulate sexually explicit material on the Internet.)

In the South African constitution, freedom of expression explicitly is guaranteed to the press and other media, to receive or impart information or ideas, for artistic creativity and for academic freedom and freedom of scientific research. The document goes on to say, in restrictions that echo and respond to U.S. case law, that the right of freedom of expression does not extend to "(a) propaganda for war; (b) incitement of imminent violence; or (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."

The constitution also guarantees the right to equal protection of the law, human dignity, life, freedom and security of the person, a prohibition against being subjected to slavery, servitude and forced labor, the right to privacy — a total of more than 30 entries, including the right to a healthy environment, education and special listings for children.

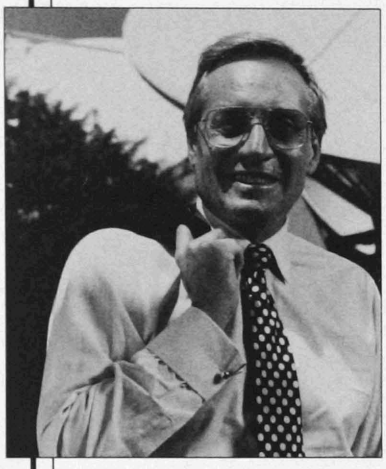
Murray notes that the listing of social and economic rights, like rights to water, food and housing, is "a major innovation" of the South African constitution that sets it apart from the basic law of other countries.

After listing the Bill of Rights, South African constitution writers turned to Canada for their section on the Limitation of Rights: "The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom."

The constitution then lists five "relevant factors" — nature of the right, importance or purpose of limitation, nature/extent of limitation, relation between limitation and its purpose and less restrictive means to achieve the purpose — that must be taken into account in order to limit anything in the Bill of Rights.

Constitution writers chose the Canadian style of overall limitation over the European model of right-by-right limitation, Murray explains. They hope that this will encourage legislatures and the courts to develop an approach to limiting rights that has overall coherence.

Dear Fellow Graduate:



As Campaign chair, I have some thoughts that I want to convey to you before the close of the Campaign on September 30. I am extremely pleased to report on the progress we have made toward our initial Campaign goals. I appreciate your enthusiastic support and want you to know that we are very close to achieving a milestone in the School's fund raising history. The graph on the opposite page shows just how dramatically we have seen support grow. On behalf of the entire Law School community, I extend a tremendous thank you to each volunteer and donor for their phenomenal participation.

However, as terrific as our campaign progress has been, it has been uneven. While we have exceeded our goals of $15 million each for unrestricted and new bequest commitments, we still need to raise $16.6 million to reach our $45 million endowment goal.

Seven years ago, I challenged you to help strengthen the financial foundation of this remarkable institution. I challenged you to ensure excellence in legal education at Michigan for the next generation of enormously talented faculty and students. I challenged you to commit to endowment support because these are the dollars that create new opportunities with a permanent source of funds.

Until ten years ago, the Law School's internally generated financial resources, combined with University and State support, were sufficient to support its world-class legal education. That is simply no longer true. The funding the University receives from the State of Michigan no longer passes through to the Law School, and the School is now required to essentially fund itself through its own sources. The increasing demands on the School for scholarship support, competitive faculty salaries, support for legal scholarship, and new programs far exceed the purchasing power of available funds, including earnings from the Cook Trust. It is only through your support that Michigan remains a leader in legal education.

Tuition is at the upper limit of the market, with Michigan's non-resident tuition essentially equal to that of the top private schools. And the gap is quickly closing between Michigan's resident tuition and the privates. On the average, a Law School graduate begins his or her career with a debt of $65,000. A larger endowed scholarship fund will help us to successfully continue to attract the best students.

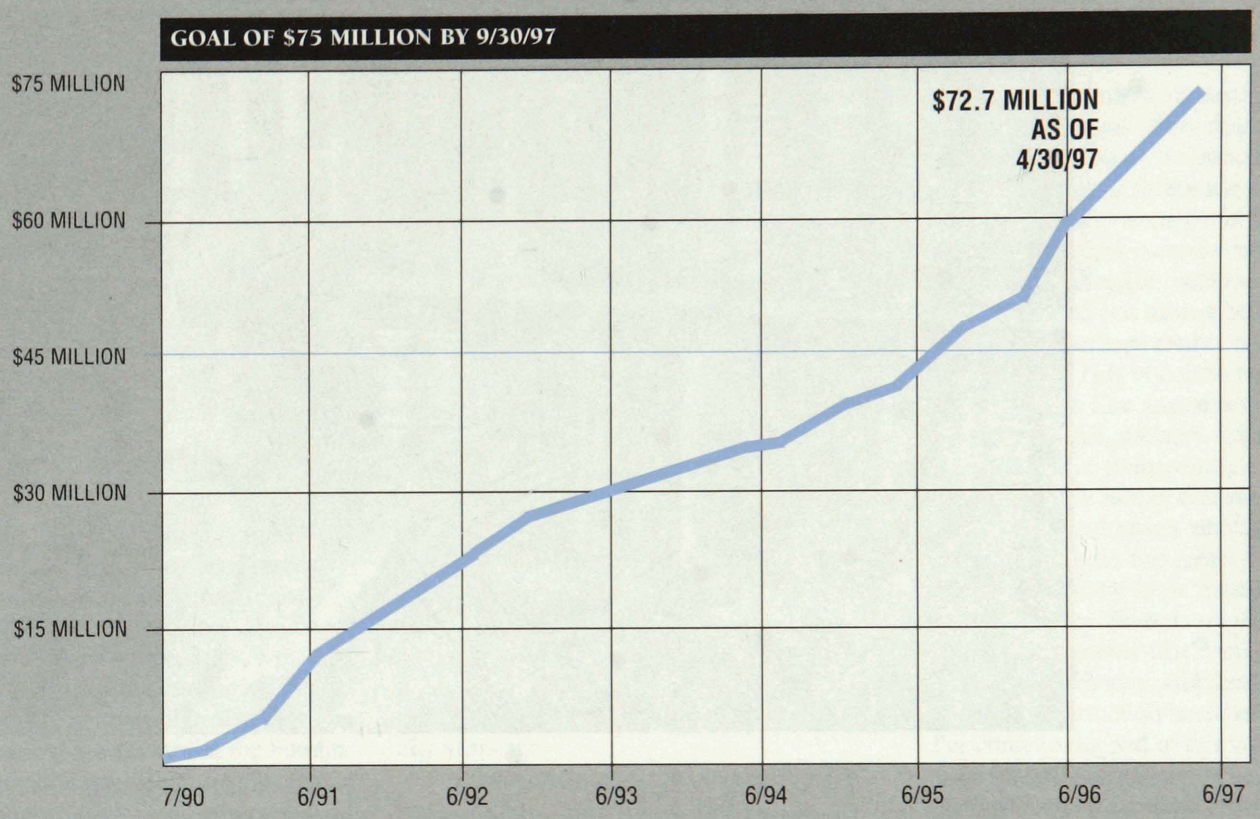
It is also becoming increasingly difficult to recruit and retain the best faculty. Increasing endowment support for professorships will help us compete with the other first tier law schools for the finest teachers. Endowment support for programs will give us the ability to establish innovative programs. New programs like our Legal Practice Program, the Law School's program to teach legal writing, and the Thomas W. Ford Program in Alternative Dispute Resolution require significant endowment support behind them. I cannot overstate the importance of endowment funds to our Law School.

Year after year, my Law School education has paid extraordinary long-term dividends in every aspect of my life. If you feel the same sense of gratitude and obligation, I hope you will consider support for endowment, investing in the Law School's long-term future, so that the skills of Michigan Law graduates will be a resource for generations to come.

Terry Elkes

Terrence A. Elkes, '58
Managing Director, Apollo Partners, Ltd.
Chair, Law School Campaign

Campaign progress report



THE LAW SCHOOL CAMPAIGN GOALS	GOAL	RECEIVED AS OF 4/30/97
LAW SCHOOL FUND UNRESTRICTED GIFTS	$15 MILLION	EXCEEDED
NEW BEQUEST COMMITMENTS	$15 MILLION	EXCEEDED
ENDOWED FACULTY SUPPORT	$15 MILLION	$9.2 MILLION (62%)
ENDOWED STUDENT SUPPORT	$15 MILLION	$10.1 MILLION (68%)
ENDOWED PROGRAM SUPPORT	$15 MILLION	$5.3 MILLION (36%)
DEAN'S DISCRETIONARY ENDOWMENT	——	3.8 MILLION

For additional information about the Campaign, or to inquire about making a gift, please contact:
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an excerpt — By Victor Rabinowitz, '34

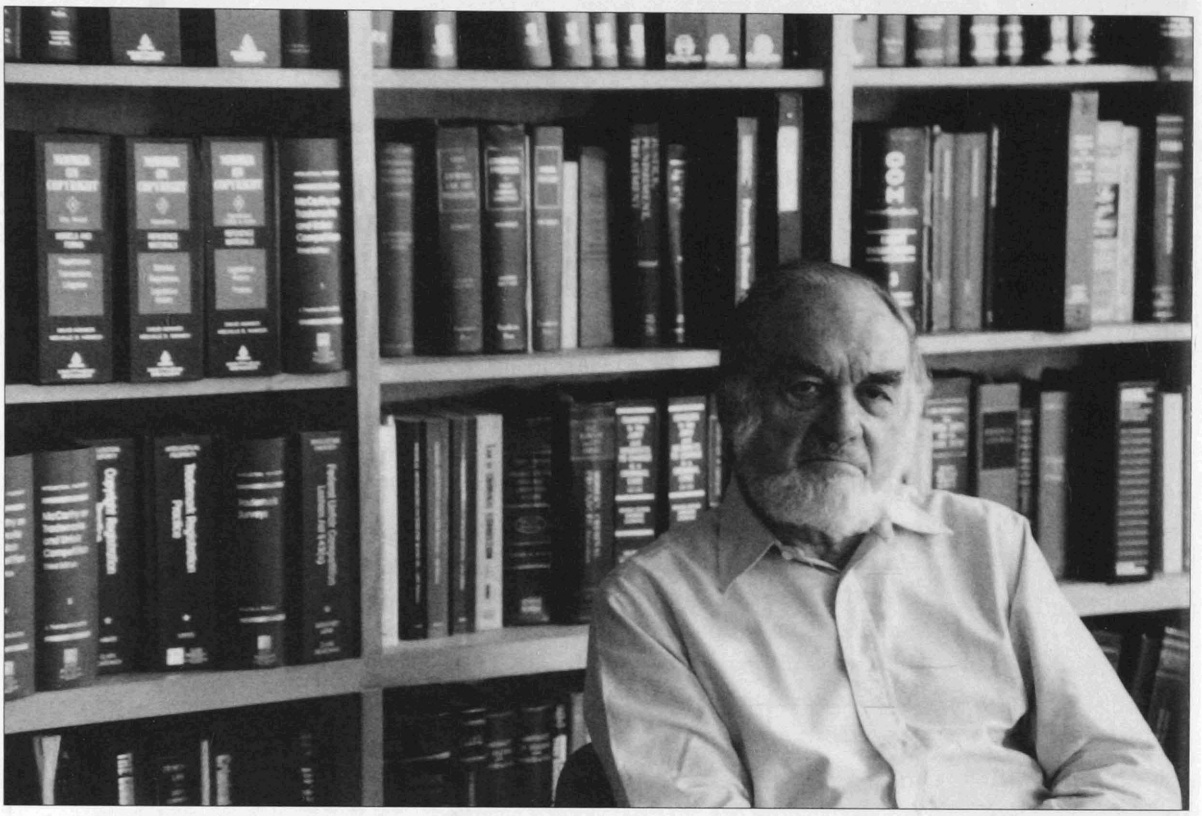


PHOTO COURTESY UNIVERSITY OF ILLINOIS PRESS

Victor Rabinowitz, '34, is of counsel to the New York law firm of Rabinowitz, Boudin, Standard, Krinsky and Lieberman, whose parent firm he served as partner and in other capacities for 50 years. "Together with Leonard Boudin, I created and built a law office that has a nationwide and richly deserved reputation for integrity and professional skills," he writes. "While I cannot claim credit for its accomplishments over the past few years, I know that it is still devoted to my favorite client, Cuba." Rabinowitz was a member of the American Labor Party at its inception, and is a founding member and former president (1969-70) of the National Lawyers Guild, of which he writes: "I cannot think of more than a handful of national progressive organizations that have lived so long in this perilous world." A native of Brooklyn, New York, Rabinowitz also received his undergraduate degree from the University of Michigan.

The following excerpt is reprinted from Unrepentant Leftist: A Lawyer's Memoir, *by Victor Rabinowitz. Copyright 1996 by the Board of Trustees of the University of Illinois. Used with the permission of the University of Illinois Press.*

I think I chose correctly sixty-five years ago when I decided to become a lawyer. I doubt whether there is any other occupation in which I could have better used my abilities, such as they are, nor any other vocation in which I could have been happier.

When I graduated from law school in 1934, the legal profession, like the rest of the country, was mired deeply in the Great Depression. But within a very few years I fell into the job in the Boudin office and was immediately engaged in a rapidly growing (though not remunerative) field of law. The explosive growth of the labor movement and the closely related field of constitutional rights meant a lot of work for lawyers — at least for lawyers with my interests. I didn't make much money but I was doing work I enjoyed and that corresponded closely to my political agenda. On the day I stepped into the Boudin office, I met men like Gold, Potash, Albertson, and Selly — men whose names I had been hearing for years and who were in a sense demigods to me. I was a middle-class Jewish boy from Brooklyn who believed in trade unions, but who had never met a trade unionist before. I felt that I was participating in a struggle to make the world, in some small way, a better place. Even as I worked in a law library and especially when I got into court I could, metaphorically but clearly, hear the sound of "you can't scare me/I'm sticking to the Union/till the day I die" in the street outside the walls.

It was indeed a new world. *McCullough v. Maryland*, the *Dartmouth College* case, *Fletcher v. Peck*, the great decisions of the early nineteenth century that created the basic framework of our federal system and which I had studied at length in law school at Michigan, disappeared forever from my mind. To take their place were the cases that transformed the American legal structure with the coming of the New Deal:

Can any structure of society — capitalist, socialist, fascist, or anything else, save civilization as we know it from destructive factors that may be inherent in the civilization mankind has created?

First came *Schechter Poultry Corp. v. United States*, and *Carter v. Carter Coal Company*, holding Roosevelt's New Deal legislation a violation of the rights of property, and then (gloriously) *NLRB v. Jones and Laughlin Steel Company*, holding the National Labor Relations Act valid, and *United States v. Darby*, upholding the Wage and Hour Law.

And in the field of First Amendment rights, a host of new concepts suddenly arose: *Thornhill v. Alabama, Thomas v. Collins, West Virginia v. Barnett*, and *Hague v. CIO*, which proclaimed in unmistakable tones the rights of free speech, press, and assembly. All of this was new: new to me and new to the country. And it was new to the legal profession as well. . . .

My view of the world I moved into in 1938 was somewhat romantic, but it was the way I felt, and this romanticism, if such it was, stuck throughout my legal career. Sometimes I was playing the role of Saint George slaying the Dragon, and sometimes the Dragon was slaying me, but it was always a struggle between social good and antisocial evil. The sense of exhilaration I felt in those first few months at the Boudin office lasted all of my life with only a few lapses. I felt that every case I won was a victory for socialism and every case I lost was a defeat for socialism. Did I get Frank Dutto off on a charge of unlawful picketing? The class struggle gained a small point. Did the Supreme Court decide against ACA in the Taft-Hartley case? The class struggle lost a big point.

Once Leonard and I together with Michael Hertzberg, an office associate, defended three real estate builders in Virginia charged with fraud. Our clients were very pleasant and intelligent, and I enjoyed their company. One was convicted and two were acquitted. After an appeal and a few days of the customary postmortems the case was forgotten. It had no political implications and when it was over, it was over.

But Steven Nelson, ACA, Joni's case, the *Sabbatino* case are ever in my mind. Those cases are never over.

I cannot remember representing any client whose cause I didn't personally approve, and very few clients whom I personally disliked. I can't recall ever having done anything in my professional career or political career that I'm ashamed of (well, hardly ever). And I've broken very few of the rules I formed for myself. On the whole it has been a good life and if I had an opportunity to live it over again I'd make a few changes but not very many.

Yet it has been a profoundly sad experience as well. The great causes for which I've fought and to which I have devoted myself have almost all gone down to defeat — temporary defeat I like to think but still defeat. The trade union movement is a shadow of its 1938 self, both in numbers and in spirit. We kept people out of jail during the era of the Great Fear of the fifties but only after thousands had been hurt, some of them very badly. The United States withdrew from the Vietnam War but not until almost sixty thousand Americans, and millions of Vietnamese, had been killed. The civil rights movement made great strides, but when I read the daily newspaper and observe the inner cities of our country, I see the rise of a new and virulent form of racism which in some respects seems worse than that of forty or fifty years ago.

On the world scene, the socialism that I had striven for has been, at least for the present, defeated. The few years after the collapse of socialism in Eastern Europe have presented an interesting paradox. While the rest of the world proclaimed socialism's failures, many of those who had presumably suffered most under communist rule seemed to prefer that rule to the free market alternative offered to them by capitalism. So in Russia, Poland, Hungary, and elsewhere, the CP, or former leaders of the CP, was chosen by large numbers (sometimes a majority) of the people voting in presumably democratic elections. Evidently the failure of socialism, flawed though it was, was not so evident to many who experienced it as it was to its critics.

It is too early to predict how all this will shake down in the next few years. Every month another expert predicts the end of history, or the end of the nation-state, or the end of civilization in the early twenty-first century. I would not dare to leap into such a maelstrom.

Of one thing I am sure. As Captain Boyle says, in Sean O'Casey's *Juno and the Paycock*, "The world's in a state of chassis." What will come out of that chaos I cannot know.

I have known intuitively since the beginning of my legal career that the law may advance, influence, or impede social change, but it cannot determine its direction. That function is performed by more powerful forces — economic, demographic, ecological, political — which may be influenced but cannot be controlled by the law and perhaps cannot be controlled at all. This of course raises still another question. Can any structure of society — capitalist, socialist, fascist, or anything else, save civilization as we know it from destructive factors that may be inherent in the civilization mankind has created? Isaiah Berlin has called the twentieth century the most terrible century in Western history. There is no reason to believe that the twenty-first century will be any less self-destructive, and there is a point at which self-destruction becomes absolute.

I've come to the end of this volume and have no intention of taking on any of these questions, but they do trouble me and make it sometimes difficult for me to see the question of capitalism versus socialism as a decisive one when it is not at all clear that either system will save us.

If so, why carry on the struggle? Why not spend our lives in making as much money as we can in an honorable fashion and in spending our spare time lying on the beach, walking in the woods, or reading a good novel?

There is an old folk tale that tells of the frog and the scorpion. The latter, unable to swim but wishing to cross a river, asked a frog to carry him across. The frog at first refused, for fear that the scorpion would sting and kill him. "Why should I do that?" asked the scorpion — "If I kill you we'll both drown." The frog, convinced, agreed and plunged into the water with the scorpion on its back. Halfway across, the scorpion stung the frog, and as both sank beneath the waters, the frog said, "Why in the world did you do that? Now we'll both drown." To which the scorpion responded, "It's my nature."

LEAP bridges the gap

Evanne Dietz, '93

Evanne Dietz, '93, has made a great LEAP — in more ways than one. She left her brief career with Legal Services Organization of South Central Michigan in March to devote full time to the new Lawyers for Equal Access Project, Inc. (LEAP), which she launched in January 1997 with fellow attorney Michelle L. Gullet.

LEAP is aimed at clients a financial notch above Legal Services clients, but a significant step below full fare legal clients. "The forgotten client," Dietz calls the typical LEAP client, whose family income ranges from 125 percent of poverty level to a little more than double poverty level. Using federal poverty figures, that translates to annual incomes of $19,500 to $31,200 for a family of four. Dietz says such families seldom can pay full rates of $100 or more per hour for legal help.

"Many people are not elgible for free legal services, yet are not financially able to secure adequate representation in the private sector," according to LEAP. "For people of moderate means, there is virtually no affordable legal representation. Lawyers for Equal Access Project, Inc., was created to balance this inequality in the justice system."

Headquartered in Oak Park, LEAP serves Oakland and Wayne counties in Michigan. Funds to launch LEAP have come from the State Bar of Michigan's Young Lawyers Section and the ABA's Young Lawyer Division. LEAP is the first program of its kind in Michigan; about 20 other states have similar programs, perhaps the best known being Modest Means in New York and Justice for All in Atlanta.

