

GT

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 44 • NUMBER 2
SUMMER 2001

LAW QUADRANGLE NOTES



Law School
Coll
MI

**Globalization and
Tax Competition:
Implications for
Developing Countries**

**How to Talk
about Religion**

U P C O M I N G E V E N T S

August 2-8	ABA Annual Meeting, Chicago (Alumni Reception August 6)
September 13	Michigan Bar Breakfast, Lansing
September 14-16	Reunion of Classes of 1976, '81, '86, '91, and '96
September 21-23	Reunion of Classes of 1941, '51, '56, '61, '66, and '71
October 11-13	Committee of Visitors Meeting
December 20	Senior Day
January 3-7, 2002	Association of American Law Schools Annual Meeting, New Orleans
January 21	Martin Luther King Day observance
February 8-9	Symposium — Separate but Unequal: The Status of American Public Education Today (<i>Michigan Journal of Race & Law</i>)
March 23	Butch Carpenter Scholarship Banquet
May 3	Law School Honors Convocation
May 4	Senior Day

Calendar is correct at deadline time, but is subject to change.

Have you moved lately?

If you are a Law School graduate, please send your change of address to:

LAW SCHOOL
Development and
Alumni Relations
721 S. State St.
Ann Arbor, MI 48104-3071

Phone: 734.615.4500

Fax: 734.615.4539

jteichow@umich.edu

Non-alumni readers should write directly to:

LAW QUADRANGLE NOTES
1041 Legal Research Building
Ann Arbor, MI 48109-1215

Address all other news to:

Editor
LAW QUADRANGLE NOTES
1045 Legal Research Building
Ann Arbor, MI 48109-1215

Phone: 734.647.3589

Fax: 734.764.8309

trogers@umich.edu

On the Cover:

The Law Quadrangle —
a place of sun and shade and
time for conversation.

PHOTO BY PHILIP T. DATTILO

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 44, NUMBER 2
SUMMER 2001

Copyright © 2001, The Regents of the University of Michigan. All rights reserved. *Law Quadrangle Notes* (USPA #144) is issued by the University of Michigan Law School. Postage paid at Ann Arbor, Michigan. Publication office: *Law Quadrangle Notes*, University of Michigan Law School, Ann Arbor, MI 48109-1215. Published three times a year.

POSTMASTER, send address changes to:
Editor, *Law Quadrangle Notes*,
University of Michigan Law School,
801 Monroe St.,
Ann Arbor, MI 48109-1215

FACULTY ADVISORS:
Christina B. Whitman, '74, and Yale Kamisar

EXECUTIVE EDITOR:
Geof L. Follansbee Jr.

EDITOR/WRITER: Tom Rogers

WRITER: Nancy Marshall

DIRECTOR OF COMMUNICATIONS:
Lisa Mitchell-Yellin

DESIGN AND PRODUCTION:
Linda Liske
www.law.umich.edu

THE UNIVERSITY OF MICHIGAN, as an equal opportunity/affirmative action employer, complies with all applicable federal and state laws regarding non-discrimination and affirmative action, including Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973. The University of Michigan is committed to a policy of non-discrimination and equal opportunity for all persons regardless of race, sex, color, religion, creed, national origin or ancestry, age, marital status, sexual orientation, disability, or Vietnam-era status in employment, educational programs and activities, and admissions. Inquiries or complaints may be addressed to the University's Director of Affirmative Action and Title IX/Section 504 Coordinator, 4005 Wolverine Tower, Ann Arbor, MI 48109-1281, 734.763.0235; TTY 734.747.1388; University of Michigan Information 734.764.1817.

THE REGENTS OF THE
UNIVERSITY OF MICHIGAN

David A. Brandon, Ann Arbor
Laurence B. Deitch, Bingham Farms
Daniel D. Horning, Grand Haven
Olivia P. Maynard, Goodrich
Rebecca McGowan, Ann Arbor
Andrea Fischer Newman, Ann Arbor
S. Martin Taylor, Grosse Pointe Farms
Katherine E. White, Ann Arbor
Lee C. Bollinger, *ex officio*

2 DEAN'S MESSAGE

3 BRIEFS

- Scholarship donors, recipients celebrate together
- Diller, Hessler win Campbell Competition
- What am I bid? SFF auction raises more than \$62,000

28 FACULTY

- *Human Rights and Legal History* honors Simpson
- New symposium recognizes Ellsworth
- Thanking Dean Christina B. Whitman, '74

ALUMNI

- The inner voice and the inspiring path
- Women and the law — a sharing of insights
- Michael Kagan, '00, wins grant to launch refugee aid project in Egypt

45 SPECIAL SECTION:

ILLUMINATING THE MOSAIC OF THE LAW

- Law, Policy, and the Convergence of Telecommunications and Computing Technologies
- Colloquium on Challenges in International Refugee Law
- Change, Continuity and Context: Japanese Law in the 21st Century
- Judging Business: The Role of Judicial Decisionmaking in Corporate and Securities Law

ARTICLES

60 GLOBALIZATION & TAX COMPETITION: IMPLICATIONS FOR DEVELOPING COUNTRIES

International tax competition threatens to undermine the individual and corporate income taxes, which remain major sources of revenue for all modern states.

— Reuven Avi-Yonah

66 HOW TO TALK ABOUT RELIGION

It is of enormous importance to learn to talk about religion well, if only for the obvious political and practical reason that religious divisions, both within nations and among them, are often intractable and bitter, and mutual understanding very difficult to attain.

— James Boyd White

UNIV. OF MICH

NOV 2 2001

LAW LIBRARY

Each year I use my messages in *Law Quadrangle Notes* to examine a quality that helps to define an outstanding attorney. I have discussed how great lawyers pursue intellectual growth and renewal, maintain integrity, teach others about the law, serve as community citizens, bolster our profession's image, exhibit patience, and sustain a form of optimism. In the coming year, I would like to explore the quality of voice.

The famous English preacher Charles Haddon Spurgeon published "Hints on the Voice for Young Preachers" in 1875. Most of his guidance had to do with diction — with qualities such as articulation, cadence, and volume. And while that is not the kind of "voice" I am speaking of here, I nonetheless expect most lawyers would find his recommendations entertaining at least. Consider, for example, the following advice:

■ "[A]void the use of the nose as an organ of speech, for the best authorities are agreed that it is intended to smell with."

■ "It is impossible to hear a man who crawls along at a mile an hour. One word today and one tomorrow is a kind of slow-fire which martyrs only could enjoy. Excessively rapid speaking, tearing and raving into utter rant, is quite as inexcusable; it is not, and never can be powerful, except with idiots."

In referring to the "voice" of a great attorney, however, I am speaking of more than diction. I am referring to qualities of personality — to the ways that we can shape the nature of our relationship with our listeners through choices about timing, syntax, tone, and word selection. And we can read some of Spurgeon's observations differently from the way he wrote them, in ways that prompt reflection about what substantive attributes of voice might characterize the best lawyers. Let me note a few examples:

"[O]pen your mouths when you speak, for much of inarticulate mumbling is the

result of keeping the mouth half closed."

The best lawyers always seem to know when and how to speak up. Never too soon, never too late, never in ways that leave their listeners wondering why they chose to speak at all.

"Always speak so as to be heard. . . . Adapt your voice to your audience." These lawyers share an unerring sense of audience and context. They know which clients should be patiently walked through each step of a complex analysis, and which clients become confused and impatient with anything beyond a summary conclusion.

"Do not as a rule exert your voice to the utmost. . . . Vary the force of your voice." Persuasion often requires restraint. The lawyer who tries to steamroll listeners, overwhelming them with an avalanche of argument, often elicits suspicion and resistance more than acquiescence.

"Get a friend to tell you your faults, or, better still, welcome an enemy who will watch you keenly and sting you savagely." Important moments of advocacy or negotiation require preparation. The best attorneys appreciate the limits to their ability to imagine the reactions of others, and they make effective use of third parties to unearth the dangerous unintended reactions that a presentation might provoke.

During the coming year, I hope to explore in greater depth the ways in which a great lawyer's voice can influence a situation or a relationship. Like Spurgeon, I believe that we may profitably analyze, debate, and teach the subject of "voice." In doing so, we can better prepare our students for careers in which the voices they use are often as important as the substantive ideas they express.

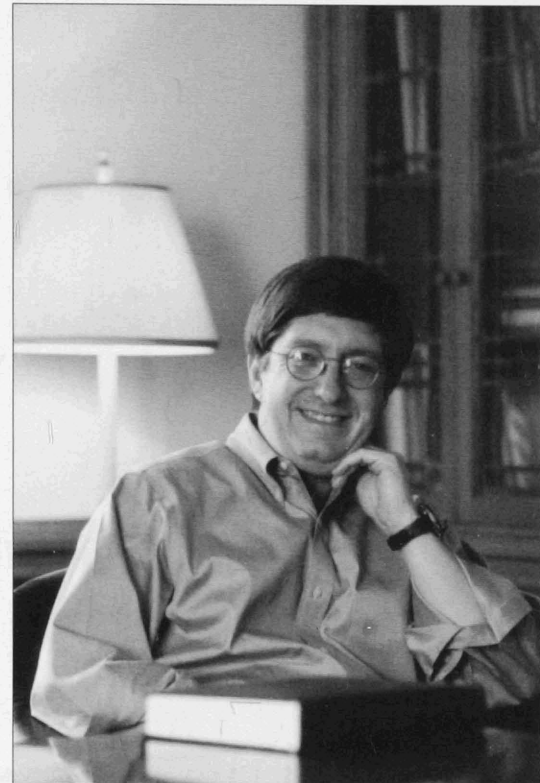



PHOTO BY THOMAS TREUTLER

The best lawyers always seem to know when and how to speak up. Never too soon, never too late, never in ways that leave their listeners wondering why they chose to speak at all.

Scholarship donors, recipients celebrate together

Every law student faces "The Big T" — tuition — and thanks to the generosity of graduates who have gone before them, many students receive scholarships to help meet the costs of attending the Law School. A significant percentage of Law School students receive some form of financial aid, and the School lists nearly 100 named scholarships and aid funds. Individual graduation classes also contribute financial aid.

Nobody thought of such things back in 1859, when the Law School began as a tuition-free training center for future lawyers. Today, however, a student from outside Michigan pays \$27,000 per year in tuition plus approximately \$10-12,000 for living expenses. A Michigan resident pays \$21,000 in tuition per year.

"This is a challenge to us because we have to be true to our heritage; we have to be true to the legacy of the University of Michigan Law School as a school open to talent," according to Dean Jeffrey S. Lehman, '81. Currently, Lehman told those who gathered for the Law School's annual Scholarship Banquet in April, the Law School distributes more than \$3.5 million each year in scholarships. He took special notice of four new scholarships awarded for the first time this school year: the Carl D. Bernstein and Harriette Heller Scholarship; the John Du Vall Boyles Scholarship; the Pierre V. Heftler Scholarship; and the Justice Lawrence B. Lindemer Scholarship.

Continued on page 4

PHOTOS BY GREGORY FOX



Scholarship assistance opens the way "to enable us to do the kind of work we have to do in our community, in our country, and for our clients," scholarship recipient and law student Kim Braxton of Detroit tells attendees at the Law School's Scholarship Banquet in April.



If you've been fortunate, help ensure "that some other kids have the same opportunity" to attend the Law School, John Du Vall Boyles, '56, challenges attendees at the Law School's Scholarship Banquet in April. The annual gathering brings together scholarship donors with recipients.

- 3 Scholarship donors, recipients celebrate together
- 4 Diller, Hessler win Campbell Competition
- 6 What am I bid? SFF auction raises more than \$62,000
- 8 Affirmative action — two views
- 9 The Establishment Clause and faith-based programs
- 10 Preparation levels the playing field
- 10 Environmental Moot Court team reaches finals
- 11 New deans lead programs in financial aid, career services, and admissions
- 12 Celebrating the life of 'Butch' Carpenter
- 13 Saul Green, '72, receives Distinguished Citizen award
- 14 A matter of equality liberty
- 15 Mentors, colleagues help shape a life in the law
- 15 Opportunities abound in intellectual property field
- 16 Issues of the new millennium
- 17 Speaker: *Bush v. Gore* interferes with federalism
- 18 Jumpstarting a legal career
- 19 Galileo reprised
- 20 Tienda banquet speaker: 'American caste system is a complex dance'
- 21 Weaving the threads of critical race theory
- 22 Commencement: The adventure of a lifetime...
- 24 Chewing on the issues of food production
- 27 'We have what we asked for': Indian Law Day speaker

Continued from page 3

It “compromises our students” to graduate heavily in debt, John Du Vall Boyles, ’56, of Grand Rapids, told Scholarship Banquet participants. Law school is expensive, he said. “If you have been lucky, I challenge you to do something about that. It was so wonderful here. We want to be sure other kids have the same opportunity.”

Boyles said he loved his experiences at the Law School. “The faculty challenged us. Students were tough. I think that made us better people.”

Law student and scholarship recipient Kim Braxton, of Detroit, thanked donors who made scholarships possible and promised to be worthy of their trust. “When we leave we have a lot of work to do, in our community, in our country, and for our clients,” she said.

PHOTOS BY THOMAS TREUTER



Judges for the final competition in this year's Henry M. Campbell Moot Court Competition file toward their seats as final arguments are about to begin. The judges are the Hon. Louis Pollak, of the U.S. District Court for the Eastern District of Pennsylvania; the Hon. David Ebel, '65, of the U.S. Court of Appeals for the Tenth Circuit; and the Hon. Denise Page Hood, of the U.S. District Court for the Eastern District of Michigan.

Diller, Hessler win Campbell Competition

With the First and Fourteenth Amendments as the battleground, third-year law students Paul A. Diller and Stephen E. Hessler won the 77th Annual Henry M. Campbell Moot Court Competition in finals held at the Law School in April.

Hessler also won the award for best oral presentation.

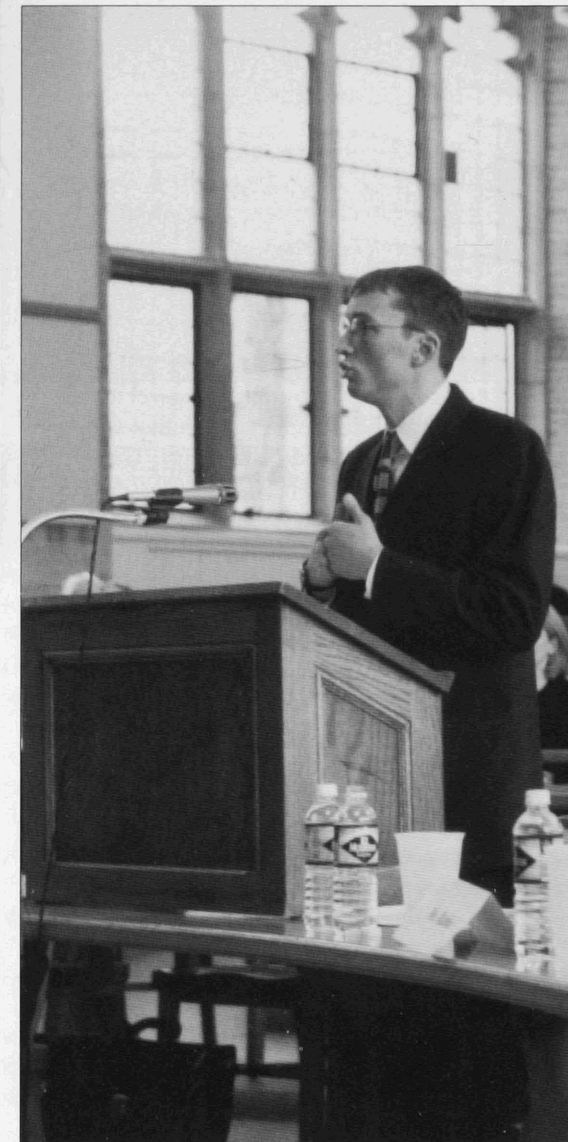
Diller and Hessler, acting as respondents in a hypothetical case over a mother's right to refuse to teach contraception to her home-schooled children for religious reasons, argued against Sarah K. Rathke and Jennifer L. Saulino, acting as counsel for the petitioner.

Judges for the final competition were the Hon. David Ebel, '65, of the U.S. Court of Appeals for the Tenth Circuit; the Hon. Denise Page Hood, of the U.S. District Court for the Eastern District of Michigan; and the Hon. Louis Pollak, of the U.S. District Court for the Eastern District of Pennsylvania.

The final arguments, held before a standing-room-only audience in Honigman Auditorium of Hutchins Hall, culminated competitions that began last fall with a total of 32 teams. For the four students who argued at the finals, it was the 9th time they had presented their case in the course of the rounds leading up to the final arguments.



Paul A. Diller argues the respondent's case during finals for the Henry M. Campbell Moot Court Competition in April. At right are Sarah K. Rathke and Jennifer L. Saulino, counsel for the petitioner.

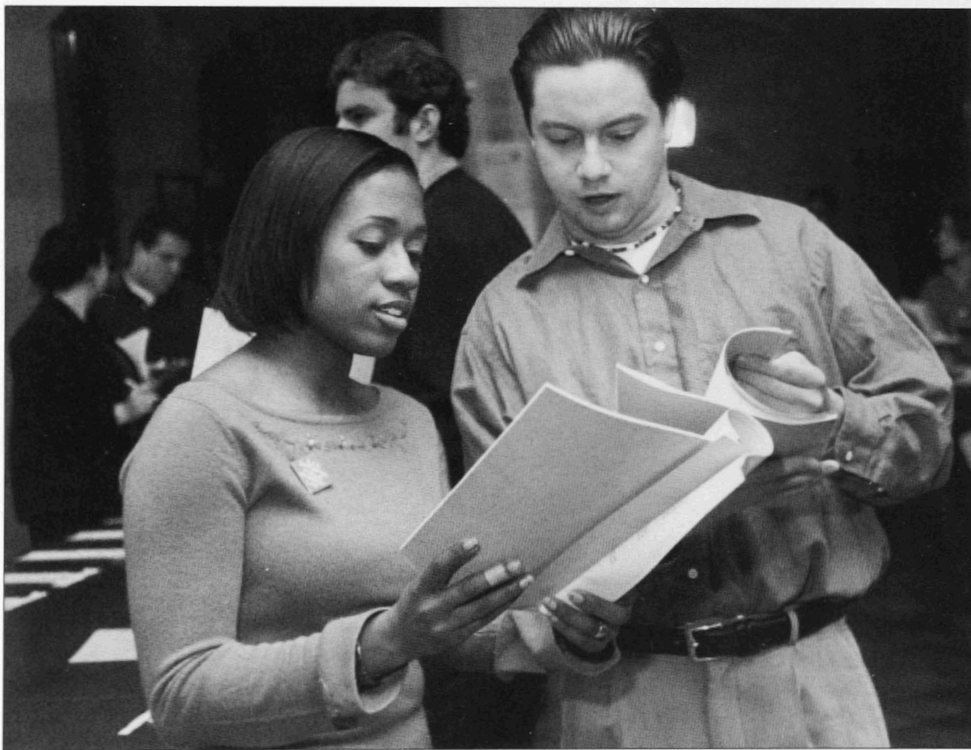
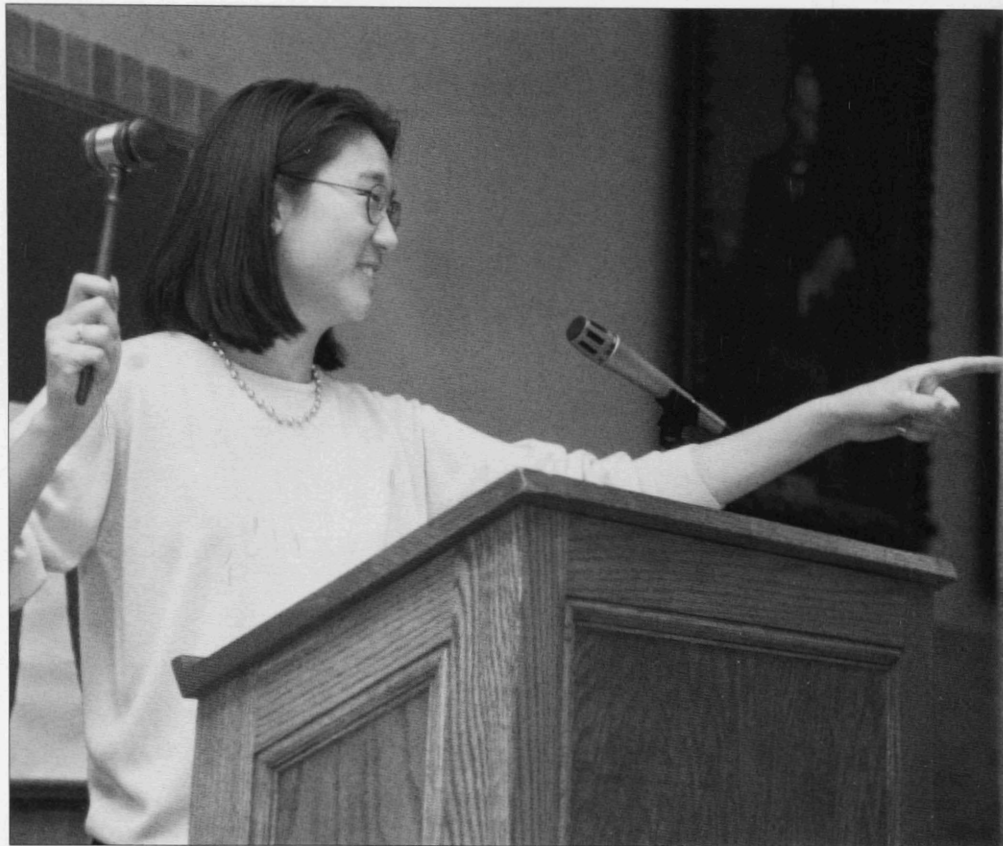


Opposing teams — Paul A. Diller and Stephen E. Hessler vs. Jennifer L. Saulino and Sarah K. Rathke — congratulate each other after final arguments in the 77th Annual Henry M. Campbell Moot Court Competition. The Diller/Hessler team, in the role of respondents, were judged winners in an especially hard-fought and close competition.

Stephen E. Hessler, arguing here for the respondent, received the Best Oralist Award.

What am I bid?

**SFF auction
raises more than
\$62,000**



Auction co-chair Roxanne Wilson and auctioneer Roger Stetson read through the lineup of items for the annual Student Funded Fellowships auction in March. Behind them, other students check the lists of items. The annual fundraiser generated some \$62,000 to assist law students in summer internships and public interest summer work.

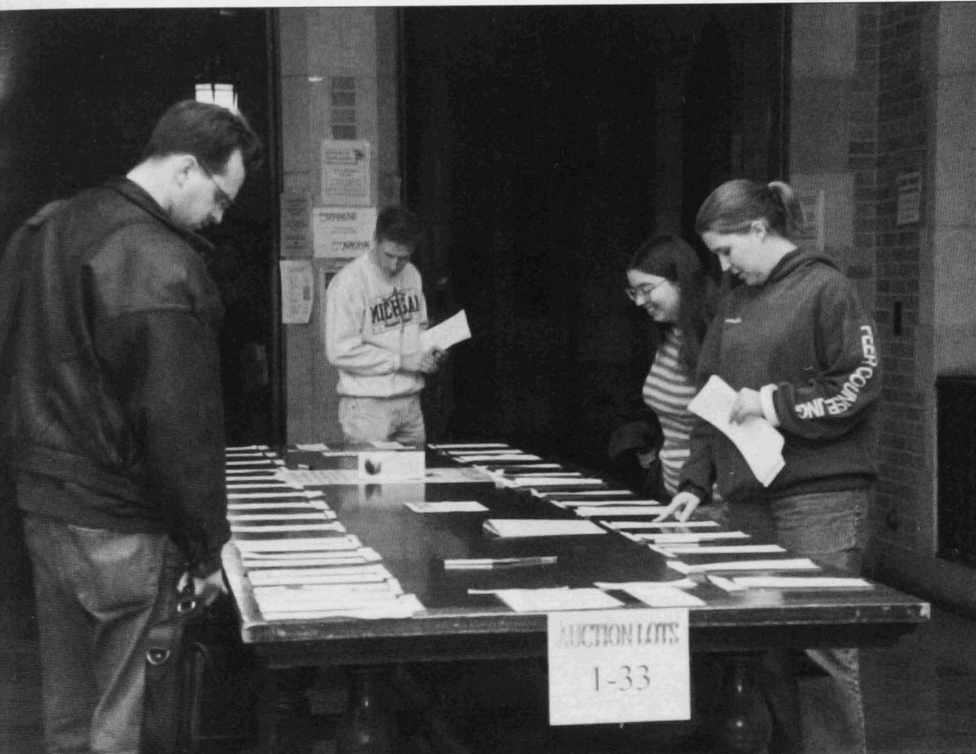
PHOTOS BY GREGORY FOX

It was the first time students have shared the heady avocation of SFF (Student Funded Fellowships) auctioneer. This year, law students Roger Stetson, Renee Dupree, and Chris Stathopoulos joined Professors Evan Caminker, Bridget McCormack, Nick Rine, and A.W. Brian Simpson, along with Assistant Dean for Admissions Sarah Zearfoss, '92, to wield the gavel for the annual fundraising auction that supports Student Funded Fellowships. The auction raised more than \$62,000.