Dietz and Gullet are preparing grant applications and seeking other sources of funds while serving the clients who have crowded to their door since LEAP opened last January. In March, Dietz estimated that LEAP had handled 700-800 telephone calls, interviewed 110-115 potential clients and had about 70 open cases. Volunteer attorneys are helping with the caseload.

The practice is "a general civil practice" of family law cases, housing and landlord/tenant issues and bankruptcies, Dietz says. One-half to two-thirds of LEAP's clients are women; some clients have been men involved in divorce and custody cases who are facing spouses represented by Legal Services attorneys.

LEAP also can be a training ground for young attorneys just out of law school who are looking for experience and for students seeking experience, Dietz adds. LEAP is linked with Pro Bono Students America, headquartered at the University of Michigan Law School.

Dietz disagrees with the complaint of some attorneys that LEAP competes with private firms. She also disagrees with the idea that LEAP dilutes Legal Services. Instead, she says, LEAP fits neatly into the niche for people too wealthy or otherwise unable to qualify for Legal Services aid and too poor to buy full price legal help. "We try," she says, "to make it really easy for people to get legal help."

Legal Services finds help outside of Washington

Martha Bergmark, '73, the new President of the Legal Services Corporation, says that some of the leaks in the federal Legal Services dike have been plugged by state governments, state bar associations, law schools and other sources of help.

"I think that over the years we've seen the steady building up of other resources, through bar association efforts and initiatives like the Poverty Law Program at the University of Michigan Law School," she said during a talk at the Law School in February. "We've seen a stepping up to the plate to be sure the resources do grow. The federal dollars still matter, but they always will be subject to change."

(The new Poverty Law Program, announced in the Spring issue of *Law Quadrangle Notes*, is a cooperative effort of the Law School, Legal Services of Southeastern Michigan and the Michigan Migrant Legal Assistance Project. The program provides support for legal services workers while offering Law School students the chance to work on real cases and issues through the Law School's Poverty Law Clinic. It is funded through a $400,000 Community Outreach Program grant from the University of Michigan and a $600,000 grant from the Michigan Bar Foundation.)

Recent congressional action has cut Legal Services funding by one-third and prevents the use of federal Legal Services funds for work with most non-citizens, in class action cases and in legislative re-districting cases. The changes also restrict Legal Services' role in legislative advocacy for poor people and welfare reform.

Bergmark's talk at the Law School was her first public appearance as President of the Legal Services Corporation. She had been named acting President only a week earlier, and she used her Law School visit to stress the "silver lining" of non-federal support for Legal Services programs that is emerging as a counterweight to federal cutbacks. She said she sees federal support for Legal Services continuing and hopes for a time when "each state has a system to use the federal money and to call on all other resources, like bar associations, law schools, technology and community support" to provide legal help for poor people. Planning and coordination in each state will be necessary to address the most pressing legal needs of poor people through a delivery system funded by many sources, she said.

Bergmark has spent her career in legal work for poor people. A native of Mississippi, she returned to her home state after graduation from the Law School to set up a civil rights and poverty law practice in Hattiesburg. A few years later, when federal funding began for legal services in each separate state, she left the practice she had co-founded to head the then-brand-new Southeast Mississippi Legal Services. She moved to Washington, D.C., in 1987 to become spokesperson for the Project Advisory Group, a nonprofit organization representing the 300 local Legal Services programs throughout the country. In 1994 she became Executive Vice President of the Legal Services Corporation, and was named President in February.

Continued on page 38

Martha Bergmark, '73, President of the Legal Services Corporation, and Robert Gillett, '78, Director of Legal Services of Southeastern Michigan, say that in Michigan many of the gaps in Legal Services created by federal restrictions and financial cutbacks have been filled by the Michigan Bar Association and state and private aid. The Legal Services leaders appeared at the Law School together in February in a program sponsored by the Office of Public Service.

Continued from page 37

(Two of Bergmark's former law partners in Hattiesburg, Alison R. Steiner, '75, daughter of Professor Emeritus of Law Peter O. Steiner, and Michael S. Adelman, '67, continue to run Adelman and Steiner, the successor to the firm that they established in Hattiesburg with Bergmark and her husband, Elliott D. Andalman, '73.)

With such a long experience in public interest law and Legal Services work, Bergmark's position is a mix of commitment and political savvy. "I'm optimistic that after 20 years of Legal Services it is not going to go away," she says, but "the big challenge is around the structure of it: How will the delivery system accommodate the new mix of funding sources and restrictions?"

"No one who cares about legal services for poor people would have wished this on us," she said of congressional restrictions and cutbacks, "but it has had a silver lining" that stateside funding sources have come forward and attention has been focused on the Legal Services delivery system in each state.

Competition for funds within states may force some states to change how they deliver Legal Services help, she says. And poor people's access to legal help may be better in some states than in others, depending on what stateside resources are available to replace federal losses and offset federal restrictions. In her native Mississippi, for example, 95 percent of Legal Services funding is federal and the state lacks resources to add significantly to that, she said.

Because of Michigan State Bar Foundation aid and other assistance, the 33 percent federal cutbacks were "more like a 10-15 percent cut" in Michigan, said Legal Services of Southeastern Michigan Director Robert Gillett, '78, who introduced Bergmark and shared the podium with her. "There's been a great deal of progress in developing an integrated network in the state," Gillett said.

He echoed Bergmark's remarks that the Law School's new Poverty Law Center will provide important legal assistance to poor people. Because Michigan allows law students to do legal work under direct supervision of an attorney, the new Poverty Law Center will give second- and third-year law students the opportunity to work directly with clients, he said. "It will expand student opportunities as well as service to the poor."

The Law School's Family Law Project and clinical programs also help serve the poor, he said.

Nationwide, the legal needs of poor people remain great, Gillett said. "Studies show that 80 percent of poor people's legal needs are unmet. The biggest gap in the system is the 80 percent of poor people who have no access to the legal system."

Preserving Federalism —

The Hon. Deanell Tacha, '71, Judge for the 10th Circuit Court of Appeals, discusses "Preserving Federalism in the Criminal Law: Can the Lines be Drawn?" during a talk at the Law School in April. Interstate drug traffic and other criminal activity, the nationalization of news and a "heightened awareness of the lack of uniformity" in criminal sentencing have contributed to the recently enlarged federal role in criminal prosecution, she said. However, she said, state differences in juvenile law, for example, provide a healthy variety of approaches to dealing with crime issues. "I would argue that we have a flourishing group of laboratories just as they envisioned in the constitutional period," she said. Tacha's talk was sponsored by the Federalist Society for Law and Public Policy Studies with support from a grant from the John M. Olin Foundation.

Mary Frances Berry, '70, delivers U-M's MLK Day keynote address

The University of Michigan called on one of the Law School's own to set the tone for the U-M's 10th annual Martin Luther King Day Symposium. Mary Frances Berry, '70, chairperson of the U.S. Commission on Civil Rights, sounded like a coach sending players onto the field as she delivered the keynote address for the annual day-long symposium last January.

"We celebrate Martin Luther King for what he did for every American," she said. "We should be somewhat embarrassed about the unfinished agenda."

There's "pain on Main Street" while there's "gain on Wall Street," she said. "Not a single chairman of a committee in the U.S. House or Senate is a person of color. The highest levels of U.S. government still are filled by white males."

"We must be like Martin Luther King. We must tell the truth, even if the times are inauspicious and even if we are made to suffer." Regarding affirmative action, "We have a lot of work to do for all those who bounce off glass ceilings and all those who are still standing on sticky floors," she said.

Berry, who also earned a doctorate in history at the U-M, was named to the U.S. Commission on Civil Rights in 1980 by President Jimmy Carter. President Reagan fired her for criticizing his civil rights policies, but she won reinstatement in federal district court. President Clinton named her chairperson of the Commission in 1993. Berry is the Geraldine R. Segal Professor of American Social Thought at the University of Pennsylvania.

PHOTO BY BOB KALMBACH

U.S. Commission on Civil Rights Chairperson Mary Frances Berry, '70, tells a packed Rackham Auditorium that "we should be somewhat embarrassed about the unfinished agenda" as she delivers the keynote speech to open the University of Michigan's 10th annual Martin Luther King Day Symposium.

Later that day, in an MLK Day program co-sponsored by the Law School, panelists discussed "Affirmative Action in the Academy: Safeguarding the Gains Made" (see story page 10). Moderators were Michigan Student Assembly President Fiona Rose and Tom Dunn, Chairman of the Faculty Senate and Professor of Chemistry. Other co-sponsors included the Faculty Senate, Michigan Student Assembly and the University's 1997 MLK Symposium Planning Committee.

The Law School also sponsored a special Martin Luther King Day program for youngsters, who had the day off from public schools. During one part of the program, Elizabeth James, a doctoral candidate in the School of Information and the third generation in a line of storytellers in her family, told tales of justice, honor and truth from around the world. She began with an African tale from Madagascar, followed by a story from Russia, then one from the American South.

In the African tale, a mermaid becomes a man's wife — provided that he never reveal her real identity to anyone. They live happily, and their son and daughter are strong and healthy. But after many years the man boasts to another that his wife really is a mermaid. When he returns home, he finds his son weeping and rushes down to the water to see his wife and daughter swimming away.

Two Law School grads receive honorary U-M degrees

Two Law School graduates shared the dais as honorary degree recipients when former Law School Dean Lee C. Bollinger, recently installed as the 12th President of the University of Michigan, delivered the main address for the University's spring commencement on May 3.

Mary Frances Berry, '70, and Robert B. Fiske, Jr., '55, received honorary doctor of laws degrees during the ceremonies. Both are alumni members of the Law School's Committee of Visitors.

For Berry, participation in the commencement ceremonies marked her second return to the University of Michigan in five months. In January she was keynote speaker for the University's 10th annual Martin Luther King Day Symposium (see story this page). Chairperson of the U.S. Civil Rights Commission and a Professor of American Social Thought at the University of Pennsylvania, Berry was

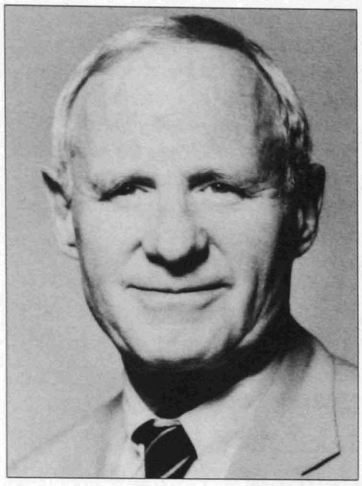


PHOTO COURTESY U-M NEWS AND INFORMATION

Robert B. Fiske, Jr., '55

appointed to the Commission by President Carter in 1980. She also served as Assistant Secretary for Education in the U.S. Department of Health, Education and Welfare during the Carter administration.

Fiske, a speaker for alumni reunions at the Law School last fall, is a litigation partner with Davis Polk & Wardwell. He served from January-October 1994 as Independent Counsel to conduct the Whitewater/Madison Guaranty investigation. From 1957-61 he was Assistant U.S. Attorney in the U.S. Attorney's Office for the Southern District of New York, where he served as Assistant Chief of the Criminal Division and head of the Special Prosecutions Unit on Organized Crime. President Ford appointed him U.S. Attorney for the Southern District of New York in 1976.

Working with Clients — *Bettye Elkins, '70, a partner in the Ann Arbor office of the Detroit-based Miller, Canfield, Paddock and Stone and a member of the firm's Health Law Practice Group, center, answers a question during a program on "Client Development and Satisfaction" at the Law School in March. Other panelists include, from left: Marcia Major, '89, a real estate specialist in solo practice in Ann Arbor; Paul Zavala, '78, of the General Motors Legal Staff; Mike Grebe, '70, chairman and chief executive of Foley & Lardner and President of the Board of Regents for the University of Wisconsin; and Calvin "Tink" Campbell, '61, Chairman, President and CEO of Goodman Equipment Corporation in Chicago. Panelists offered law students a variety of insights into how they deal with issues like the difference between clients' desires and needs, the differences and similarities between dealing with private clients and corporate clients who are your employers, and other issues. The program was sponsored by the Office of Student Affairs.*

55TH REUNION

The class of 1942 Reunion will be Sept. 12-14.

50TH REUNION

The classes of 1946-47 Reunion will be Sept. 12-14.

1949

The Honorable **Avern Cohn**, United States District Judge for the Eastern District of Michigan, was reelected to the American Judicature Society Board of Directors. The national organization promotes improvement in the courts in the areas of ethics, judicial selection, the jury, administration, and public understanding of the justice system.

The Colorado General Assembly has named its newest juvenile detention facility the **Marvin W. Foote** Youth Center, in honor of the late Marvin W. Foote, who served as judge for the Eighteenth Judicial District of Colorado for 19 years, including eight years as chief judge. Throughout his career, Judge Foote regularly championed the needs of the juvenile justice system, and he was an early pioneer in the development of humane detention services for children in Colorado.

Several graduates have notified the Law School of their inclusion in the 1997-98 edition of *The Best Lawyers in America*. They include: Nolan W. Carson, '51; J. Lee Murphy and Jack R. Clary, '59; Jay A. Rosenberg, '65; John W. McNeil, '67; Peter J. Kok, '70; Robert D. Brower, '72; Michael A. Snapper, '74; J. Michael Cooney, '75; and James C. Bruinsma, '76. Carson, Rosenberg and Cooney are partners with Dinsmore & Shohl L.L.P. of Cincinnati. Murphy, Clary, McNeil, Kok, Brower, Snapper and Bruinsma are with Miller, Johnson, Snell & Cummiskey, P.L.C., of Grand Rapids. Lawyers are included on the basis of peer evaluations.

1951

Stuart E. Hertzberg of Bloomfield Hills was elected to the American College of Bankruptcy's Board of Directors, the College's main governing body. The College is an honorary professional and educational association of bankruptcy and insolvency professionals. Hertzberg is a partner in the Detroit office of Pepper, Hamilton & Scheetz and co-chair of the firm's Bankruptcy and Creditors' Rights Practice Group.

Theodore Sachs won the Distinguished Service Award from the Labor and Employment Law Section of the State Bar of Michigan. The award is a monetary award of $1,000 to be used for a scholarship, with the honoree choosing where the money goes. Sachs asked that the money be sent to the University of Michigan Law School.

Albert V. Witham received the U.S. Department of Interior's Distinguished Service Award, which is given for outstanding contribution to science, outstanding skill or ability in the performance of duty, outstanding contributions made during a career in the Department, or other exceptional contributions to public service. Witham retired last year after serving for 33 years in the Colorado Parks and Wildlife Department, Office of the Regional Solicitor, where he and his staff represented the Department and Secretary in legal matters involving the National Parks in the Midwest Region.

45TH REUNION

The class of 1952 Reunion will be Sept. 12-14.

1955

Leland B. Cross, Jr. was the first recipient of the Indiana Chamber of Commerce Medallion of Merit and Distinction for his work in the United States and in Europe on behalf of the state's economy. These activities also earned him the Governor's Award for Outstanding Service and Leadership. In addition, a scholarship was named in his honor by the Indiana University at Indianapolis School of Law and Region 25 of the National Labor Relations Board. The Leland B. Cross, Jr. Scholarship will be presented annually to a law student attaining academic excellence for a three-year period. The scholarship recognizes Cross' lifetime achievements as a labor lawyer and his contributions to the field of labor law.

Sir **Ivor Richardson, LL.M.**, was made president of the Court of Appeal of New Zealand, the country's highest court.

1956

Gerald B. Helman of Alexandria, Virginia, is vice president of Mobile Communications Holdings, Inc. He previously served with the Foreign Service, where he was at various times Deputy Assistant Secretary for International Organization Affairs, Deputy Under Secretary of State for Political Affairs, and U.S. Ambassador to the United Nations in Geneva.

40TH REUNION

The class of 1957 Reunion will be Oct. 31-Nov. 2.

1959

Carroll F. Purdy, Jr. was appointed to the Pennsylvania Judicial Evaluation Commission Investigative Division, which will conduct the preliminary investigation of candidates seeking election to the state's appellate courts. Purdy is a partner in the Harrisburg, Pennsylvania, law firm Thomas, Thomas, Armstrong & Niesen.

1960

Robert Glenson Rhoads, a private practice attorney in Trenton, New Jersey, was listed in the current issue of *Who's Who in American Law*.

Class notes

1961

Former Florida Congressman **Lou Frey, Jr.** of Lowndes, Drosdick, Dostor, Kantor & Reed and president of the United States Association of Former Members of Congress, led a bipartisan delegation of eight current and former members of Congress to Cuba last December "to gain a better understanding of political and social conditions in Cuba and to engage in a series of frank discussions concerning U.S.-Cuban relations." In its report, the delegation said that "it is time for a serious reexamination of U.S. policy toward Cuba."

35th Reunion

The class of 1962 Reunion will be Sept. 12-14.

1963

Alexander E. Bennett of the Washington, D.C.-based law firm Arnold & Porter, was one of two attorneys who represented the Republic of Brazil in its successful action against Jorgina Maria de Freitas Fernandes, a Brazilian citizen who stole large sums of money from the Brazilian social security system and took up residence in Florida.

Stefan F. Tucker will be the chair of the American Bar Association, Section of Taxation. His official duties begin this August when he assumes the chair-elect position.

1964

Henry McC. Ingram has joined the Pittsburgh office of the law firm Reed Smith Shaw & McClay, in the firm's Environmental Group. He was previously partner and chairman of Buchanan Ingersoll's Natural Resources Law Section. His practice concentrates in litigation and counseling in the area of regulation affecting the development of natural resources, particularly in the mineral extraction industry.

1965

The Hon. **Harry T. Edwards**, Chief Judge of the U.S. Court of Appeals, addressed the 74th Annual Meeting of the American Law Institute in May on "A New Vision for the Legal Profession." In the past, the address usually has been given by the Chief Justice of the United States.

J. Gary McEachen, a partner in the Kansas City law firm Morrison & Hecker, was elected president of the Board of Trustees of Legal Aid of Western Missouri.

Kent P. Talcott, of Dexter, Michigan, has joined the law firm Dykema Gossett P.L.L.C. in an of counsel capacity. Resident in the firm's Ann Arbor office, he specializes in corporate law, business planning, mergers and acquisitions, corporate finance, and international transactions. He was previously vice president for corporate development, and corporate secretary of JPE, Inc.

1966

Richard L. Bibart has been named Business Group Coordinator for the Columbus office of the law firm Baker & Hostetler L.L.P. He will be responsible for coordinating the efforts of approximately 30 business attorneys in the Columbus office. Bibart concentrates his practice in business planning and transactions as well as business and personal tax planning.

1967

30th Reunion

The class of 1967 Reunion will be Sept. 12-14.

Michael W. Coffield has left the Chicago law firm Coffield, Ungaretti & Harris, which he co-founded in 1974, to form his own practice, located just a few floors above his former firm.

1968

Robert M. Dubbs has become of counsel to the Philadelphia-based law firm Obermayer Rebmann Maxwell & Hippel L.L.P., in the Business and Finance Group.

Henry S. Gornbein, of Bookholder, Bassett, Gornbein & Cohen, P.L.L.C., Troy, Michigan, has created a web site on the internet known as Divorce Online (http://www.divorce-online.com), which has more than 150 pages of articles and divorce-related information. It also has a chat site.

1969

Paul Dimond has returned to the law firm Miller, Canfield, Paddock and Stone, P.L.C., after serving four years at the White House as Special Assistant to the President for Economic Policy and Director to the National Economic Council. He joined Miller Canfield in 1990, receiving his presidential appointment in 1993. As senior counsel at the firm, Dimond will be involved in matters relating to all aspects of education; banking, financial services, and access to capital; and economic development and research in the greater Detroit area and throughout Michigan and the Midwest. He will be based in the Ann Arbor office, but will spend a major portion of his time working in the Washington, D.C., office, advising clients on federal initiatives.

1970

Michael W. Grebe of Milwaukee was appointed general counsel of the Republican National Committee. Grebe, who has a long history of Republican Party leadership, is chairman and chief executive of the law firm Foley & Lardner.

George Siedel has been named the Williamson Family Professor of Business Administration at the University of Michigan Business School, where he also continues to serve as associate dean.

1971

Lawrence C. Tondel was appointed a senior partner at Brown & Wood L.L.P., in New York City, where his practice concentrates in structured derivative products and offshore finance.

25th Reunion

The class of 1972 Reunion will be Sept. 19-21.

1973

Richard P. Saslow has joined Superior Consultant Holdings Corporation of Southfield, Michigan, as vice president and general counsel. He will oversee the corporation's expanding contractual and corporate legal responsibilities, spurred by its recent public status, rapid growth, outsourcing, and acquisition activities.