Another first this year was the public presentation of the annual A.W.B. Simpson Award "to pay tribute to members of the Law School community who provide unparalleled support for our efforts." The award is aptly named. Simpson, the Charles F. and Edith J. Clyne Professor of Law, is a longtime supporter of the SFF program and one of its most popular auctioneers.

Funds raised at the annual event support the fellowships that law students may win to help them in summer employment. Typically, SFF awards provide the margin that allows a student to take a low-paying or non-salaried summer position in exchange for gaining valuable experience. Often, having the SFF fellowship provides the margin that allows a student to work with an agency that cannot afford to pay a full or partial salary.

LEFT: Auction co-chair Amy Liu demonstrates the art of identifying a bidder and priming her gavel for a sale.



Potential buyers peruse lists of items ripe for bidding.

The A.W.B. Simpson Award, begun last year and presented then to Simpson himself in a private ceremony, this year was presented to Assistant Dean for Financial Aid Katherine B. Gottschalk. (See related story page 11.) “We honor Katherine tonight for one simple reason: SFF could not maintain its efforts without her generous assistance,” SFF co-chair Brian Smith said in announcing this year’s award.

“Katherine works tirelessly to ensure that SFF can fund as many students as possible, and that SFF recipients receive their funds without difficulty. Our applicants and my fellow board members overwhelm her with information, questions, and requests for assistance, and she responds with skill, generosity, and care.”

Smith also used the presentation to offer a public thank-you to Simpson: “SFF recognized Professor Simpson for his long-standing support for, and extraordinary

contributions to, our efforts — as instructor, donor, and faculty advocate. I hope you will join me tonight in publicly thanking Professor Simpson for his many contributions to our community, and particularly for his support of SFF”

Here’s a sampling from the auction list:

- “Join University President Lee Bollinger in the President’s Box for a Michigan football game next season.”
- “You and a friend will enjoy a gourmet meal and gaze upon the Big Apple’s skyline while circling Manhattan on *The Highlander* yacht. Courtesy of magazine publisher and perennial presidential candidate Steve Forbes.”
- Professors Rich Friedman and Paul Reingold throw down the gauntlet. Last year they limited it to intermediate players, but after winning they’ve gotten a bit cocky. They’ll take on any takers in a tennis doubles match.”
- “A home-cooked gourmet country continental dinner for six with wine hosted by Professors Ed Cooper and Grace Tonner on a Saturday evening to be negotiated.”

- “Don’t leave Michigan without experiencing the Great Lake by the same name. Join Captain and Professor Don Duquette on his Cape Dory 30, *Donna Marie*, for a day sail on Lake Michigan.”
- “Los Angeles Lakers superstar Kobe Bryant wants you to take the shirt off his back. Win a jersey signed by Bryant, who helped lead the Lakers to the 2000 NBA championship and was the youngest All-Star in NBA history. Arranged by super sports agent alum Arn Tellem, ’79.”
- “Enjoy a graduation celebration (either brunch or a cocktail party) for 10 at the home of Professor Deborah Malamud.”
- “Kyle ‘The Taxman’ Logue, ‘General’ Sherman Clark, David ‘Da’ Baum, Omri ‘The Market’ Ben-Shahar, [and] Lyle ‘IT Guy’ Whitney head up a faculty/staff basketball *tour de force*. They’ll take on any group of five students in a 3-on-3 game of hoops. Let the trash talking begin as you and four others bring your ups out to the court to take on the kids during their 2001 comeback tour. Be warned: we hear that ‘Da’ Baum likes to throw the elbow as he clears his shot from the arc. This group is out for vengeance after losing a close one last year.”

Affirmative action — two views

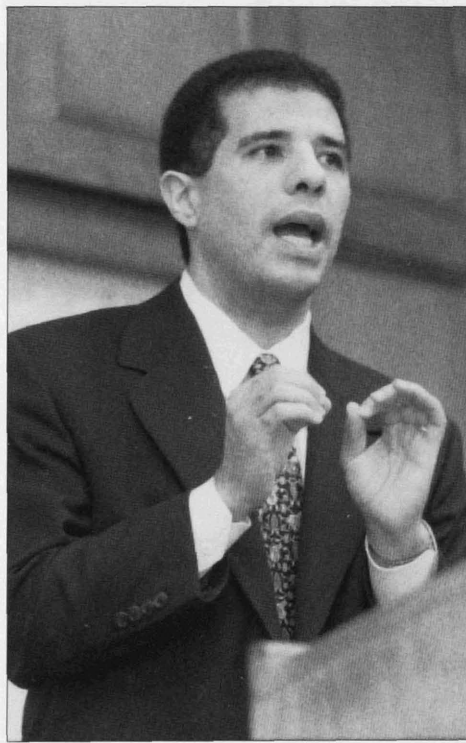
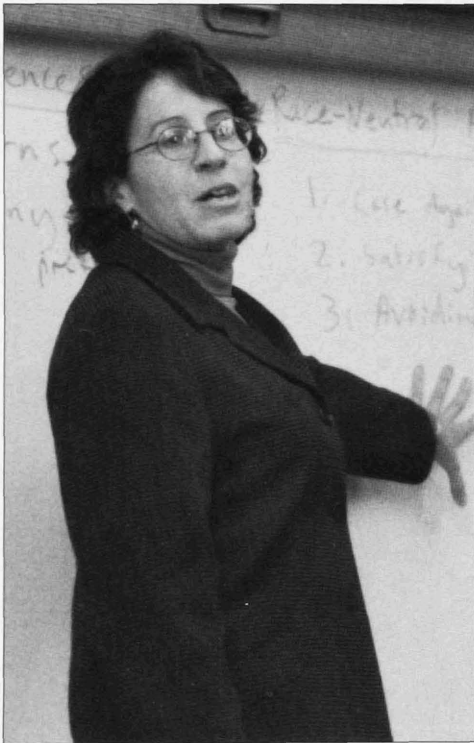
How will the U.S. Supreme Court respond when it next considers the issue of race-based affirmative action in education? Professors Deborah Malamud, of the University of Michigan Law School, and Kim Forde-Mazrui, '93, of the University of Virginia School of Law, debated the question at the Law School in a program in February sponsored by the Asian Pacific American Law Students Association.

For Malamud, the critical question for the swing votes on the Court will be whether ending race-based affirmative action will result in resegregating America's schools. "There is something hard-wired into the Supreme Court that recognizes that a return to segregated education would be taking a big step backward," she said. Those votes might well turn, she argued, on whether the justices perceive

race-neutral affirmative action as a workable alternative. She said that "race-neutral affirmative action does not work."

A person's race affects other aspects of his life, she said. It is different for an American, for instance, to be black and poor than to be white and poor. "The reason that race-neutral affirmative action can't succeed is that the discrimination experienced by blacks and other racial minorities can't be captured by race-neutral programs," she said. "That story still needs to be told."

Forde-Mazrui, in contrast, said his reading of recent U.S. Supreme Court decisions convinces him that the Court would not condone the use of race to achieve diversity. "If the Court's to be consistent, it would seem difficult for the Court to conclude that race in the classroom matters, not that diversity is not compelling, but that race is a stereotypical way of achieving that goal. In my view, virtually any racial preference program is not only vulnerable, but is waiting to be struck down." However, he argued, the Court should uphold race-neutral means to promote the inclusion of minorities.



PHOTOS BY GREGORY FOX

Professor Deborah Malamud of the University of Michigan Law School and Professor Kim Forde-Mazrui, '93, of the University of Virginia School of Law, make their points during the program "Perspectives on Race-Based Affirmative Action," presented at the Law School. The program was sponsored by the Asian Pacific American Law Students Association.

The Establishment Clause and faith-based programs

Religious organizations act legally and appropriately when they use public funds to operate secular programs, according to a scholar of the Establishment Clause who spoke at the Law School during the winter term. It only is when such organizations step over the line and try to proselytize participants that they run afoul of the Constitution's prohibition against government support of religion.

Professor Robert A. Sedler of Wayne State University Law School in Detroit offered this outline — albeit one that is not universally accepted — in his program “The Establishment Clause, Neutrality and Financial Aid to Religion,” presented at the Law School under sponsorship of the ACLU (American Civil Liberties Union) Law Student Group.

“In the real world of constitutional litigation, all that counts is doctrine and precedent,” Sedler said. U.S. courts have used the Establishment Clause to strike

down activities like prayer at high school graduations and nativity scenes in publicly funded settings, but the Constitution allows for public support if the “overriding principle of complete neutrality” is observed.

President Bush's plan for federal aid to faith-based organizations' social programs is “constitutionally permissible,” Sedler said of the president's controversial proposal. “As I understand the law, there is nothing wrong with faith-based organizations applying for federal funds if they use them in a secular way.”

Asked about school voucher programs, Sedler said President Bush's proposal is designed to help poor inner city youngsters attend better schools, mostly religious schools. He said Michigan's ballot proposal for school vouchers was a “precursor” to the Bush plan and called for vouchers to be available to parents of children who were in “failing” school districts.

Michigan voters last fall defeated Proposal 1, as Michigan's school voucher plan was called. Earlier in the fall, the Federalist Society's student group at the Law School sponsored a debate on the vouchers issue featuring Clint Bolick, of the Institute for Justice, vs. Elliott Minberg, of People for the American Way. Basically, the proposal would have allowed students in school districts the state determined to be “failing” to go to private schools in their district and receive the state *per capita* stipend (up to about \$4,000 per year per student) toward tuition that otherwise would have gone to the public school district.

Giving people a choice is “an important part of improving the public schools,” said Bolick. “If you don't like vouchers, the way to get rid of them is to improve the public schools.”

But Proposal 1 was not limited to low-income families or only to failing schools, countered Minberg. It would “cost up to \$60 million [to public school systems] even if no one transferred” because it would authorize state funds to follow students who already attend private schools, he said. Nor would the state money provide adequate funds to support many poor people who may want to leave the public schools to attend private schools, he added.

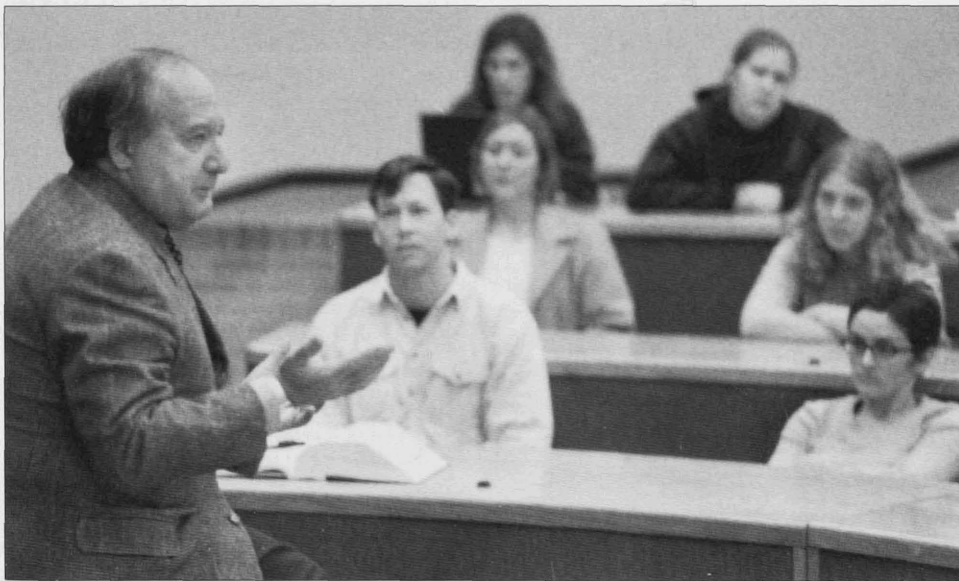


PHOTO BY GREGORY FOX

Public money can assist programs run by religious organizations if the programs are secular and do not involve religious teaching, Wayne State University Law School Professor Robert A. Sedler asserts during a program at the Law School. Sedler's talk was sponsored by the Law School student chapter of the American Civil Liberties Union.

Preparation levels the playing field

Yes, there may be differences in how men and women present themselves in the courtroom. And there may be differences in how judges and jury members perceive and respond to these variations.

But there is no substitute for preparation — and solid, competent preparation for a case will blur gender differences toward the point of disappearance, according to a woman who has served as a magistrate judge for the past 15 years.

“Preparation is something that inspires confidence across gender lines,” Magistrate Judge Virginia Morgan, of the U.S. District Court for the Eastern District of Michigan, explained during a program at the Law School this past spring. Much the same holds true for brief writing, she added. “A well written brief is good regardless of gender.”

Morgan discussed “Gender Communication Styles in the Courtroom and in Legal Transactions” in a program presented by the Women Law Students Association, Women Lawyers of Washtenaw County, and the office of Assistant Dean of Students Charlotte Johnson, ’88.

Morgan, who in 1975 became the first woman attorney to be hired into the Washtenaw County Prosecutor’s Office, expressed her pleasure at taking part in a program that brings together practicing

women attorneys and law students. “There couldn’t be a more positive role for the University to play in the community,” she remarked.

Throughout her program, Morgan encouraged audience members to ask questions and express their opinions. The result was a mix of experiences and expectations that touched on many issues:

- At the firm, if a man goes out to play golf, is this a good thing for the firm? Probably so. But if a woman goes out to play golf, how is that perceived?
- Being aggressive is what’s rewarded within the firm, said a woman in the audience. Being prepared is what wins cases.

There also was a sense that a professionalism is developing that combines the best of the typical “male” and “female” approaches.

“I think they’re better received,” Morgan responded to a questioner who asked about combining the best of the characteristics associated with men and women. “And I think we’re moving toward standardizing.

“People expect a woman to be competent. They appreciate frankness and directness in communication. And I think in the same manner that men are expected to listen more and be less overtly aggressive. I think we’re moving toward more uniformity.”

PHOTO BY GREGORY FOX



Competent, solid preparation is the best ally of an attorney, male or female, Magistrate Judge Virginia Morgan of the U.S. District Court for the Eastern District of Michigan, explains during a program at the Law School this past spring.

Environmental Moot Court Team reaches finals

Fifty-three teams from law schools throughout the country participated at the National Environmental Moot Court Competition in February at Pace University School of Law in New York. The Law School team not only reached the final round, but 3L Brian Gruber earned the best oralist prize in the finals and the team’s brief was named the best appellant’s brief.

The Law School team was comprised of Gruber; George Torgun, 2L; and Michael Bowling, 1L; while Marisa Martin and Tim Lundgren, both 2Ls, worked with the group through long hours of preparation, according to team coach Clinical Assistant Professor David Santacroce. “The level of [the team’s] performance from the first day of practice to the first day of competition was incredible. Then the jump from the first day of competition to the final round was equally impressive,” Santacroce said after witnessing the competition.

Katherine B. Gottschalk



Susan M. Guindi, '90



Sarah C. Zearfoss, '92



PHOTOS BY GREGORY FOX

New deans lead programs in financial aid, career services, and admissions

Three assistant deans have been named to help guide the Law School in the areas of student financial aid, career services, and admissions. They are:

- Katherine B. Gottschalk, Assistant Dean for Financial Aid.
- Susan M. Guindi, '90, Assistant Dean for Career Services.
- Sarah C. Zearfoss, '92, Assistant Dean and Director of Admissions.

Gottschalk, Guindi, and Zearfoss already are well-known to students, faculty, and other members of the Law School community.

Katherine B. Gottschalk, a graduate of Wellesley College, had been director of financial aid since 1986. She supervises the Office of Financial Aid, which administers aid for some 1,100 students annually, takes part in decisions to award aid, counsels students on financial aid and debt management, and implements the Law School's financial aid policies.

Susan M. Guindi, '90, who earned her J.D. *magna cum laude*, has directed the Office of Career Services since 1998. She came to the Law School in 1995 as associate director of the Office of Public Service. Previously, she clerked for Justices Dennis Archer and Conrad Mallett Jr. of the Michigan Supreme Court and practiced law in Washington, D.C.

Guindi supervises the Office of Career Services, including career counseling and education, informational programs, and management of the on-campus recruiting program.

Sarah C. Zearfoss, '92, who also received her J.D. *magna cum laude*, formerly was an attorney-counselor with the Law School's Office of Career Services. While a law student, she was editor-in-chief of the *Michigan Journal of International Law* and received the Henry M. Bates Memorial Scholarship, the highest award given to Law School students. After graduation, she clerked for the Hon. James L. Ryan of the U.S. Court of Appeals for

the Sixth Circuit, practiced law in Detroit, where she specialized in employment discrimination work, and then returned to serve Ryan as a career law clerk. She joined the Law School's Office of Career Services in 1999.

Zearfoss also has served as a cooperating attorney for the American Civil Liberties Union and as area admissions representative and district admissions coordinator for Bryn Mawr College.

The appointments were approved by the University of Michigan Board of Regents.

Erica A. Munzel, '88, Zearfoss' predecessor, has joined the Law School's Office of Development and Alumni Relations and is responsible for major gifts for the Midwest outside of Michigan.

Celebrating the life of 'Butch' Carpenter

Nearly 270 students, faculty, alumni, and honored guests gathered at the Crowne Plaza Grand Ballroom in March for the 23rd annual Alden J. "Butch" Carpenter Memorial Scholarship Banquet. Ena Weathers, a 1988 Law School graduate and president of the Michigan Black Law Alumni Society, reminded the audience of the history of the occasion and the scholarship fund. The fund and scholarship awards have increased substantially over the years since the first award of \$100 was presented in 1978. This year was the first time three first-year students received awards, said Assistant Dean of Students Charlotte Johnson, '88. Kristin Johnson received the largest award to date: a scholarship for \$10,000. Additional scholarships for \$2,500 each were awarded to Erica Green and Riana Shipp.

The annual event recalls the life and ideals of Butch Carpenter, an African American student at the Law School who

was "dedicated to the survival and growth of economically depressed communities." His untimely death halted his academic career, but his enthusiasm and dedication live on through the memorial fund. Student awardees mirror his drive to assist economically depressed areas and have well-established community service credentials illustrating their commitment.

The banquet also serves as a mini-reunion as alumni reconnect with each other and this tradition. And it is a time for students to publicly recognize the faculty members who have meant so much to them in their legal studies. U.S. Congressman Harold E. Ford Jr., '96, honored the event by presenting this year's keynote address. Seated at one of the front tables were members of the Butch Carpenter family: Butch Carpenter's widow, Vivian Carpenter Strather, and her husband Herb Strather; Carpenter's sister, Cheryl Perry; his mother, Arie Carpenter; and his niece, Corey Perry.

Dean Jeffrey S. Lehman, '81, welcomed Congressman Ford back to the Law School. "Harold, every time I see you on television, I take enormous pride in your association with Michigan, and I want to thank you for allowing us to bask in your reflected glory."

And then it was Congressman Ford's turn to look back at his own experiences here, to remember the special people who helped and influenced him, to be "a little political" and share some of what drives him, and to give a challenge born of experience.

"I went to three of these banquets when I was a student here — you all have gotten better at this," he said to an appreciative chuckle from the audience. It hasn't been that long since his own graduation in 1996 — "I had two deans when I was here: now-President Bollinger and Dean Lehman. I remember how Professor St. Antoine, when a class discussion got bogged down, would say, 'Then fair enough' and then change to a new topic. He knew how to make you feel good but still move the class discussion on." Ford has found the technique to be a useful one when discussions with colleagues in the Congress get stuck.

In 1996, Ford became the youngest member of the 105th Congress, and was reelected in 1998, receiving over 80 percent of the vote. He served as the keynote speaker at the 2000 Democratic National Convention in Los Angeles, California, and is known for consensus building in the Congress.

"You are very fortunate to be at a school like this — the people you've had the opportunity to meet — it won't take long after you leave for you to appreciate what you have had here. I miss being able to interact with my professors. I remember the conversations I had with Dean Lehman about policy issues, the discussions in Professor Pildes' Democratic Rights class, and of course, Dores McCree. You won't find a more committed, dedicated, caring person than Dores McCree. To this day, I remember the challenges she gave me.

"We are at a remarkable time in America" because there is so much progress, so much success, and such rancor

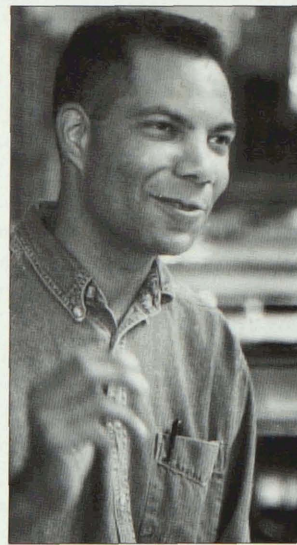
PHOTOS BY GREGORY FOX



Deborah Malamud



Grace Tonner



Sherman J. Clark

- The special awards presentations for this year's program recognized two faculty as "Outstanding Faculty Members of the Year," an award that normally goes to only one faculty member. Both Professor Deborah Malamud and Grace Tonner, director of the Legal Practice Program, were recognized for their contributions to the legal education and lives of BLSA students.
- Professor Sherman J. Clark received the "Recognition of Excellence" award — illustrating the affection students have for him and their pride in the fact that Professor Clark has recently received tenure.



PHOTOS BY GREGORY FOX

LEFT: After dinner, 2L Fortune Glass enjoys talking with Congressman Harold E. Ford Jr., '96. In background is Harold W. Bulger Jr., '82.

— “one side sees things in an entirely different way from the other side. How things have changed: Democrats say ‘be careful’ and Republicans say ‘spend.’”

“On nights that I’m home in Memphis, I try to drive by the Motel Lorraine where Rev. Martin Luther King Jr. was shot. You know, it’s being made into a museum now. I drive by there and it reminds me that I haven’t done much yet.”

Ford believes there are things happening that King would be pleased about: that Tiger Woods is in the best golf tournaments in the world — and he isn’t a caddy; and that a black man, Ken Chenault, is president and CEO of American Express.

But if King visited correctional facilities as Ford frequently does, would he be pleased to see that so many of the inmates are illiterate? “It seems perverse to wait for someone to be hurt for us to see that young people aren’t getting educated. What does it say about us as a nation when we can’t figure out ways to build schools and hire more teachers?”

He asked, “Will you be people who complain about what should be happening while doing nothing to help? We need to take advantage of what we have and move forward.”

“You come from good stock here at the Law School: look at Senator Peter Fitzgerald, '86, and Representative Richard Gephardt, '65,” he added. “Think about what needs to be done and what you can do. As you prepare to graduate, determine to make a difference.”

Saul Green, '72, receives Distinguished Citizen award

The Butch Carpenter Memorial Scholarship Banquet offered an appropriate venue for presenting Saul Green, '72, with the Distinguished Citizen award. Green is well known for his service to the legal profession and his commitment to helping others. Over a career that spans nearly 30 years, he has contributed to the University of Michigan and to the Law School through unselfishly giving of himself to mentor, counsel, and assist others. Green was instrumental in getting the Butch Carpenter Scholarship set up and he continues to serve as a member of the scholarship committee. He also is a member of the Michigan Black Law Society, the Law School’s Committee of Visitors, the University Alumni Group, and participated in establishing the Wolverine Bar Minority Clerkship Program, which has successfully placed minority law students in summer clerkship programs with many of the area’s top legal employers. Green was appointed by President Bill Clinton in 1994 as the U.S. attorney for the Eastern District of Michigan, the first African American to hold this position. As expected with the advent of a new president, Green submitted his resignation effective May 1.

In presenting the award, Assistant Dean of Students Charlotte Johnson, '88, said, “Saul Green has served with integrity, quiet strength, intelligence, and humility. It is only fitting that he receive this award for his many years of service to the profession and his commitment to helping others.”



Saul Green, '72, recipient of the “Distinguished Citizen” award, and his wife, Diane, chat with Does McCree after the banquet and awards presentations.