1974

Carol Hollenshead, of Reach & Hollenshead in Ann Arbor and a Visiting Professor at the Law School in Fall 1996, took part in a panel on "Mediation and the Law" in March at the Law School sponsored by Student Mediation Services and the Student Government of the School of Literature, Science & the Arts.

Cameron H. Piggott, of Grosse Pointe Shores, was elected board chairman of the Detroit Central Business District Association, a nonprofit association dedicated to making Detroit's central business district a better place to work, reside, and visit. Piggott is a member of the law firm Dykema Gossett P.L.L.C., resident in the Detroit office. He is a member of the firm's real estate practice group, specializing in commercial development, leasing, and construction law.

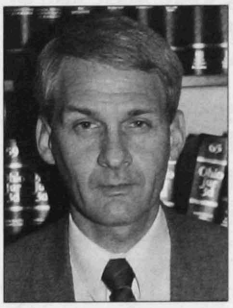
1975

Peter D. Holmes has become a member of Clark Hill P.L.C. in its Detroit office, where he heads the firm's environmental law practice.

Lawrence Joseph is the author of the newly published book *Lawyerland: What Lawyers Talk About When They Talk About Law* (Farrar, Straus & Giroux, Inc., 1997). A Professor of Law at St. John's University in New York City, Joseph is the author of three previous books of poetry.

James D. Spaniolo was appointed dean of the Michigan State University College of Communication Arts and Sciences.

1976



Gregory P. Dunsky was appointed as an assistant prosecuting attorney for Montgomery County, Ohio. He is assigned to the Civil Division of the Prosecutor's Office, where he will represent county officials on matters of contracts, liability, and administrative law, and will represent those clients in civil legal action brought by any party against the county. He was formerly a partner with the law firm Bieser, Greer, and Landis.

David A. Ettinger was featured in the April 7, 1997, issue of *The National Law Journal* as one of "40 Health Care Lawyers Who Have Made Their Mark." He is a member of the Detroit law firm Honigman Miller Schwartz and Cohn.

1977

20TH REUNION

The class of 1977 Reunion will be Sept. 19-21.

Martha Mahan Haines has left the law firm Altheimer and Gray in Chicago and joined Barnes & Thornburg as a partner. She will continue to specialize in municipal finance.

Kathy Ward has left private practice to become vice president and general counsel of Rolls-Royce Power Ventures Limited, the independent power project subsidiary of Rolls-Royce in London. It is a new position, the company not having had any in-house lawyers to-date.

1978

Elizabeth A. Campbell of Fort Washington, Maryland, was promoted to vice president-administration for Sportservice Corporation, a leading food, beverage, and retail services provider at sports, entertainment, and hospitality venues nationwide. The company is headquartered in Buffalo, New York.

Steven H. Rosenbaum has become chief of the Special Litigation Section of the U.S. Department of Justice, Civil Rights Division, where he has served in various capacities since 1978. He will remain co-chairperson of the Police Misconduct Initiative.

1979

Steve Fetter, Senior Director with Fitch Investors Service, Inc. in New York, ran the Jersey Shore Marathon, his first, in 4 hr. 26 min.

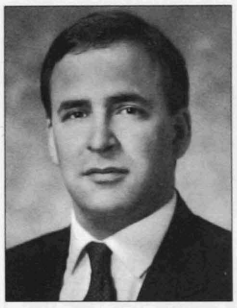
Brant A. Freer, of Birmingham, has returned to the law firm Miller, Canfield, Paddock and Stone, P.L.C., as a senior counsel, having previously worked for the law firm as an associate from 1980-84. He will direct the firm's Employee Benefits Practice Group from the Detroit office. In addition to his ERISA and employee benefits practice, he also focuses on the federal income tax aspects of public finance.

James Morales is the first Latino chief of the San Francisco Redevelopment Agency, which is responsible for urban renewal projects in the San Francisco area. He previously worked as head of the Fair Housing for Families Project of the National Center for Youth Law since 1979.

1980

David Wray, of Princeton Junction, New Jersey, has joined the law firm Patterson, Belknap, Webb & Tyler L.L.P., as counsel. He was previously a senior attorney at Sherman & Sterling. His practice includes estate planning, drafting of will and trust agreements, estate and trust administration, and Surrogates Court litigation.

1981



Marc Abrams was elected state chair of the Democratic Party of Oregon. Abrams is an attorney and a member of the Portland School Board.

Alisa Sparkia Moore was appointed director of college relations for California Polytechnic State University's College of Engineering, in San Luis Obispo, California, where she will be responsible for publications and media and alumni relations.

1982

15TH REUNION

The class of 1982 Reunion will be Sept. 19-21.

Jodie W. King, a lawyer in the Office of General Counsel of The Hearst Corporation, was elected a corporate vice president of Hearst. She will continue to serve as secretary of the Corporation, a post she has held since June 1993.

Richard W. Krzyminski was named associate principal in the Cincinnati-based architectural firm Baxter Hodell Donnelly Preston, Inc.

1983

Probate Judge **Patricia D. Gardner** has been appointed to the Kent County, Michigan, Probate Court by Governor John Engler.

Michael Lied, partner at the law firm of Husch & Eppenberger in Peoria, Illinois, was elected to the Board of Directors of the Greater Illinois Chapter of Associated Builders and Contractors, Inc. He represents employers in labor and employment matters and related litigation.

Sylwester Pieckowski, LL.M., has joined the Warsaw, Poland, office of the law firm Miller, Canfield, Paddock and Stone as senior counsel in the International Business Practice Group. He also serves as deputy resident director of the Warsaw office. He was formerly corporate secretary, general counsel, and a member of the board of directors of Melex USA, Inc., since 1988.

John P. Relman is handling the federal lawsuit in Wilmington, North Carolina, that accuses Avis and its local franchisee of unlawfully discriminating against blacks trying to rent vehicles. The company has also been accused of discriminating against Jewish individuals and corporate clients, and has denied all accusations.

1984

Ray Berens was named general counsel of Wilson Sporting Goods Co. Wilson's worldwide headquarters are in Chicago.

David D. Knoll, LL.M., was elected vice president of the New South Wales Jewish Board of Deputies and executive councilor of the Executive Council of Australian Jewry. He also heads the new Department of Compliance and Regulatory Affairs at Energy Australia, based in Sydney.

Teri G. Rasmussen, formerly a partner with Porter, Wright, Morris & Arthur, has joined the Columbus law firm Blaugrund, Herbert & Martin, where she will continue her commercial law and insolvency practice and also practice in the areas of litigation, real estate, and general business law.

Walter E. Spiegel is now serving as Senior International Trade Counsel for NCR Corporation in Dayton, Ohio, where he is responsible for trade regulation issues, including Customs and export controls. He was previously a partner in the Washington, D.C., office of Kilpatrick & Cody, where his practice focused on international trade regulation.

David K. Tillman, and **Robert P. Perry, '88**, have been named senior attorneys at the law firm Butzel Long. Tillman, a resident of Beverly Hills, practices in the Detroit office in the areas of real estate, commercial litigation, construction law, and employment litigation. Perry, a Livonia resident, practices in probate, estate planning, and trust administration in the Birmingham office.

1985

Susan T. Bart was elected a Fellow of the American College of Trust and Estate Counsel, an association of lawyers who have been recognized as outstanding practitioners in the fields of estate and trust planning and administration, charitable planning, related taxation, business succession, insurance planning, employee benefits, and fiduciary litigation. Bart also taught the Fall 1996 courses "Trusts and Estates I" and "Gift Taxation" at the University of Michigan Law School.

David K. McLeod was elected principal of the law firm Miller, Canfield, Paddock and Stone, P.L.C. Resident in the firm's Detroit office, he practices in the area of finance and development, including commercial transactions, real estate transactions, and banking and finance.

Craig Trebilcock was one of several attorneys who donated hundreds of hours of his time over the past four years to the Golden Venture case, which sought to help free Chinese illegal immigrants being held in York County Prison, Pennsylvania. President Clinton in February decided that the immigrants, who are awaiting hearings to determine whether they will be granted asylum, should be released on parole. Shortly after President Clinton's decision, Trebilcock, an Army Reservist, left for a six-month assignment in Bosnia with the Balkan peacekeepers.

1986

Arthur D. Brannan, an attorney in the Atlanta office of Holland & Knight, L.L.P., has been named a firm partner. Brannan practices in the area of general commercial litigation with experience in matters involving corporate issues, construction defects and delays, payment and performance bonds, commercial leases, lender liability, and other business torts and contract claims.

Clifford A. Godiner, of Chesterfield, Missouri, has joined the St. Louis, Missouri, office of Thompson Coburn as a partner. He will practice labor and employment law in the firm's Human Resources practice area. He was formerly a partner at Peper, Martin, Jensen, Maichel and Hetlage.

Nancy Gardner Rubin and her husband Benjamin Rubin, M.D., announce the September 30 birth of their daughter, Sarah Iliana. She has two sisters, Rachel and Rebecca. Nancy Rubin works part-time as a senior corporate associate at the Washington, D.C., office of Skadden, Arps, Slate, Meagher & Flom, L.L.P.

1987

10TH REUNION

The class of 1987 Reunion will be Sept. 19-21.

Kathryn A. Donohue has joined the law firm Pepper, Hamilton & Scheetz, as an associate. Her practice focuses on intellectual property and corporate matters. She was previously with Clark, Ladner, Fortenbaugh & Young, which dissolved its partnership in November 1996.

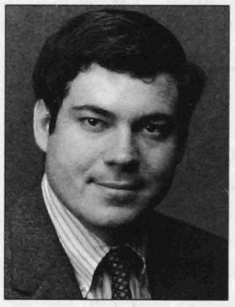
David A. Hickerson was named partner in the law firm Weil, Gotshal & Manges L.L.P. Hickerson is a litigation attorney in the firm's Washington, D.C., office. His practice encompasses complex civil litigation, including tax litigation, contract disputes, business and partnership disputes, copyright and trademark litigation, and other white collar criminal cases.

Paul D. Seyferth has become a partner in the Kansas City office of the law firm Husch & Eppenberger. He practices in the areas of employment litigation and labor matters.

Dave Trask joined Trans World Airlines in November 1996 and completed training as a flight engineer on the Boeing 727 in January. He now flies for TWA out of its St. Louis hub and is currently living in Springfield, Illinois. He previously was flying the Canadair Regional Jet for Comair, a Delta Connection airline based in Cincinnati.

Reginald M. Turner was among 18 White House Fellows honored by President Clinton at an April White House reception. White House Fellows work for a year as full-time paid assistants to senior White House, Cabinet and other Executive Branch officials. Turner is serving as a special assistant to the Secretary of Housing and Urban Development. He is a labor and election law attorney with the Detroit law firm Sachs Waldman.

1988



Douglas W. Campbell was named a partner with Dinsmore & Shohl L.L.P. He practices in the firm's Cincinnati office, in the areas of commercial practice, business law, and bankruptcy.

Thomas C. Froehle, Jr. and **Scott M. Kosnoff** were admitted to partnership in the law firm Baker & Daniels. Froehle is a member of the firm's business planning and municipal law/tax exempt finance teams, concentrating his practice primarily in the areas of business law and public and corporate finance. Kosnoff is a member of the firm's insurance and health care teams, representing insurance companies, health maintenance organizations, and other managed care entities in all forms of corporate, transactional, and regulatory matters. Both are resident in the Indianapolis office.

Marjorie M. Margolies, has become a partner in the Chicago office of the law firm Mayer, Brown & Platt. She specializes in tax controversy.

Nicholas J. Stasevich was elected a shareholder of the law firm Butzel Long, where he practices in employee benefits, immigration, and international law. He is based in the firm's Detroit office and is a resident of Northville, Michigan.

Janet K. Welch, former director of the nonpartisan Legislative Analysis Section of the Michigan Senate, is now counsel to the Michigan Supreme Court. The Court's new senior management team, which includes Welch, was formed to pursue initiatives to revitalize the court reform effort begun in 1995.

1989

Charles A. Browning has formed a partnership with Michael B. Moore. Moore & Browning represents plaintiffs with an emphasis on products liability, discrimination, wrongful termination, and professional malpractice actions. Browning was previously an associate at Cartwright, Borowsky, Bokelman, Moore, Harris, Alexander & Gruen of San Francisco, at the Boccardo firm in San Jose, and at Crosby, Heafey, Roach & May in Oakland.

Catherine J. Courtney has been admitted to partnership in the Minneapolis law firm Best & Flanagan, P.L.L.P. She practices in the areas of public finance, corporate, and employment law.

Steve Englund was elected a partner in the law firm Arnold & Porter in Washington, D.C. His practice primarily involves technology-related matters, including technology transactions and counseling on intellectual property issues.

David J. Gaskey, of Royal Oak, Michigan, has become a shareholder of the firm Howard & Howard. He concentrates his practice in patent, trademark, and copyright law in the Bloomfield Hills office.

Robert Klyman has become a partner in Latham & Watkins, where his practice concentrates on bankruptcy and corporate restructures. He is resident in the firm's Los Angeles office.

1990

David Eskenazi and his wife, Julie, announce the February 28 birth of their daughter, Amelia Howard. The family lives in Indianapolis, Indiana.

Tom Howlett, his wife **Kim Ruedi Howlett**, '91, and their daughter Jemma reside in the Republic of Palau in the western Pacific Ocean, where Tom serves as assistant attorney general. Palau is former U.S. Trust Territory that became the world's newest sovereign state in October 1994.

Theodore R. Schneck, **Julie Y. Chen**, '91, and **Steven Kasten**, '91, have become partners with McDermott, Will & Emery. Schneck is a member of the Health Law Department in the firm's Los Angeles office. Chen practices in the Litigation Department of the firm's New York office, where she is also a member of the Employment and Labor Group. She concentrates her practice in commercial civil litigation, including employment and labor, contract and ERISA and pension litigation. Kasten is a member of the Litigation Department in the Boston office, where he focuses his practice in the areas of international litigation and complex business disputes, ERISA, health care and products liability litigation.

Class notes

Roger A. Swets has been elected a shareholder in the law firm Law, Weathers & Richardson, P.C. His practice is devoted to estate planning and tax-exempt financing.

Caspar Zellweger, LL.M., has started a joint practice with several other attorneys, Boerlin Kuster Flückiger Mayer Zellweger.

1991

David Bulbow was promoted to a supervisory position within the Dallas County Public Defenders office. He was formerly an assistant felony public defender.

Sarah Maguffee has joined Husch & Eppenberger as an associate in the Jefferson City office. She practices in the firm's Litigation Department.

Michael J. Melliere has joined the Columbus law firm Squire, Sanders & Dempsey, as an associate in the public law practice group. He was previously an associate in the municipal finance practice area of the Indiana law firm Ice Miller Donadio & Ryan.

1992

5th Reunion

The class of 1992 Reunion will be Sept. 19-21.

Victoria T. Aguilar was promoted to a senior attorney with US WEST, Inc., where she will manage all right-of-way/franchise issues for the company's 14 states in addition to trying contested case proceedings before various state regulatory bodies. As part of her promotion, she is relocating from Minneapolis to company headquarters in Denver.

Michael P. Behringer was named director of legal and business affairs for Your Choice TV, Inc., Bethesda, Maryland. He will be involved in all aspects of YCTV's licenses and legal operations, including programming, distribution, and advertising deals.

Lydia Pallas Loren has joined the faculty of the Northwestern School of Law of Lewis & Clark College as an assistant professor of law. Loren, who specializes in intellectual property law, previously worked at the Michigan law firm Bodman, Longley and Dahling, where she represented bands, visual artists, computer software companies, printing companies, and authors.

Lamont D. Satchel has joined the Detroit Public Schools' Office of the General Counsel as associate general counsel. Satchel continues to practice in the areas of civil rights, employment and labor law, in addition to commercial transactions, personal injury and education law generally. He previously practiced at the Maurice and Jane Sugar Law Center in Detroit, where he represented international and local unions, national civil rights organizations and community groups.

1994

Heather Kern has become an associate in the litigation section of Hughes & Luce, L.L.P., in the firm's Dallas office. She was previously an associate with Lord, Bissell & Brook in Chicago.

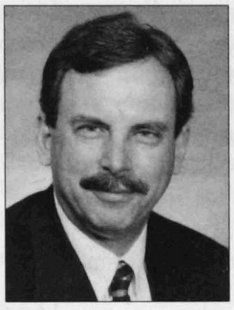
Pia Norman has joined the Chicago law firm of Hedlund Hanley & John, a national litigation-only practice specializing in all types of commercial litigation.

Susan E. Shink has joined Davidson Staiger and Hill, P.C. in Port Huron, Michigan. Her practice emphasizes real estate, environmental, and probate matters.

Michelle Caprara Smith has joined the Kalamazoo office of the law firm Miller, Canfield, Paddock and Stone, P.L.C. As an associate in the Labor and Employment Practice Group, she will be involved in local and national employment matters.

Deborah L. Walker has joined the Los Angeles law firm Rogers & Wells. She was previously with the Pacific Gas & Electric Law Department of San Francisco.

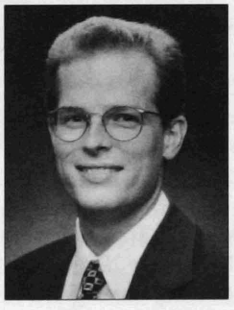
1995



David L. Freedman, M.D., has joined the Ann Arbor office of the law firm Miller, Canfield, Paddock and Stone, P.L.C. as an associate in its Health Care Practice Group. He also continues on staff at Chelsea Community Hospital as an emergency room physician.

Tamara K. Hackmann has joined Husch & Eppenberger as an associate in the Labor Department in the Peoria office. She previously practiced law with a Detroit firm.

1996



Mark F. Hoffman joined Graham & James/Riddell Williams as an associate in the firm's Seattle office. He practices corporate finance and securities law and is a member of the firm's Corporate Finance Practice Group.

IN memoriam

'24	Joseph E. Defley, Sr.	
	Louis M. Dyll	November 1, 1994
'28	Louis E. Smith	
	M. Truman Woodward, Jr.	
'29	Hawley E. Stark	August 2, 1996
'31	Harold Helper	November 5, 1996
	R. Niven Stall	November 18, 1996
'32	Alfred H. Golden	November 14, 1996
'34	Edward S. Wunsch	December 4, 1996
'35	Charles C. Hewitt	December 19, 1996
	Susanna M. Osterling	June 4, 1996
'36	Harold E. Fawcett	December 24, 1995
	Evan A. Gilchrist	September 20, 1996
	Leo K. Showalter	January 16, 1997
'37	Richard W. Barrett	October 27, 1996
'39	William J. Blazek	December 1, 1995
	G. Durbin Ranney	November 23, 1996
	Van H. Viot	November 28, 1996
'40	John C. Newell, Jr.	October 24, 1996
	Paul E. Siegel	October 7, 1996
'41	Alfred G. Ellick	November 25, 1996
	N. Michael Plaut	November 12, 1996
'42	Joseph B. DePeyster	November 23, 1996
	Malcolm B. Ramey	January 1, 1995
	Lelan F. Sillin, Jr.	January 3, 1997
'46	Malcolm E. Long	
'47	Harry Calcutt	December 24, 1996
	Robert M. White II	February 13, 1995
'48	Franklin Essenburg, Jr.	January 28, 1996
	Judge Helen W. Nies	August 8, 1996
	Hubert L. Rowlands	December 6, 1996
'49	Andrew W. Lockton III	October 17, 1995
	Dr. J. Gerald Nilles	July 2, 1996
'51	Hon. David E. Marsden	January 1, 1997
	James D. McKim	December 4, 1996
	Wilbur K. Watkins, Jr.	July 1, 1996
'52	Guy A. Gladson, Jr.	
	Morton L. Simons	October 1, 1996
'53	Charles R. Gibson	September 21, 1996
'54	Richard H. Norris III	August 18, 1996
'55	Herbert H. Tanigawa	July 30, 1996
	W. Gerald Warren	January 8, 1997
'56	Thomas R. Ricketts	April 22, 1997
'57	R. William Ward	May 24, 1996
'60	Samuel J.K. Rogers	February 12, 1996
'61	Robert D. Zitko	November 19, 1996
'62	Ronald L. Burkhard	November 30, 1996
'65	Samuel Shepard, Jr.	February 21, 1996
'66	James S. Hale	December 5, 1994
'74	W. James Noland	January 1, 1993
'85	John D. Wilson	September 9, 1996

CORRECTION:
The Spring 1997 issue of *Law Quadrangle Notes* incorrectly reported that John H. Spelman, '49, had died. The report should have said that John H. Spelman, '78, had died. *Law Quadrangle Notes* regrets the error.