PHOTO BY GREGORY FOX

Why Geology? —

The movement of international law during the 20th century has resembled a geology of many layers more than a stream of steady current, according to Joseph Weiler, the Manley Hudson Professor and Jean Monnet Chair at Harvard University Law School and a former member of the Law School faculty. Weiler is shown here in March as he delivered his talk, "Towards a Geology of 20th Century International Law," to the Law School's International Law Workshop. In 1900, bilateral treaties were the norm, but in 2000, despite the massive increase in multilateral treaties, there still are a large number of bilateral treaties concluded, he said. And increasingly, there is an international regulatory layer that helps control international activities. Other International Law Workshop speakers during the winter term, and their topics were:

- Mary Footer, Faculty of Law of Erasmus University in Rotterdam and the GLODIS Institute/Department of International Law, "Rethinking the Concept of Culture in a Global Society."
- Craig Scott, Osgoode Hall Law School, "Torture, Translation and Transnational Torts."
- Eric Stein, '42, Hessel E. Yntema Professor Emeritus, University of Michigan Law School, "International Integration and Democracy: No Love on First Sight."

- Mathias Reimann, LL.M. '83, Hessel E. Yntema Professor, University of Michigan Law School, "An International Court of Jurisdiction? A Modest Proposal to Resolve the Dilemmas of Concurrent International Civil Litigation."
- Nuala Mole, director of the A.I.R.E. (Advice on Individual Rights in Europe) Center, London, England, "The Rule of Law in Kosovo: Who Guards the Guards?"
- James Salzman, Washington College of Law at American University, "Seattle's Legal Legacy: Executive Order 13141 and the Environmental Review of Trade Agreements."
- Jeffrey Dunhoff, James E. Beasley School of Law, Temple University, "Economic Analysis of International Law."
- Christine Chinkin, London School of Economics and Affiliated Overseas Faculty, University of Michigan Law School, "Using International Law to Combat Poverty."
- Jennifer Llewellyn, Dalhousie Law School, Halifax, Nova Scotia, "Reconciling Amnesty and Justice — The Case for Just Amnesty."
- Alan Sykes, Frank and Bernice Greenberg Professor, University of Chicago Law School, "The Economic Structure of Dispute Resolution in the WTO/GATT System."
- Susan Marks, University of Cambridge Faculty of Law, "International Law and the Politics of Knowledge."

The International Law Workshop programs for the winter term were offered by Professor Robert L. Howse.

A matter of equality liberty

"The reason that *Roe* happened" — Professor Lucinda M. Finley is talking about the U.S. Supreme Court's decision in 1973 in *Roe v. Wade* that a woman has a right to an abortion — "is because of the women's rights movement of the late 1960s."

The equality liberty component "about control over your body" is critical to defending the right to abortion, continued Finley, a professor at the State University of New York at Buffalo Law School who frequently represents abortion providers and clinics.

"This is not just about privacy. It is essential to a woman's economic and social well-being. I think that being able to control your body is about equality and liberty in the most fundamental sense."

Finley, who also is on the board of the National Abortion Federation, spoke at the Law School earlier this year in a program sponsored by Law Students for Reproductive Choice. Despite the federal Freedom of Access to Clinic Entrances Act, she said, "the daily reality of trying to get into 80 percent of abortion clinics today" requires moving past an obstructed driveway, having your vision blocked by signs, and/or enduring shouting and screaming from protesters.

But most people who feel victimized by such protests won't testify. "The biggest challenge in doing reproductive rights law is that it's very hard to convey and to present the reality of the women [you represent]. It's very unlikely that you'll get a doctor or a patient to testify. . . . Everywhere you turn you're walking a very tricky line in trying to portray the lives of patients without putting them on the stand."

Although abortion is "the most commonly performed surgical procedure on women in the world," Finley said, she faces "the problem of convincing judges that abortion is about healthcare and is a legitimate medical procedure."

"What would happen to women's equality if abortion were outlawed in this country?" Finley asked. "You have to say that without reproductive rights you don't have these other rights, either."

MENTORS, COLLEAGUES HELP SHAPE A LIFE IN THE LAW

Speakers stressed the importance of law students acquiring hands-on experience and practicing attorneys having a network of colleagues to mentor and support them during a program held at the Law School under the sponsorship of the student chapter of the National Lawyers Guild (NLG).

Participants also praised involvement in the kinds of public interest cases that put them into direct contact with clients and have the potential for making significant changes in those clients' lives. As Paul Sher, an attorney with Legal Services of Southern Michigan, put it: "We are representing people for whom you can really make a difference," and "all the clients we represent would be worse off without us." Besides, he added, "there's a very collegial atmosphere in Legal Services."

Patricia Stamler of Sommers, Schwartz, Silver and Schwartz PC noted that working with a large firm offers great "resources for public interest work." In addition, she advised, it's "important to find a mentor" and it's "absolutely critical to develop a network of lawyers for mentoring and for casework referral."

Other panelists included John Erdevig, '83, an Ann Arbor attorney specializing in tenant and consumer law; Julie Hurwitz, '82, executive director of the NLG/Maurice and Jane Sugar Law Center for Economic and Social Justice in Detroit; and Shel Stark, education director for the Institute of Continuing Legal Education. The program was called "How to be a Lawyer, Pay Your Bills . . . and Not Sell Your Soul."

Other comments:

- Erdevig advised students to get as much clinical practice experience as possible while in Law School. And after graduation, "if you can keep your lifestyle in check, you can do a lot of things to pay off your loans."
- Hurwitz, noting that "no matter what they tell you, the law is not neutral," also encouraged students to acquire practical experience and to "find the consistency between what you believe in and why you became a lawyer."
- Stark praised "alternative careers" and said that involvement with NLG "always helped me keep my perspective." Use your network of colleagues to fashion "fulfilling careers that are socially useful," he advised.

Hate Crimes —

More than half of the 7,755 hate crimes the FBI recorded in 1998 were related to race, Aryani Ong, of the National Asian Pacific American Legal Consortium (NAPALC), tells a Law School audience during a program in February sponsored by the Asian Pacific American Law Students Association. Next in the ranking was religion, which was related to 18 percent of that year's hate crimes. Next was sexual orientation, followed by ethnicity/national affiliation, and, finally, disability, which was related to .3 percent of the cases. Hate incidents are based on unchangeable characteristics of the victim, and "do not have to be prosecutable crimes," Ong said.

PHOTO BY GREGORY FOX



Intellectual property specialist Katharine C. Patterson, of Katharine C. Patterson Consulting in San Francisco, answers a student's question at the conclusion of her program on career opportunities in the field of intellectual property. Patterson spoke at the Law School under sponsorship of the Office of Career Services.



PHOTO BY GREGORY FOX

Opportunities abound in intellectual property field

Many different legal specialties make up the field of intellectual property law — like patents and copyrights, and increasingly biotechnology and genomics — and "intellectual property is one area where there are always jobs," consultant Katharine C. Patterson told a Law School audience.

"Intellectual property doesn't exist as a profession," said Patterson, who heads Katharine C. Patterson Consulting in San Francisco. "There are different forms of intellectual assets that the law lets us manage in different ways."

Patterson, whose placement work keeps her in touch with intellectual property and venture capital specialists, noted that the Law School "has a very strong reputation in intellectual property." IP, as the intellectual property field often is called, offers work in detection, enforcement, and transactional law, she said. "IP law is very, very mobile," she noted.

But the wealth of opportunities in the field does not mean that job hunting can be lackadaisical. "Don't leave a thank you unwritten," she warned. "Don't leave a call unreturned."

PHOTOS BY GREGORY FOX



Issues of the new millennium

The question of how we define ourselves and each other will continue into, and perhaps dominate, our new century. The dynamics of race, cultural, ethnic, and national background, linguistic allegiances, and similar identifying factors promise to fuel most of our efforts to determine how we live together on our planet of shrinking distances and growing populations.

In a three-part speakers series last spring, the *Michigan Journal of Race & Law* presented programs to illuminate related issues: districting and voting; racial profiling and Asian American activism; and opposing perspectives on the U.S. drug war.

Once again, as it does every decade, the task of redrawing electoral districts to represent the most recent population shifts occupies lawmakers and political leaders. Sizes, shapes, and the makeup of these districts not only reflect political realities, but cultural, racial, and ethnic leanings.

Pamela Karlan, professor of public interest law at Stanford Law School, gestures as she emphasizes her remarks, while John Chamberlin, associate dean of the University of Michigan Gerald R. Ford School of Public Policy, listens. Above right, Laughlin McDonald, director of the Southern Regional Office of the American Civil Liberties Union, uses the words "deeply confusing" to describe the 1993 Shaw v. Reno U.S. Supreme Court decision, which allowed people to sue over the shape of a congressional district. Karlan, Chamberlin, and McDonald were panelists for the first of three programs on "Race and Democracy in the New Millennium" presented by the Michigan Journal of Race & Law. Other panelists in this program were Anita Hodgkiss, co-director of the Voting Rights Project of the Lawyer's Committee for Civil Rights Under Law; and Judson H. Minor, a partner in Miner, Barnhill & Galland of Chicago. Assistant Professor Ellen Katz served as moderator.

And they raise serious legal questions about the weight of a person's vote, "equal" representation, and other issues.

A panel discussion of "Electoral Identities: Districting and Voting," led off the series.

"Redistricting is the public's chance to say, 'Here's how we identify ourselves as a community,'" said Anita Hodgkiss, co-director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under Law.

African Americans and Hispanics have gained congressional seats during the past decade, and "today the issue for minority groups is holding their gains," she reported. But the provision of the 2000 census that allowed self-identification as multi-racial raises the issue of how people are counted.

"Just as there are no atheists in foxholes, there are no nonpartisans in redistricting," said John Chamberlin, associate dean of the U-M's Gerald R. Ford School of Public Policy. "I think getting a clear agreement is absolutely critical."

Other parts of the series included:

- Frank Wu, '91, a professor at Howard University School of Law, speaking on "Wen Ho Lee, Racial Profiling and Asian American Political Activism."
- A panel discussion of "The Drug War: Colorblind Justice or Racial Oppression?" Panelists included: Graham Boyd, director of the ACLU Drug Policy Litigation Project; Steven B. Duke, professor of the law of science and technology at Yale Law School and author of *America's Longest War: Rethinking Our Tragic Crusade Against Drugs*; Kurt L. Schmoke, former three-time mayor of Baltimore and partner in Wilmer, Cutler & Pickering, Washington, D.C.; and Sharda Sekaran, associate director of public policy and community outreach, the Lindesmith Center — Drug Policy Foundation. The discussion was moderated by Adjunct Professor James Forman, co-founder of the Maya Angelou Public Charter School in Washington, D.C.

Speaker: *Bush v. Gore* interferes with federalism

The U.S. Supreme Court's decision in *Bush v. Gore*, which decided the 2000 presidential election, is "a very serious interference with federalism" that is inconsistent with the enhancement of states rights that has marked the current Court, a Georgetown University Law Center professor told a Law School audience during a program held last spring.

The talk by Neal K. Katyal, co-counsel for Albert Gore Jr. in *Bush v. Palm Beach County Canvassing Board*, was sponsored by the Asian Pacific American Law Students Association.

"I think it is very difficult to defend this decision," Katyal said of the 5-4 Supreme Court ruling. "It is an exceptional problem for federalism to say that the state can't structure its activity this way" and "this decision allows the Court to handpick its successors. It takes away checks and balances.

"The response I believe is appropriate is for the Democrats not to confirm any Supreme Court justices [nominated by President Bush]. This is about the separation of powers. This is about who will pick the president, who will name the next justice."

There is precedent for having a Supreme Court of fewer than nine justices, Katyal said. "After the Civil War, the Republican Congress wouldn't let [Andrew] Johnson appoint any justices after Lincoln was killed. The Supreme Court had seven justices. It went back to nine under President Ulysses Grant."

Jumpstarting a legal career

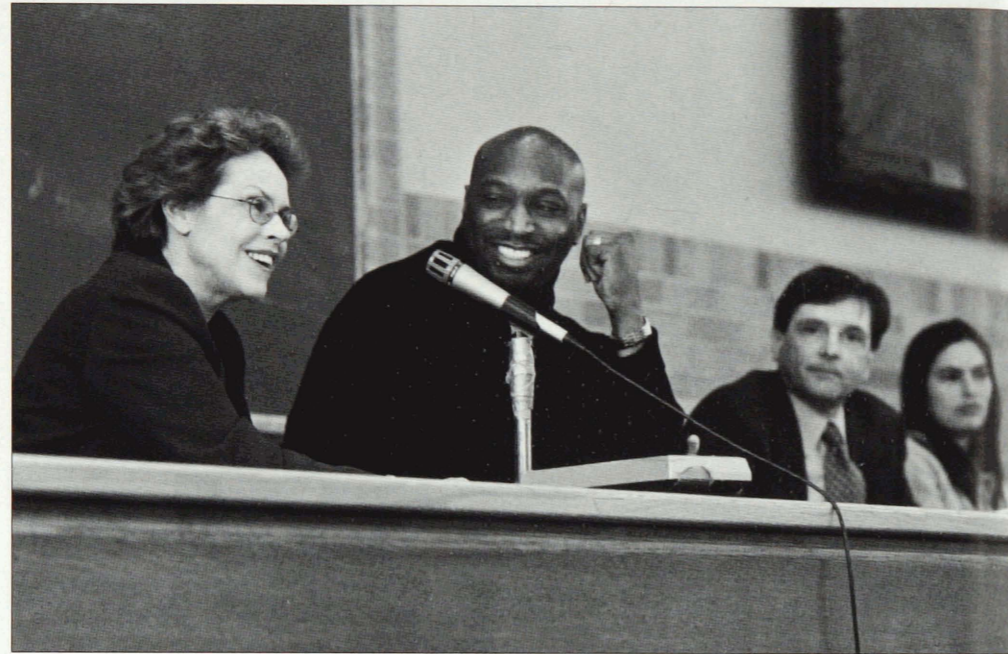
No doubt about it. A clerkship offers a jumpstart to a young lawyer's career. Working with a judge or a magistrate provides insight into court workings that attorneys in the courtroom might never achieve. A year or two as a clerk provides the practice in researching, writing, and analyzing that few other experiences can equal. And all this in the presence of a judge or magistrate who may become a career-long mentor and cheerleader.

"My experience is that lawyers don't get a lot of hands-on help, at best not enough," Michigan Supreme Court Justice Marilyn Kelly explained during a program on clerkships held at the Law School. "Ultimately, the biggest benefit is the skill level that these people are able to attain before they leave their clerkships."

Kelly, who uses clerks regularly at the Michigan Supreme Court, said she looks to applicants' grades, ability to meet deadlines, and their level of self-confidence when choosing among clerkship applicants.

"The biggest thing is the learning experience," Timothy L. Williams, '93, a partner in Constangy, Brooks & Smith LLC of Atlanta, explained of clerkships. "When I got out and started to practice law, my employers expected a lot of me because they knew I had been behind that curtain," he said. Doing a clerkship "just gives you an added bonus."

"We value the judicial clerkship experience so much that we are prepared to work with you from the time you are a law student applying for a clerkship to the time you graduate and come to work for us at Jenner & Block," added Richard J. Gray, '74, a partner in the firm's Chicago office. Seventy-one of the 300 lawyers in the Chicago office are former clerks, he noted.



A clerkship offers the young lawyer hands-on experience and the chance to grapple with substantial issues earlier in his practice, Michigan Supreme Court Justice Marilyn Kelly explains during a program on clerkships presented at the Law School by the Office of Career Services. Other panelists, from left, are: Timothy L. Williams, '93, of Constangy, Brooks & Smith LLC, Atlanta; Richard J. Gray, '74, of Jenner & Block, Chicago; and second-year law student Courtenay Morris.

Recent changes have removed standardization from the clerkship application process, however, and law students will find their hunt for a clerkship to be "daunting and disorganized, but well worth it in the end," reported second-year law student Courtenay Morris. "I clerked for a judge after my first summer," she said. "I cannot tell you how great it was. Persevere. Every one of you deserves a clerkship."

Richard J. Gray, '74, of Jenner & Block in Chicago, chats with law students Heather Kamins, Syrus Mousavinezhad, and Jay Coppoletta after serving as one of four panelists for a discussion of clerkship requirements and opportunities.



PHOTOS BY GREGORY FOX

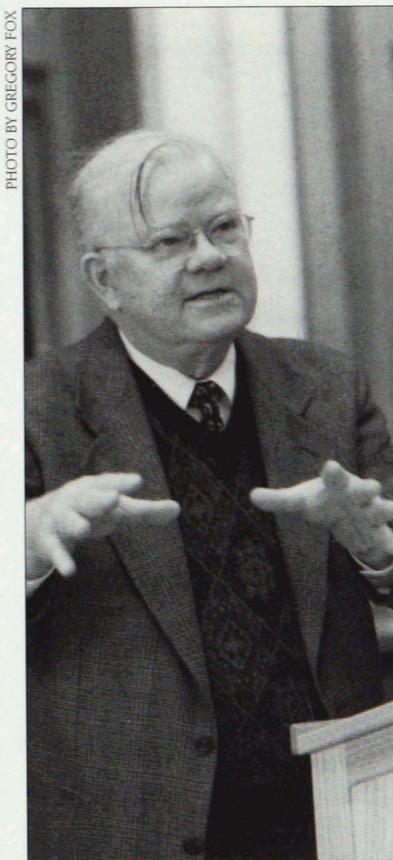


PHOTO BY MARTIN VLOET/UNIVERSITY OF MICHIGAN PHOTO SERVICES

Wide-Ranging —

Veteran human rights worker Aryeh Neier, president of the Soros Foundation's Open Society Institute and former executive director of Human Rights Watch, chats with students and officials during a visit to the Law School last spring. The previous day Neier had delivered the lecture to inaugurate the Fred Cuny Fellowship Program at the University of Michigan. Neier touched on many subjects during his conversation at the Law School, including issues of incarceration, the value of international experience, the role that U.S. foreign policy needs played in the U.S. Supreme Court decision in *Brown v. Board of Education*, and military intervention. His Law School visit was sponsored by the Public Interest Group. At left is law student and Public Interest Group co-chairman Noah Leavitt.

PHOTO BY GREGORY FOX



Phillip E. Johnson

Galileo reprised

"It's the Galileo case in reverse."

That's how University of California at Berkeley Law Professor Phillip E. Johnson describes the controversy over how public schools teach about evolution.

"An effort ought to be made to separate the philosophical dogma from the physical evidence," Johnson told a Law School audience earlier this year. "Both affirmation and the denial have to be science — or neither is."

Science gives "the impression of an unassailable dogma, which the First Amendment is designed to guard against. . . . The First Amendment should allow open discussion and debate of what is taught in the classroom. . . . It's a freedom of expression and freedom of thought issue."

Johnson, a leader in the Intelligent Design movement, was speaking on "The Kansas Evolution Controversy Continues: Who is Trying to Establish a Religion?" His talk at the Law School was sponsored by the Christian Law Students.

The issue arose in Kansas in 1999 when newly elected state board of education members decided to test students only on the generally agreed upon changes Johnson called "micro evolution," but not to test them on the aspects of "macro evolution" that Darwinians accept but others do not. These members since have lost their seats but "the controversy continues," Johnson noted.

"What should the schools do?" he asked. "They should teach the controversy."

TIENDA BANQUET SPEAKER: 'American caste system is a complex dance'

Minority groups may improve their lot by widening their focus and realizing that discrimination moves among groups, a leader in the study of race in the United States told listeners at the annual Juan Tienda Scholarship Banquet in February.

"We know that the American caste system is a complex dance. It can advantage one group at one time and disadvantage it at another," Richard Delgado, the Jean Lindsley Professor of Law at the University of Colorado School of Law, explained in his keynote address to those attending the 16th annual banquet.

The evening's activities also included presentations of the J.T. Canales Distinguished Alumni Award, named for the Law School's first Hispanic graduate, and the Juan Luis Tienda Scholarships.

The celebration, sponsored by the Latino Law Students Association (LLSA), honors a Law School student who served as president of La Raza Law Student Association, the predecessor of the current LLSA. Tienda died in an automobile accident shortly before he was to return to the Law School for his final year of study.

Delgado, a leader in the study of critical race theory, recounted some of the historical twists that made different groups the targets of discrimination at different times in U.S. history.

For example, he noted, Operation Wetback targeted Hispanic laborers in the United States at the same time that the Supreme Court's 1954 decision in *Brown v. Board of Education* declared segregated schools to be illegal. But seven years before *Brown*, the very similar decision in *Westminster School District v. Mendez* went nearly unnoticed, he said.

And in the *Korematsu* case, in which the Court ruled that the United States could intern Japanese Americans during World War II because they were a security threat, no Hispanic, African American, or other

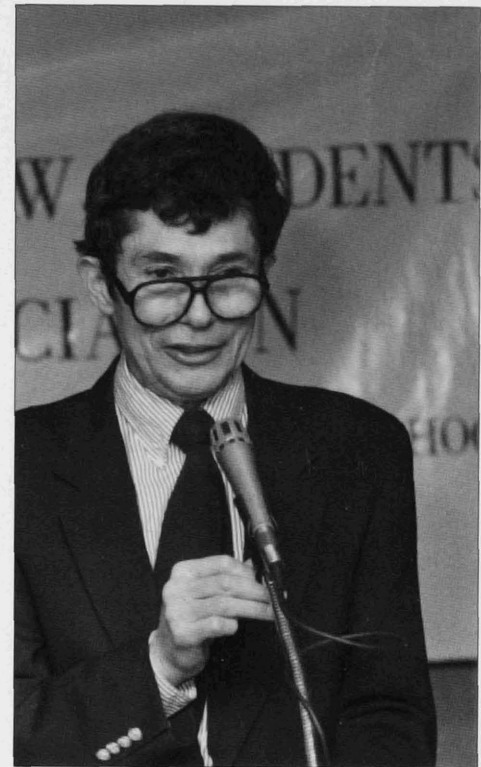
minority group filed a brief on behalf of the Japanese Americans, he noted.

"Binary thinking often prevents minorities from forming coalitions," Delgado said. Abandon such narrow thinking, he advised, and "negotiate separately with each other."

Canales Award winner Luis de Baca, '93, called Canales "an inspiration to all the generations of Latino lawyers that have come out of Texas since then." Canales and Tienda "gave us a road map of what we can take out into the community," noted de Baca, senior litigation counsel in the Criminal Section of the Civil Rights Division of the U.S. Department of Justice.



Keynote speaker Richard Delgado tells listeners at the Juan Tienda Scholarship Banquet that historical shifts have targeted different minorities for discrimination at different times and that groups should learn to be aware of what is happening to each other. Delgado is Jean Lindsley Professor of Law at the University of Colorado School of Law.



"What people in our position have to defend is the ability of others to enter — to enter the doors of academia, enter the doors of a school, enter the doors of a hospital, just to enter the doors of our society," de Baca said.

"Place," he said, "is power."

"We are here, and not only do we have to stay, but we have to make sure that people recognize [that we are here]. . . . Claim your place. By each of you claiming your place, we will be able to claim our collective place."

This year, LLSA awarded three Juan Luis Tienda Scholarships to first-year law

Juan Tienda Scholarship winners Litza Mavrothalasitis and Rene Martinez are shown with Paul Zavala, '78, Martin R. Castro, '88, and Bernardo Garza, '79. Zavala and Garza began the scholarship fund; Castro chairs the scholarship committee. Scholarship winner Concepcion Escobar is not shown.

students: Concepcion Escobar, Litza Mavrothalasitis, and Rene Martinez.

"Whatever you do with your law degree, do some good with it," Scholarship Committee Chairman Martin R. Castro, '88, advised as he announced the scholarship award recipients.

PHOTOS BY GREGORY FOX

Weaving the threads of critical race theory

Critical race theory's examinations should not stop at the United States' borders, and, indeed, there is value in comparing other cultures' treatment of minorities to shed light on our own.

That's the thrust of the message participants heard as a day-long symposium on critical race theory began at the Law School. The program was presented during the winter term by nine Law School journals and student organizations, plus Lexus Publishing and the University of Michigan's Center for Afro-American and African Studies.

"Legal theory at the end of the 20th century has remained too balkanized, and continues to leave out women and people of color from its jurisprudence," said Adrian Wing, a professor at the University of Iowa College of Law. "I believe in the 21st century we cannot continue [to do this]."

By 2050, people of color will make up the majority of the U.S. population, Wing noted, and students, lawyers, and judges are being cheated if their education does not include consideration of what these different identities mean.

Critical race theory grew out of critical legal studies, a movement that questioned law's objectivity. It focused on the legal manifestations of white supremacy and people's color, Wing said. Among its tenets:

- Race is a social construction.
- Law is not color-blind.
- Racial progress is cyclical.
- The narrative method reveals significant findings.
- Multidisciplinary approaches provide valuable insights.
- The field should embrace a combination of theory and practice.
- Critical race theory is beginning to be global in nature.

"Racism, sexism, homophobia do not stop at the borders of the United States,"



PHOTO BY GREGORY FOX

Wing said. "We feel strongly that these have to be looked at in a global perspective [human rights, public international law, and international business]."

Leti Volpp, of Washington College at American University, expanded on the idea by bringing it back home. "Are feminism and multiculturalism antithetical?" she asked.

"People assume that cultures of immigrant communities are so much more sexist [than their own cultures]. People assume an act of sexism is representative of the group, but in the United States it is seen as an individual act," she said.

Yet, said Volpp, one study has found that domestic violence murder in the United States is as big a problem as dowry murders are in India. For another comparison, she said, if you're a member of a minority and you're in a classroom "you are thought to speak for that minority."

"To use selective blaming of behavior on culture is both dehumanizing and depoliticizing," she said. "Why do people

think gender subordination characterizes these immigrants, Third World cultures and not western cultures?"

Speakers Leti Volpp, of Washington College of Law at American University, and Adrian Wing, of the University of Iowa College of Law, chat before delivering their talks during a symposium on critical race theory held at the Law School in February. Volpp discussed "Feminism vs. Multiculturalism." Wing spoke on "Global Critical Race Feminism." Other symposium speakers included: Devon Carbado of the UCLA School of Law who spoke on "Working Identities"; Cheryl Harris, also of UCLA School of Law, who addressed "Whiteness as Property"; and Darren Hutchinson of Southern Methodist University School of Law, who spoke on "Identity Conflicts: Race, Sexuality and the Problems of Essentialism."

Afternoon panelists for the symposium included:

- Devon Carbado of the UCLA School of Law, who spoke on "Whiteness as Property"; and
- Darren Hutchinson of the Southern Methodist University School of Law, who spoke on "Identity Conflicts: Race, Sexuality and the Problems of Essentialism."

Professor Deborah Malamud moderated morning and afternoon sessions.

The adventure of a lifetime...

Outside, it was a perfect day — sunshine and a comfortable breeze. Proud families clustered in groups around Hill Auditorium as commencement ceremonies were about to begin. Inside, faculty and honored guests filed to their seats on the stage, while graduates took up row after row on the main floor.

Dean Jeffrey S. Lehman, '81, offered the graduating students some advice about how to conduct themselves in the professional world they are entering. "I want to suggest to you this afternoon that, in the center of a sometimes justifiably cynical world, the very best lawyers I have known are optimists. And I want to suggest that our profession has a special role in nurturing a distinctive flame of optimism in our society."

Lehman went on to explain that he was endorsing a measured, realistic form of optimism, one that acknowledges the imperfections of the legal system but still believes that "in any given case, the most likely outcome is also the correct one."

Commencement speaker Robert Hirshon, '73, president-elect of the American Bar Association and member of the Drummond, Woodsum & MacMahon law firm in Portland, Maine, recognized the highs and lows that accompany the passage of time. In many ways, he said, the 1990s were "the best of times and the worst of times." The decade provided great opportunities for lawyers and jurists "to extend the rule of law to the emerging democracies of the former Soviet bloc," but the decade also was a time when lawyer jokes were commonplace and "politicians, pundits, and ideologically-based commentators singled out lawyers for criticism."

Much has changed today, he continued. The legal profession no longer is considered to be a detriment to public policy, but new issues replace the old. Spiraling salaries, a growing mobility that makes "loyalty and longevity look to be things of the past," and the impact of the Internet may sound negative, but Hirshon sees a positive side. There is "a greater sense of democracy" within the legal profession. "To be successful in the new economy, one must be efficient and effective, talented and able to handle a broad range of work," he told the graduates. "Your generation's ability to bring technology to bear on the effectiveness and efficiency of the practice of law makes you better prepared in this new era and new economy."

He also noted that the growth of diversity in the legal profession "creates an increased strength for all lawyers. The profession and the public we

serve gain immeasurably from the divergent viewpoints these new participants in the practice of law bring to our collective deliberations. . . . Some will tell us that the debate over admission standards is about a few prospective students and how they are treated. I believe it is about America and how this country will treat its citizens."

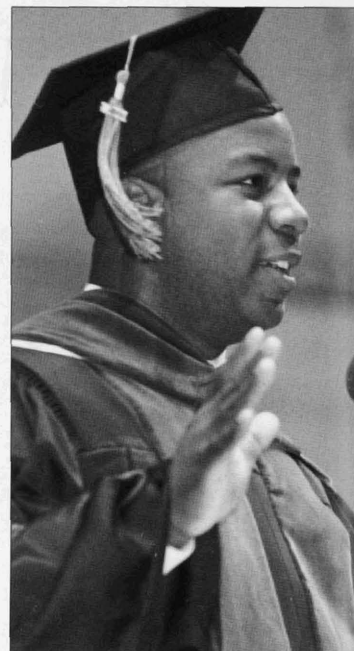
Concern for people has been a recurring theme throughout Hirshon's career. His public service activities have been recognized by the Maine Bar Foundation and the National Association of Pro Bono Coordinators; and he served for six years as the chair of the Steering Committee for the ABA's Center for Pro Bono, and served as chair of the Standing Committee on Lawyers' Public Service Responsibility.

Hirshon offered some practical advice from the perspective of almost three decades of practicing law.

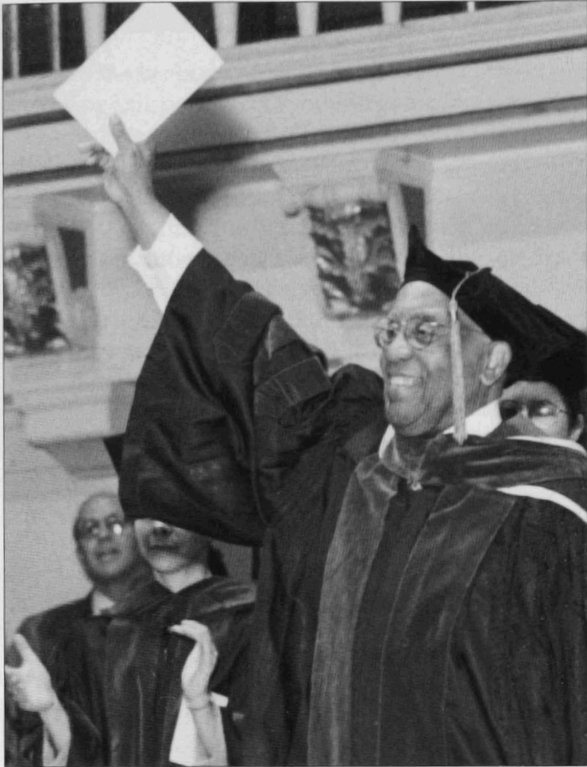
- "First, make time in your legal practice to practice your life Don't just read law books and cases." Read something just for pleasure; enjoy the opera, the symphony, and a movie or play.
- "Spend time with your children — get to know them. . . . Few things in life will bring you more happiness and satisfaction than the experience of witnessing your children's happiness."
- Make time to see your parents. Don't allow this occasion to be the "last time you see your mom or dad before the holiday season arrives." Your parents still have much that they can teach you.
- "Engage your profession — do not simply work There is no longer a single yellow brick road leading to professional satisfaction." Try different practice settings; find out what is most enjoyable to you. Participate in the organized bar.
- "Give time to *pro bono* service." Your career accomplishments may receive local and national recognition, "but you will never be so great as when you use your skills to help a child, an abused woman, an immigrant in detention, a family facing eviction, or someone afflicted with HIV/AIDS."

This "ritual of passage from law school into the profession is an important point of demarcation and debarkation," he said, acknowledging that this was his first Law School commencement — he had failed to attend his own, one of the few regrets he has had over the course of his professional career. This is the final opportunity to say goodbye to the men and women who were once "nameless faces, but who today include some of your best friends." And, he said, "It is the beginning of a great adventure for all of you as lawyers."

BELOW: Robert Hirshon, '73, president-elect of the American Bar Association, addresses this year's spring graduating class. "To be successful in the new economy, one must be efficient and effective, talented and able to handle a broad range of work," he said.



ABOVE: Brandon Mack sat on the stage with the faculty and honored guests. As the twice-elected president of the Law School Student Senate (LSSS), this was his fourth trip to the dais. It is the responsibility of the LSSS president to present remarks during each commencement ceremony. "We should never forget to learn from one another," he said as he stepped away from the podium for the last time.

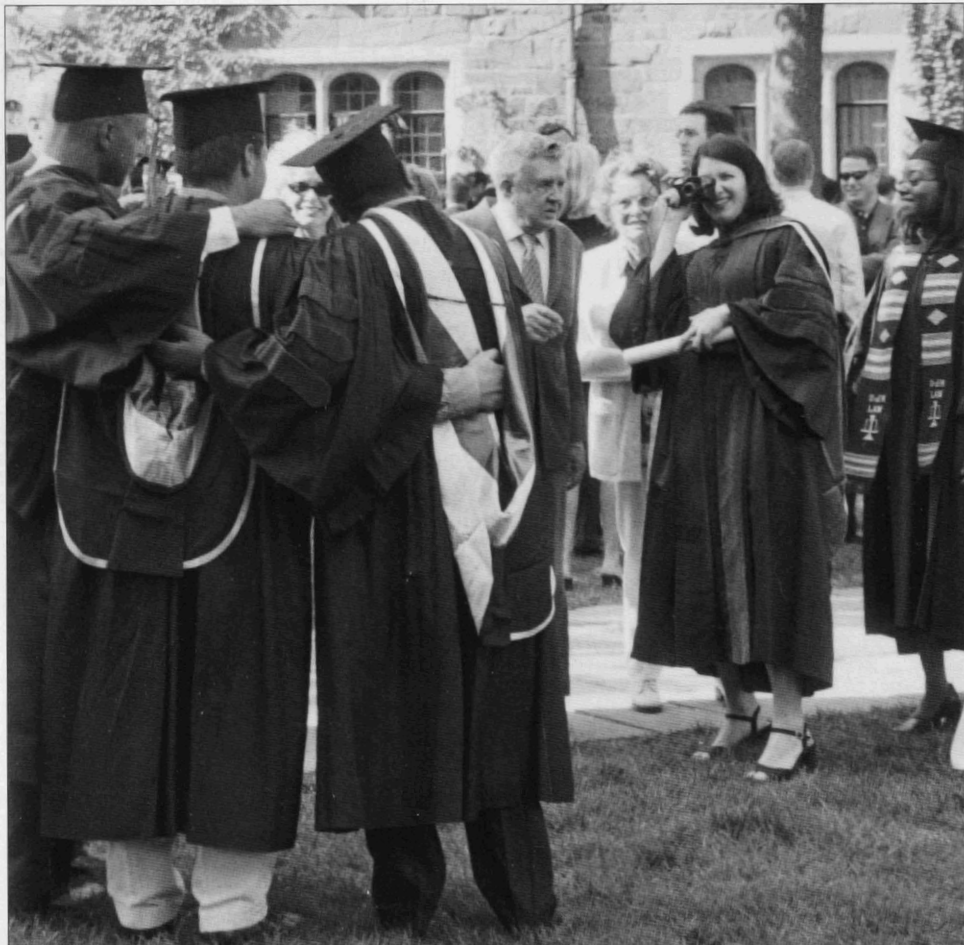


LEFT: Honored guest Judge William McClain, '37, receives a standing ovation at the close of his introduction. McClain is the Law School's oldest living African American graduate. His distinguished career has been "characterized by frequent breakthrough achievements," said Dean Jeffrey S. Lehman, '81. He was the first black member of the Cincinnati Bar Association; the first black lawyer to serve as the city attorney of a major American city; the first black partner in a major Cincinnati law firm; and the first black judge in the Court of Common Pleas in Hamilton County, Ohio.

PHOTOS BY GREGORY FOX



ABOVE: Elizabeth Lucas concentrates as she pins "Kiki" Manjari Purkayastha's cap firmly in place.



LEFT: Cameras were ubiquitous — graduates made sure they captured this special occasion on film.

Chewing on the issues of food production

As the United States has urbanized — only two percent of our population works the farms that produce the food we eat — the momentum to maximize food production and minimize apparent costs has accelerated. Massive corporate farms are replacing family farms, just as grocery, electronics, and other chains have replaced the home-owned small businesses that once provided so many of the services we consumers seek.

PHOTOS BY GREGORY FOX



Veterinarian Paul Sundberg, assistant vice president for veterinary issues of the National Pork Producers Council, explains how the council's Code of Practice calls for hogs to be protected from weather extremes, be handled by trained personnel, and have access to good water and a balanced diet. "Animal welfare and animal health are dependent on each other," he said.

ABOVE: "A person who cannot love animals and cannot enjoy nature will never love another human being," Polish union leader Andrzej Lepper tells participants in a symposium on industrialized agriculture at the Law School in January. Lepper, a recent candidate for the Polish presidency, led successful efforts to prevent the introduction of massive animal feeding operations (AFOs) into Poland. Lepper delivered his talk, "Traditional Humane Farming or Industrial Agriculture?" in Polish. At left is translator Agnes Van Volkenburgh, a University of Illinois veterinary student and the Animal Welfare Institute's representative in Poland.

"National policy attention on AFOs [Animal Feeding Operations] has grown significantly over the last few years, symbolized by the release of the USDA/EPA Unified National Strategy on Animal Feeding Operations in 1999," according to the Environmental Law Society, a student group at the Law School. "At least 35 states have passed, voted on, or at least debated laws and policies in the last five years that would directly or indirectly affect control of livestock operations. As farming operations grow larger and more concentrated, the debate over what should be done will only become more intense nationally and locally."

To further that discussion, the Environmental Law Society presented the symposium "Industrialized Agriculture in the Twenty-First Century: Balancing the Financial Benefits against the Environmental and Social Costs." Co-sponsors included the Law School, the U-M's Gerald R. Ford School of Public Policy, and the Environmental Issues Committee of the Michigan Student Assembly.

In a day-long program, nearly 30 panelists wrestled with questions like "Do AFOs pose a significant threat to human health and are they worth the cost?"; "Can AFOs be justified in the current moral and ethical climate of the United States?"; "Should AFOs be treated like other land use/business entities?"; and "Do AFOs pose a significant threat to the physical environment and are they worth the cost?" Participants' specialties covered many fields, among them: medicine, animal welfare, ecology, the law, organic farming, and history.

Disagreement was common. One speaker, for example, noted that Michigan law makes agricultural operations "zero discharge" sites. But a physician who has studied the development of antibiotic-resistant bacteria at AFOs, countered that "there is no way to have zero discharge of these DNA fragments. . . . To think that some sort of discharge policy is going to regulate it is just foolhardy."

"Today, America's system of family farms is in *extremis*," Andrzej Lepper, a Polish farm union leader and former presidential candidate of that country, said in remarks

prepared for his keynote address at the symposium. Lepper toured the United States and studied its agricultural systems as part of his successful opposition to a U.S. agricultural conglomerate's entrance into the Polish market.

"Fewer than two percent of Americans remain on the land; the number declines daily," Lepper said. "What we are witnessing . . . goes beyond historic change. It is a profound tragedy, not only for farmers, for rural communities, and farm animals, but for the nation.

"A great lie, fed to the press, propagated and repeated *ad nauseum*, is that small farmers are inefficient; that they are being overtaken by progress; that their doom, though lamentable, is inevitable.

"The truth is that industrial agriculture does not work economically unless much of its real cost — environmental costs, socio-economic costs, infrastructural costs — are imposed on others. The truth is that if existing federal laws, the Packers and Stockyards Act, the Federal Meat Inspection Act, the Humane Slaughter Act, the Clean Water Act, and sundry other federal and state laws were being honestly administered and enforced, the whole system would unravel. The corporate takeover is being greased by one of the most powerful and unscrupulous lobbies in American history."

The state of North Carolina, which in 1997 placed a moratorium on growth in its population of nearly 10 million hogs, figured prominently in much of the discussion at the conference. From the early 1980s through 1997 there was "definite consolidation and corporatization" of the hog-raising business in the Tar Heel State, noted Melva Fager Okun, a research associate with the University of North Carolina's School of Public Health. About 95 percent of hog producers now are under contract to large companies, she said. "Only two independents are left. The companies have taken over everything else."

Odors from such operations can irritate nearby residents, and sprayed manure can infiltrate both surface and subterranean water. "We see no difference between low

level nuclear waste and millions of gallons of urine and feces in our backyards," said Karen Hudson, president of the Illinois-based Families Against Rural Messes.

But to have small and medium-sized operations produce America's food, "What are you willing to pay?" countered Ernie Birchmeier, of the Michigan Farm Bureau.

"We believe in protecting the environment," he said. "[And] we believe in a profitable agriculture. Public health is of the utmost concern. I'm not going to protect people who knowingly pollute the environment."

Veterinarian Paul Sundberg, of the National Pork Producers Council, outlined how the council has established policies to

ensure that animals are treated humanely and are well-cared for. Added John D. Copeland, Tyson Foods' executive vice president of ethics and environmental compliance, "You may not like what you see with factory farms. But these are not pets. They are being raised as products."

The clock can't be turned back, said Alfredo DiCostanzo, of the University of Minnesota Animal Science Department. Fewer and fewer farmers feed more and more people. "I have to ask: How many of us are willing to go back to [working in] agriculture to feed this country?" The issues to be solved are food safety, the environment, and animal welfare, he said.



PHOTO BY GREGORY FOX

Quarterbacking —

The corporate lawyer is like a quarterback when it comes to guiding a merger or an acquisition — "he needs to be apprised of all that is going on," mergers-and-acquisitions specialist Mark J. Mihanovic, '85, of McDermott, Will & Emery in California, tells Assistant Professor Adam Pritchard's Mergers and Acquisitions class during a visit to the Law School last spring. Serving as guest lecturer for the class, Mihanovic led students through "the anatomy of a deal." Due diligence in studying the background and details of the deal in its early stages can pay off handsomely as the pact proceeds, Mihanovic said. "It's important to flush out the problems as soon as possible. Both sides want to know that they're not going through this dance, which is a very complex and expensive one, on a frivolous basis."



Testing —

Michael Olivas, William Bates Professor of Law at the University of Houston Law Center and former general counsel of the American Association of University Professors, asserts that the academic records and admissions tests that professional schools use to measure applicants — and the composite score number that can result — do little to accurately predict a student's subsequent performance. "These numbers are really quite soft, notwithstanding their arithmetic rigor," he argued during a talk at the Law School called "Academic Life: In Search of the Perfect Metaphor." Olivas' talk was part of the series of events that made up the 2001 Martin Luther King Symposium and was co-sponsored by the Law School.

PHOTOS BY GREGORY FOX



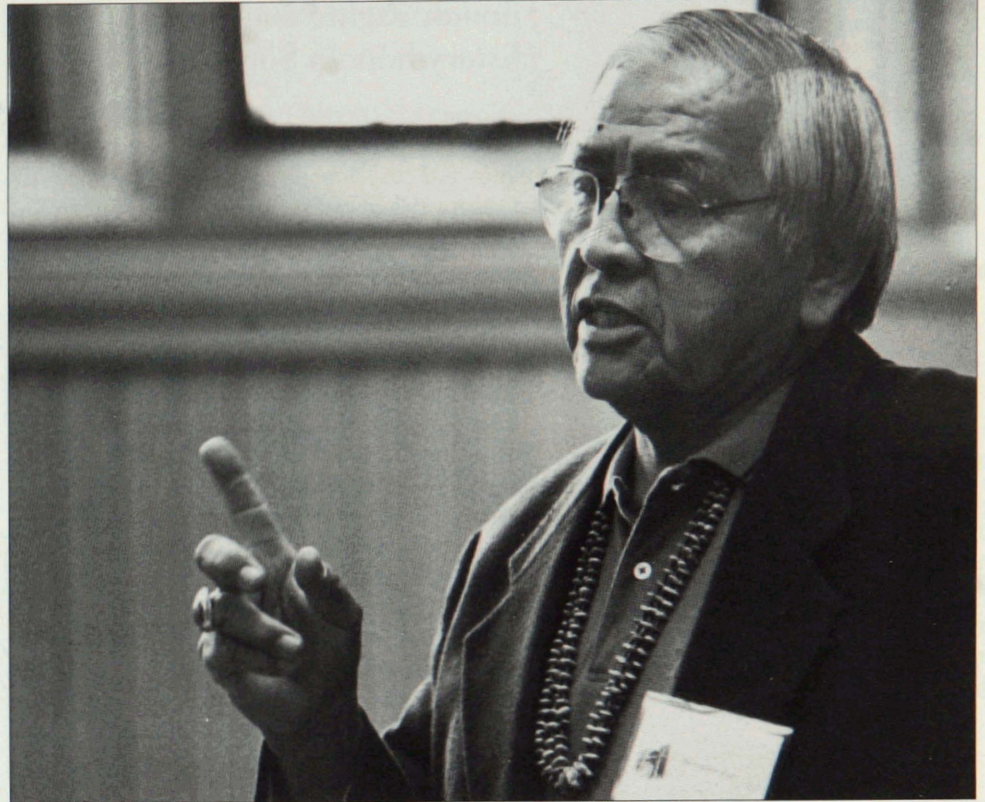
How Do We Choose? —

The Voting Rights Act of 1965 was "a beacon in the annals of democracy and representative government," the Hon. Algenon L. Marbley, above, of the U.S. District Court, Southern District of Ohio, Eastern District Division, tells listeners during a Martin Luther King Jr. Celebration program at the Law School. "Who would have thought that in 2001 we again would be discussing franchise rights, and yet here we are," he added, referring to the NAACP's suit against Florida's attorney general alleging voting irregularities in the 2000 presidential election. Marbley and his co-panelists, Judge Denise Page Hood, of the U.S. District Court, Eastern District of Michigan, and Michael Rodriguez, of the Mexican American Legal Defense and Educational Fund, discussed "The Civil Rights Struggle in the New Millennium: Issues, Obstacles and Strategies for Moving Forward." The program was sponsored by many groups within the Law School: the ACLU student group; Black Law Students Alliance; Latino Law Students Association; Michigan Journal of Race & Law; Native American Law Students Association; Public Interest Group; Asian Pacific American Law Students Association; Environmental Law Society; Law Students for Reproductive Rights; National Lawyers Guild; OutLaws; and the Office of Academic Services.

Indian tribes need to take responsibility for more of their own affairs, keynote speaker Peterson Zah tells attendees at the American Indian Law Day 2001 program held at the Law School. Zah, who is Navajo, is advisor to the president of Arizona State University.

PHOTO BY GREGORY FOX

'We have what we asked for': American Indian Law Day Speaker



Peterson Zah is no Pollyanna who thinks Native Americans have their full due. But the Navajo Indian and advisor to the president of Arizona State University knows how hard Indian nations have fought for tribal rights and wants to ensure against returning to the federal government's role as the great protector.

"I think we have come and made a complete circle," Zah said in his keynote address to the American Indian Law Day 2001 conference held at Law School in March. Indian tribes have secured many of the things they sought from the federal courts, the state courts, and Congress, and Indian people are implementing them at the local level, he said.

"Now the battleground has to be back in the local community at the tribal level. What is needed is more educational conferences like this one where we are coming together to listen to the experts. It means we have to be cautious that we no longer just run to court.

"My recommendation to you is that we need to work more on our own, to turn more [responsibility] over to local people and the tribal government. We've got to teach people to be responsible and more active in handling their own situations."

Sponsored by the Native American Law Students Association, the conference was a preliminary to the annual Ann Arbor Pow Wow, which began the next day. Other parts of the conference included:

- A discussion of "Tribes and Environmental Protection," with John Leone of the Natural Resource Division

of the Michigan Attorney General's office, and Riyaz Kanji, of Kanji & Katzen in Ann Arbor and an affiliated professor at the Law School; and

- Discussion of "The New Administration, Congress, and the Supreme Court: The Future of Federal Indian Policy," with Mary Pavel, of Sonosky, Chambers, Sachse & Enderson, Washington, D.C.; Virginia Boylan, of Dorsey & Whitney, Washington, D.C.; and University of Iowa Professor of Law Robert Clinton, who also has taught as a visiting professor at the Law School. Clinton, who will join the law faculty at Arizona State University this fall, also is chief justice of the Winnebago Supreme Court and associate justice of the Cheyenne River Tribal Court of Appeals.