The A student who gave up the law for baseball

— BY YALE KAMISAR
CLARENCE DARROW
DISTINGUISHED UNIVERSITY
PROFESSOR OF LAW

It's been 50 years since Jackie Robinson made history by striding onto the diamond at Ebbets Field in the uniform of a Brooklyn Dodger. Few people realized that Robinson was following in the footsteps of another black major league baseball player who had preceded him by more than 60 years. The Law School was part of this making of history — **twice.**

The following essay is based on a similar commentary that appeared last spring in the Detroit News. *It was written in recognition of Jackie Robinson's major league debut 50 years ago with the Brooklyn Dodgers as the first black player in the modern major leagues.*

EDITOR'S NOTE: Before Yale Kamisar decided on law as a career, he considered sports reporting. In 1948, the Newspaper Guild of New York City named him the best college sportswriter in the New York City metropolitan area.

When the head coach of the University of Michigan baseball team resigned suddenly, University officials started looking around for a replacement. Then several people told the Athletic Director about an outstanding candidate in his own backyard. It turned out that a young man who had coached baseball both at Ohio Wesleyan University and Allegheny College and then been a catcher for several major league baseball clubs (before his throwing arm went dead) was a student in the Law School.

After receiving glowing reports about the young man (let's call him by his first two initials, W.B.), the Athletic Director offered him the head coaching job on the condition that he persuade the Dean of the University of Michigan Law School that he could study law and coach baseball at the same time. But when the student approached him, the Dean was incredulous. He also became quite angry. Emphasizing that the Law School was an extremely competitive place, the Dean maintained that it was "absolutely impossible" for any student to both coach a varsity team and earn passing grades in the school, especially a student like W.B., who was carrying an unusually heavy load of courses.

The Dean had underestimated the resoluteness of his student. He did not know that W.B. had been fired from his first job with a major league baseball club for refusing to play on Sundays because doing so was against his principles. (Before signing with a second major league team, W.B. had insisted on a clause in his contract stating that he was under no obligation to be at the ballpark on Sunday.) Nor did the Dean know that, some years earlier, when W.B.'s favorite teacher at Ohio Wesleyan had fallen critically ill, W.B. had taken over his class in elementary law, refusing to accept any compensation so that his former teacher's family could continue to receive his full salary.

The Dean of the Law School had also underestimated his student's powers of persuasion. W.B. pointed out that while teaching at Ohio Wesleyan he had taken night classes at Ohio State Law School, some 25 miles away. In addition, noted W.B., while coaching both baseball and football at Allegheny College he had taught freshman English, Shakespeare and Greek drama at the college — and "read for the law" in his free time. Moreover, and this probably impressed the Dean most of all, W.B. argued convincingly that the law came easily to him — as evidenced by the fact that he had completed his first year at the University of Michigan Law School with a straight A average.

After a two-hour meeting with his student and the University's Athletic Director, the Dean relented. He ruled that W.B. could coach the baseball team and continue to study law on one condition — to make certain he was keeping up with his studies, he would be called on every day in every class. W.B. told the Dean that was fine with him.

W.B. did not let the Dean down. The baseball team enjoyed a highly successful season and W.B. continued to attain high grades in law school. After cramming three years of law school into two calendar years, W.B. graduated with an A average.

W.B.'s record in law school was so outstanding that the Dean invited him to join the faculty. But W.B. declined the opportunity to be a law professor. He was much more excited about practicing law than teaching it. He and two friends from his college days had decided to form their own law firm.

W.B.'s career in baseball seemed to be over. But there was one problem with his law firm: It failed to attract any significant clients.

Fortunately, W.B. had left the University of Michigan baseball team with the understanding that he would be welcomed back if he decided to return in the near future. W.B. soon had enough of law practice. A few months after he had left Ann Arbor, he wired the U-M Athletic Director: "Am starving, will be back without delay."

When W.B. returned to the Michigan campus he became a part-time scout for the major league's St. Louis baseball club as well as the coach of the University's baseball team. He impressed the owner of the St. Louis team so much that in two years time W.B. was managing the team. After a few detours, W.B. was finally on

Can you identify the man at the far right in the back row?

You may not recognize his picture, but you probably recognize his name: Branch Rickey, '11. The photo is of the 1912 University of Michigan baseball team and Rickey was its coach. After graduation from the Law School, Rickey became a leader in professional baseball and in 1947 was the man responsible for bringing Jackie Robinson to the Brooklyn Dodgers as the first black player in major league baseball in modern times. Robinson made his debut with the Dodgers in April 1947.

PHOTO COURTESY BENTLEY HISTORICAL LIBRARY

Wesley Branch Rickey

the road that would take him to baseball's Hall of Fame.

W.B.'s full name was Wesley Branch Rickey. When he died, a half-century after leaving Ann Arbor with his law degree, *New York Times* sports columnist Arthur Daley wrote that "only Alexander Cartwright, who drew up the original baseball rules, left a greater impact on the sport." Some may consider that a slight exaggeraton, but many would agree that the Mahatma (as he was often called) was the most prescient, best organized and most effective baseball executive in the history of the game. I like to think the fact that he went to the University of Michigan Law School had something to do with that.

To many, his name will always be linked with Jackie Robinson, the player he signed to a contract in 1945 and the player who trotted on to Ebbets Field, home of the Brooklyn Dodgers, on Opening Day, 50 years ago last spring — the first black athlete to play major league baseball.

Robinson once said of Rickey: "He was like a piece of mobile armor, and he would throw himself and his advice in the way of anything likely to hurt me." Unlike many of his counterparts in the national pastime, Rickey was open to the need for change. As demonstrated by the way he went about breaking major league baseball's "color line," when motivated by a strong conviction that he was doing the right thing, Rickey was prepared to move decisively and willing to confront rebelliousness. I like to think the fact that he went to the University of Michigan Law School had someting to do with that, too.

AUTHOR'S NOTE: There are a goodly number of books on Jackie Robinson and Branch Rickey, '11. For an especially thoughtful and moving account of the obstacles that Robinson had to overcome (often with the help of Rickey), see Jackie Robinson — An Intimate Portrait *(Harry N. Abrams, Inc., Publishers, 1988), by Robinson's widow, Rachel Robinson. For a succinct but extraordinarily rich and insightful account of the Robinson-Rickey story and its great significance, see the Foreword to Rachel Robinson's book by Roger Wilkins, '56.*

Law School student first to break

major league baseball color barrier

— BY TOM ROGERS

The name of Moses Fleetwood Walker does not have the same historical ring as that of Jackie Robinson, but Walker made the first footsteps into major league baseball that Robinson followed more than 60 years later. Walker, the son of a physician, came to the University of Michigan Law School from Oberlin College in his native Ohio. He was known as a superb catcher at a time when pitchers were evolving from underhanders toward the sophisticated ball spinners we have today and catchers usually caught bare handed and wore only a face mask as protective gear.

Walker came to the Law School in 1882 partly because of his baseball playing at Oberlin, which was only one of the many schools that had beat the U-M the previous year. "The recruitment of Walker, who would be both a student and a player the campus newpaper promised would 'give entire satisfaction,' was vital," David W. Zang writes in *Fleet Walker's Divided Heart: The Life of Baseball's First Black Major Leaguer* (University of Nebraska Press, 1995).

It was a good move for Walker and for Michigan, which won 10 of its 13 games that year. The University paper dubbed him "the wonder" for his catcher's skills. Against opponents in the new Western College League, Walker singled eight times in 26 at bats and hit .308.

Richard M. Dott, an infielder for the 1882 Michigan team, recalled later how during a game at Evanston, Illinois, Walker unveiled "a new idea" for baseball. "They had a man at second who was leading off the base a few feet," Dott recalled in "The First Western Trip of a Michigan Baseball Team" for *Michigan Alumnus* magazine in November 1902. "As the pitcher delivered the ball, Walker gave me the signal to cover second and he sent the sphere down so true and speedily that the runner was out before he realized what had happened."

"A large part of our success was due to our catcher, Walker, who was one of the best catchers ever seen at the University," Dott wrote. "Had it not been for his color he undoubtedly would have been found later in the National League."

Walker left Law School and played the 1883 and 1884 seasons with the Toledo baseball team, then a major league team. He batted .251 and had a fielding percentage of .783 in 1883 and bettered both marks to .263 and .887 in 1884. But he was released after his second season and the team disbanded soon afterward. Walker — whose younger brother Welday followed him to the University of Michigan to study medicine, play on the U-M baseball team and then play briefly for Toledo — became a businessman and publisher in Steubenville, Ohio. Fleetwood Walker died in 1924.

Walker never graduated from Law School, nor did his brother complete his medical studies. "As had been the case at Oberlin, university classes proved no match for baseball," writes Zang. "Both Walker brothers were intent on answering the calls of professional baseball, a decision made just as the game's determination to become the national pastime was about to intersect with the nation's determination to separate its white and colored citizens."

Sixty-three years later Law School graduate Branch Rickey, '11, would bring those citizens back together by bringing Jackie Robinson onto Ebbets Field as one of the Brooklyn Dodgers.

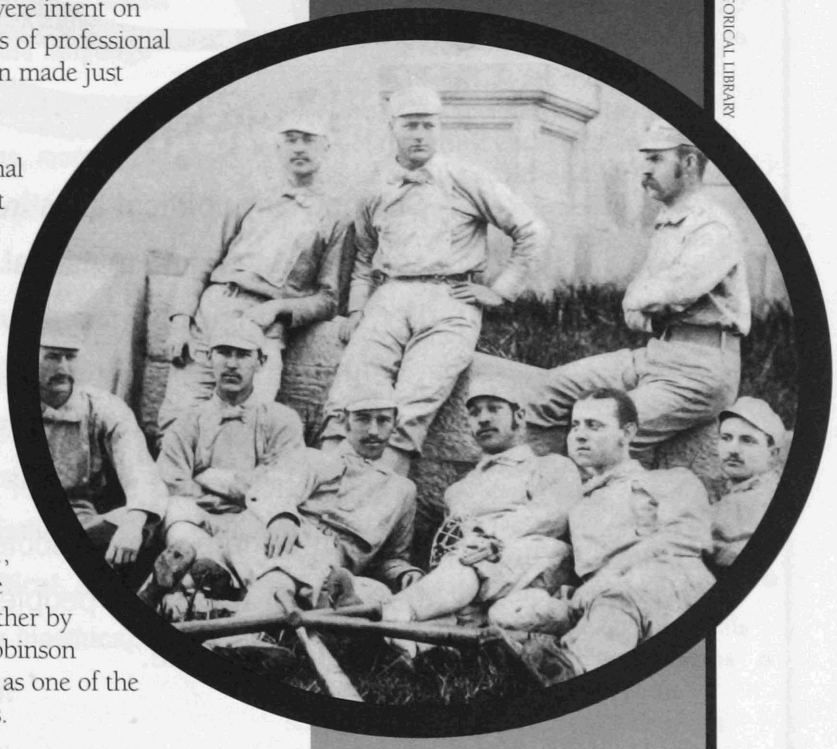


PHOTO COURTESY BENTLEY HISTORICAL LIBRARY

Law School student Moses Fleetwood Walker, fourth from left in front row, is shown with the 1882 University of Michigan baseball team. A catcher, Walker went on to play for the Toledo, Ohio, professional team in the Northwestern Association and the American Association as the first African-American player in major league baseball.

Bioethics in the Language of the LAW

— BY CARL E. SCHNEIDER

This article is based on one originally published in the Hastings Center Report *(24, No. 4, 1994): 16-22, "Bioethics in the Language of the Law." It will appear as part of a forthcoming book on the practice of autonomy. A fully cited version is available from the editor of* Law Quadrangle Notes *or the author.*

What happens when the language of the law becomes a vulgar tongue? What happens, more particularly, when parties to bioethical discourse are obliged to borrow in their daily controversies, the ideas, and even the language, peculiar to judicial proceedings? How suited are the habits, taste, and language of the judicial magistrate to the political, and more particularly, the bioethical, questions of our time?

> **Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.** Hence all parties are obliged to borrow, in their daily controversies, the ideas, and even the language, peculiar to judicial proceedings....The language of the law thus becomes, in some measure, a vulgar tongue; the spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society, where it descends to the lowest classes, so that at last the whole people contract the habits and the tastes of the judicial magistrate.
>
> — ALEXIS DE TOCQUEVILLE
> *DEMOCRACY IN AMERICA*

We ask these questions because, as the incomparable Tocqueville foresaw, Americans today truly do resolve political — and moral — questions into judicial questions. As Abraham Lincoln hoped, the Constitution "has become the political religion of the nation." Many Americans now "take for granted that the Constitution embodies moral as well as legal rules." We revere the Supreme Court as the great arbiter of American moral life, as performing a "prophetic function," as expressing what "we stand for as a people." Trial courts, "L.A. Law" wants to teach us, are forums for the apotheosis of social and moral reasoning. The legalist error proliferates that "moral rights [necessarily] represent claims that *ought* to be made in legal rights, that *ought* to be protected and enforced by law."

Further, bioethical issues have been framed for public discussion in legal terms in cases from *Quinlan* to *Cruzan*, in the tribulations and trials of Baby Doe and Baby M., in the constitutional principles of *Roe v. Wade*, in legislative reforms of law at the end of life, in referenda in Washington, California and Oregon, in the law's travails with Jack Kevorkian. Finally, the spirit of the law has penetrated into the bosom of bioethics because it has penetrated into the bosom of society generally: bioethicists partake of the habits and tastes of their time and place, and those habits and tastes are in no small part those of the judicial magistrate.

I will argue that the language of the law has enriched bioethical discourse. Law has done so by generating vivid and pressing instantiations of bioethical issues, by scrutinizing them — in part — in moral terms, and by proffering means of resolving them. It has contributed vocabulary and concepts to bioethical discourse and proffered ways of putting those words and ideas into practice. But the law's gifts to bioethical discourse and to effectuating that discourse should be cautiously received. For the law has goals that go beyond the immediate problems of bioethics, and those goals peculiarly shape the moral terms the law employs and specially alter the direction legal discourse takes. Furthermore, the law has limits that arise from its special social purpose, and those limits crimp the usefulness of law's language as a vehicle for bioethical discourse.

Law is essentially a device for social regulation. It is the means by which society through its government seeks to establish a framework for human interactions. This framework helps set minimum standards for human behavior (criminal law and tort law exemplify this function), helps establish and support the institutions and practices people use in organizing their relations with each other (this is what contract and commercial law, for instance, do), and helps people resolve their disputes (which is a primary function of civil courts). In this century, the law has broadened that framework by providing some minimum assurances of human well-being (what we call the welfare state).

Law's calling as a device for social regulation is its boon and bane as a language of bioethics. As boon, law's attractions are two. First, it provides a highly developed, conceptually fertile, analogically abundant, professionally precise, systematically disciplined language for thinking about bioethical issues, a rich language that Oliver Wendell Holmes called "the witness and external deposit of our moral life." Second, law provides a tool not just for talk, but for action. As bane, law's disadvantages are also two. First, its language is often inapt. Second, it regularly fails to achieve its desired effect, and sometimes seems to have hardly any effect at all.

The language of the LAW

We turn now to law's first attraction as a language for bioethical discourse. Because law has centuries of experience with social regulation, it offers a highly articulated method and language for analyzing social problems. That method, in America, is the common-law process: Courts build legal principles incrementally, by evaluating one case at a time; legislatures intermittently respond with reforms and reconsiderations. One might think of this as Rawls' reflective equilibrium in action. It is a method well suited to a field as new and febrile as bioethics, since it brings to bear long-nurtured principles on emerging problems. And it is a method particularly congenial to medicine and applied ethics, since, like them, it relies in important ways on cases.

This almost-dialectical common-law method has over the last millennium elaborated a language of social regulation. That language includes a vocabulary not just of terms, but of conceptual, organizing ideas. Three sets of ideas form idioms that particularly influence bioethical debate and that will repay attention: law's dispute-resolution function, its facilitative function, and its rights discourse.

One of law's oldest aims is to help people resolve disputes. American law does so partly through the law of torts. When one person injures another, the law may authorize a tort suit. The tort action provides a way of settling the dispute between the injurer and the victim and of restoring the victim to his prior well-being. By setting the substantive terms for resolving disputes, tort law also establishes a standard of behavior which — one hopes — may shape conduct so that injuries are deterred, disputes are forestalled, and, even, people behave better.

Because the language of torts provides a convenient pattern for thinking about those bioethical issues that arise where one person has injured another, it has seemed a promising response where doctors abuse their power over patients. Building on tort doctrines (like the principle that people may not be touched unless they have given their consent), courts have developed a principle of informed consent. This principle serves three bioethical goals: to help resolve disputes over injuries caused by a doctor's failure to inform a patient adequately; to recompense — however crudely — the injured patient; and — more ambitiously — to improve the way doctors treat patients.

The law tries to conduce to good not just through tort law, but also through what I call the facilitative function: by, that is, lending people the law's authority to use in organizing their relations with each other. A familiar example of this function is the law of contracts, which allows people to reach whatever agreements about their affairs they desire, and to deploy the law's power to make those agreements binding and thus predictable and reliable. The facilitative function also lets people recruit the law's force to give binding effect to their personal preferences. Two common examples of this are the will and the power of attorney, which permit people to dispose of their property as they wish or to allocate that power to someone else.

As bioethics began to hunt for ways of enhancing the power of patients, the idiom of the facilitative function attractively presented itself. Some people have, for example, sought to reform the relationship between doctors and patients by treating it in contractual terms. (This effort has foundered because of a classic problem with contract law: contracts tend to ratify pre-existing differences in power.) More successful have been analogies to the law of wills and the law of agency (the law authorizing powers of attorney). Out of those analogies have arisen the living will and the durable power of attorney, devices that extend the authority of patients to control their medical treatment when they can no longer think and act for themselves.

Finally, as Benjamin N. Cardozo said, "The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions . . . ." This process evokes the language of rights, a language that has achieved a potence and preeminence in the United States unmatched anywhere in the world. That language is woefully muddled by our tendency to conflate moral rights, statutory rights, and constitutional rights. But constitutional rights are undoubtedly the trump cards of our legal system. Once recognized, they massively prevail against statutes that infringe on them. What is more, they have not just a legal, but also a luminous social and moral, authority.

The law's rights discourse has seemed delightfully suited to that engine of bioethical thought, the doctrine of autonomy. Thus proponents of one set of bioethical positions have enlisted the doctrine of constitutional rights with overwhelming effect in the law of reproduction generally and abortion specifically. Because the debate over that law was phrased in rights terms, its

language, tone, content, and result have been transformed. And proponents of another position have similarly labored, with some profit, to transpose the discourse about euthanasia into a debate over a — constitutional — right to die.

In America, then, the language of the law lies easy on the tongue. It abounds in productive principles and illuminating analogies. It provides familiar and powerful tools for analyzing many social problems, including many bioethical issues. And to a notable extent, bioethical discourse has been phrased in legal terms, has been conducted in courts and legislatures, and has won legal reforms.

Nevertheless, alluring as the law's language is, it has drawbacks and limits that are not always perceived or understood. Like the attractions of that language, these drawbacks arise from law's role as a means of social regulation. More concretely, the law's language is shaped specifically for a system with a particular aim — social regulation. That aim itself is a limited one — to shape and not to supplant social practices and institutions. And the law is a blunt chisel even for that task.

First, the idioms of the law are often less apt than they might appear. They have arisen in response to needs for social regulation; but the systemic imperatives that shape the law are sometimes a poor pattern for bioethical discourse. For example, the law of torts is centrally a way of compensating victims of an injury. But bioethicists have wanted the law of informed consent not just to remedy specific failures to inform patients, but to fundamentally reform the relationship between doctors and patients. However, tort law ill suits this ambitious goal.

For one thing, the language of torts is the language of wrongs. That language states only minimum duties; it is not the language of aspiration. A doctor may obey it through quite mechanical and sadly unsatisfactory routines that mock the dialogue bioethicists imagine for doctors and patients. Furthermore, the law penalizes the breach of even those minimal duties only sporadically — when a patient has actually been injured by that breach, when the injury is great enough to justify the expense of a suit, and when the patient realizes all this and is willing to sue.

More broadly, not just torts law, but the law generally, is inept at shaping relationships — particularly relationships that are instant with intimacy. The field that tries most directly to do so — family law — is perhaps the sorriest of law's enterprises. As James Fitzjames Stephen wrote, "To try to regulate the internal affairs of a family, the relations of love or friendship, or many other things of the same sort, by law or by the coercion of public opinion, is like trying to pull an eyelash out of a man's eye with a pair of tongs. They may put out the eye, but they will never get hold of the eyelash." Familial affairs involve relations between people who deal with each other in private on a personal basis concerning intimately personal questions and consulting personal values that are passionately felt. In such affairs, it is hard for law to learn what is going on in the relationship, to write rules that will fit each relationship, to supervise it, and to induce people to follow those rules and cooperate with that supervision.