Throughout the discussions, speakers stressed the twin themes of tribal action and cooperation among tribal, state, and federal governments. Leone, for example, cited the "triumvirate of governments" that bring tribal, state, and federal actors into the arena, while Kanji noted that "we are fortunate to have a very professional

attorney general's office with people who are concerned about what is best for the state. It's my hope that over time we can work with state governments such that the immediate reflexive tendency [to go to the courts for answers] will become a thing of the past."

Boylan and Pavel said they could not predict how the new Bush administration will deal with the tribes. Strengthen tribal courts and other institutions, Pavel advised, and added that "when we can bring all sides together and find some common ground, I think the conservative agenda will be all for us."

For the future, Clinton said, many tribes need to reform their outmoded constitutions and water, tax, and other codes. Intergovernmental cooperation also is important, he added. "You're not going to get respect from state or federal courts unless you enforce their rulings where they have jurisdiction. Figure out a way to keep your sovereignty and cooperate. . . . Tribal sovereignty is what tribes make of it, not what the court says it is."

- 28 *Human Rights and Legal History* honors Simpson
- 29 New symposium recognizes Phoebe Ellsworth
- 30 Thanking Associate Dean Christina B. Whitman, '74
- 31 Professor Evan Caminker named associate dean for academic affairs
- 32 Activities

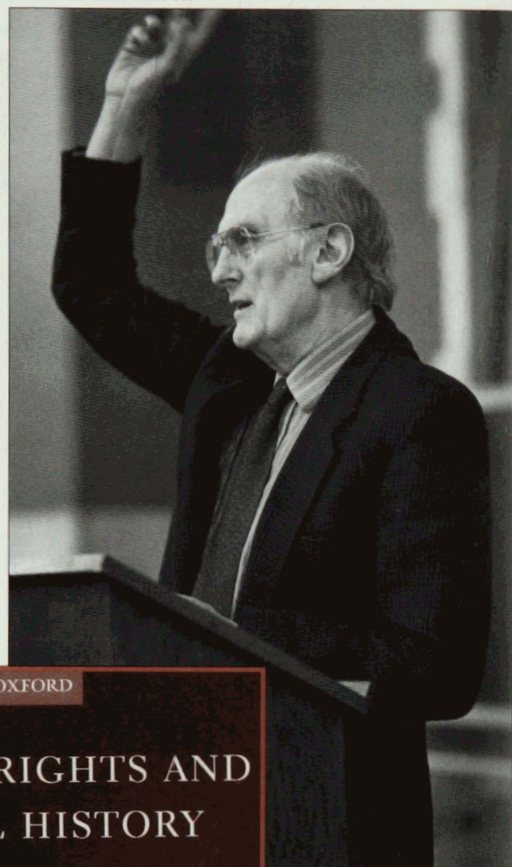
Human Rights and Legal History honors Simpson

No one who knows Professor A.W. Brian Simpson can remain unaware of his keen good humor and encyclopedic knowledge. During his distinguished career, he has written lucidly on the results of his complex scholarship and taken his academic reflections into the arena of human rights activism. Simpson seldom has visited a place or an idea without leaving significant footprints.

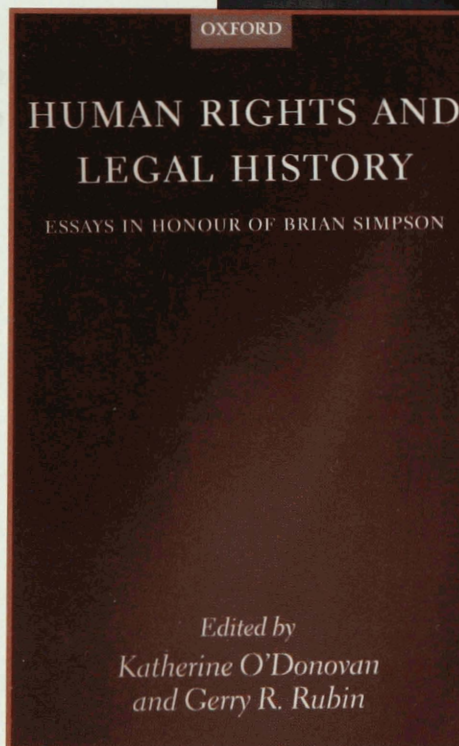
In recognition of Simpson's long and distinguished career, Oxford University Press has published *Human Rights and Legal History: Essays in Honour of Brian Simpson*, edited by Katherine O'Donovan and Gerry R. Rubin. Among the 13 contributors are two who are well known to the Law School community: Affiliated Overseas Faculty member Christopher McCrudden, a professor of law and fellow of Lincoln College, University of Oxford; and Nuala Mole, director of the London-based AIRE Center for Advice on Individual Rights in Europe. McCrudden, Simpson's successor at Lincoln College, regularly teaches at the Law School; Mole, Simpson's professional colleague in his practice at Strasbourg and his student at Oxford 30 years ago, speaks here often and provides job postings for law students interested in human rights work.

Editors O'Donovan and Rubin begin their book introduction: "For those fortunate to be acquainted with Brian Simpson, there can be no disputing that he is a remarkable individual. The biographical outlines are, of course, sketched out in his entry in *Who's Who*. A child of the rectory in Yorkshire, he was educated at Oakham School, Rutland, and was called up for national service between 1950 and 1951. He then entered Queen's College, Oxford,

PHOTO BY GREGORY FOX



A.W. Brian Simpson



graduating with a first class degree in Jurisprudence in 1954. He followed this by becoming a junior research fellow at St. Edmund Hall (1954-5), and then Fellow and Tutor in Law at Lincoln College, where he taught across a range of law disciplines for 18 years."

Simpson, the Charles F. and Edith J. Clyne Professor of Law at the University of Michigan Law School, is highly regarded by scholars as a keen mind and welcome colleague. He also is well-known and popular among students. Leaders of the Student Funded Fellowships program, which provides awards for students in summer jobs, honored his support of the program last year by naming the A.W.B. Simpson Award after him and making him the first recipient. The award honors "members of the Law School community who provide unparalleled support for our efforts." (See related story page 6.)

Simpson's groundbreaking scholarship covers more than three decades and has produced books like *In the Highest Degree Odious: Detention Without Trial in Wartime Britain*; *Leading Cases in the Common Law*; *Legal Theory and Legal History*; *A History of the Land*; *Cannibalism and the Common Law*; *A Biographical Dictionary of the Common Law*; and *A History of the Common Law of Contract*. His book on the Human Rights Convention is to be published this year.

McCrudden, writing in the chapter "A Common Law of Human Rights? Transnational Judicial Conversations on Constitutional Rights," opens with a bow to Simpson's "intellectual curiosity" as well as his "insights and friendship." McCrudden writes: "Brian Simpson's unquenchable and infectious intellectual curiosity has resulted in his pursuing as wide a range of scholarly interests as any other legal academic of his generation. Two of these interests are reflected in this article: the role of precedent, and the pursuit of human rights. It is offered as an inadequate 'thank you' for the insights and friendship he has given my family and me over the years."

Mole, Simpson's student-become-colleague, traces the development of a human rights consciousness and legal structure, connects the Gulf War-time detention of Iraqis with publication of

Simpson's *In the Highest Degree Odious: Detention Without Trial in Wartime Britain*, and discusses Simpson's role as expert in detention and other issues.

"In *Odious*," she notes, "he was deeply critical of the arbitrary way in which administrative detention was used before and during the Second World War." She adds that during the 1990s Simpson contributed "expert advice" on detention sentence history to the European Commission on Human Rights and was "one of the first academic contributors to the now well-established journal, the *European Human Rights Law Review*, with a scholarly paper on the detention of Archbishop Makarios during the Cyprus troubles." She also takes note of his efforts to help Law School students work at the AIRE Center or to do research on human rights cases in which the center is involved.

And, she concludes, "In January 1999, at an age and stage in his career when many would have opted for the comforts of retirement, he cheerfully joined a team in Albania in the depths of winter and, enduring the conditions of some privation, gave up his time to assist the University of Tirana with a pilot academic course on the history, law, and practice of the European Convention on Human Rights. His familiarity with the history of their country and particularly the detailed provisions of the Kanun of Lek Dukagjini (the complex code that regulates blood feuds) impressed both students and faculty almost as much as his detailed knowledge of the genesis of the ECHR [European Commission on Human Rights]."



PHOTO BY GREGOR FOX

Phoebe C. Ellsworth

New symposium recognizes Phoebe Ellsworth

A California college has honored Kirkland and Ellis Professor of Law Phoebe Ellsworth's pioneering work in the field of psychology and law by naming a new symposium for her.

Ellsworth was one of four speakers for the first annual Phoebe Ellsworth Psychology and Justice Symposium, held in March at Mount Saint Mary's College. Ellsworth discussed "Aversive Racism in Juror Decision Making."

Another Law School faculty member, Thomas G. and Mabel Long Professor of Law Samuel R. Gross, also spoke at the symposium, addressing "Racial Profiling on American Highways." Other speakers included Christine Littleton of the UCLA Law School, discussing "Gender and the Legal System," and Tom Lyon, a law professor at the University of Southern California, who spoke on "Child Witnesses and the Truth."

"When Phoebe Ellsworth began applying social psychological research methods to the study of the U.S. legal system in the 1960s, she probably did not realize she was founding an entirely new field of research," symposium notes stated. "Her enormous contributions to both the psychological and the legal communities have continued unabated ever since, earning her widely held and well deserved respect and admiration."

Ellsworth, who also holds an endowed professorship in the University of Michigan psychology department, holds degrees from Harvard and Stanford. She taught at Yale and Stanford before coming to the Law School in 1987. She is a member of the Russell Sage Foundation's board of trustees and is a fellow of the American Academy of Arts and Science.

FACULTY

Thanking Associate Dean Christina B. Whitman, '74

PHOTOS BY GREGORY FOX



Associate Dean Christina B. Whitman, '74, receives congratulations from Thomas A. Green, the John Philip Dawson Collegiate Professor of Law, during an appreciation dinner for Whitman held in the Lawyers Club in May. Whitman, a professor of law who also is a professor of women's studies, steps down September 1 after serving as associate dean since 1997.

Dean Whitman thoroughly enjoys the spoof of the monthly administrators' meeting that she runs. Assistant Dean of Students Charlotte Johnson, '88, left, in the role of Whitman, spoofs interruption of the meeting by a phone call from Whitman's daughter. Others performing the skit are, Assistant Dean for Admissions Sarah Zearfoss, '92; and Assistant Dean of Students David Baum, '89.



All joking aside — and there was plenty of joking throughout the appreciation dinner for Associate Dean for Academic Affairs Christina B. Whitman, '74 — “I don't think anyone here really knows how much difference you have made to the Law School over the last four and one-half years,” Dean Jeffrey S. Lehman, '81, explained in the serious side of his comments.

Whitman, the first woman to serve the Law School as associate dean for academic affairs, is leaving the post and returning to

Ah, the e-mails. Richard D. Friedman, the Ralph W. Aigler Professor of Law, stirs laughter as he shows a chart of e-mails received from Professor Christina B. Whitman, '74, as her term as associate dean for academic affairs progressed.

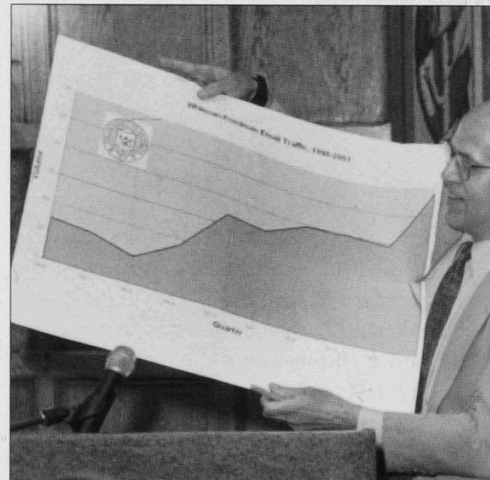


PHOTO BY GREGORY FOX

the faculty September 1. She has served in the position since 1997, and is to be succeeded by Professor Evan Caminker (see story on this page).

More than 100 colleagues, friends, family members and well-wishers gathered for an appreciation dinner for Whitman at the Lawyers Club in May. From quips from Professor Richard D. Friedman about the significant increase in his e-mail traffic during Whitman's deanship (he had a chart to prove his argument), to a skit presented by those who had gathered with Whitman for the monthly administrators meetings, the evening was filled with good-natured recollections of Whitman's tenure.

"One of the things that has been terrific for me is that I have worked with such fabulous people," Whitman told her well-wishers. "I'm actually going to miss meetings. This has been a great time for me. It has really been a tremendous pleasure."

"I don't think anyone here really knows how much difference you have made to the Law School over the last four and one-half years."

— DEAN JEFFREY S. LEHMAN, '81

There were two things she had not fully appreciated before becoming associate dean, Whitman said: the high esteem the students have for the faculty, and "what an incredible staff of administrators we have."

"The theme of my talk is gratitude," Suellyn Scarnecchia, '81, associate dean for clinical affairs, began her remarks.

"Thanks," she said to Whitman, "for your hard work and dedication." Thanks "for your honesty." Thanks "for maintaining a sense of humor."

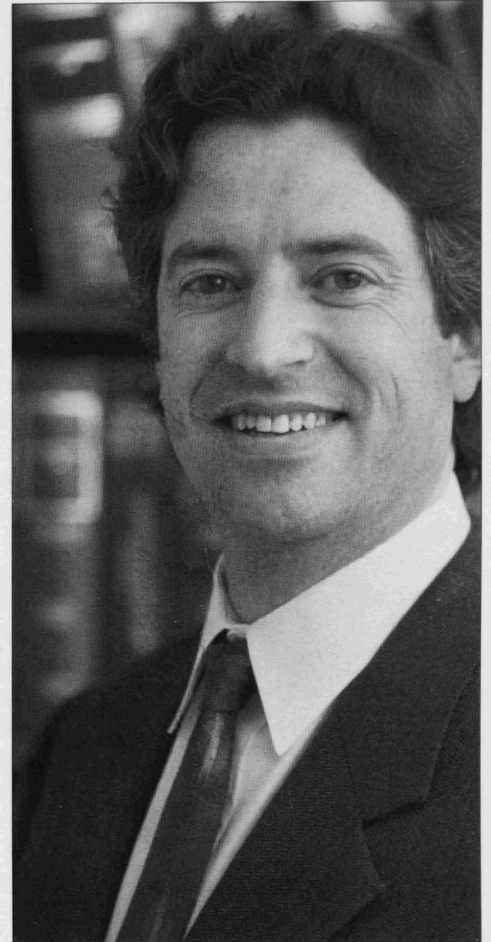
Lehman noted that Whitman "showed an incredible ability to find solutions to problems that didn't seem to have solutions." Whitman, he said, has been "a wonderful partner."

Professor Evan Caminker named associate dean for academic affairs

Professor Evan Caminker, a constitutional law specialist who recently returned to the Law School after serving in the U.S. Justice Department, has been named associate dean for academic affairs, effective September 1. He replaces Professor Christina B. Whitman, '74, who has served since 1997 and was the first woman to hold the post. (See adjoining story.)

Caminker came to Michigan from the UCLA Law School, where he was a faculty member from 1991 to 1999. A distinguished scholar of constitutional law who clerked for Justice William Brennan at the U.S. Supreme Court and for Judge William Norris of the Ninth Circuit, Caminker received his B.A. in political economy and environmental studies, *summa cum laude*, from the University of California at Los Angeles. He received his J.D. from Yale Law School.

As an undergraduate student, Caminker earned the Outstanding Senior Award, the Phi Beta Kappa Top Junior at UCLA Award, and two national championship debate awards. In law school, he was a senior editor of the *Yale Law Journal* and a Coker Fellow, and he was awarded the Benjamin Scharps Prize for Excellence in Legal Writing. He has practiced law with the Center for Law in the Public Interest in Los Angeles and with Wilmer, Cutler & Pickering in Washington, D.C., and has been a visiting fellow at the University of Cambridge. He recently completed a leave to serve in the federal government as deputy assistant attorney general in the Office of Legal Counsel.



Evan Caminker

A gifted classroom teacher, Caminker has received the ACLU Distinguished Professors Award for Civil Liberties Education. He has taught in the fields of constitutional law, civil procedure, and federal courts, and has lectured widely before audiences ranging from the Los Angeles Chapter of the Federalist Society to the Free Society of the University of Cambridge. His research interests include the intersection of state and federal powers and the interplay of lower and higher courts. He has published articles in *Michigan Law Review*, *Columbia Law Review*, *Stanford Law Review*, *Supreme Court Review*, *Texas Law Review*, and *Yale Law Journal*. His most recent work includes an inquiry into the nature of voting on multi-member courts.

Activities

In May, Professor **Reuven Avi-Yonah** presented the paper "Tax Competition and e-Commerce" at the Conference on World Tax Competition sponsored by the Office for Tax Policy Research at the University of Michigan Business School and the Institute for Fiscal Studies, London. In April, he was a panelist on Writing Tax History in a critical tax conference at Washington University, St. Louis, and in March he was commentator on a paper on international tax reform by David Bradford of Princeton University at the New York University Colloquium on Tax Policy. He also served as faculty advisor to the U.S. Congress Joint Committee on Taxation project on federal income tax simplification, and, in January, delivered the paper "Tax Competition and Globalization: Implications for Developing Countries" at the UN Economic Commission for Latin America and the Caribbean meeting in Santiago, Chile. (A version of the paper begins on page 60.) Last fall, he was commentator for the International Tax Panel at the National Tax Association Annual Meeting in Santa Fe, served as commentator on a paper on trade and tax by P. McDaniel of New York University at the Brooklyn Law School conference "International Taxation in the 21st Century," and taught a mini-course on U.S. international taxation at ITAM University in Mexico City. Last December, he addressed the Detroit Chapter of the International Association of Jewish Jurists on the subject "Does Israel Need a Written Constitution?"

Professor **Evan Caminker** in April spoke at the University of Cincinnati College of Law on "Prophylactic Rules, Probabilistic Wrongs, and the Nature of Rights"; in February he presented the paper "Voting Protocols and Supreme Court Decisionmaking" at the Illinois College of Law Legal Theory Workshop; and in November he was a speaker/panelist at the Law School symposium "Miranda after *Dickerson*: The Future of Confession Law." In January, he concluded his leave from the Law School to serve as deputy U.S. assistant attorney general in the Office of Legal Counsel. On September 1 he begins duties as associate dean for academic affairs. (See story on page 31.)

Clinical Professor **Donald Duquette**, director of the Child Advocacy Law Clinic, has been leading the effort of the National Association of Counsel for Children (NACC) to become the agency to certify lawyers as specialists in juvenile law. The effort also is expected to develop educational programs for lawyers, probably through distance learning techniques, to help prepare them for the certification examination.

Thomas A. Green, the John Philip Dawson Collegiate Professor of Law, is serving as president of the American Society for Legal History (ASLH) and as co-editor of *Studies in Legal History*, the ASLH book series published by

the University of North Carolina Press. He is nearing completion of a book tentatively titled *Conventional Morality and the Rule of Law: Perspectives on Freedom and Criminal Responsibility in America, 1870-Present*.

Assistant Professor **Daniel Halberstam** was a guest lecturer at the University of Zagreb, Croatia, in March; he spoke on "The Relationship between Supranational and National Law in the European Union" for the Department of Law and on "Intergovernmental Relations in the European Union, Germany, and the United States" for the Department of Political Science. In March he also participated in the workshop on European constitutionalism held at the European University Institute in Florence, Italy.

Professor **James C. Hathaway** delivered an advanced refugee law course in Berlin last November to more than 100 advocates and scholars from across Europe under the auspices of the European Council on Refugees and Exiles. In January, he facilitated a workshop on the temporary protection of refugees at the biennial meeting of the International Association for the Study of Forced Migration in Johannesburg. In March, he convened the second Colloquium on Challenges in International Refugee Law at the Law School. (See story on page 52.) He recently was retained by the European Commission to draft a comprehensive study of state practice on interpretation of the

Convention refugee definition; the study was approved by an expert panel of judges and academics meeting in Brussels, and will form the basis for preparation of a directive on harmonized asylum standards in the European Union.

Paul G. Kauper Professor of Law **Douglas A. Kahn** delivered the 72nd Cleveland-Marshall Fund Visiting Scholar Lecture at the Cleveland-Marshall College of Law in March. He spoke on "Tyranny of Words or Tyranny of Judge: A Hobson's Choice? — The Principles of Statutory Construction." In addition, during his two-day visit he taught class, met with students, and gave a seminar for faculty members on the subject of capital expenditures.

In April, Clarence Darrow Distinguished University Professor of Law **Yale Kamisar** spoke at the University of San Diego Law School on "The Rise and Decline of the Right to Physician-Assisted Suicide" and to the appellate public defenders of San Diego on "Recent Developments in Constitutional-Criminal Procedure." The same month he also delivered the annual Willard Pedrick Lecture at the Arizona State University College of Law, speaking on "Miranda Thirty-Five Years Later: A Close Look at the Majority and Dissenting Opinions in *Dickerson*"; an expanded version of the lecture is being published in the

Summer 2001 issue of the *Arizona State Law Journal*. At deadline time, the 9th edition of his book, *Constitutional Law: Cases, Comments & Questions* (with Jesse Choper, Richard Fallon Jr., and Steven Shiffrin) was about to be published by West Publishing Company.

Professor **Ronald J. Mann** presented his findings on "Debit Cards and Credit Cards in the United States and Japan" at two conferences, the Vanderbilt Law & Business Symposium at Vanderbilt University in March, and the conference "Change, Continuity, and Context: Japanese Law in the Twenty-First Century," held at the Law School in April.

Assistant Professor **Adam C. Pritchard** spoke at the annual meeting of the American Law and Economics Association in May and the first annual Joe C. Davis Law and Business Program Conference at Vanderbilt University School of Law in March. He was organizer for the conference "Judging Business: The Role of Judicial Decisionmaking in Corporate and Securities Law," held at the Law School in April. (See story on page 58.)

Mathias W. Reimann, LL.M. '83, the Hessel E. Yntema Professor of Law, has been elected a member of the Executive Committee of the American Society of Comparative Law; he also was elected chairman for 2002 of the Conflicts Section of the Association of American Law Schools (AALS). In January he presented the paper

"Parochialism in American Conflicts Law" at the AALS annual meeting in San Francisco, and, in November presented the paper "Beyond National Systems — Comparative Law in the International Age" at the World Congress of Comparative Law in New Orleans. Reimann also has been named an honorary member of the German American Lawyers Association.

In May, **Theodore J. St. Antoine**, '54, the James E. and Sarah A. Degan Professor Emeritus of Law, presented the third annual lecture of the College of Labor and Employment Lawyers in Washington, D.C. He spoke on "The Once and Future Labor Act: Myths and Realities." Previous lecturers in the annual series have been former White House Counsel and Circuit Judge Abner Mikva and the Hon. Richard Posner of the U.S. Seventh Circuit.

Associate Dean for Clinical Affairs **Suellyn Scarnecchia**, '81, spoke on "Turning Curricular Innovations into Scholarship" at the Association of American Law Schools Clinical Section Conference in Montreal in May.

In March, **Lawrence W. Waggoner**, the Lewis M. Simes Professor of Law, chaired the planning committee for a workshop on Defining the Family in the Millennium, held

in Palm Springs under sponsorship of the Association of American Law Schools. In May, he presented a tentative draft of a portion of the Restatement (Third) of Property: Wills and Other Donative Transfers for approval by the American Law Institute. The approved version will be combined with a previously approved portion and will be published as the second hardbound volume of the Restatement.

Assistant Professor **Mark D. West** served as program director for the conference "Change, Continuity, and Context: Japanese Law in the Twenty-First Century," held at the Law School in April. (See story on page 55.) In May, he presented the paper "The Resolution of Karaoke Disputes: The Calculus of Institutions and Social Norms" at the American Law and Economics Association Annual Meeting. He also received a Fulbright Research Scholarship to do research in Japan next year.