The relationship between doctor and patient is not always all that it might be, and it is sometimes more bureaucratic than personal. But it can partake, and its members often want it to partake, of those qualities that make it inapt for the law's regime. Thus trying to organize that relationship through tort law may be an example of what Judith Shklar disparagingly calls "the structuring of all possible human relations into the form of claims and counterclaims under established rules."

A second drawback of analyzing bioethical problems in legal terms is that law is a *system* of social regulation, a system whose parts should mesh into what Holmes called "a thoroughly connected system," a (reasonably) coherent body of precedent and principle. Jurists have worried for centuries that changing one area of law will unexpectedly alter another. Such concerns help explain, for instance, the Supreme Court's decision in *Cruzan* (*Cruzan v. Director, Missouri Department of Health*, 497 US 261 [1990]), in which the Court was asked to declare a constitutional right to die. The Court might have done so except for *Roe v. Wade*, which established a right to an abortion. The Court has long agonized over *Roe*, and several Justices regret ever

LAW is essentially a device for social regulation.

It is the means by which society through its government seeks to establish a framework for human interactions.

embogging themselves in the jurisprudential and political quagmire of abortion and its questions of constitutional interpretation and federalism. Whatever the moral appeal of the Cruzans' right-to-die argument, accepting it would have seemed to revivify *Roe* and its expansionist view of constitutional analysis and judicial power. Thus even a Justice who liked much in the Cruzans' argument might have rejected it for fear of its systemic implications.

This point can be put somewhat differently. Every judicial opinion looks forward as well as backward; every opinion is both based on precedent and itself becomes precedent. Yet a court cannot easily anticipate what kind of precedent an opinion will become, for the cases and arguments it will govern are cloaked in the mists of the future. The resulting fear of the unforeseen consequences of each legal precedent is one reason slippery-slope arguments are so common and so telling in law.

Anticipating consequences is particularly urgent where, as in *Cruzan* and *Roe*, "privacy" rights are at stake. To maintain the vigor of those rights, the Court has made it structurally arduous to justify a statute that conflicts with them. Yet this has introduced a crucial and almost perverse rigidity in the law: The Court hesitates to define interests as "rights" because that decision's consequences are so severe. The stronger the doctrine of rights, then, the more reluctant the Court must be to deploy it. Thus the majority in *Cruzan* declined to find a "right to die" in the Constitution partly for fear of what Cardozo called the "tendency of a principle to extend itself to the limits of its logic."

Seen in this light, *Cruzan* is not hard to understand. The Court faced several kinds of systemic pressure to cabin the privacy rights it had announced in *Roe*, and it dreaded the slippery slope it might slide down. In addition, it faced a substantive question — euthanasia — whose slopes were notoriously slippery, whose contours had changed with chastening speed, and whose future dimensions were disturbingly murky. Thus, however the Justices may have assessed the ethical merits of the Cruzans' position, whatever their views of good public policy, and however seductive the idiom of rights, they faced strong systemic reasons not to create a right to die.

This leads us to a third limitation of thinking about bioethical problems in legal terms. Law is a system of *social* regulation, and social regulation is the art of the possible and the necessary. Out of a sense of what is normatively desirable and practically possible, American law seeks only to plan a bare framework for society, and not a complete blueprint for it. Our common law does not — unlike civil law — even aspire itself to be a complete system. Thus there are often gaps in legal doctrine where legal institutions have not fully dealt with an issue.

One such limitation arises from the fact that our judicial system is primarily driven by litigants. Cases they do not bring cannot be adjudicated. Arguments they do not make will not be heard. Another limitation arises from the fact that law relies on precedent. Propositions for which there is no precedent will have trouble making their way into law. One example of this "incompleteness" problem appears in the law of rights. That law has historically flourished in one paradigmatic situation — where a single individual confronts the state. Virtually all rights-thinking in American law is organized around that paradigm. "In such conflicts," as I once wrote, "we are predisposed to favor the person, out of respect for his moral autonomy and human dignity. That predisposition also rests on our assumption that the state can bear any risks of an incorrect decision better than the individual can." But in bioethics the conflict often is not between one person and the state, but between two people, each with a claim against the other and each with a rights claim against the state. Our legal rights doctrine tells us little about how to make such choices because those are not situations the law was designed to cope with.

Surrogate-mother contracts exemplify this problem. In the Baby M case, did Mr. Stern have a constitutional right to father a child in this way? Did Mrs. Whitehead have a constitutional right to raise Melissa, the child she had borne? Did Melissa have a constitutional right to a decision made in her best interests? To be reared by her natural mother? To stay in touch with both her natural parents? Little in our crude and crabbed doctrine of constitutional rights helps answer those questions.

I have observed that law's language can enrich bioethics' discussion of the moral and public-policy issues that subject treats. Yet I suggested that courts and legislatures speak a language shaped by the special exigencies of a legal system of social regulation, a language that is easily misunderstood by an unwary public and that fits uneasily with the language of bioethical reflection. In particular, I discussed that part of the law's language closest to the mainsprings of bioethical discourse — the law's rights talk. I suggested that rights talk is narrow enough to begin with. John Ladd, for instance, profitably contrasts that talk with a broader discourse, the language of "responsibility." In bioethics, "a responsible decision may require consideration of such different things as risks and benefits, other relationships, concerns, needs and abilities of persons affected by and affecting the decision. In addition, in order to make responsible decisions it is usually necessary to 'weight' a number of factors against each other; the final decision often requires what we generally call 'judgment.'" He contrasts rights talk: "Decisions based on rights, on the other hand, are quite different. They do not permit taking into account most of the considerations mentioned, and they do not involve the same kind of weighing, deliberation, judgment, etc., that is called for in cases of responsibility."

But rights talk in the law is importantly more limited even than in ethics, for the apparent similarity of the law's rights talk and bioethics' autonomy principle is misleading. Bioethics can describe a principle of autonomy complex and modulated enough to assimilate the full range of relevant moral considerations. But the law is constrained by its function as an agency of social regulation. It must find authority in legal precedent, fit its rights principles into a demanding context, and articulate rights doctrines that can be translated into the day-to-day work of courts, lawyers, and citizens. Such factors are inevitable in any

system of law. However, they corrode the wide-ranging, subtle, and complex principles necessary to a system of ethics. And they suggest one reason that some bioethical versions of the autonomy principle will not readily be transformed into law.

Political and Judicial QUESTIONS

This leads us to law's second advantage as a language of bioethical discourse. Perhaps law's most beguiling aspect is that it is not just talk. It is also a way of actively, directly trying to change the world. It is not the only way, nor always the best way, but it has conspicuous attractions.

The first such attraction is that law embodies an already established enforcement structure. Further, that structure is backed, ultimately, by society's fiercest instruments of coercion. For instance, the fear of criminal prosecution even today influences — and some say, should influence — decisions about terminating medical treatment. And opponents of abortion precisely want to use the criminal law to prevent abortions.

But law is not just a structure of regulation backed by force. Law also enjoys social and moral authority. Laws are often obeyed because people believe they should obey the law. And people are subtly but truly influenced by the law's expressive capacity (which exploits the law's power to impart ideas through words and symbols) and by the social force (the force of familiarity, custom, and legitimacy) acquired by institutions the law supports. This is, for instance, one defense of the law of informed consent: even though recalcitrant doctors may evade it, it symbolizes society's aspirations for medicine. That symbol, over time, supported by an emerging practice, and taken with other legal and social measures, may gradually prevail in the minds and methods of doctors.

The law is an appealing device for change for yet another reason — there are so many points of access to it. The law can be reached through the instruments of democracy and through litigation, all means available (in principle) to anyone. This helps explain why people trying to challenge, for instance, the institutional authority of medicine and the individual power of doctors have sought to speak in the voice of the law.

Despite these attractions, almost all laymen and too many lawyers sadly overestimate the law's precision and reach. Why does law so often fail to translate hopes into reality? Once again, it is crucial that law is a system of social regulation. Bioethical reflection can analyze each case meticulously to seek the right result for that case. But a system of social regulation cannot trust each decision-maker to make each case right. Nor can it tolerate discretion's inconsistency and unpredictability. Further, a wisely considered and carefully formulated rule may produce the right result in more cases than the ad hoc efforts of individual decision-makers. For all these reasons, justice may require that an agency of social regulation substitute rules for discretion. Further, considerations of efficiency may lead to the same result. As Alfred North Whitehead wonderfully wrote,

> *It is a profoundly erroneous truism, repeated by copy-books and by eminent people when they are making speeches, that we should cultivate the habit of thinking about what we are doing. The precise opposite is the case. Civilization advances by extending the number of important operations which we can perform without thinking about them. Operations of thought are like cavalry charges in a battle — they are strictly limited in number, they require fresh horses, and must only be made at decisive moments.*

But of course, when you adopt a rule, you risk diminishing the chance of doing exact justice in every case, since rules by their nature sweep many somewhat diverse cases into a single category. This is the problem the Missouri legislature faced in the statute tested in *Cruzan*. That statute's rule set a high standard of evidence for terminating treatment. The legislature presumably calculated that making such decisions discretionary was likelier to produce more "errors" than the rule it adopted. Similarly, some states have concluded that a rule prohibiting

The LAW is an appealing device for change for yet another reason – there are so many points of access to it.

The law can be reached through the instruments of democracy and through litigation, all means available (in principle) to anyone.

surrogate-mother contracts will yield more good results than a series of discretionary decisions about enforcing each specific contract. But both rules pay a cost in wrong decisions, as the facts of *Cruzan* suggest.

Rules have another drawback. They must be so clear and comprehensible that the people who apply them will understand them. Yet clarity exacts a cost in justice. This problem plagues bioethics. For example, doctors reasonably complain that tort law's hazy "reasonable patient" standard tells them frustratingly little about their duties. Yet critics who want a doctrine of informed consent with real bite reasonably complain that a clearer standard would leave uncovered the numerous unforeseen situations which ought to be covered.

In all these ways, then, the language of the law must give up something — and sometimes a great deal — in precision and in sensitivity because of the contexts in which law is actually applied. But there is a further, deeper problem. One of the great truths about law is that with unnerving frequency, it fails to achieve the effects intended for it, and sometimes quite fails to have any effect at all. Some of the most fascinating modern legal scholarship reminds lawyers how removed their talk is from the world's ken. That literature reveals that, to the lawyer's chagrin, businesses resist using contracts, ranchers do not know what rules of liability govern damage done by wandering cattle, suburbanites do not summon the law to resolve neighborhood disputes, engaged couples do not know the law governing how they will own property when they marry, citizens repeatedly reject the due process protections proffered them, and, what is worse, all these people simply don't much care what the law says.

The same can be said of many of the law's recent bioethical reforms. There is evidence that as few as ten percent of us have made an advance directive, that only a quarter of us have signed an organ donor card (despite the swarms of us who say we want to be donors), that even competent patients are not widely consulted about do-not-resuscitate orders, that doctors have reduced informed consent to one more bureaucratic chore, and that plaintiffs rarely win informed-consent suits.

What is going on here? Well, of course, many things. But central among them is society's enormous complexity and the narrow relevance of the law to it. People are moved by many pressures beyond those the law creates. They have their own agendas and, more important, their own normative systems. The law writes rules, but the governed — when they know the rules — often have the incentives, time, and energy to avoid them.

Consider advance directives. They offer an apparently irresistible way of speaking in one of life's greatest crises. Yet people spurn them. People do so because they have their own lives to lead. Momentous as the crisis may be, it will generally not seem urgent until it arrives. People resist contemplating their own mortality. They heartily dislike and don't easily understand legal forms; people find them obscure and darkly imagine how they might be misused. For that matter, people may doubt that they will be used at all. Further, many people have trouble envisioning their circumstances years into the future or how they would respond to those hypothetical circumstances. And I suspect that people expect that decisions about their welfare would in any case fall to people they trust — to their families. In short, advance directives were formulated and promoted by people — bioethicists, lawyers, and doctors, for instance — who know what they want to do through them and keenly want to do it. But many of us are not clear about what we want and about whether getting it is worth the costs.

While the language of the law may have penetrated into the bosom of society, it must still, in quotidian life, compete with the many other languages that people speak more comfortably, more fluently, and with more conviction. These are languages of religion and morality, of love and friendship, of pragmatism and social accommodation, of custom and compromise. The danger for bioethicists, then, is believing too deeply that law can pierce the Babel, can speak with precision, can be heard.

The Spirit of the LAW

I have tried to show how law's function as an agency of social regulation produces a language that — despite its uses and attractions — can be an inapt idiom for bioethical discourse and even for transforming bioethical principles into social policy. I now want to propose that "socio-psychologically," if not logically, that language may tend to sway us in undesirable directions. I will suggest two of them.

Let me give a brief example of my first concern. Every year I ask my (law and medical) students whether they have any moral obligation to give blood. They immediately bristle and tell me that the law should not require people to make such donations. I repeat what I have already told them, that I am not asking about legal duties, but about moral ones. They reply that no such obligation should be imposed on them, whether by law or any other outside force. When I ask why those of them who have given blood have done so, they say that they happen, purely as an arbitrary matter of personal preference, to want to do so. Like the subjects of Robert Bellah's *Habits of the Heart*, even their "deepest ethical virtues are justified as matters of personal preference."

I think this story has many explanations. The one relevant to our problem begins with the observation that law generally conceives of problems in terms of rights, whether constitutional or not. This promotes bioethics' own legalistic tendencies, for "it is hardly an exaggeration to say that discussions of medical ethics often amount to little more than glosses on the rights to life, liberty, and the pursuit of happiness," as Ladd says. It is often desirable for people to look on their relations with government in rights terms. It is sometimes necessary for people to look on their relations with other people in those terms. But, as I've previously written, making rights central to one's world view carries a danger:

> *Thinking in terms of rights encourages us to ask what we may do to free ourselves, not to bind ourselves. It encourages us to think about what constrains us from doing what we want, not what obligates us to do what we ought. Legal rights are tellingly different from moral rights in this respect:*

When philosophers talk about rights, they commonly talk about a complex web of relationships and duties between individuals; when lawyers talk about rights, they commonly talk about areas of liberty to act without interference.

This tendency of rights thinking is exacerbated in the United States by the feeling that to assert one's rights is a virtue, that, as A.I. Melden wrote in *Rights and Persons*, "to demand our rights, to assert ourselves as the moral agents we are, is to be able to demand that we be dealt with as members of the community of human beings." In dealing with the government, this may often be true. However, as I've said,

attitudes appropriate to civil rights may be inappropriate to privacy rights. Civil rights are rights to participate in self-government and society. Such participation is at least a virtue and may be a duty. But privacy rights are in a sense the opposite of civil rights — they are rights not to be affected by government and society — and to forego their use can be a virtue and even a duty.

One reason rights thinking is so prevalent in the United States is that in a self-consciously pluralist and secular society other sources of value have lost much of their authority. But this also aggravates the risks of rights thinking, for it deprives people of the incentives for modulating rights claims which a moral system can supply. My students vehemently believe that nothing should bind them to give blood; only their "arbitrarily" chosen preferences counsel them to do so. Nothing in rights thinking *requires* this kind of response; but in a world in which the language of the law has become a vulgar tongue, that response comes all too readily to the lips.

Another "socio-psychological" peril lies in abandoning people to their rights. If doctors and patients meet clad in the armor of their rights, both of them will lose as well as gain. As Robert A. Burt has written: "The physician who is now instructed to obey the 'informed consent' of his patient, no matter how harmful he feels that action to be for the patient, is not only permitted but positively enjoined to separate himself from his patient, to respect his patient's 'autonomy' by suppressing his own identifications, his self-confusions, with that patient." Robert Zussman suggests that such a separation may be taking place: "While a number of observers of the medical scene have argued that patients and patient advocates may demand rights in response to the impersonality of relations with physicians, few have noted that physicians may also become advocates of patients rights in response to the impersonality of their relations with patients." As Charles L. Bosk writes, "The dark side of patient autonomy [is] patient abandonment."

Of course, rights thinking has achieved its present power in bioethics exactly because of medicine's long history of paternalism and because of its long prospect of increasingly bureaucratic and impersonal relations between doctor and patient. The question I raise is about the costs of responding to these evils in too legalistic a way. Or, as Grant Gilmore put it in *The Ages of American Law*: "The worse the society, the more law there will be. In Hell there will be nothing but law, and due process will be meticulously observed."

The Vulgar Tongue

In this paper, I have argued that law offers a rewarding language of social regulation. But I have also contended that, as a vehicle for discussing morally consequential issues like those in bioethical disputes, that language is momentously limited and often inapt. Law is the language of social regulation, and hence obeys systemic imperatives that are irrelevant to and even may conflict with genuine understanding and wise resolution of moral issues. This is why Holmes saw himself "as a judge whose first business is to see that the game is played according to the rules whether I like them or not." It is why Cardozo thought the judge "is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life.'"

Of course courts and (much more) legislatures sometimes speak in moral terms. But that fact must be understood in light of law's task as a system of social regulation: As Holmes said, "The law is full of phraseology drawn from morals, and by the mere force of language continually invites us to pass from one domain to the other without perceiving it . . . . Manifestly, therefore, nothing but confusion of thought can result from assuming that the rights of man in a moral sense are equally rights in the sense of the Constitution and the law." *Cruzan* does not express the Court's belief about whether Nancy Beth Cruzan should have been allowed to die. *Roe* does not state the Court's view of the desirability of Texas' abortion statute. The law of informed consent does not embody any legislature's whole sense of the ethical duties of doctors to patients. All this sharply and crucially limits both the extent to which the language of the law may safely be imported into bioethical discourse and to which bioethical ideas may be effectively translated into law.

We no doubt must live with the fact that the law has become, in some measure, a vulgar tongue, that its spirit has penetrated into the bosom of society. Yet we should remember that the law's calling is to regulate social life, however awkwardly, and its language reflects that purpose. That is its strength. But like any lexicon, law's vocabularies must be handled cautiously. For its idioms rule us in ways we do not always grasp or desire, and they have limits growing out of the ends for which they were created.

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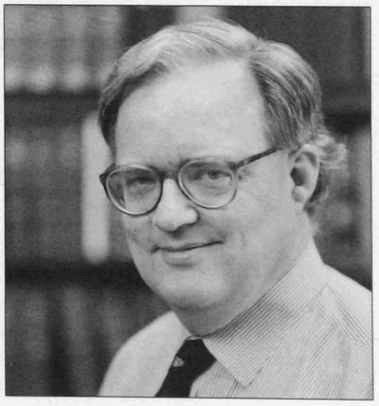


MARRIAGE

TODAY

Legal Consequences for Same Sex and Opposite Sex Couples

— BY DAVID L. CHAMBERS

Laws that treat married persons in a different manner than they treat single persons permeate nearly every field of social regulation in this country — taxation, torts, evidence, social welfare, inheritance, adoption, and on and on.

In this article I inquire into the patterns these laws form and the central benefits and obligations that marriage entails, a task few scholars have undertaken in recent years. I have done so because same-sex couples, a large group not previously eligible to marry under the laws of any American jurisdiction, may be on the brink of securing the opportunity to do so in Hawaii. I wanted to know the benefits and burdens that legal marriage might extend to this group and ask whether the consequences would be sensible and appropriate for same-sex couples. How, in other words, would this institution, molded over time for persons of different sexes, apply to those with different differences?

My findings form the core of this article: that the laws assigning consequences to marriage today have much more coherence than has been commonly recognized, largely falling within three sorts of regulation; that each of these three sorts of regulation would, as a whole, fit the needs of long-term gay male and lesbian couples; that while the law has changed in recent years to recognize nonmarital relationships in a variety of contexts, the number of significant distinctions resting on marital status remains large and durable; that in some significant respects the remaining distinctive laws of marriage are better suited to the life situations of same-sex couples than they are to those of opposite-sex couples for whom they were devised; and, most broadly, that the package of rules relating to marriage, while problematic in some details and unduly exclusive in some regards, are a just response by the state to the circumstances of persons who live together in enduring, emotionally based attachments.

This essay is adapted from "What if? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples," which appeared in 95 Michigan Law Review 447-491 (1996) and is printed with permission from the journal and the author. For a fully cited version of this essay, contact the author.

Every survey of adult Americans willing to identify themselves as lesbian or gay finds that a majority or a near majority are living currently with a partner. Increasing numbers of these couples are celebrating their relationships in ceremonies of commitment.

Just at the point that I finished this article, Congress acted to limit the effects that legal marriage would have, if Hawaii or any other state moved to permit same-sex couples to marry. The new "Defense of Marriage Act" declares that all federal statutes and regulations that refer to married persons or to spouses shall be read as applying to opposite-sex couples only. This article persists in reviewing both federal and state laws that bear on married persons, for the purpose of my exercise of imagination — the "what if? — is to ask how opposite-sex married persons are treated under the law today and hold these laws up to the situations of lesbian and gay male couples.

I. Postures toward marriage

A large proportion of American adults who identify themselves as lesbian or gay live with another person of the same sex and regard that person as their life partner. Exactly how many gay or lesbian adults there are in the United States and what proportion live with another in a long-term relationship are not possible to calculate on the basis of existing information. Still, every survey of adult Americans willing to identify themselves as lesbian or gay finds that a majority or a near majority are living currently with a partner. Increasing numbers of these couples are celebrating their relationships in ceremonies of commitment. Those who participate commonly refer to the ceremonies as weddings and to themselves as married, even though they know that the ceremonies are not legally recognized by the laws of any state. If states extend the legal right to marry, it is highly probable that large numbers of gay and lesbian couples would choose to participate. In a recent survey of nearly 2600 lesbians, for example, seventy percent said they would marry another woman if same-sex marriage were legally recognized.

Exactly what lesbians and gay men hope to obtain from legal marriage is uncertain. Since public ceremonies of commitment are already so common, one might expect that when debating state-sanctioned marriage, they would focus on what law itself can accord that other insitutions cannot: a range of legally protected benefits and legally imposed obligations. In fact, they do not. In the vigorous public discussion, few advocates address at any length the legal consequences of marriage. William Eskridge, for example, devotes only six of the 261 pages in his fine new book, *The Case for Same-Sex Marriage*, to the legal consequences, and his, with one exception, is the longest discussion I can find. Whatever the context of the debate, most speakers are transfixed by the symbolism of legal recognition. It is as if the social significance of the marriage ceremonies gay people already conduct today count for nothing — as if, without the sanction of the state, those who marry have merely been playing dress-up.

That the social meanings of state recognition draw so much attention is nonetheless understandable. In our country, as in most societies throughout the world, marriage is the single most significant communal ceremony of belonging. In a law-drenched country such as ours, permission for same-sex couples to marry under the law would signify the acceptance of lesbians and gay men as equal citizens more profoundly than any other nondiscrimination laws that might be adopted.

Skeptics about marriage within the lesbian and gay communities also largely ignore the legal consequences of marriage. They focus instead on the negative meanings they attach to the institution itself. To many, marriage signifies hierarchy and dominance, subjugation and the graves of countless generations of married couples; one stone reads "Herbert Smith," the other simply reads "Wife." And even if the legal institution of marriage has changed in the recent past, they resist the assimilaton of queer couples into an oppressive heterosexual orthodoxy of ascribed roles and domesticity.

II. The legal consequences of marriage

Each of the fifty states defines the incidents of marriage for its residents. Federal laws add hundreds of other legal consequences. Some scholars have characterized the multitude of legal attributes of marriage today as largely incoherent, and in their details they surely are. Yet it is possible to identify three central categories of regulation, within each of which a certain coherence obtains: some laws recognize affective or emotional bonds that most people entering marriage express for each other; some build upon assumptions about marriage as creating an environment that is especially promising or appropriate for the raising of children; and some build on assumptions (or prescriptive views) about the economic arrangements that are likely to exist (or that ought to exist) between partners.

As you read, you will encounter occasional ghosts from an authoritarian and formally gendered past. The laws dealing with married persons have undergone a massive transformation during the last century. Well into the nineteenth century, all assets of a married couple, including those that the wife brought into a marrigae, were controlled by the husband. In fact, her personal property became his property. The husband also, as a matter of law, controlled all decisions that related to a married couple's children. This male-controlled relationship was also difficult or impossible to leave. At the beginning of the nineteenth century, marriage was indissoluble under the laws of nearly all states. Later in the century, it was dissoluble, but only on proof by one sinless spouse of a serious marital sin committed by the other.

Today, legislatures or judicial decisions have removed virtually all rules that explicitly provide different status or authority for husbands. They also permit marriage to end without proof of marital fault. The compulsory and sex-linked aspects of the law of marriage have, during the latter half of this century, been withering away, sometimes at the price of providing insufficient protection to women economically ill-positioned to protect themselves. As we will see, for example, the rules of divorce commonly treat marriage as a partnership with an equal division of property, but, because of their lower earnings, women are generally left significantly worse off financially than men are. Most gay and lesbian couples can, however, appropriately regard the legal aspects of marriage today as serving primarily, though not entirely, a facilitating function — offering couples opportunities to shape satisfying lives as formal equals and as they, rather than the state, see fit.

A. Regulations that recognize emotional attachments

Some laws and regulations dealing expressly with married persons can best be viewed today as promoting the emotional attachments that most spouses feel toward each other. Here are a few examples. Statutes or common law doctrine in all states grant decisionmaking powers to relatives when a person becomes incompetent to make decisions for herself. Two broadly different sorts of laws exist. The more narrow sort authorizes a family member to make an emergency medical decision when a person has become incompetent and has failed to execute a formal document authorizing some other person to make decisions on her behalf. When such incapacity arises for an unmarried person, state laws designate a parent or an offspring or some other blood relation as decisionmaker, but, for persons who are married, they typically turn first to the person's spouse. The second sort of law, broader in scope, provides for the formal appointment of a "guardian" or "conservator," who typically makes not only medical decisions but other decisions about residence, care, and financial matters. These statues also differ widely, but commonly provide first for the appointment of a blood relative for a single person and a spouse for a married person. The Uniform Probate Code, for example, has been adopted in fourteen states, and establishes an order or preference for the appointment of relatives as the guardian for an incapacitated person, with the spouse first in line, followed by an adult child or a parent. Upon death, other laws or court decisions provide that the spouse has first right as "next of kin" to claim a person's remains and to make anatomical gifts of parts of the deceased person's body when the deceased person has made no directive of her own.

In a similar manner, state laws designate the spouse as the person to receive part or all of a married person's assets when he or she dies without a will. These "intestacy" laws vary widely among the states. In some states, if there are surviving children, a spouse receives as little as a third; in many others, a fixed dollar amount and a share of the remainder; in still others, the entire estate. In most states, if there are no surviving children and no surviving parents, the spouse receives everything.

The laws relating to incompetency and death serve fairly obvious functions but ones worth explicit recognition. Some relate to the control of property, a subject taken up later. But most fundamentally, for couples who see themselves in an enduring relationship, the spouse is the appropriate person for the state to designate as decisionmaker during a period of incompetency and as primary beneficiary after death on the basis of a reasonable guess that that is the person whom the now-incompetent or deceased person would have chosen if she had addressed the question in advance. That is, the rule fulfills her probable wishes.

Do gay men and lesbians with partners need the protection of such laws to ensure that their partners make decisions for them or inherit their estates? A very few states designate a long-term unmarried partner as the preferred decisionmaker for the incompetent person, but most states ignore the umarried partner altogether. Similarly, only a very few states provide that an unmarried partner shall receive any portion of the estate of a person who dies without a will and, to date, no state provides anything for a same-sex partner. Despite this, one could argue that gay couples do not need such protections because they can protect themselves fully by simply executing a will or a medical power of attorney. But gay men and lesbians who are in relationships need these protections for the same reason that

heterosexual persons need them. Like most heterosexuals, most gay men and lesbians are reluctant to think about their mortality and procrastinate about remote contingencies. They fail to execute wills and powers of attorney, even though they are often aware of the unfortunate consequences of failing to act.

Even if all persons with a same-sex partner remembered to execute the proper documents and had access to the needed legal services, other forms of government regulation that recognize special emotional and spiritual ties could not be similarly handled by a scheme of private designations. Consider four examples. Federal law places severe restrictions on the opportunities for foreign-born nationals to immigrate legally to the United States. One significant exception to this rule of exclusion is that a foreign-born national who enters into a nonfraudulent marriage with an American citizen has a presumptive right to enter the United States immediately as a long-term resident. No such special provisions are made for a friend or lover. Even brothers or parents of a U.S. citizen are not automatically entitled to preferential treatment, but typically face long waiting periods before entry.

Another federal law, the Family and Medical leave Act of 1993, requires all employers with fifty or more employees to extend unpaid leave of up to twelve work weeks during each year to an eligible employee to care for a spouse with a "serious health condition." The statute also provides for leaves to care for children and for parents, but makes no provision of any kind for friends, lovers, or unmarried partners.

The federal government and many states also extend an advantage to married people when called to testify in a criminal proceeding that bars the state from forcing a married person to testify against his or her spouse. Nearly all states offer a related protection, typically in both civil and criminal proceedings, for confidential communications made between spouses during the marriage.

Finally, under the law of many states, if a third person injures a married person negligently and by so doing deprives the spouse of care and companionship, the spouse can typically sue the injuring party for what is called loss of "consortium," compensation not for financial loss but for the loss of companionship.

The immigration preference for spouses, the family leave provisions, the evidentiary rules, and the consortium rules have a common current justification: that it is fitting for the state to recognize the significance in people's lives of one especially important person to whom they are not biologically related. Lesbians and gay men in long-term relationships attribute a similar level of importance to their partners (even if they have other gay and lesbian friends they also consider significant). They need these rules as much as heterosexual people do.

Gay men and women would experience as a burden, not as a benefit, a few regulations that attach to marriage and that also build, in substantial part, on assumptions about the emotional salience of the marital relationship. Public and private employers, for example, adopt antinepotism regulations that prohibit employees from participating in decisions to hire, promote, or discharge their spouse or from supervising their spouse in the workplace. Resting on views about both emotional and economic ties, these regulations are as justifiably imposed on lesbians and gay men in enduring relationships as they are on heterosexuals: no one can be expected to be sufficiently objective when decisions about one's own long-term partner must be made.

B. Regulations dealing with parenting

Gay male and lesbian couples raise children in this country in three common contexts. In the first, numerically the most common, one of the partners has already become the biological parent of a child (usually in the course of a prior relationship with a person of the opposite sex) and then has later formed a relationship with a same-sex partner. This new partner is functionally in the position of a "stepparent." In the second context, a same-sex couple, *after* beginning a relationship, agree to raise a child together. They plan that one of them will be the biological parent and that, after birth, they will serve as co-parents. In the third context, a same-sex couple seeks to adopt or to become the foster parents of a child who is biologically related to neither of them.

Opposite-sex couples also raise children in each of these sorts of contexts and, in each, laws and practices in all states treat such couples, when married, in specially favored ways. By contrast, in each of the three situations, a gay or lesbian partner who is not the biological parent of the child typically faces formidable, often insuperable, difficulties in becoming recognized as a legal parent at all. The laws that advantage married couples are needed by *some* heterosexual married couples who wish to raise children, but these same laws would be helpful to almost *all* lesbian and gay male couples who wish to raise a child as legal equals because, for them, it is always the case that neither partner or only one is the biological parent of the child.

In each context, most of the rules would be defended today as intending to serve the best interests of children. I will focus on the value of these rules both for children and for lesbian and gay male adults who wish to raise children. As to the interests of children, a great deal has been written on the adequacy of gay men and lesbians as parents in the past two decades. I do not intend to review this literature. It is well reported elsewhere. In overwhelming measure, it concludes that a person's sexual orientation has no significant bearing on her or his parenting capacities or skills and that children raised by lesbian and gay male parents fare as well day by day and over time as children raised by other parents.

As we will see, some of the difficulties currently experienced by gay men and lesbians who wish to raise children are not formally imposed by law. Some arise under rules that courts and agencies already have the discretion to extend to gay people or to same-sex couples, but rarely do. Thus, in some contexts, the benefits of legal marriage for same-sex couples may lie less in the rules that would become applicable to them than in a changed attitude toward homosexual persons that a change in marriage laws might help bring about on the part of legal actors exercising authorities that already exist. Here the symbolic and the legal intertwine.

1. The stepparent relationship

When a lesbian or gay male parent with custody of a child begins to live with another person of the same sex, the new person assumes a parenting role functionally comparable to a stepparent. The state of the law about such parenting relationships outside of marriage is clear: no matter how long the gay "stepparent" lives with the child, no matter how deeply she becomes involved in the care of the child, she and the child will rarely be recognized as having a legally significant relationship with one another. The state of the law is essentially the same for stepparent figures in opposite-sex unmarried couples. They are just the "boyfriend" or "girlfriend" or "live in" of the custodial parent and have no legal significance.

Perhaps surprisingly, until the recent past, the legal position of the opposite-sex partner who marries a custodial parent has been little different. In all but a few states, the stepparent married to a biological parent has not been legally obliged to contribute to the support of the child during the marriage. In no state has the stepparent been required to

contribute to the child's support upon divorce, no matter how long he lived with the child or the extent of his voluntary contributions. The stepparent has also had no legal entitlement upon divorce to be considered for court-ordered visitation or for sole or joint custody of the child. It has been the absent biological parent who remained financially liable for support, who remained the one parent eligible for visitation (even if he never lived with the child), and who remained second in line for custody.

Recently, however, stepparents married to a custodial parent are coming to be recognized as parent figures for at least some purposes, and it is to the benefits of these laws and court decisions that gay and lesbian "stepparents" need access. A few states have begun, for example, to protect the relationship between a child and a stepparent whose marriage to the biological parent comes to an end. No state has imposed on the stepparent a general obligation of support upon divorce, but some courts and a few legislatures have given courts the authority to grant visitation and, in unusual circumstances, custody, even over the objection of the biological parent.

States have also expanded the opportunities for stepparents during their marriage to a biological parent to become the full legal parent of a stepchild through adoption. If the absent biological parent consents, most states permit the married stepparent to adopt without any of the home visits and family studies usually required as a part of the adoption process. Consensual stepparent adoptions now account for over half of all adoptions that occur in the United States. Within the last few decades, most states have recognized certain circumstances in which stepparents living with and married to a biological parent are permitted to adopt even over the objection of the absent biological parent.

A further change regarding stepparents is found in laws relating to employment in the labor force. State worker's compensation programs and the federal Social Security survivor benefit program permit a minor stepchild living with and dependent upon a stepparent to receive benefits after the stepparent's death. These programs replace much of the income lost to a child upon the death of the supporting stepparent. Similarly, the Federal Family and Medical Leave Act of 1993 requires employers to permit a worker to take up to twelve weeks of unpaid leave to care for their seriously ill child, including a stepchild.

Despite these reforms that apply to stepparents married to a biological parent, unmarried stepparent figures, of the same or opposite sex as the custodial parent, remain almost totally ignored by the law, wholly ineligible, for example, for the special treatment for stepparent adoption, wholly unable to secure for a child the benefits of workers' compensation or Social Security survivor benefits, and ineligible for the protections of the Federal Family and Medical Leave Act. They also remain free of the legal obligations that would come with adoption — most notably the obligation to provide financial support for the child they adopt. Extending these benefits and obligations to lesbians and gay men by permitting them to marry would serve well their needs and the needs of their children for the same reasons that they serve the needs of married opposite-sex couples and their children: children who live with a stepparent figure who is in a committed relationship with their biological parent often become attached to and financially dependent upon the stepparent and these attachments warrant recognition.

2. Artificial insemination, sperm donors and surrogacy

The second parenting context for gay men and lesbians includes the same-sex couples, already formed, who agree that one of them will become the biological parent of a child whom they will raise together. Here the issues are rather different for women than for men.

When a lesbian couple plan that one of them will become pregnant — and large numbers of lesbian couples seek to have babies today in this manner — they first must find a source of sperm. Some face problems that are not formal barriers of law but that are probably aggravated by the outlaw status of their relationship. Sperm banks in all states provide insemination services to women, most commonly in circumstances in which the woman is married and her husband is sterile. While no state expressly prohibits sperm banks from providing services to unmarried women or to lesbians, some doctors and sperm banks apparently decline to do so.

Clearly legal problems arise after birth, at the point that the lesbian partner seeks to become recognized as a legal parent. She will be able to achieve such recognition only if she successfully completes a formal process of adoption. In most states, her petition to adopt will be rejected, either because her partner and she are of the same sex, or because they are not married to one another, or both. In a growing number of states, the lesbian partner can be considered for adoption, but even in these states, the best

Most gay and lesbian couples can appropriately regard the legal aspects of marriage today as serving primarily, though not entirely, a facilitating function — offering couples opportunities to shape satisfying lives as formal equals and as they, rather than the state, see fit.

the couple can hope for is that, after completing elaborate forms and enduring an intrusive home study and an individualized inquiry into the child's "best interests," a court eventually, many months after the child's birth, will approve the application of the nonbiological parent to adopt. The whole process is likely to cost thousands of dollars.

Lesbian couples need a simpler and more welcoming process. They need, at a minimum, the procedures available in most states to legally married couples in comparable circumstances. For such couples, most states' laws provide a straightforward procedure governing artificial inseminaton through clinics or sperm banks. The sterile husband simply acknowledges in writing his concurrence in his wife's insemination and his acceptance of the child as his own. He is then treated for purposes of the law in exactly the manner that he would be if he had been the biological father. No home study is required. No court hearing is held. The child's birth certificate simply records him as the father of the child. Lesbian couples need access to the same automatic registering of parenthood for the nonbiological female partner.

Similarly problematic are the situations for gay male partners when they wish one of them to serve as the biological father for a child they plan to raise together. This situation is troublesome for it necessarily involves a much more substantial involvement by the other biological parent — the surrogate mother — than in the case of artificial insemination through a surrogate father, involvement under circumstances in which there are well-founded concerns for the intersts of the mother and of women in general.

Reflecting differing resolutions of these concerns, state laws vary widely today regarding the legality and enforceability of surrogacy arrangements. Some prohibit surrogacy agreements altogether; some refuse to enforce them but do not prohibit the arrangements if voluntarily carried out; and some permit enforcement if the parties comply with various state-imposed requirements and if the mother does not change her mind within a statutorily prescribed period. Among the requirements in many states is that only married couples may enter into surrogacy arrangements with a donor mother. Thus, under these varying schemes, few gay men could legally enter into an enforceable surrogacy agreement, and when they are able to do so, they would still have to overcome the adoption problems that lesbian couples face when both partners seek to be recognized as the legal parents of the child born to one of them.

The issues surrounding surrogacy are complex, but, whatever their resolution, gay male couples need access to whatever scheme is made available to opposite-sex married couples.

3. When neither partner is the biological parent: adoption and foster care

Today, a few states prohibit lesbian and gay men from adopting under any circumstances and a few others prohibit them from serving as foster parents. Most other states make adoption or foster care very difficult in practice for persons who are openly gay or lesbian. Single heterosexual individuals are also disfavored in practice almost everywhere. When single persons, gay or heterosexual, are permitted to adopt, they are often offered only the most hard-to-place children, children who are older and have had multiple foster placements, or children with multiple handicaps.

By contrast, while procedures for adoption and foster care vary widely across the country, it is the case everywhere that, whatever the procedure, the married heterosexual couple stands highest in the hierarchy of preferred units for placement of a child. The status that is accorded to married opposite-sex couples today would provide fully adequate legal protection for the interests of gay male and lesbian couples and for the children they would raise.

C. Laws regulating the economic relationship of couples or between the couple and the state

A considerable majority of the laws that provide for differing treatment for married persons deal with the married couple as an economic unit. They build on beliefs or guesses about the economic relationships that married persons actually have and on prescriptive views about what those relationships ought to be. They assume that married persons differ from most single persons, including most single persons who share a residence with another person, in one or more of the following ways: the married partners will live more cheaply together than they would if they lived apart (that is, that there are routine economies of scale); the two will pool most or all of their current financial resources; the two will make decisions about the expenditure of these resources in a manner not solely determined by which party's labors produced the resource; the two will often engage in divisions of labor for their mutual benefit; and one partner, typically the woman, will often become economically dependent on the other.

To the extent that these laws have an empirical foundation, it is unclear whether the images of opposite-sex relationships that lie behind them will fit the circumstances of the sorts of gay male and lesbian couples who would marry under a change in the law. What evidence there is suggests that most lesbian and gay couples in long-term relationships believe in pooling resources and practice it today, and that pooling is particularly common among those who engage in ceremonies of commitment.

The review that follows divides the many financial regulatons that treat married persons differently than single persons into two rough sorts — those that fix the relationship between married persons and the state and those that fix the economic relationship between the two married persons themselves — because these sorts of regulations typically serve quite different ends.

1. The regulation of the financial relationship between married persons and the state

Tax laws and laws pertaining to government benefits commonly treat married persons in a distinctive manner by regarding them for most purposes as a single economic unit.