The Inner Voice *and the* Inspiring Path

- 34 The Inner Voice and the Inspiring Path
- 36 Women and the Law — a sharing of insights
- 38 Michael Kagan, '00, wins grant for refugee project in Egypt
- 39 McGill, '99, awarded Robert Bosch Foundation Fellowship
- 39 Follansbee joins Law School as assistant dean for development and alumni relations
- 40 Class Notes
- 44 In memoriam

Each term, the offices of Public Service and Career Services showcase lawyers, usually University of Michigan Law School graduates, whose devotion to public service can be an inspiration to future lawyers, whether the work is done through a public interest nonprofit agency, or a traditional law firm. These "Inspiring Paths" talks increasingly feature speakers whose work is international in scope.

Speakers during the winter term included: Jackie Payne, '97, of the National Organization for Women's (NOW) Education and Defense Fund; Betsy Apple, of Earthrights International; and Eric Grossmann, '73, of Bernstein Litowitz Berger & Grossmann LLP in New York City. Payne also was a panelist in the Law School's Women's Professional Development Symposium earlier this year. (See story on page 36).

All three speakers stressed the significance of listening to your inner voice and following its hints — even though those hints may be very subtle and easily obscured by peer pressure or other distractions. As their stories show, the method of tuning in to and honoring that inner voice can be as one-of-a-kind as the people who are listening.

Payne, for example, convinced NOW leaders that she was the person for their policy formulation job with the Education and Defense Fund, even though she lacked the experience they sought. She broke down the lack-of-experience barrier by coming to NOW for six weeks as a consultant to show her abilities. Her stint as consultant convinced NOW to retain her.

After being hired, she first worked on re-authorization of the Violence Against Women Act; now her attention focuses on welfare reform.

"My passion always has been the intersection of all these issues — equality with men, how it's different for women of color, gays and lesbians — and looking at the intersection of how these things affect everybody. It's an awesome opportunity. I spend my days planning how we will do all these things."

For Apple, founder and current women's rights project director for Earthrights International, "the environment and human rights are inextricably linked." As she sees it, "the idea is that you can't separate environmental destruction from human rights problems. . . . If people aren't free, then they are not able to protect their environment."

But "how do you create a career out of whole cloth when there are lots of obstacles to that career?" she asked. Accident, surprise, and trouble, she answered.

■ **Accident:** The accident of birth gave her a good education, travel, and reading, she said. "What I did with these lucky accidents was up to me."

■ **Surprise:** She spent a year in the jungles of Burma interviewing defectors, something she never imagined doing previously. "The way that your passion may reflect itself in your career may surprise you."

■ **Trouble:** There are other people's troubles — which "you have talent and skills to do something about," and troubles you'll encounter in your own career. "Make trouble for institutions and people who deserve it."

"You have free will, and unless you've made some sort of Faustian pact, you have power over your own life," she said. "It's probably one of the few things you actually have control over."

For Grossmann, "it's really been an adventure during the last 28 years.

"I left here on a cold day in May 1973 without a job, not knowing what I was going to do, pretty scared . . . and knowing only one thing for sure — I was not going to be a litigator."

He worked first at a two-man firm, then moved to a larger firm where he worked on the Equity Funding case that resulted in a \$40 million settlement. This, he said with a chuckle, is where "I began a very satisfying part of my career — of getting

ALUMNI

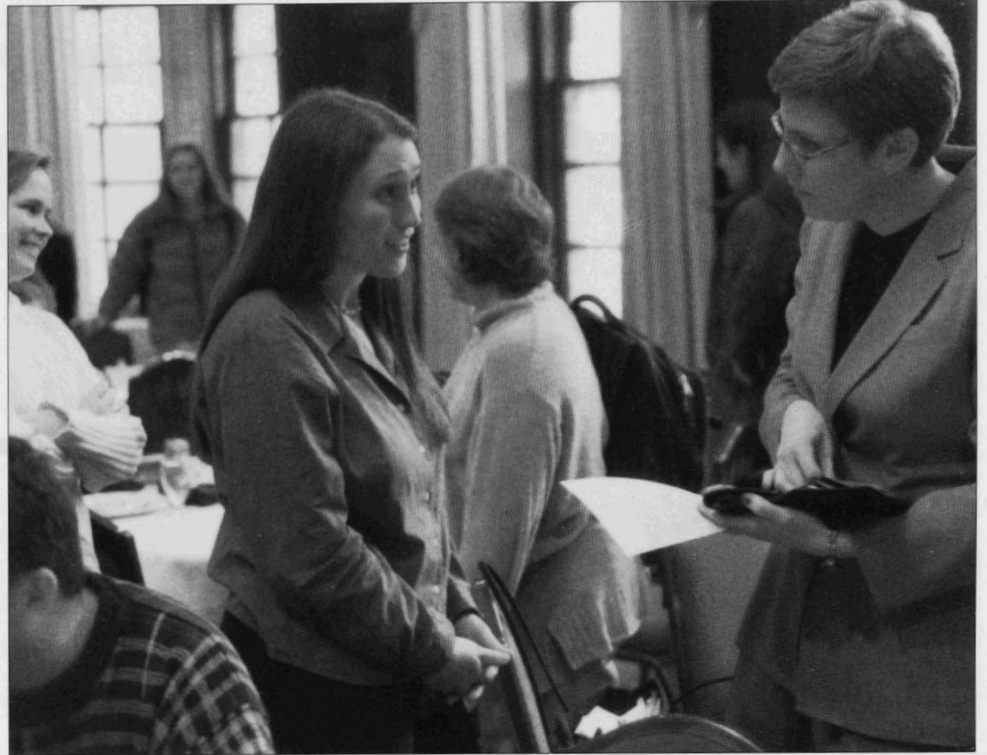
BELOW: Jackie Payne, '97, of the National Organization for Women's Education and Defense Fund in Washington, D.C., chats with first-year law student Nicole Levin after speaking in the Inspiring Paths series hosted by the Law School's Public Service and Career Services offices.

PHOTOS BY GREGORY FOX

revenge on those firms that refused to hire me." He left in 1983 to form his own firm.

"We do what we believe are some really meaningful cases," he said. Like the case against Texaco that resulted in a \$3 billion settlement for racial discrimination. For Grossmann, however, the monetary settlement was less significant than the part of the settlement that required establishment of a task force of outsiders to monitor Texaco's performance.

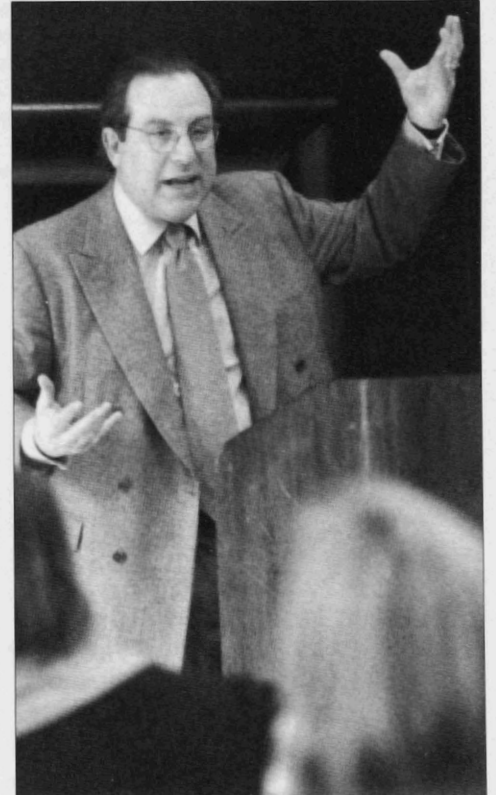
"These kinds of non-monetary rewards will carry over to other companies in the future, and will make them more socially responsible citizens," he said.



BELOW: The icing on the cake of Inspiring Paths programs is the chance to talk with speakers afterward. Here, Betsy Apple, of Earthrights International, talks with first-year student Anna Gullickson, second-year student Daniel Tentler, and first-year student Julie Pfluger after telling her audience that "you can't separate environmental destruction from human rights problems."



RIGHT: Edward A. Grossmann, '73, recounts his 28-year "adventure" as a lawyer who has taken "meaningful" cases and been involved with settlements like the \$3 billion resolution of the case against Texaco for racial discrimination.



Women and the Law — *a sharing of insights*



Colleen Barney, '93, with her two-year-old daughter on her lap, explains that her clients support her in coming to her office early and leaving early in order to be with her family. Barney, of Albrecht & Barney in Irvine, California, specializes in setting up placements and care programs for clients with adult special needs children. Barney's co-panelists for discussion of "Pursuing Your Passions," include Melody McCoy, '86, of the Native American Rights Fund, Boulder, Colorado; Jackie Payne, '97, of the NOW (National Organization for Women) Legal Defense and Education Fund, Washington, D.C.; and Shirley Kaigler, '75, of Jaffe, Raitt, Heuer & Weiss in Detroit.



Coming to the Women's Professional Development Symposium four years ago "totally changed my life," Jackie Payne, '97, reports during the panel discussion "Pursuing Your Passions." Listening is fellow panelist Melody McCoy, '86.



Mary Ann Sarosi, '87, director of the State Bar of Michigan's Access to Justice Program, outlines "what I've learned in the pursuit of my passion — which is civil legal services for the poor," in her keynote address to the Women's Professional Development Symposium.



"I look at success as a journey, not a destination," Shirley Kaigler, of Jaffe, Raitt, Heuer & Weiss in Detroit, explains during the panel discussion "Pursuing Your Passions." Listening is co-panelist Jackie Payne, '97.

Mary Ann Sarosi, '87, is well-acquainted with the misgivings and doubts that accompany young women entering legal practice — and she has quieted her's while continually listening to her own drummer.

Founder of the Coordinated Advice and Referral Program for Legal Services in Chicago — which she established with a foundation grant as she was exiting from a terminally ill firm — and now director of the State Bar of Michigan's Access to Justice Program, Sarosi shared her experiences with participants in the Women's Professional Development Symposium, held at the Law School early this year.

The annual symposium offers women law students and others the opportunity to learn and take inspiration from those who

have gone before them. Women who serve as presenters and panelists say participation also serves to re-affirm the choices and commitments that have marked their own career paths while offering them the satisfaction of sharing with younger women the insights they have gained.

"What I thought I'd do today is talk about what I've learned in the pursuit of my passion — which is civil legal services for the poor — what lessons I've learned from the journey thus far," Sarosi explained to her luncheon audience.

She condensed her journey into six lessons:

■ **Walking through that door.** "You can count yourself among the top law graduates in the nation when you walk out of here. Although coming from Michigan will most certainly open doors for you, it's up to you to walk through those doors."

■ **You must do what you think you cannot do.** "I thought back to a rock climbing course I had taken a few years earlier — this was long before rock climbing became a mainstream sport. When I discovered that I was the only woman in the class, I felt that the men had the advantage because they were physically stronger. But I soon realized that my advantage was my flexibility, agility, and sense of balance. I brought other skill sets that made me just as effective as the men. And I ended up blowing those guys away on the wall. I did what I didn't think I could do in that class."

■ **Laugh.** "Use humor to lighten life's moments."

■ **Your life's work** doesn't mean that work has to be your life. "Last year, I

Continued on page 38

The voices of experiences

Listening to comments at the Women's Professional Development Symposium is to reap a wealth of insights from women lawyers' varied experiences. Women graduates who serve as panelists in the annual program share personal and professional experiences with law students and discuss questions the future lawyers have about their lives and career paths. Here is a sample of comments from symposium panelists:

■ "I look at success as a journey, not a destination."

■ "I work with people who are setting up situations for their adult children with special needs — for after they're gone. I'm truly providing a service."

■ "Whatever your passion is, fulfilling it is the best part. Keep going for that dream."

■ (After reading a study of counterparts' salaries) "I was making about half that much, but I know I was 400 percent happier."

■ "There are a lot of really strong Native American women in the legal profession, and they are willing to help."

■ "By being in a small firm, I have the flexibility to pursue my passion. I'm in the office at 6 a.m., and two days a week I go home at 3 p.m. It gives me the ability to have a full life."

■ In response to a question about education debts: "The truth is, you have to live like a student for a time, and if you can do that for a time, you're okay."

■ In response to the question "Is there ever a good time to have children?": "If you weren't working you'd still ask that question."

■ "Figure out what works for you, and don't worry about what package it comes in. You have the power to make your life what you want."

■ "The biggest problem I've had is trusting my own instincts."

PHOTO BY GREGORY FOX



Co-panelists and audience members listen as Marcia A. Bruggeman, '97, of the Venture Law Group in Menlo Park, California, speaks on "Keeping Your Options Open" during the Women's Professional Development Symposium, held at the Law School in January. Other panelists include Lynda A. Tolen, '77, Berrien trial judge, St. Joseph, Michigan; Barbara McQuade, '91, of the U.S. Attorney's Office in Detroit; and Sharlene Lassiter, '85, associate dean for academics, Salmon P. Chase College of Law, Northern Kentucky University.

Michael Kagan, '00, wins grant for refugee project in Egypt

Michael Kagan, '00, who served as rapporteur for the Colloquium on Challenges in International Refugee Law (story on page 52), has won a grant from the Initiative for Public Interest Law to launch a new project in Cairo to aid refugees. The Initiative is a private, nonprofit organization at Yale University.

Kagan, who worked earlier this year with Amnesty International in London, also has received a Bates Overseas Travel Fellowship from the Law School to do research in Egypt this fall to set the foundation for launching the Cairo Asylum and Refugee Aid Project (CARA) in January. Kagan says CARA "will provide legal aid to refugees seeking protection by the United Nations High Commissioner for Refugees by training refugees in refugee rights and by organizing refugees to advocate each other's cases."

He hopes that CARA also can serve as a model for similar programs elsewhere.

"My great-grandparents were refugees before there was refugee law," Kagan explained. "But today, western governments, the United States included, wouldn't have let them near the border, or would have locked them up when they arrived. What used to happen at Ellis Island now happens at UN offices in places like Cairo, Nairobi, or Bangkok. I think if we want to protect refugee rights, that's where we have to do it."

"What I learned in Egypt is that the strongest voices for refugee rights are refugees themselves, so what I want to do is to help refugees help refugees."

He added: "This would not have happened if Michigan did not have a program that teaches refugee law beyond the limits of U.S. borders and that addresses refugee problems where refugees are."

Continued from page 36

trained for and ran two half-marathons, went to Europe twice, hiked in Glacier National Park among the grizzlies, spent a week kayaking in the backcountry of Isle Royale, and did four 100-mile bike rides. I tell you this not to talk about my lung capacity, but to let you know that although I'm devoted to my life's work, work is not my life. It's the balance that allows us to continue to be passionate about our work."

■ **Find the fuel that sparks your passion.**

"I don't want to be melodramatic, but I am here because our nation opened its doors to my parents. [Her father is from Hungary and was drafted into the German army during World War II; her mother lived in Munich during the Nazi regime.] My parents walked through those doors and did something with their lives, but the fact is that they had opportunities here that they did not have in Germany or Hungary. I feel an obligation to ensure that those opportunities exist for everybody in this country. That's what fuels my passion."

■ **Make connections.** "I'm talking something beyond 'networking.' I'm talking about caring for, encouraging, and nurturing relationships. It's those nurturing relationships that will see you through the peaks and valleys. Look out

for other women — both older and younger. Allow yourself to learn from them."

The symposium also included a morning panel discussion on "Pursuing Your Passions" and an afternoon panel on "Keeping Your Options Open," both featuring Law School alumnae with a variety of career backgrounds.

Morning panelists included: Colleen Barney, '93, of Albrecht & Barney, Irvine, California; Shirley Kaigler, '75, of Jaffe, Raitt, Heuer & Weiss, Detroit; Melody McCoy, '86, of the Native American Rights Fund, Boulder, Colorado; and Jackie Payne, '97, of the NOW (National Organization for Women) Legal Defense and Education Fund, Washington, D.C.

Panelists for the afternoon session included: Marcia A. Bruggeman, '97, Venture Law Group, Menlo Park, California; Sharlene Lassiter, '85, associate dean for academics at Salmon P. Chase College of Law, Northern Kentucky University, Highland Heights; Barbara McQuade, '91, U.S. Attorney's Office, Detroit; and the Hon. Lynda A. Tolen, '77, Berrien trial judge, St. Joseph, Michigan.

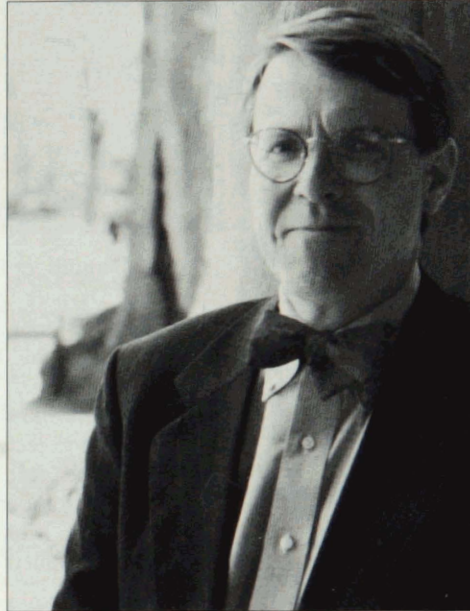
Follansbee joins Law School as assistant dean for development and alumni relations

George L. Follansbee Jr. has been named assistant dean for development and alumni relations. A *magna cum laude* graduate of Princeton University, he earned his J.D. *cum laude* from the State University of New York at Buffalo.

Follansbee, who prefers to be called Geof, has practiced law in New York State, has experience in the political world, and has served as associate dean for development at the Marshall-Wythe School of Law at The College of William and Mary in Williamsburg, Virginia.

He comes to the Law School from his post as assistant head for advancement at The Williston Northhampton School in Easthampton, Massachusetts, where he also has served as director of development. He has served as a trustee of the Chautauqua Institution and currently serves as a director of the Chautauqua Foundation.

PHOTO BY BRENT FUTRELL



George "Geof" L. Follansbee Jr.

McGill, '99, awarded Robert Bosch Foundation Fellowship

Yolanda McGill, '99, has been awarded a Robert Bosch Foundation Fellowship for 2001-2002 to spend September through May in Germany and Europe taking part in specially arranged seminars and internships. The Bosch Fellowship program, which began in 1984, awards 20 fellowships annually.

"Through this fellowship program, the Robert Bosch Foundation aims to contribute to the long-term stabilization and growth of German-American relations," according to fellowship materials. "Most of the Americans selected to participate in this program are very likely to be leaders in their professional fields in the future, and it is hoped that the experience will foster personal commitments to this common goal."

Typically, fellows attend a four-week introductory seminar in Bonn, move on to work at an internship in a federal ministry or similar placement, participate in an additional study program, and then take part in a second work phase "designed as a project, based on the individual participant's professional expertise and interests."

Fellows also take part in programs elsewhere in Europe that make up the fellowship's Europaseminar. In the most recent Europaseminar, fellows participated in a two-week study program in Strasbourg, Brussels, and Paris "to become more familiar with Europe's intricate political and cultural system and Germany's relations with its most important European partners."

PHOTO COURTESY OF JENNER & BLOCK LLC



Mehrberg, '80, and Silver, '98, win Legal Services Awards —

Then-partner Randall Mehrberg, '80, and Associate Jeffrey Silver, '98, of Jenner & Block LLC in Chicago, are shown with Patricia Mendoza, regional counsel for the Mexican American Legal Defense and Educational Fund, as they received MALDEF's Legal Services Awards for pro bono work at ceremonies in Chicago in April. Mehrberg since has become senior vice president and general counsel of Exelon Corporation. Mehrberg and Silver were recognized for their work on the amicus brief filed on behalf of more than 20 Fortune 500 corporations in support of diversity in higher education at the University of Michigan. The federal district court in the Eastern District of Michigan cited the brief in December in concluding that diversity is a compelling state interest and that the University's undergraduate admissions program is constitutional. "The amicus brief has been widely recognized as a significant contribution to the national debate on affirmative action," said Robert Graham, managing partner of Jenner & Block.

CLASS notes

60TH REUNION

The Class of 1941 reunion will be September 21-23

John R. Feikens and
Harold Rosem, Co-Chairs

1948

The Patent and Trademark Society's 2000 Pasquale J. Federico Memorial Award has been given posthumously to the Hon. **Helen Wilson Nies**, former chief judge of the U.S. Court of Appeals for the Federal Circuit, Washington, D.C. The selection committee for the award cited Nies as "a primary example for all members of the patent and trademark profession of excellence and dedication to public service. . . . Judge Nies was selected because of her significant history in both the patent and trademark fields and her impact on encouraging women to participate in intellectual property." Nies died in an accident in 1996.

1949

Joe C. Foster and **Nancy L. Little**, '89, are two of the seven principals at the new law firm Foster Zack & Lowe PC, Okemos, Michigan. The law firm opened January 1.

1950

Hessel E. Yntema has authored the book *A Guide for Aspiring Prophets*, (1st Books Library) an environmental saga dealing with man's technological destruction of his own home. (Yntema is the son of the late Law School professor of the same name.)

50TH REUNION

The Class of 1951 reunion will be September 21-23

Rex Eames, Chair
Donald G. Leavitt, Fundraising Chair

45TH REUNION

The Class of 1956 reunion will be September 21-23

Stephen (Steve) C. Bransdorfer, Chair

1961

40TH REUNION

The Class of 1961 reunion will be September 21-23

James N. Adler, Irvine O. Hochaday Jr.,
Laurence M. Scoville Jr., and
William Y. Webb, Co-Chairs

Barry I. Fredericks was appointed adjunct professor of law at Seton Hall University Law School, teaching a class on civil trial practice and procedure to third-year students.

35TH REUNION

The Class of 1966 reunion will be September 21-23

Charles E. Patterson and
Alfred M. Butzbaugh, Co-Chairs

1967



I. William Cohen, a partner in the Detroit office of Pepper Hamilton LLP and chair of the firm's Bankruptcy and Reorganization Group, has been reelected to the firm's Executive Committee, the governing body of the nationwide firm.



Peter L. Dunlap, of Fraser Trebilcock Davis & Dunlap PC of Lansing, has been selected for inclusion in *The Best Lawyers in America* for 2001-02. He is listed for excellence in the Personal Injury Litigation section. He also practices in the areas of alternative dispute resolution, legal malpractice and licensure, arbitration, and products liability.

1968



Robert G. Buydens has joined the law firm of Butzel Long, located in Detroit, as a shareholder. Prior to joining Butzel Long, Buydens was chairman of Buydens and Anderson, a specialized employee benefits practice based in Detroit.



Michael E. Cavanaugh, who practices with Fraser Trebilcock Davis & Dunlap PC in Lansing, has been selected for inclusion in *The Best Lawyers in America* for 2001-02. He concentrates his practice in the areas of commercial litigation, association law, employment and labor law, and administrative law.

1969

Peter D. Axelrod, a family law attorney, was featured in an article in the *Tucson Citizen* about a group of Tucson attorneys who use cooperative strategies instead of litigation in divorce cases. The process is called collaborative divorce. "The crux of the whole thing — you put your money where your mouth is — is that attorneys agree they will terminate their services if the cases can't be settled outside of court," Axelrod is quoted in the article.

1971

30TH REUNION

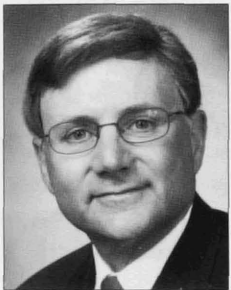
The Class of 1971 reunion will be September 21-23

Richard R. Burns and
Donald F. Tucker, Co-Chairs

1972



John W. Allen, a partner in Varnum, Riddering, Schmidt, & Howlett's Trial Practice Group, has been reappointed chair of the Michigan State Bar Standing Committee on Professional and Judicial Ethics.



Michael B. Shapiro, a partner and chair of the Real Estate Tax Appeals Department of Detroit-based Honigman Miller Schwartz and Cohn LLP, has been named in *The Best Lawyers in America* for 2001-02. He is listed as a practitioner in the area of real estate law.

1974

Stuart M. Lockman has been named to *The Best Lawyers in America* for 2001-02. He is a partner in the Healthcare Law Department of Honigman Miller Schwartz and Cohn LLP in Detroit.

Clarence L. Pozza Jr. has been reelected as a managing director of the firm Miller Canfield Paddock and Stone PLC, located in Detroit.

1975

Susan Grogran Faller, a member of the firm Frost Brown Todd LLC, has been named president of the Libel Defense Resource Center Defense Counsel Section. The section is the arm of the national Libel Defense Resource Center consisting of private attorneys who represent the media.

Jeffrey K. Haynes has joined Beier Howlett PC in Bloomfield Hills, Michigan, as member in charge of the Environmental Law Practice Group. Haynes' concentration is in environmental litigation and transactions.