Consider some examples. Federal and state income tax laws create a system of joint returns for married couples that treats the couples as a single economic entity. Under these provisions, when only one spouse earns any income, the total tax liability for the couple will be less than it would be if the income-earning spouse filed as a single person, a result that may be thought justified because two people are living on the single earner's income. On the other hand, when both spouses work and each earns even a fairly moderate income, their total tax liability will often be higher than it would have been if each had filed as a single person, a result that may again be thought justified because, by pooling incomes, they can live together more inexpensively than two single persons living separately. In many situations, these two sets of rules produce wholly justifiable outcomes, but their paradoxical impact in practice is that many working men and women maximize their incomes by living together but not marrying, each filing a separate return, even though

they might otherwise prefer to marry. The same rules also discourage some married women from seeking employment outside the home, because they conclude that the marginal tax rate on any earnings they produced would be so high as to make their economic contribution trivial.

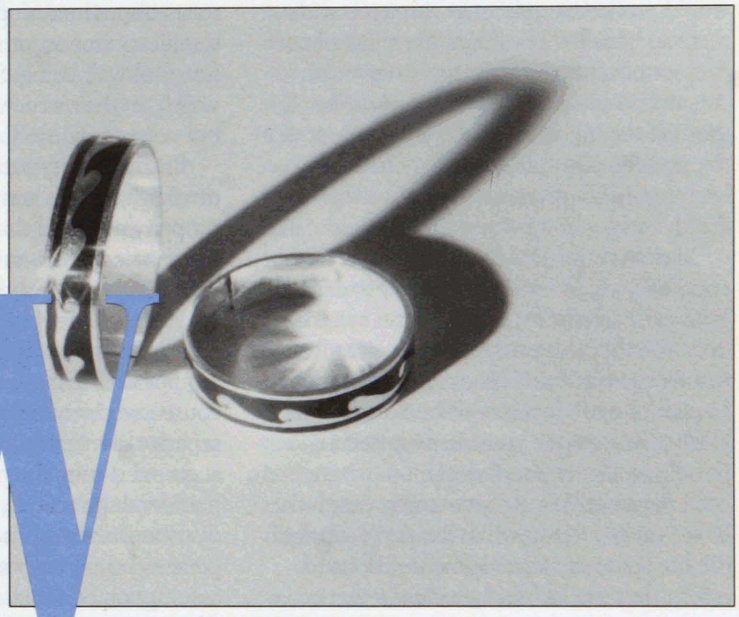
Similar rough justifications and undesired effects characterize the rules that apply when low-income married persons who are aged, blind, or disabled apply for federal welfare benefits under the program of Supplemental Security Income (SSI). If a married couple apply together, their grant will be lower than it would be if they were treated as two individuals applying separately. Similarly, if only one member of the couple applies, the income of the applicant's spouse will be assumed to be available to the applicant and will be taken into account in determining both the applicant's eligibility for the benefit and the size of the grant. The same sorts of rules of income attribution apply when a married person seeks a government-backed educational loan. For couples who in fact pool their income and resources, these government benefit rules make sense, but they can impose hardships when the rules attribute more income as available than the spouse can comfortably contribute and can sometimes deter couples from marrying who otherwise would.

Government taxing and benefit regulations of other sorts also build on the expectation that married couples will share resources and recognize that one spouse is often economically dependent on the other. Some of these programs, fortunately, avoid the undesired behavioral incentives we have just discussed. When a long-employed worker retired with a spouse who has been a homemaker and has not worked in the labor force long enough to be entitled to full Social Securicty benefits in her own right, the nonworking spouse, if over sixty-two, is entitled to benefits through the worker. Similarly, when a long-employed worker dies, Social Security benefits will typically be available for a surviving spouse over sixty who is not entitled to full benefits through her own contributions as an employee.

Gift and estate taxes also reflect a view of the married couple as a single economic unit in which dependencies arise. When a well-heeled spouse transfers property to the other spouse during the marriage, the transfer is not subject to the federal gift tax that would apply to gifts to others, including the donor's children. When appreciated assets held in the name of one spouse are transferred at divorce to the other spouse, no capital gains tax or gift tax is due at the time of the transfer. And, when a spouse dies, bequests to the other spouse are not taxed under federal estate tax laws. Public and private employers further recognize the economic interdependency of spouses by making health care benefits available to their employees' spouses, and, just as federal and state income tax laws exempt from taxation the value of a worker's own employer-provided health care benefits, so too these same laws exempt from taxation the value of the benefits for the worker's spouse.

Gay and lesbian couples are subject to none of these rules, neither the benefits nor the burdens. No joint return. No attributed income. Even when employers provide health benefits to both married employees and to employees with a same-sex domestic partner, only the married employees obtain the benefit of the tax exemption for the value of their partners' health coverage; the employee with the same-sex partner must report the value of the benefit to his partner as income and pay taxes on it.

Would gay and lesbian couples be advantaged by being treated like heterosexual married couples across this range of state and federal legal consequences? They would be subject to the same unfortunate behavioral incentives that these rules create today for opposite-sex couples. A gay man with HIV on Medicaid, for example, might choose not to marry on learning that, if he did, he would cease to be eligible for benefits even though his partner and he did not actually earn enough to pay the couple's medical bills. Indeed, it is possible that an even higher proportion of gay male and lesbian couples would be economically disadvantaged by the application of the current tax laws than are married opposite-sex couples. The only couples who consistently benefit from the current laws are those in which one partner works in the labor force, and taxes aside, both partners prefer this arrangement. Given



Would gay and lesbian couples be advantaged by being treated like heterosexual married couples across this range of state and federal legal consequences? They would be subject to the same unfortunate behavioral incentives that these rules create today for opposite-sex couples.

enduring sex-ascribed roles, the employment of only one partner is likely to be the situation more often in opposite-sex than in same-sex couples. Moreover, the premise of the current rules is that married couples actually share in the control of resources and expenditures. When that premise fails, it is doubtful whether the burdens of the joint return should be imposed. Some observers have raised doubts about the actual degree of sharing of control in most heterosexual married couples, and it is quite possible that an even higher proportion of gay men and lesbians who would marry would be persons who in their day-to-day lives would share only some of their income.

On the other hand, remember that not all tax and welfare rules work to the harm of gay couples who would marry. In some couples, only one partner would work in the labor force, and for them the benefits of health coverage and the joint tax return might be substantial. In others, both partners would work, but only one with a job with medical benefits. For them, the value of tax-exempt benefits through the partner with coverage could be considerable. And for those at the highest end of the income scale, the benefits of the estate and gift tax exemptions might more than offset the disadvantages of a joint return.

Moreover, in actual practice, even for the couple in which both partners work and both earn significant incomes, the income tax and other rules may in actual practice less frequently cause behaviors experienced as painful by the parties. When neither partner in a couple considers himself or herself the "secondary" worker — when both partners, that is, have strong ties to the labor force — then, while the perversities of the tax laws may affect some decisions to marry, they are less likely to lead either partner to drop out of the labor force or feel economically useless in a manner that he or she resents or later comes to regret. And, viewed from another perspective, the opportunity for legal marriage, at the very least, provides a choice to opposite-sex couples whether to marry or not, a choice from which lesbian and gay couples could benefit for the same sorts of reasons.

2. The regulation of the financial relationship between married partners

In the United States today, states employ either of two broad schemes of regulation to define the economic relationship between married partners. Nine states (mostly in the West and Southwest) employ "community property" regimes, under which, to oversimplify, the spouses own separately whatever they bring into the marriage or receive by gift or bequest during the marriage and own jointly any other assets either of them acquires during the marriage, including all assets acquired from their labors. The earnings of each partner are owned jointly by the pair. In the remaining states, called "common law states," again to oversimplify, the spouses own separately whatever they acquire in their separate names and jointly whatever they buy in both names or whatever one by deliberate act puts into joint control. Their earnings are their own. These differences in law sound significant and may affect many married persons' perception of the nature of their relationship, but it is probable that social conventions linked to gender have greater impact than formal legal rules on the way that assets are controlled by married persons who live together.

The rules of property do, however, become crucial at the point of divorce, for all states impose rules of distribution that have significant impact on the separate spouses' financial well-being. State divorce laws differ widely in their structures and in their details, but commonly produce similar outcomes.

In community property states, each divorcing spouse is entitled to one-half of the property acquired during the marriage. In some states judges may deviate from this division in extraordinary circumstances. The remaining states have adopted more flexible schemes of property division generally called "equitable distribution." In these states, courts are permitted to ignore the rules of separate ownership and divide all property acquired during the marriage in an equitable manner. In practice in many equitable distribution states, lawyers for divorcing persons begin negotiations with an assumption of a division closely similar to the division imposed in community property states: in the absence of special circumstances, the couple will divide equally all assets acquired by either during the marriage. And in practice in many community property and equitable distribtuion states, the actual division of property negotiated by parties often deviates from a fifty-fifty distribution in ways that have little to do with formal legal rules.

What is critical for our purposes is that at the point of divorce, under either regime, married persons encounter formal systems of forced allocation of assets that treat married persons as economic partners while they were together. Thus, as a single important example, for many long-married couples today the largest single asset owned by either is a pension account accumulated in the name of one of them. In both community property and common law states, that part of the pension assets attributable to the period of the marriage will be subject to division between the partners.

State law also responds at divorce to imbalances in earning capacity between spouses, imbalances that have often been magnified during the "partnership." It does so in common law states by allowing judges to consider the disparate financial positions of the parties in the distribution of property. Many states have also devised doctrines that permit courts to compensate a spouse in some manner for helping to increase the human capital of the other partner, most commonly by bearing the costs of putting the partner through professional school. In addition, both community property states and common law states permit courts to award periodic payments, called alimony or maintenance, for the support of a spouse unable adequately to provide for herself or himself after separation. Today alimony is awarded less frequently and for shorter durations than in the past.

Death is another occasion when the law imposes financial obligations because of marriage. Under the laws of nearly all states, a married person cannot unilaterally prevent his spouse from inheriting part of his assets. Thus, when a married person dies with a will and the will fails to provide for the surviving spouse, the laws of nearly all common law states permit the surviving spouse to claim a "forced" or "elective" share of the estate, commonly one-third or one-half. Much the same result is reached in long-term marriages in community property states because, no matter what one spouse considers to be her separate property and attempts to bequeath by will to others, one-half of the assets acquired by the couple during the marriage will be considered the property of the other spouse at death.

Thus at both divorce and death, states impose on married couples a prescriptive view of the appropriate financial relationship between them. Most states now permit couples, at the point of marriage or during the marriage, to contract for a different arrangement on death or divorce than the law would otherwise impose, though also placing some limits to ensure that the decision to contract was "voluntary" and "informed."

How, by comparison, does the law treat the income and assets of single persons with a long-term partner? Very differently indeed. In both community property and common law states, the earnings of an unmarried

person and the resources bought with those earnings are entirely the property of the earner. Moreover, in no state today does the state impose on the estate of an unmarried person a forced share for a surviving partner. An unmarried person can leave her money to whomever she pleases, no matter how long a relationship she may have had with a partner.

The rules relating to the breakup of unmarried couples vary widely among the states. Until the last thirty years or so, courts in nearly all states refused to intervene at all, even when the parties had agreed to share assets, on the ground that the cohabiting relationship itself was immoral. A few states still retain this approach. In most states, however, the law has changed, responding to the huge growth in the numbers of unmarried opposite-sex couples living together and to the changed social perception of the acceptability of such cohabitation. Courts will enforce express agreements between unmarried persons to support each other or to divide property titled in the other's name. Some of the cases have involved same-sex couples.

A few states have gone further than the enforcement of agreements, coming closer to imposing a marital regime. Some will enforce "implied contracts," the contents of which courts infer not from words of agreement between the partners but from the partners' conduct — and which may in fact not reflect any actual agreement between the parties. In a few more states, judges will, at the request of a separating long-term unmarried partner, simply impose a property division that seems "just," even in the absence of any express or implied agreement between the parties. In most states, however, unmarried partners still have no state-prescribed obligations to each other that apply in the absence of agreement. Each can walk away taking whatever is titled in his or her name.

At first blush, the rules currently applied in most states to the unmarried may seem to most gay men and lesbians preferable to the rules of forced sharing imposed on married people. Most states, as just described, impose on unmarried couples only what the couple itself has agreed to. Such a regime may well appeal to couples who are suspicious of the state and couples in which neither partner is economically dependent on the other. And, even if they saw themselves as having some continuing responsibilities, many would reject the notion of the state, through its judges, having the power to apportion fault or responsibility between them under the discretionary guidelines found in the "equitable distribution" states.

Yet I think that the rules regarding the financial aspects of divorce now in place for married couples would serve lesbian and gay male couples reasonably well. In the first place, the property rules of divorce are given life as part of a larger set of procedures governing divorce proceedings, procedures that encourage, or force, couples to wind up their financial relationship prior to moving on to another relationship. In the second place, the rules regarding the division of property for married people are, to an increasing extent, subject to alteration by the agreement of the parties. Before or during marriage, the parties may contract for different outcomes between them that will be honored by courts if voluntarily entered. So seen, the rules of marriage operate as a default regime for couples who marry and do not choose a different scheme for themselves.

Of course, just as only a small proportion of opposite-sex married couples enter agreements today to vary from the rules otherwise imposed at divorce, so it is probable that few gay male and lesbian couples would do so in the future. My own belief, however, is that a default rule of imposed sharing is preferable for gay male and lesbian couples to the default rule of separate property and no continuing obligations that now exists for unmarried couples. The moral claims for independence and separate ownership have their own weaknesses. Some may look at the world of forced sharing and alimony, remember a time when married women could own nothing in their own name, and wish to reject any reminders of the dependence of women on their husbands. But the world of independence has its own poisoned roots. Independence in law means that the person with legal title wins, and title, standing alone, bears little necessary relation to the efforts that lie behind the generation of the asset or to the moral implications of a long-shared life.

Taken together, these considerations even support the claim that the default property rules for marriage will not merely serve most gay and lesbian couples reasonably well but will, in general, serve gay and lesbian couples who choose to marry better than they serve opposite-sex married couples today. Gay men and lesbians compelled on separation to share assets will be hurt less frequently when the law's promise of sharing fails to produce economic parity between the partners. Because the members of such couples are always of the same sex they more often earn similar incomes and are less likely to have gender-assigned expectations of divided responsibilities for income production during the relationship.

III. Observations

American states and the federal government, as we have seen, treat married individuals differently than single individuals in three broad respects — privileging their relationship to their spouse in certain contexts because of their affective ties, providing them and their partners opportunities for legally recognized parenting that are not provided to others, and extending benefits and imposing obligations based on a view of the partners as economically intertwined.

Taken together, the rules bearing on marriage offer significant advantages to those to whom they apply. The case I have tried to make for gay and lesbian couples is that they need these opportunities and choices to much the same degree that heterosexual couples do.

Heterosexual conservatives object to same-sex marriage either on the ground that sex between persons of the same sex is immoral or pathological or on the ground that permitting same-sex couples to marry will somehow contribute to the crumbling of the "traditional" family. Feminists among gay and lesbian scholars are also often critical of marriage for same-sex couples, fearing different undesirable consequences for lesbian and queer communities. Neither objecting group focuses on the fit of specific legal rules with the lives of same-sex couples and, for this reason, this article has not addressed their claims. Three other sorts of doubts that do address the legal consequences of marriage might nonetheless be raised about legal same-sex marriage, even by some gay men and lesbians who might be expected to be sympathetic.

A first objection is that there is a better vehicle than something called "marriage" for extending the appropriate protections and opportunities to same-sex couples. Especially for those for whom marriage is indelibly associated with male-female relationships, the alternative of permitting same-sex (and opposite-sex couples who want it) to register with the state as "domestic partners" and extending to such partners some or all of the consequences attached to marriage may seem attractive.

No American state has yet adopted domestic partner registration, but, as we have seen, some states, through imaginative court decisions and occasional statutes, are beginning to recognize unmarried couples for particular purposes. Formal registration has been instituted in Denmark and Norway, where registered same-sex partners are treated precisely like married couples with

regard to all financial and economic regulations, but are not labelled as "married." Unless a regime of domestic partnership were developed under which same-sex couples were treated just as opposite-sex married couples are, same-sex couples would probably find that domestic partnership legislation excluded benefits that they would much like to have. Thus, in Denmark, for example, registered same-sex couples are treated like opposite-sex married couples for purposes of economic benefits, but not for purposes of the adoption laws or any other laws that apply to parenting.

I do not, however, wish to seem critical of the movement for domestic partnership registration. I believe that, though the rose by another name will not smell as sweet to some of us, states are far more likely to accept domestic partnership than same-sex marriage. Denmark — and the fifty American states — may eventually accept for gay couples united under a name other than "marriage" all the special rules for married persons, including those that apply to parenting. And those of us who favor legal same-sex marriage must acknowledge that just as "domestic partnership" legislation might provide only parts of the package of legal consequences that now attaches to marriage, so also legal "marriage" itself might be granted piecemeal as well: a state might open legal marriage to same-sex couples but withhold parenting or other benefits from them, or, more fundamentally, some states might extend all state laws bearing on marriage to same-sex couples while the federal government withheld the incidents of federal law.

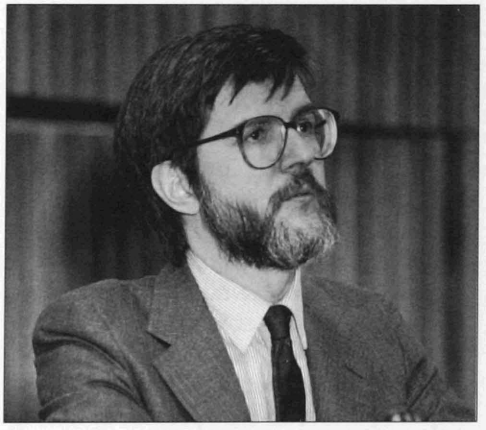
A second doubt about pursuing changes in the laws of who may marry is that the benefits of marriage are likely to be unevenly distributed among same-sex couples. Nitya Duclos, a Canadian scholar, has argued, for example, that the rules of marriage would primarily benefit lesbians and gay men who are members of the idle class — "those who are already fairly high up in the hierarchy of privilege." She does not argue that this lopsided allocation of benefits is a reason not to permit same-sex marriage, for surely it is not, but rather is a reason to be less exultant about what will be achieved by it.

Duclos may be right. Those high in the hierarchy of privilege usually come out ahead. Still, at least in this country, many lower-income same-sex couples will find great benefits in marriage. Duclos claims that "[t]hose who rely for most of their income on state benefits are more likely [than middle class persons] to be economically penalized for marrying," and it is true that a significant cost of marriage for some lower-income persons who marry a working person is the loss of government benefits, such as Medicaid or Supplemental Security Income. It is also true that some other rules, such as those exempting bequests to a spouse from the estate and gift taxes, are of value only to those who have large sums to give away. Still, there may be compensating gains for low income persons. Social Security retirement benefits for a nonworking spouse and Social Security survivor benefits are of most importance to those without long ties to the formal economy. Medical benefits tied to employment — including employment of some low-earning government employees — are of immense significance to spouses with jobs that carry no health coverage at all. And other benefits, such as the immigration rules or rules that relate to intestate succession, are likely to be at least as frequently invoked by the people of modest incomes as they are by the well-heeled. It is impossible for all sorts of reasons to make a confident prediction of what class-groups among gay men and lesbians would benefit most from being permitted to marry, but there is ample reason to believe that the rules relating to marriage will be appealing to many people of all classes.

A final criticism of the laws bearing on married persons is more fundamental: even if legal marriage would offer benefits to a broad range of same-sex couples, some might claim that all these advantages are illegitimate — illegitimate for both same-sex and opposite-sex couples — because they favor persons in two-person units over single persons and over persons living in groups of three or more, and because they favor persons linked to one other person in a sexual-romantic relationship over persons linked to another by friendship or other allegiances. Those of us who are gay or lesbian must be especially sensitive to these claims. If the deeply entrenched paradigm we are challenging is the romantically linked man-woman couple, we should respect the similar claims made against the hegemony of the two-person unit and against the romantic foundations of marriage.

Still, nearly all reform to correct disparate treatment in our society is incremental. It comes at points at which the state finally recognizes the legitimacy of the claims of some long disfavored group. Thus, within this century, governments have gradually changed their posture toward the legal position of the child born outside of marriage and toward unmarried opposite-sex couples in their relationships with one another.