Mark F. Pomerantz has joined the international law firm of Paul, Weiss, Rifkind, Wharton, & Garrison, located in New York, as a partner in the Litigation Department. Pomerantz comes to Paul, Weiss from Clifford Chance Rogers & Wells, where he was head of the firm's White Collar and Regulatory Practice.

1976

25TH REUNION

The Class of 1976 reunion will be September 14-16

Bertie N. Butts III, Chair

George A. Lehner, a partner of Pepper Hamilton LLP, located in Philadelphia, has been elected to the Executive Committee, the firm's governing body. Lehner is an experienced trial lawyer and trained mediator in areas ranging from patent infringement to international matters. He is the partner-in-charge of the Washington, D.C., office.

Art Przybylowicz, founding partner of the Okemos, Michigan-based White Przybylowicz Schneider & Baird, has accepted a position as the Michigan Education Association's general counsel. The firm's name has changed to White Schneider Baird Young & Chiodini PC. **James A. White, '64**, **William F. Young, '83**, and **Thomas A. Baird, '78**, are recognized in the new firm's title. White, the senior member, has 35 years of experience in labor and employment law. Young, one of the firm's founding members, has specialized in labor, employment, and education law since 1986. Baird, vice president, has practiced employment litigation and labor relations since 1978.

1977



George M. Pond has been hired by Hiscock & Barclay LLP located in Syracuse, New York. Pond was employed in the law department of one of New York's largest investor-owned utilities working on contract negotiations before the Federal Energy Regulatory Commission, the New York Public Service Commission, and the New York Independent System Operator. Pond's concentration is on energy matters.

1979

Gary P. Timin has joined the Tallahassee, Florida, office of Steel Hector & Davis LLP as an equity partner. His concentration is in insurance and other regulated business, corporate transactions, antitrust, and trade regulation.

1980

George Brandon has joined the Phoenix office of Squire, Sanders & Dempsey as a partner. He formerly was a partner with Steptoe & Johnson LLP and focuses his practice on corporate litigation matters.



David Foltyn, a partner in the Corporate Law Department of Honigman Miller Schwartz and Cohn LLP in Detroit, has been named to *The Best Lawyers in America* for 2001-02.

Diane M. Soubly has rejoined the employment law and litigation firm of Veracruz, Metz, & Murray PC, in Bingham Farms, Michigan, as a shareholder. She was a founding principal of the firm in 1996.

CLASS notes

1981

20TH REUNION

The Class of 1981 reunion will be September 14-16

Marianne Gaerber Dorado,
Chair

Steven J. Schooler has become executive director of Transitional Housing Inc. Transitional Housing is a not-for-profit corporation based in Madison, Wisconsin, providing help to those in need in the Madison area.

1982



Mary Jo Larson, a partner of Detroit-based Honigman Miller Schwartz and Cohn LLP, has been named in the 9th edition of *The Best Lawyers in America* for 2001-02. She focuses on employee benefits law.

Myint Zan has published the article "Of Consummation, Matrimonial Promises, Faults, and Parallel Wives: The Role of Original Texts, Interpretation, Ideology, and Policy in Pre- and Post-1962 Burmese Case Law" in Volume 14 (1) *Columbia Journal of Asian Law*, at pages 155-212.

1983

John Denniston has become the chief operating officer of the venture capital firm Kleiner Perkins Caufield & Byers in Menlo Park, California. Denniston was previously the head of technology investment banking for the western United States for Salomon Smith Barney.

Frank J. Saibert has joined as a partner in the Legislative, Regulatory, and Public Policy Department of the Chicago-based firm Ungaretti & Harris.

1984

Charles E. Jarrett has been appointed chief legal officer at the Mayfield Village, Ohio, headquarters of Progressive Insurance. Jarrett formerly was a Cleveland-based partner in the national law firm Baker & Hostetler, where he specialized in business and commercial litigation for 14 years.

Walter E. Spiegel has joined Standard Textile Company in Cincinnati, Ohio, as general counsel. Spiegel previously was employed as senior international trade attorney with NCR Corporation in Dayton, Ohio.

1986

15TH REUNION

The Class of 1986 reunion will be September 14-16

Arthur H. Siegal, Chair



Jeffery M. Brinza has joined the law firm of Butzel Long as a senior attorney in the Ann Arbor office. Brinza was assistant general counsel to the former Warner-Lambert Company's Parke-Davis Pharmaceutical Research Division (now Pfizer Inc.).

Amy Comstock was appointed by the U.S. president and confirmed by the Senate in October of 2000 to the position of director, U.S. Office of Governmental Ethics.

1988

David Bromfield has become a partner in the Michigan-based law firm Morgensteing & Jubelirer LLP.

Tom Froehle has been appointed managing partner of the Baker & Daniels Indianapolis office. Froehle practices primarily in the areas of public finance, securities, and corporate law.

Mark R. Soble exchanged wedding vows with his wife Leslye on November 11, 2000. He serves as senior commission counsel for the State of California Fair Political Practices Commission.

1989

Robert B. Gordon has become a senior shareholder of the law firm Jackier Gould Bean Upfal & Eizelman.

1990

Rick Kornfeld has opened his own law firm, Recht & Kornfeld PC, in Denver. The new firm emphasizes criminal defense, First Amendment law, and professional disciplinary board litigation.

1991

10TH REUNION

The Class of 1991 reunion will be September 14-16

Robert J. Borthwick, Carla Folz Brigham, and Kevin T. Conroy,
Co-Chairs

Lisa J. Bernt has authored the article "Wrongful Discharge of Independent Contractors: A Source-Derivative Approach to Deciding Who May Bring a Claim for Violation of Public Policy," published in 19.1 *Yale Law and Policy Review* (2000).

Vincent Carver has accepted a position in the General Counsel Department of American Airlines Inc. to practice in the Employment Group, handling employment-related litigation and counseling. He formerly was with Jenkins & Gilchrist PC.

Michael Colosi has been appointed general counsel for Kenneth Cole Productions in New York.



Tony Comden has been elected partner in the Grand Rapids-based firm of Varnum Riddering Schmidt & Howlett LLP. Comden joined the firm's Labor Group in 1994.

Kenneth Ewing has become a partner at Steptoe & Johnson based in Washington, D.C. He formerly was a visiting foreign associate in the Dusseldorf office of a German law firm, focusing on German and European Union antitrust law.

Irene C. Freidel has been elected partner of Kirkpatrick & Lockhart LLP resident in the firm's Boston office. Her concentration is in commercial litigation at the trial and appellate levels.

Shawn Parrish has become a partner in the Michigan-based law firm Morgenstein & Jubelirer LLP.

Edmund W. Sim was named a partner in White & Case, Colin Ng & Partners, the Singapore joint venture office of White & Case LLP. Sim practices international law and policy, specializing in antidumping litigation and WTO dispute resolution.

1992



Pamela S. Haan has been elected partner in the Grand Rapids-based law firm of Varnum Riddering Schmidt & Howlett LLP. Her work in the corporate arena is focused on securities transactions, corporate finance, and general corporate issues.



Wendy Zimmer Linehan has joined Dykema Gossett PLLC's Taxation and Estates Practice Group at the firm's Detroit office. She focuses on estate planning and related tax issues.

Angela M. Niemann has been elected a shareholder at the Seattle office of Heller Ehrman White & McAuliffe LLP. She is a member of the Intellectual Property and Insurance Coverage National Practice Groups and practices in the firm's Litigation Department. Niemann's practice focuses on commercial litigation in federal and state courts.

Hilda Harris Piell has become assistant general counsel at Chicago Mercantile Exchange Inc. Her responsibilities include advising the company on intellectual property matters and negotiating and drafting technology-related contracts.

The governor of Michigan has appointed **Mark A. Randon** Judge of the Thirty-Sixth District Court in Detroit. Randon is a former assistant general counsel with the Detroit Board of Education and associate with Miller Canfield Paddock and Stone.

David G. Wille has become a partner at the Dallas office of Baker Botts LLP. Wille's practice includes litigation, licensing, secured transactions, corporate transactions involving intellectual property, patent prosecution, and trademark prosecution.

1993

Thomas D. Colis has been elected principal at the Detroit office of Miller Canfield Paddock and Stone PLC. He practices in a variety of financial areas, including municipal, university, library, school district, and economic development finance.

David C. Layden has joined as a new partner to the Jenner & Block law firm's Chicago office. He serves in the Telecommunications and Litigation Practice Groups.

1994

Jeffrey S. Cronn has become a partner of the Tonkon Torp LLP law firm. He maintains a transactional and general corporate practice with an emphasis on securities work.

Omar J. Harb has joined the newly formed firm of Alber Crafton PLLC as an associate in the firm's Troy, Michigan, office.

Robert L. Jackson III has joined the Detroit-based law firm Honigman Miller Schwartz and Cohn LLP as an associate in the Labor and Employment Law Department.

Karen R. Pifer has joined the Detroit-based law firm Honigman Miller Schwartz and Cohn LLP as an associate in the Real Estate Department.

1996

5TH REUNION

The Class of 1996 reunion will be September 14-16

Carol E. Dizon and Miranda C. Nye,
Co-Chairs

Michael P. Matthews has joined the Milwaukee office of Foley & Lardner as an associate in the Litigation Department. He was previously affiliated with the Washington, D.C., firm Williams & Connolly LLP.

Michael J. Thomas wrote an opinion piece, "National law rules out need for state-based bar exams," which appeared in the February 2001 issue of *Student Lawyer* magazine. Thomas is an associate at Holt & Babington PC based in Las Cruces, New Mexico. He was recently appointed to the New Mexico Supreme Court's Rules of Evidence Committee.

CLASS notes

1997



Maurits Lugard has recently joined Powell Goldstein Frazer & Murphy in the firm's Washington D.C., office. Before moving to private practice, Lugard represented the European Commission in a number of World Trade Organization dispute settlement procedures in Geneva as a member of the Commission's Legal Service.

1998

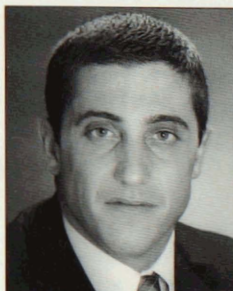
Ann McGuire joined four attorneys in March 2000 to open the new Seattle office of Orrick, Herrington & Sutcliffe LLP. McGuire came to Orrick from the Corporate/SEC Department at Perkins Coie LLP based in Seattle.

Andrew J. Tavi has joined the law firm of Foley & Lardner as an associate in the Business Law Department of the firm's Detroit office.

1999

Abdu Murray has joined Detroit-based Honigman Miller Schwartz and Cohn LLP as an associate in the Litigation Department.

2000



Trevor J. Belden has joined the law firm of Baker & Daniels' Indianapolis - 96th Street office as an associate on the corporate finance team. Belden concentrates his practice in general corporate and securities law.

Jeffrey S. Pitt has joined the Detroit-based law firm Honigman Miller Schwartz and Cohn LLP as an associate in the Real Estate Department.



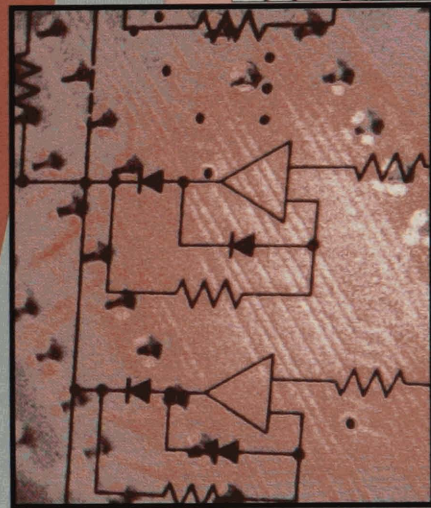
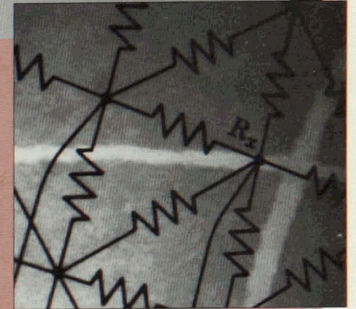
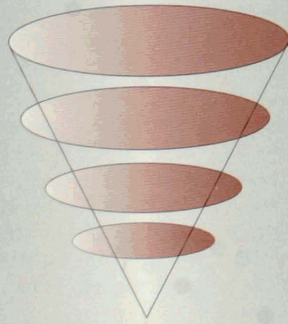
Hideaki Sano has joined the Detroit-based law firm Honigman Miller Schwartz and Cohn LLP as an associate in the Health Care Law Department.

Mark A. Smith has joined the law firm of Thompson Hine & Flory LLP as an associate in the firm's Cleveland office.

Elefteris (Terry) Velesiotis has joined Fulbright & Jaworski LLP in Houston in the Corporate Department and will focus his practice on corporate and securities law.

IN memoriam

'27	Wayne E. Shawaker	September 16, 2000
'31	Florence K. Weinberg	January 8, 2001
'32	Donald F. Nash	December 5, 2000
'34	James J. Cohen	August 28, 2000
	Irving W. Coleman	February 25, 2001
'35	Francis F. Blundon	March 1, 2001
'36	Marshall Beach	January 23, 2001
	Glenn W. Vogelgesang	October 13, 2000
'37	Roy Arthur Reabuck	January 1, 2001
'38	Henry J. Fox	March 31, 2001
'39	Collins E. Brooks	February 5, 2001
'40	Roman G. Burnor Jr.	February 25, 2001
'41	Jack P. Dunten	December 25, 2000
	Howard M. Lubbers	June 13, 1998
	Reed T. Phalan	January 24, 2000
	C. Stark Ritchie	April 4, 2001
	George G. Wood	February 24, 2001
'42	Lennart V. Larson (SJD)	November 25, 2000
'46	R.W. Nahstoll	January 27, 2001
'47	Joseph F. Hession	June 16, 1998
'48	Robert L. Gibson	February 3, 2001
	Joseph B. Johnson	May 31, 2000
	Gerald A. Lipnik	March 1, 2001
	Stanton G. Roesch	January 5, 2001
'49	Robert E. Gardner	December 27, 1999
	Loren T. Robinson Jr.	April 4, 2001
'50	Charles C. Killin	January 1, 2001
'51	William D. Flaskamp	October 20, 2000
	Gordon W. Hueschen	January 21, 2001
	Richard F. Ludeman	January 27, 1999
	Ernest Mayerfeld	February 17, 2001
	Theodore Sachs	March 5, 2001
'52	Ward F. Ellison	August 25, 1999
	Thomas P. Segerson	November 16, 1999
	Lloyd A. Wright	January 30, 2001
'54	Evelyn J. Lehman	January 8, 2001
	William G. Reamon Sr.	January 10, 2001
'55	Leland B. Cross Jr.	February 14, 2001
	John A. Grayson	March 17, 2001
	Banks McDowell Jr. (LLM, SJD 1956)	February 18, 2001
	Robert A. Sanregret	November 9, 1999
	Frank A. Stocking	February 18, 2001
'56	Alfred L. Haffner Jr.	August 22, 2000
	W. Whitney Sawyer	December 20, 2000
'57	Edward C. Adkins	August 15, 2000
	Robert D. Criss	January 10, 2001
	Lawrence P. King (LLM)	April 1, 2001
	Richard R. Zukowski	March 6, 2001
'58	L. Ronald Modlin	November 16, 2000
'60	George E. Mason	January 24, 2001
'63	Charles F. Dugan II	November 7, 2000
'65	Llewellyn W. Gray	December 28, 2000
'70	Robert P. DeYoung	January 19, 2001
'83	Mark A. Broida	January 30, 2001



SPECIAL SECTION

ILLUMINATING THE MOSAIC OF THE LAW

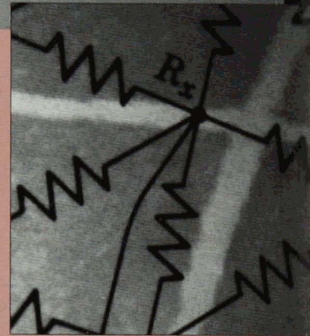
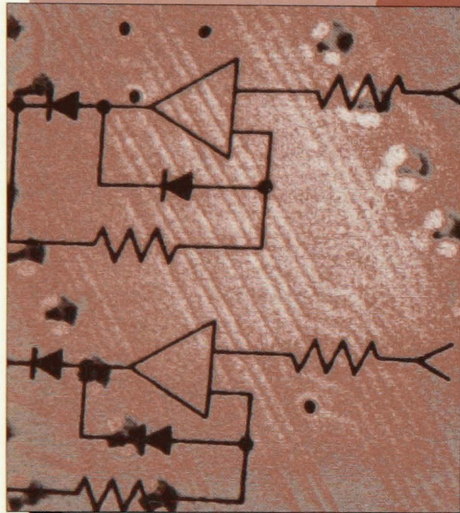
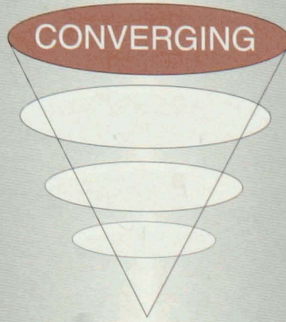
FROM THE CONVERGENCE OF TECHNOLOGY, LAW, AND POLICY, TO THE INTERPLAY OF LAWMAKING AND LAW INTERPRETING, THE LAW SCHOOL AND ITS FACULTY MAINTAIN A KEEN INTEREST IN THE CHANGES AND ISSUES OF OUR WORLD. THEIR INQUIRIES CROSS GEOGRAPHICAL AND VIRTUAL BOUNDARIES, AND FASHION QUESTIONS THAT PROBE THE REACHES OF THE PHYSICAL AND INTELLECTUAL WORLDS.

IN THE PAGES THAT FOLLOW, WE TAKE YOU TO FOUR MAJOR SYMPOSIA HELD AT THE LAW SCHOOL EARLIER THIS YEAR. EACH OF THE PROGRAMS BORE THE DISTINCT STAMP OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL, AND EACH ATTRACTED PARTICIPANTS FROM A VARIETY OF LOCATIONS AND DISCIPLINES.

EACH OF THE SUBJECT AREAS — THE KINSHIP OF TECHNOLOGY, LAW AND POLICY; ISSUES IN REFUGEE AND ASYLUM LAW; THE CHANGING FACE OF JAPANESE LAW; AND THE ROLE OF THE BENCH IN MEASURING BUSINESS PERFORMANCE — REFLECTS A RICH SIDE OF THE LAW SCHOOL AND ITS FACULTY. EACH OFFERS A CHANCE FOR DEEPER, FULLER INQUIRY AND REFLECTION THAN IS USUALLY AVAILABLE. AND EACH ILLUMINATES A DISTINCT PIECE OF THE GREAT MOSAIC OF A LIFE IN THE LAW.

- LAW, POLICY, AND THE CONVERGENCE OF TELECOMMUNICATIONS AND COMPUTING TECHNOLOGIES. **PAGE 46.**
- COOK LECTURE PROVIDES CONFERENCE KEYNOTE: ANTITRUST INTERVENTION. **PAGE 48.**
- COLLOQUIUM ON CHALLENGES IN INTERNATIONAL REFUGEE LAW. **PAGE 52.**
- CHANGE, CONTINUITY AND CONTEXT: JAPANESE LAW IN THE 21ST CENTURY. **PAGE 55.**
- JUDGING BUSINESS: THE ROLE OF JUDICIAL DECISIONMAKING IN CORPORATE AND SECURITIES LAW. **PAGE 58.**

CONVERGING



C

ONVERGING

ON THE
ISSUES

OF TECHNOLOGY'S BRAVE NEW WORLD

How do you preserve a place of safety in a world that is tightly bound but without wires? What is private amidst instant data swapping? How does government regulate business and protect citizens in a world where sovereignties are being shrunk relentlessly?

Questions like these may sound like futuaretalk, but they are as real as today's cell phones, ever-faster Internet connections, desktop databases, and other signs of information technology's unstoppable advance.

And the pace is picking up. Moore's Law — that ever-accelerating change will continue — is thriving. As Donn Davis, '88, president of AOL Interactive Properties, put it at a spring conference at the Law School: "We are just at the beginning of the golden age of what will be the Internet and the interactive century."

True, Michigan Attorney General Jennifer M. Granholm added at the same conference, but "the question is — who is going to win — [it will be] whichever lobbying arm is stronger."

MEET THE SPEAKERS

The roster of speakers and commentators for the conference Law, Policy and the Convergence of Telecommunications and Computing Technologies, read like a *Who's Who* of the groundbreakers leading us into this new century. And the conference itself broke new ground with live Web site audio/videocast and archiving and Continuing Legal Education credit for "virtual" attendance.

(Former U.S. Assistant Attorney General Joel I. Klein launched the conference by delivering the 2001 William W. Cook Lecture on American Institutions; he called his talk "The Role of Government in the Emerging High Tech Global Economy." See story on page 48.)

Eight other leaders keynoted the separate sections of the conference and experts from higher education, business, or government responded. Here is the program:

Such was the exchange that took place over three days in March as leaders from higher education, business, and policy-making circles offered their opinions and challenged one another's positions in an effort to illuminate the direction, if not the destination, of the 21st century. Law, Policy and the Convergence of Telecommunications and Computing Technologies, as the conference was aptly titled, reached across the University of Michigan campus. The Law School, College of Engineering, School of Information, Gerald R. Ford School of Public Policy, Business School, and the *Michigan Telecommunications and Technology Law Review* sponsored the event, which seemed to have no boundaries — it was broadcast live on the Web not only for those who were interested but could not attend, but also so that U-M students from throughout the University could listen and learn from multiple sites. A generous grant from the Park Foundation funded this ground-breaking conference and the technology that supported it.

(Proceedings are archived on the Web at www.law.umich.edu/Convergence Conference and will be published in a future issue of the *Michigan Telecommunications and Technology Law Review*.) In another pioneering move, conference participants could obtain Continuing Legal Education credits — whether they attended in person or via the Webcast.

In some ways, it was a conference as difficult to define as the mind-expanding subjects it considered. In other ways, it was a conference that wrestled with the ancient issues of the sanctity of the individual and how best to keep the heart of a democracy beating. "The boundaries," as Dean Jeffrey S. Lehman, '81, said in his introduction, "continue to dissolve."

"Computers, networks, telephones, televisions, and pagers all blend. Each day

Continued on page 49

PHOTOS BY GREGORY FOX



Donn Davis, '88
Chief Operating Officer,
AOL Interactive Properties



Jennifer M. Granholm
Attorney General,
State of Michigan

"Adapting to Rapid Changes in Consumer Behavior"

Davis is the chief operating officer of AOL Interactive Properties, AOL Time Warner, which includes the AOL Local Group and the AOL Messaging Group, two of the fastest growing Internet segments.

■ Moore's Law is alive and well. Technological change continues to accelerate: telephone arrived 125 years ago, television 50 years ago, and the Internet 10 years ago.

■ Interactivity becomes part of life wherever you go. "None of us want technology. We want services. We want technology to be invisible."

Respondents included: Douglas Lichtman of the University of Chicago; John Riedl of the University of Minnesota; and Mary E. Snapp, '84, of Microsoft.

"Personal Privacy in a Connected World"

Granholm, attorney general for the State of Michigan, introduced a new High Tech Crime Unit to explore, investigate, and prosecute Internet and high-tech crimes. She has taken action against online child pornographers, online sellers of contraband to minors, online fraud, identity theft, and Internet murder.

■ "Companies that deal online need to create an environment that people trust.... Whenever anyone destroys our ability to live in a safe place, that's when I get concerned."

■ "In terms of privacy, what is and what can be the legal baseline? . . . I think we've got to set forth a basic privacy right which is articulated in law for personally identifiable information and allow the market to respond."

Discussants for Granholm's talk included Professor Jeffrey Rosen of George Washington University and Jonah Seiger of mindshare Internet Campaigns LLC.



COOK LECTURE PROVIDES CONFERENCE KEYNOTE

ANTITRUST INTERVENTION: WHEN? HOW? HOW MUCH?

As leader of the U.S. Justice Department's antitrust cases against Microsoft, VISA/MasterCard, and American Airlines, Joel I. Klein analyzed the changing nature of our economy from the center of the arena. "The changes brought by the evolution in information and biotechnology are so profound that no one is able to appreciate their impact," Klein told a Law School audience in March as he delivered the 2001 William W. Cook Lecture on American Institutions.

Klein's lecture, "The Role of Government in the Emerging High Tech Global Economy," kicked off the conference Law, Policy and the Convergence of Telecommunications and Computing Technologies, a probing, multi-sided examination of the present and future connections between emerging technologies and the laws and policies that monitor and regulate them. (See accompanying story.)