A next appropriate step is the step discussed in this article — the recognition of same-sex couples who wish to marry. And although it is conceivable, as some have feared, that permitting gay people to marry will simply reinforce the enshrined position of married two-person units in general in our society, it seems at least as likely that the effect of permitting same-sex marriage will be to make society more receptive to the further evolution of the law. By ceasing to conceive of marriage as a partnership composed of one person of each sex, the state may become more receptive to units of three or more (all of which, of course, include at least two persons of the same sex) and to units composed of two people of the same sex but who are bound by friendship alone. All desirable changes in family law need not be made at once.



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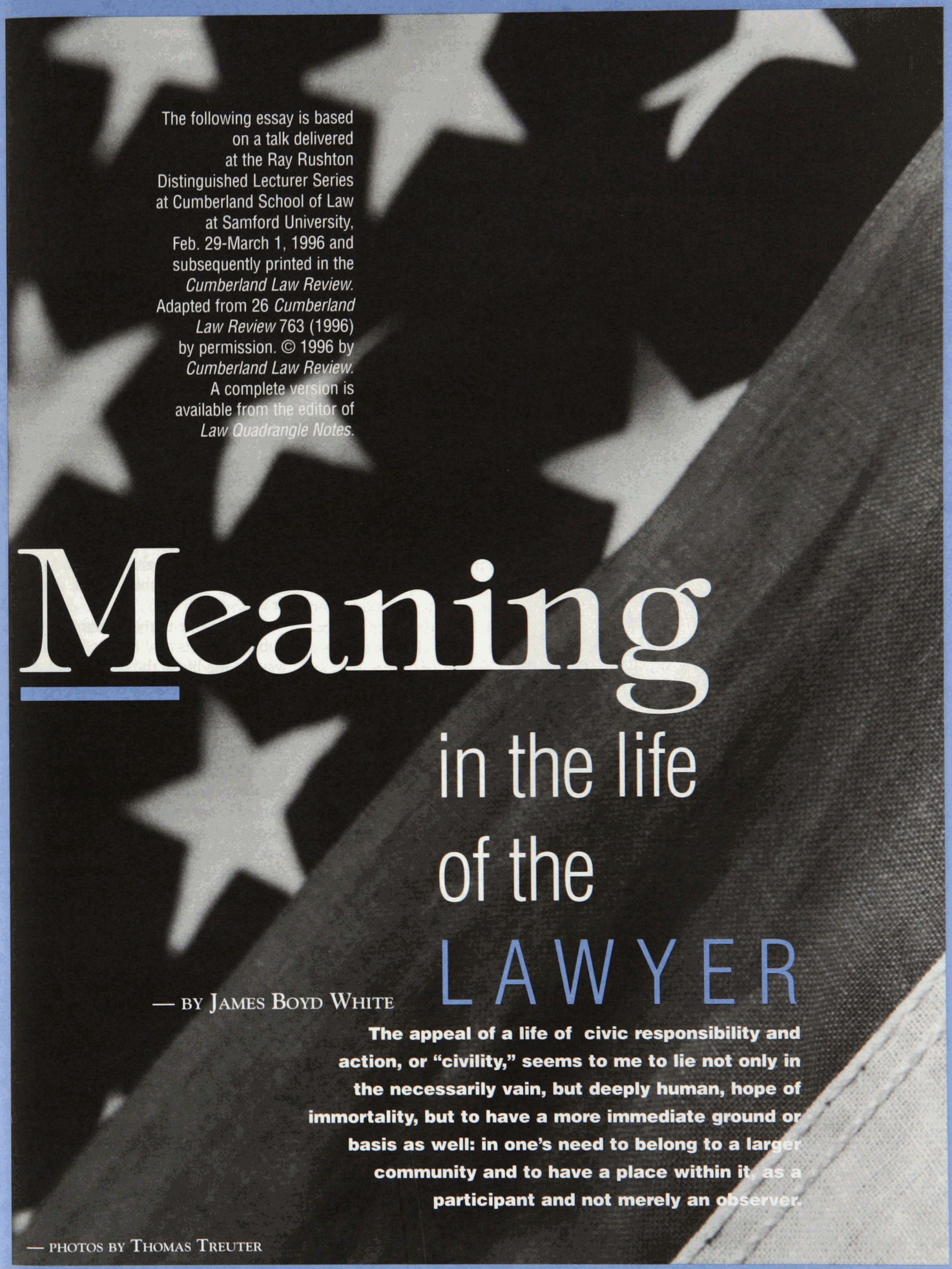

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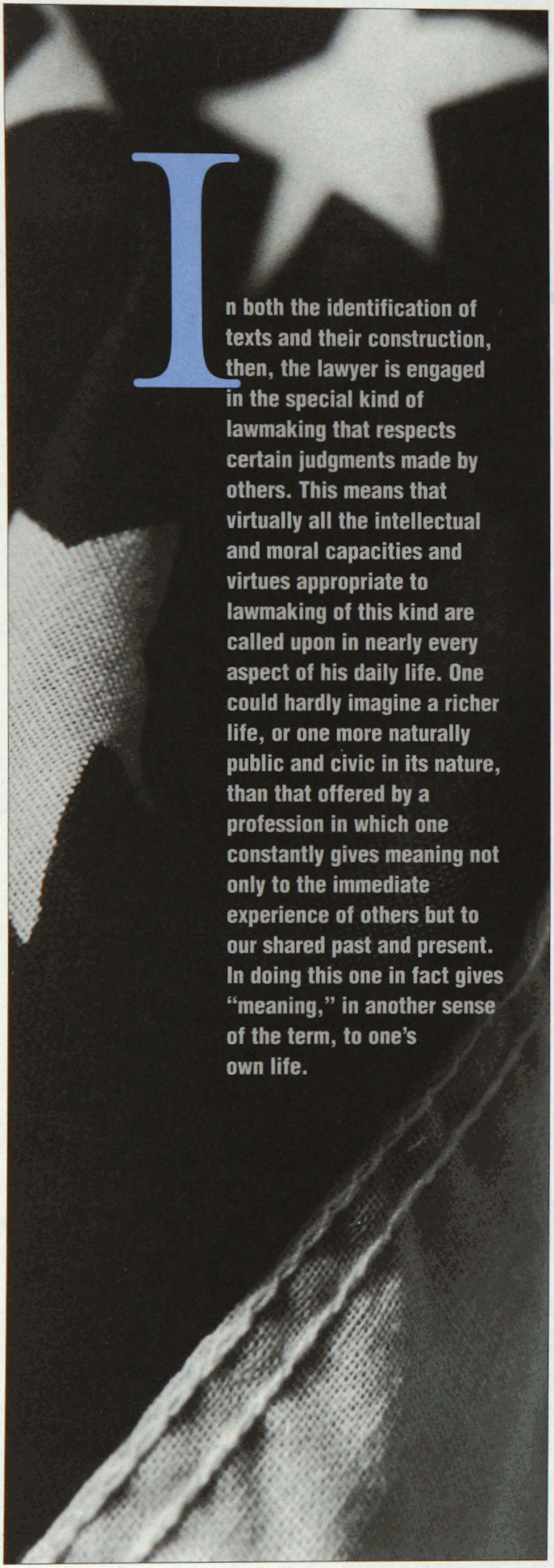
Meaning in the life of the LAWYER

— BY JAMES BOYD WHITE

The appeal of a life of civic responsibility and action, or "civility," seems to me to lie not only in the necessarily vain, but deeply human, hope of immortality, but to have a more immediate ground or basis as well: in one's need to belong to a larger community and to have a place within it, as a participant and not merely an observer.

— PHOTOS BY THOMAS TREUTER



In both the identification of texts and their construction, then, the lawyer is engaged in the special kind of lawmaking that respects certain judgments made by others. This means that virtually all the intellectual and moral capacities and virtues appropriate to lawmaking of this kind are called upon in nearly every aspect of his daily life. One could hardly imagine a richer life, or one more naturally public and civic in its nature, than that offered by a profession in which one constantly gives meaning not only to the immediate experience of others but to our shared past and present. In doing this one in fact gives "meaning," in another sense of the term, to one's own life.

This need is in turn based partly on another, equally interesting and important: the need to claim meaning for our shared experience. Thus we see an elected politician, or candidate running for office, saying over and over again, "This is how we are situated; this is how we got here; this is what we need." In doing this he tells a story of the polity, giving it both a character and a role in a narrative, and he gives the story itself a meaning: "America: the land of equality," or "opportunity"; "Birmingham: the city of steel," or "tradition"; "the University: center of research" or "teaching." The activities of public life in this way meet our need to claim meaning for our existence, not only as individuals but as a larger community; and they do this not only when we agree with the meanings claimed, and find them comfortable, but also at the worst and most awful moments in our shared life: when a tyrant comes to power, for example, or someone starts a civil war. The need to claim meaning for experience is not inherently benign, that is, but a force of human nature capable of great good or evil.

What is true in this general way about public action is true in specific and strong ways in the life of the lawyer, and it is about this that I mainly wish to speak. The lawyer is perpetually claiming meaning, both for the events with which she deals and for the law itself. In the former case, she faces the intractable tension between the hard reality of human experience and the necessarily inadequate languages into which it is her task to translate it, a challenge worthy of any mind. In the latter case, when deciding what the law should mean, she must put herself in the special position that the law offers those who construe it, namely that of one who when he reads law, makes law.

For reading a statute or opinion cannot be reduced to a process of reading commands, as a political subordinate reads the orders of his superior, since the meaning of the law is not simply there, in the texts; rather, it must be construed by the lawyers, in light of larger purposes and values. And the process of construction is not a matter simply of determining legislative will, as though one could see through the words to such a thing, but takes quite a different form:

In the case of a statute the question is not "what the legislature intended," but "what this statute should be taken to mean," given not only the words of the statute and whatever legislative history exists, but the whole fabric of prior law, including other legislation, the common law background against which it was assumed to be written, fundamental commitments of value in constitutional documents and in other texts construing them, and so forth. The legal text in this way always calls upon its reader to integrate its meaning with the other texts that make up the law; this means that the smallest or most trivial case may present the lawyer with the opportunity of speaking to the very largest questions of public meaning and value.

If a crucial part of the life of civic responsibility is the making of laws, it is important to see that the lawyer engages in this activity all the time. Every time she construes a piece of legislation, an opinion, a regulation, or a contract, she is participating in the making of law, and this is equally true when she argues a case, when she decides it as a judge, or when she advises her client that the law permits or forbids a certain course of conduct.

On the other hand, it is important to see that the work of the lawyer in reading and making law cannot be reduced to mere policy judgments either, for in the law no choice is wholly free of constraint. Every actor must ask himself not only what he thinks the best result would be (or the best policy); he must ask to what judgments authoritatively made by others he must accord respect, and why. It is not simply the question, "How should this case be decided?" that he must answer as judge, then, or to which he must argue as lawyer, but — parallel to the question he must ask in reading a statute — "How should this case be decided, given this array of prior cases, legislation, constitutional provisions, and the like?" each of which must be read and construed.

In both the identification of texts and their construction, then, the lawyer is engaged in the special kind of lawmaking that respects certain judgments made by others. This means that virtually all the intellectual and moral capacities and virtues appropriate to lawmaking of this kind are called upon in nearly every aspect of his daily life. One could hardly imagine a richer life, or one more naturally public and civic in its nature, than that offered by a profession in which one constantly gives meaning not only to the immediate experience of others but to our shared past and present. In doing this one in fact gives "meaning," in another sense of the term, to one's own life.

Yet when we ask our students how they imagine their futures, or when we talk to our graduates about what they do, we often hear a different story, marked by a note of discouragement or disappointment. One question is why. Part of the answer, no doubt, lies in the commercialization of law practice, by which I mean a professional life in which attention is focused not on the meaning of what the lawyer is actually doing, as a lawyer, so much as upon the market for his services. This in turn reflects a larger reconception of the nature of human life, especially our shared life, as an essentially economic activity, a process often described as one in which self-interested actors rationally pursue their goals, seeking to gratify whatever tastes or preferences they bring to the process. Thus success for the nation is measured in terms of GNP, not human flourishing or human rights; the student in the university is imagined as a customer, whose felt needs or desires it is our task to gratify, rather than as a person who needs an education; and medicine is conceived of as the "delivery" of something called "health care services," rather than as a profession devoted to giving sick people proper medical attention — all as though the meaning of what we do can be reduced to a commodity transferred for money. Of course there is an economic element in each of the situations I describe above, and an economic analysis of them may be fruitful; but there is also more than that, and that "more" is crucial to the value and meaning of the activity in question. We do ourselves a disservice when we allow one feature of our experience, and one language, to dominate others; in particular we erode our capacity to meet the need that public life and the professions partly exist to satisfy, the need to claim adequate meaning for our shared existence.

In the law the process of deprofessionalization I describe is also fed, I think, by the modern law school, when it focuses so exclusively upon the law as a set of policy choices, themselves frequently cast in economic terms. What I have characterized as the central feature of the lawyer's life, the claiming of meaning through the reading of authoritative texts, was once the center of a legal education; but it is no longer; and one consequence of the shift is that we are no longer training our students to see and realize the possibilities for meaningful action and life that are present at the center of the profession they have chosen.

In fact, the lawyer's professional judgments cannot be reduced to economic form, or to economic analysis, and this for two reasons: first, because economics has no way to respect authority external to itself, which is the root of legal thought; second, because law concerns itself in large part with what economics takes for granted, namely, what economists call the formation of "taste" or "preferences" — and what others call the fundamental questions of individual and collective human life: what we should value, who we should be. As a method of analysis, economics assumes that those choices have been made; it then pursues the question how they can be harmonized or otherwise interact to mutual benefit. But there are questions prior to economics, questions of value and being, that it cannot address, and these are central to every legal argument.

I think, then, that the true nature and possibilities of legal practice are to some extent obscured both by the dominant economic conception of our shared life

and by the dominant focus in our law schools on law as policy, rather than on law as the art of making choices that are at once partly constrained and guided by an authoritative culture, partly open to our present judgment.

How, under these circumstances, is law as a profession properly to be taught? Not without economics, or politics, or psychology, or history, for all have much to contribute to legal thought and debate; but not as if any of these disciplines could simply be extended to take the place of law. Rather, law should be taught as a discipline of thought and argument with its own structure, its own elements, at the center of which is the activity of claiming meaning for human experience, at both the individual and collective level, and doing so in a language that is at once a source of authority and itself subject to perpetual revision. It can best be taught I think through a revived case method; one in which the case is seen not, as Langdell apparently thought, as a particular instance to be scientifically subsumed under a general rule, but in an even more old-fashioned way: as a kind of prospective apprenticeship, in which the student learns by doing. What the lawyer will face in her professional life is a series of cases, after all; a legal education can be conceived of as training her how to deal with cases, which, if looked at clearly enough, almost invariably have a quality of freshness or newness, testing the adequacy of prior formulations and calling for present invention. They involve her directly in the process described above, of claiming meaning for experience in an authoritative language that is made by others but open to transformation at her hands. What she can learn is the kind of complex thought and argument, at once general and particular, at once interpretive and creative, at once respectful of the past and responsive to the present, that characterizes the law at its best.

Everything I have said is related to meaning in the second sense in which I have used the term, the meaning of a professional life. In this connection I want to make the point that the satisfactions I am describing are in principle available throughout the profession, not merely in certain elite firms. In fact, I think the life of the small city or small-town lawyer offers remarkable possibilities along the lines I have suggested. Here one can make a decent living; maintain professional standards; live and work with many of the same people, both as lawyers and as clients, over a lifetime; serve one's community in various explicit ways, perhaps on a school board or zoning commission; have a place in one's church or synagogue; have a real relation with one's spouse and children; and in doing all of this engage powerfully in the processes by which the community claims meaning for its experience. A rich life of many dimensions, public and private. Of course, this life is not for everyone, and some big firms and big cities offer unique opportunities of other kinds; but the life I describe does seem to me a good one.

If I am right, why do our students not line up for the kind of life I describe above, especially when it seems to fit with many of their own values? Part of it, I think, has to do with their socialization: they have so far proceeded from prestigious institution to prestigious institution, and this is the model on which it is natural for them to take the next step. To do anything else is for some of them literally unthinkable. Part of it, too, is once more the fault of the law schools, for all too often we encourage our students to imagine the practice of law hierarchically, with certain big firms in certain big cities at the top, smaller firms in smaller towns near the bottom. This is most unfortunate, I think, because it leads our students towards practices that may not fit with their own values, and often without their considering the alternatives at all.

But there is also something larger, namely the nature of experience in a mass media age. People sometimes choose the big city, I think, because it has an existence in what might be called "the news," and the big firm for parallel reasons, because it has an existence in the professional news. If I go to Los Angeles or Chicago I am going to a place everyone has heard of; of course they have not heard of me, but that does not matter; I identify with the team I have joined. I think it used to be different, and suspect that in the South it still is. People used to think that where they came from was real, and mattered, and was as full of the drama of life as any other place, maybe fuller; that it too had wise people and fools, saints and evil ones, and real possibilities for life. People used to think, that is, that their own experience was real and that it mattered. If there is an educational task we should take seriously, it is helping our students conceive of their own experience, and that of other individual human beings, as real and important.

The dissipated sense of the reality of one's own experience may be at work in the practice of law itself, and in a way that is connected to the commercialization described above. It used to be quite common for the lawyer to think of himself as very different from his clients; it was to his profession, as much as to his clients, that his loyalties extended. Now lawyers all too often seem to imagine themselves as simply selling services in a world in which the customer is king. Instead of feeling that they in some ways elevate the experience of their clients, as they translate it into the language of the law and claim for it a new kind of meaning, they often feel that they reduce the law, and what it could mean, to a system of manipulation. In doing so they lose much of what a profession means.

For a comparison, think of the transport of goods for sale: what could be more plainly a business, merely commercial, than that? Yet think also of the magnificent world of meaning that Joseph Conrad and others have been able to make out of the life of the sea, which was, from an economic point of view, simply the transport of goods.

The law is transformative. It acts upon certain material — the problem or dispute or trouble brought by the client to the lawyer — which has one principle of organization and intelligibility, and converts it into something that has to be

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understood in very different ways. In a case like *Cohen v. California* (1971), for example, it converts a dispute about a vulgar motto on a jacket into a consideration of the fundamental nature of political speech in our society. In converting its material the law converts us as well, both speakers and listeners, as we come to inhabit the world this language and culture define. Conversion of this kind is a radical form of human activity, for which our word is art: we convert earth and oil into paintings that may change the imagination; pleasing sounds into music, not always pleasing, but sometimes of incredible power and beauty; human actors and costumes and words into another dimension of reality, on the stage, with another claim on our attention altogether. So in the law: we convert immediate experience into the subject of thought of a particular kind, which has at its center the question of meaning: what this event means, and should mean, in the language of the law; and what that language itself means, as a way in which we articulate our deepest values and attain collective being. The life that gives meaning in such a way is itself a life of meaning.

In the development of such capacities — which lie at the heart of the profession of the law — there is ground for hope that some of the less than satisfactory tendencies of our world can be resisted. For "I have often seen," wrote Dante, "a thorn bush stand fierce and rigid all winter long," as if it were stark and lifeless; "then, in the spring, bear a rose at its crest."

There are deep traditions that conceive of law in such ways, and we should do our best to keep them alive. I am reminded, for example, of Solomon: when he became King, the Lord appeared to him in a dream, and said "Ask what I shall give thee." Solomon replied: "Give unto thy servant an understanding heart to judge thy people, that I may discern between good and bad." He did not ask for money, or long life, or the death of his enemies, but a wise and understanding heart; or, as Dante puts it when he retells the story in the Paradiso, he asked not to know how many spheres there were in heaven, or whether necessity conditioned by contingency is true necessity, or whether one can make a triangle in a semicircle that does not have a right angle, but asked for royal prudence, regal prudenza.

It is important to see that this is a quality of the individual mind, of individual experience. "Whenever you are uncertain," Dante says, "put lead on your feet, to make you slow to reach either Yes or No: for a quick judgment often takes the wrong way; and then the feelings bind the intellect" — that is, your capacity for thought is impaired by your emotional commitment to the decision you have hastily made.

For a lawyer this is very good advice indeed. And see what its premise is: that excellence of judgment is the work of the whole mind, including the affections, including the capacity to suspend conclusion. This in turn means that excellence of this kind is to be attained only by the development of individual mind; not by a mass education, or by the experience of groups or classes, but through sustained attention to individual experience of intellectual and affective life. In the development of such capacities — which lie at the heart of the profession of the law — there is ground for hope that some of the less than satisfactory tendencies of our world can be resisted. For "I have often seen," wrote Dante, "a thorn bush stand fierce and rigid all winter long," as if it were stark and lifeless; "then, in the spring, bear a rose at its crest."

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