In a sense, Klein delivered two talks in one: the first part of his lecture dealt with government's role *vis-à-vis* the changing economy; the second, what he called the "most significant" part, focused on what he sees as a declining sense of democracy and community.

"I watched and observed our economy during an enormous transitional period, from the 'old' economy to what we call the 'new' economy," Klein said. "I've come to the conclusion that we as a nation put too much faith in the free market and too little [faith] in government."

For three reasons:

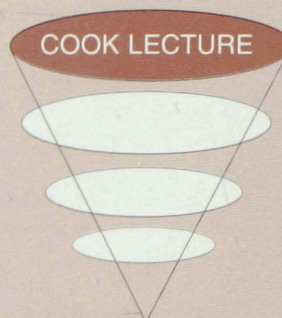
- 1) Competitive markets are the best way to maximize wealth creation, but you need regulation at some point.
- 2) Without antitrust regulations, markets will be dominated by large corporations.
- 3) "Even if we get antitrust right, we only will have maximized wealth creation — but not answered the question of allocation."

"All of these questions must be resolved in one way or another by some form of government. . . . The market will not resolve these fundamental issues for our society. . . . We are at serious risk as a people of undervaluing government and perhaps of overvaluing the market."



PHOTO BY GREGORY FOX

The free market should be given "as much freedom as possible," former Assistant U.S. Attorney General Joel I. Klein explains as he delivers the 2001 William W. Cook Lecture on American Institutions. Klein's talk served as the opening address in the conference Law, Policy and the Convergence of Telecommunications and Computing Technologies, held at the Law School in March.



Klein did not advocate a constant or heavy-handed intervention by government. Instead, he said, "the best market regulation there can be is competition by free and independent competitors. And when that exists the government should stay out." In this time of economic transition, he added, the market should be given "as much freedom as possible."

But free markets don't always work if left alone, he continued. For example, airline deregulation has reduced competition and led to a half dozen dominant airlines protected by the "hub" concept.

"I think we're not debating whether to intervene, but we're debating how much, how often, and under what circumstances," he stated. "Human imperfection cannot be an excuse for abdication. I think good antitrust [regulation] is doable."

"I believe there is a greater impediment to competition and efficient markets in the absence of competition that results without government intervention."

Turning to the "most significant part of my talk," Klein voiced his "concern for the decline of government as an institution and its consequences for our nation." The "digital divide" is widening, he noted, and "for all these and other reasons, just as in the past, we will need strong and important government institutions to bring the will to bear on these technology-generated questions."

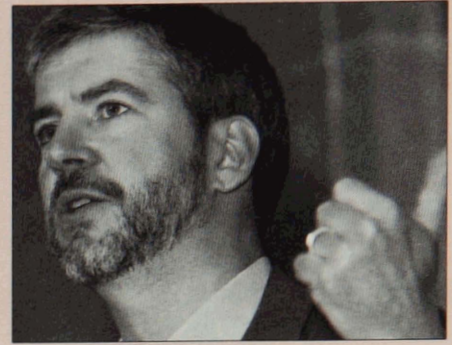
Quoting John Kennedy's famous "Ask not what your country can do for you. Ask what you can do for your country," Klein observed that "today, this spirit, I fear, has been displaced by a collective sense of 'It's time to get mine.'"

"I think President Bush is on to something when he attempts to introduce a new civility into public policy," Klein said. "Our government will be a whole lot better off if the politics of personality is moved to the back and the merits of public debate become the matter of discourse."

MEET THE SPEAKERS



Steven Gorosh, '85
Executive Vice President, NorthPoint
Communications



Rick Snyder, '82
Chief Executive Officer, Ardesta LLC

"Bridging the Digital Divide"

Gorosh is former executive vice president, general counsel, and founder of NorthPoint Communications, a pioneer in providing Digital Subscriber Line (DSL) service. He led the fight to establish regulatory protections to spur the development of a competitive carrier industry for DSL, and led the landmark battle for line sharing.

- Half of American households have access to the Internet, and fast-growing broadband access now accounts for 10 percent of connections. Seventy-five percent of households with \$75,000 or higher annual income are connected to the Internet, but only 13 percent of those under \$15,000. African Americans, Latinos, and people with disabilities have lower connection rates than others.

- The "digital divide" has implications "for a vigorous democracy" and equal access can be a civil rights issue.

- The longer the digital divide exists "the greater the probability that the disparity will increase."

Three panelists provided discussion after Gorosh's remarks: Professor James S. Fishkin of the University of Texas at Austin; Professor W. Russell Neuman of the University of Pennsylvania; and Professor Paul J. Resnick of the University of Michigan School of Information.

"Technology Transfer and Tech Investing"

(luncheon talk)

Snyder, co-founder and chief executive officer of Ardesta LLC, is dedicated to developing the microsystems industry through investing in startup and early stage companies and providing business and technical resources support. He previously served as president and chief operating officer of Gateway Inc.

- After a decade of great prosperity, the downturn in the economy, for high-tech firms especially, is "really economic reality returned."

- "What is the current investing climate? The food chain is fundamentally damaged at this time. It's a very tough environment . . . and I see it continuing for some time, perhaps out to the latter part of 2002."

- Universities and the public sector generally are driving the technology transfer sector, and tech transfer will provide the next hot opportunities. "First and foremost, if the universities had not gone out and done it, the Internet would not be what we know today." University-sponsored research totaled \$23.5 billion in 1999, and this level of university-based research raises issues of publication vs. secrecy, cash vs. equity and fair compensation, exclusivity, negotiations, and companies themselves.

The United States needs more centers of technological excellence. No one questions top tier centers like Silicon Valley, and "Ann Arbor is on the cusp. We have to get a little more belief in ourselves." A technology excellence center needs five things: technology, capital, an infrastructure of attorneys and bankers, people with the skills to be CEOs and marketing vice presidents, and a social culture that encourages innovative thinking.

Continued from page 47

seems to offer us a new hybridized way to analyze, store, or transmit information. And the interactions surprise us, at times outpacing our ability to foresee the impact on our culture, our economy, and our policy."

The virtual crystal ball offers a cloudy yet intoxicating vision — a vision still too elusive to breed agreement. AOL's Davis says "at the center of the technology revolution is the consumer." But Professor Douglas Lichtman of the University of Chicago, says Davis is "wrong" on two points: "The customer is not always right, and the consumer does not always win."

Davis and Lichtman were participants in the discussion "Adapting to Rapid Changes in Consumer Behavior," one of eight discussion sessions that made up the three days of the conference.

Each of the separate discussions included a talk followed by response from two or more specialists in the field. (See adjoining list.) Among the subjects for discussion were personal privacy, the digital divide, and the "new" economy.

To take one example, the session on privacy featured Michigan Attorney General Jennifer M. Granholm as main speaker. To Granholm, Michigan's top lawyer, the question is "what is, and what can be the legal baseline? . . . I think we've got to set forth a basic privacy right that is articulated in a law of personal identifiable information and allow the market to respond." But as respondent Jonah Seiger of mindshare Internet Campaigns noted: In regard to personally identifiable information (PII), "the state of the law is muddled in the area of data privacy. The core issue is that consumers should have control over how their identities are managed online. [And] there is the question of preemption. If there are 50 different state laws, you can't do business well. I think it's fair to say . . . that the big doubt we need to confront is the issue of federal preemption."

Continued on page 50

MEET THE SPEAKERS



Jim Davidson, '84
Co-Founder, Silver Lake Partners



David Pine, '85
Vice President, Handspring Inc.

"The Maturing of the New Economy"

Davidson is co-founder of Silver Lake Partners, an investment firm with \$2.3 billion of committed capital. The firm makes large scale investments in technology and related growth companies.

■ "The technology economy really has transformed the whole economy" and "increasingly, every company in every industry uses technology." Semiconductor content now exceeds steel in cars, and the Internet allows real-time information 'round the clock and directly.

■ Regarding the downturn in the tech industry, "the laws of economics were not being followed. Actually, what's happened is healthy. . . . Historically, 70 percent of venture companies will fail."

Discussants were Professor Jeffrey Mackie-Mason of the U-M Economics Department and U-M Professor of Law Ronald J. Mann.

"Wireless Communications and the Emerging Mobile Commerce Space"

Pine is vice president of Handspring Inc., a leading innovator in the handheld computing industry. He previously held executive positions with @Home Corporation, a broadband online service provider, and with Radius Inc., a manufacturer of Macintosh computer peripherals.

■ "By 2002-03, one billion people in the world will use cell phones. Currently, 19 million people in Japan use wireless Internet and e-mail. The ultimate phase is when bandwidth becomes available."

■ Wireless technologies raise three issues: the role of standards, scarcity of spectrum, and privacy.

1. In the late 1980s, Europe adapted a single standard, but "in the United States, this is the Wild West. At the end of the day we will still have two flavors of system."

2. The radio frequency spectrum is "a finite resource, and we use a lot of it. There's a lot of concern about if we're going to run out." Last summer the Radio Communication Conference adapted standards, "but many of these bands already are occupied in the United States. . . . This is a critical, critical matter for the United States as we go forward."

3. Using mobile technologies creates special privacy concerns. One-third of 911 emergency calls now are placed by cell phone users, and tracking technology is being developed to locate these people as they make their calls. And business plans are emerging for commercial use of consumer location data. Industry and government leaders are working together to cope with these issues: the Wireless Advertising Association issues location privacy guidelines, and the groups have worked together on the Wireless Privacy Protection Act of 2001.

Respondents were Ann-Marie Anderson, '94, vice president/general counsel for Neomar; and George A. Vinyard of Sachnoff & Weaver Ltd.

Continued from page 49

Or take the highly publicized case of Napster, the dot-com company that facilitated people's use of the Internet to share music files. Napster ran afoul of copyright laws — laws written before lawmakers ever imagined dot-wav or other Internet music files. "Napster respects copyright law and believes the artist should be paid," Napster Vice President Manus Cooney told conference participants.

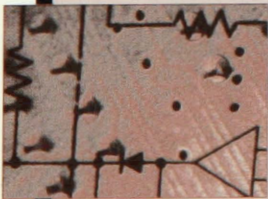
He continued, "Today we must ask, as we did with the player piano, the VCR, [and] the Xerox machine, how do we balance the law? . . . Every time a new technology makes it easier for listeners to hear . . . the copyright holder and the artist all benefit."

Recognizing that "it's hard to stay motionless at the top of that slippery slope," U-M Law School Professor Rebecca Eisenberg, confessed: "I'm a Napster mom." Her revelation ignited laughter among the audience members, half of whom earlier responded to a question from Cooney by confirming that they had used Napster.

"I don't use it," continued Eisenberg, a specialist in biotechnical intellectual property. "But I'm not stopping my kids from using Napster. I'm disoriented. I'm not sure I want to use up a lot of parental capital to stop them." There's "an intensely social phenomenon" associated with Napster, Eisenberg added, and its duplication of music seems different from other copy technologies like cassette tapes.

But fellow respondent Randal C. Picker, a University of Chicago professor, was more wary. "I think Napster is essentially a virtual inventory case," Picker said in comments that focused far ahead of the immediate Napster case. "I think virtual inventory is the future."

These and other discussions throughout the conference reflected the sharp uncertainties and disagreements that



MEET THE SPEAKERS



James R. Young, '76
Former Executive Vice President,
Bell Atlantic

"Global Consolidation and the Future of Competition"

Young is retired from Bell Atlantic. During his tenure as executive vice president, Bell Atlantic became the first Bell company to gain entry into long distance in New York, achieved two of the largest mergers in telecommunications history, and completed successful First Amendment litigation that allowed telephone companies to enter the video business.

■ "Historically, convergence was thought to be the great competition between AT&T and IBM. And convergence once meant laying cable wire and phone lines in the same trench. Now, a few years ago, IBM sold its worldwide telecommunications to AT&T, and convergence means that telephone, fiber optic, video, and cable all are the same company.

■ "To people like me on the network side, convergence means to us that all communications are moving to the corporate band."

■ Facing competition from mobile communication on one hand and high-speed data transfer on the other, "the old-time telephone network is having the life sucked out at both ends."

Discussants for Young's talk included: U-M Professor of Law Robert L. Howse; Michael Mathews, '65, of Westgate Capital Company; and Professor Marshall Van Alstyne of the U-M School of Information.



Manus Cooney
Vice President for Corporate and Policy Development, Napster Inc.

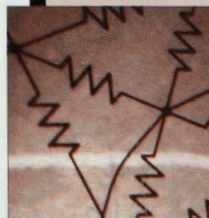
"Producing, Owning, and Using Intellectual Property"

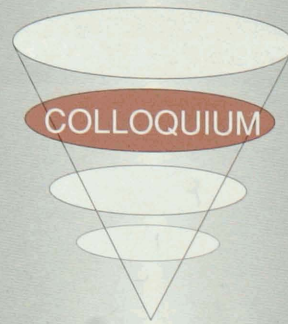
Cooney is vice president for Corporate and Policy Development, Napster Inc. He is responsible for setting the company's strategic course on legislative policy issues that affect the company, its users, and artists. He also represents Napster before Congress and the administration, and advises the company on licensing, strategic alliances, and partnerships both domestically and abroad.

■ Napster is "a community of music lovers built around a list of files." The firm's legal problems raise the issue of copyright law and its suitability for application to the Internet.

■ "Whether to impose the copyright paradigm on consumers on the Internet is a core question. . . . We are staring into a world where consumption will be pay per use."

Three discussants followed Cooney's talk: Professor Yochai Benkler of New York University; U-M Professor of Law Rebecca Eisenberg; and Professor Randal C. Picker of the University of Chicago.





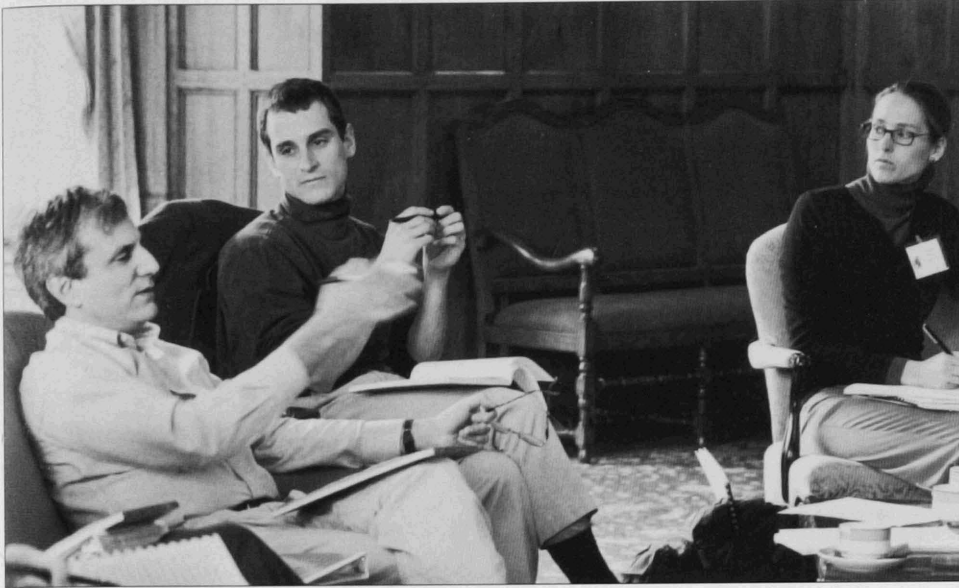
R EFUGEES —

AND THEIR 'TROUBLESOME ISSUES'

When Rodger Haines QC opened the Law School's second Colloquium on Challenges in Refugee and Asylum Law in March, the participants already had done major homework:

- For the professionals in the field, like colloquium convenor and professor James C. Hathaway, director of the Law School's Program in Refugee and Asylum Law, and others who traveled to the Law School from around the world, this is a field that rivets their daily attention but still requires study of historical, background, and other issues that have a bearing on contemporary questions. These professionals had read and digested the background materials prepared for them during the course of

PHOTO BY GREGORY FOX



Law School students and world-renowned experts sit side-by-side and trade thoughts and insights during the biennial Colloquium on Challenges in International Refugee Law, held at the Law School in March. Results of the discussions are compiled into recommendations that are distributed worldwide to leaders in the field of refugee and asylum law. Here, former University of Michigan Law School faculty member Alexander Aleinikoff of Georgetown University Law Center makes a point as law students Noah Leavitt and Barbara Miltner listen.

much of the academic year and had each prepared a written critique of that research before coming to Ann Arbor.

■ For the law students who were taking part, the colloquium marked the culmination of a term of intensive study and collaborative research and writing in a special seminar directed by Hathaway, resulting in the preparation of a major *Background Study* distributed to all participants in advance.

"We deeply need a study of the troublesome issues in refugee law," said Haines, and the background study prepared by the Law School student participants "has advanced our understanding of the subject."

The deputy chairperson of New Zealand's Refugee Status Appeals Authority and a lecturer in immigration and refugee law at the Faculty of Law, Auckland University, Haines served as colloquium moderator. The colloquium's blending of law students and professionals in refugee law is "the bringing together of two generations of refugee scholars," he noted.

This spring's colloquium, the second in the series of biennial gatherings, followed its predecessor in identifying an issue to consider, bringing world leaders and students into close discussion, then, finally, issuing recommendations to be distributed to leaders in the refugee and asylum fields throughout the world. (The recommendations will be released later this year.)

Two years ago, the inaugural colloquium looked at the issue of the "internal protection alternative." (See adjoining story.)

This year, the colloquium focused on the "nexus" clause of Article I of the Convention Relating to the Status of Refugees: "[Any person who] owing to a

well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country . . ."

"The 'for reasons of' (nexus) clause links the identity or beliefs of the applicant with the risk of being persecuted in her home state," explains the *Background Study*. "Despite this critical role, the meaning of the clause remains uncertain. Courts interpret the nexus clause in a variety of ways, using the inconsistent analytical methods that result in widely differential treatment of similarly situated individuals. This undesirable result undermines the commitment of the Convention to treat applicants similarly wherever they seek safety."

Seven sequential sessions addressed:

1. Goals and methodology.
2. Linkage to what?
3. Delimitation of the beneficiary class.
4. Logic of a standard of causation.
5. Conceiving a standard of causation.
6. Testing provisional conclusions in the context of asylum claims arising from civil war.
7. The process from here.

In addition to Haines and Hathaway, professional participants included:

■ Alexander Aleinikoff, former Law School faculty member and now a law professor at Georgetown University Law Center and a senior associate at the International Migration Policy Program of the Carnegie Endowment for International Peace. From 1994-97 Aleinikoff served as general counsel and then executive associate commissioner for programs for the U.S. Immigration and Naturalization Service.

- Catherine Dauvergne, a member of the Faculty of Law at the University of Sydney.
- Suzanne Egan, of the Faculty of Law at the National University of Ireland, Dublin, and a member of the Irish Human Rights Commission.
- Walter Kälin, professor of constitutional and international law at the University of Bern.
- Volker Türk, chief of the Standards and Legal Advice Section of the UN High Commissioner for Refugees (UNHCR). From 1997-2000 Türk served as assistant chief of mission (protection) for the UNHCR operations in Bosnia-Herzegovina and in Kosovo.
- Jens Vedsted-Hansen, professor at the University of Aarhus Law School and a member of the Public Inquiry Commission examining the Danish Internal Security Service. From 1995-98 Vedsted-Hansen coordinated the legal sub-study of the Nordic Comparative Studies on Temporary Protection of Refugees.

Student participants included:

- Vanessa Bedford, who is working this summer at Debevoise and Plimpton and then at ECRE in London as a refugee fellow.
- Stephanie Browning, associate editor of the *Michigan Journal of International Law* and an executive officer of the International Law Society.
- Michelle Foster, an LL.M. candidate and graduate of the University of New South Wales in Australia.
- Nicole Green, a student in the University's Gerald R. Ford School of Public Policy who previously held a fellowship to work as a researcher with

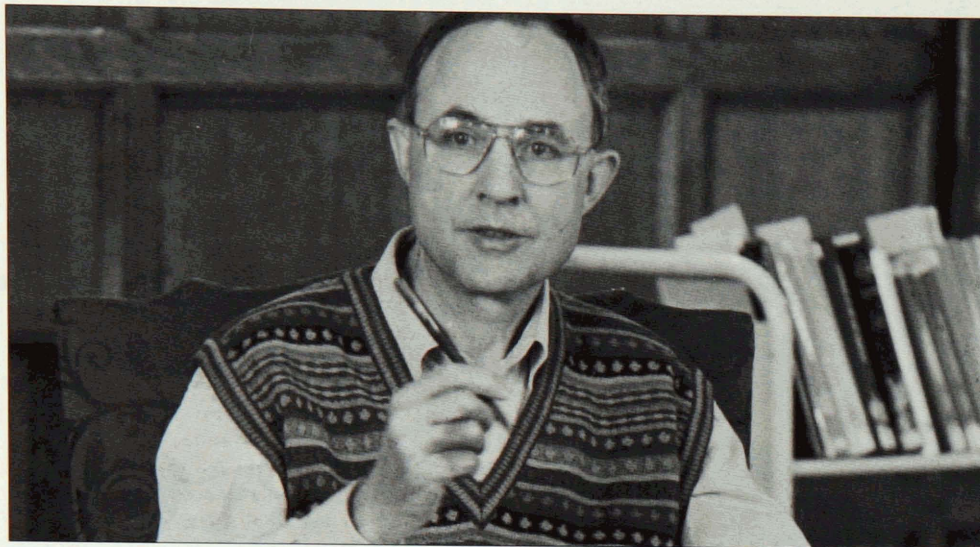


PHOTO BY GREGORY FOX

Colloquium moderator Rodger Haines QC of New Zealand outlines the rules of discussion for the two-day colloquium, held at the Law School in March.

the International Migration Policy Program of the Carnegie Endowment for International Peace.

- William Johnson, who studied during the fall semester at Leiden University in the Netherlands and graduated from the Law School in May.
- Noah Leavitt, who interned last summer at the UN's International Law Commission in Geneva and helped to prepare Germany's case against the United States in *Germany v. USA*, heard last fall before the International Court of Justice.
- Elizabeth Marsh, who worked last summer with Hunton & Williams in Hong Kong and this summer, as a refugee fellowship recipient, is working with the Human Rights Watch Women's Division.
- Barbara Miltner, a Refugee and Asylum Program fellowship winner who is working this summer with Amnesty International in London, England.
- Kate Semple-Barta, who has worked with the Jesuit Refugee Service in Zambia, the Archdiocese of Detroit, and the Helsinki Committee in Budapest. She also has taught English as a second language in Romania, the Czech Republic, and Ann Arbor, and has published several articles in Czech and Hungarian periodicals about migration issues in Central Europe.

In addition, Michael Kagan, '00, a student participant in the first colloquium in 1999, served as colloquium rapporteur. Kagan worked for Amnesty International in London at the time of this year's colloquium, then was to move to Cairo, Egypt, to develop a system for providing legal aid to asylum-seekers who are petitioning UNHCR for international protection. (See story on page 38.)

MICHIGAN GUIDELINES 'INFORM' NEW ZEALAND LAW

Moderating two days of talks among well-prepared law students and world experts in refugee and asylum law can be a daunting task. Rodger Haines QC, the refugee expert from New Zealand, knew he had two pleasant but rigorous days ahead of him as he prepared to moderate the Law School's second biennial Colloquium on Challenges in International Refugee Law.

He also knew firsthand how valuable the *Michigan Guidelines on the Internal Protection Alternative*, developed in 1999 by the first colloquium, had been to his own work on New Zealand's Refugee Status Appeals Authority. Haines was chairman of the appellate panel that wrote those *Guidelines* into a decision to fortify and clarify its interpretation of New Zealand jurisprudence on the issue of internal protection for refugees.

Appearing in fall 1999, the *Guidelines* provided the glue that pulled together the threads of New Zealand's jurisprudence on the issue of when and how to determine if a potential refugee can reasonably be expected to find haven within his own country instead of in a surrogate homeland. The *Guidelines* provided a framework for the case-by-case rationale that underlay New Zealand's court decisions on the issue.

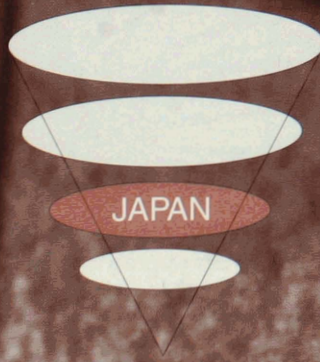
New Zealand jurisprudence and the *Guidelines* came together in the 1999 *Butler* case, in which a British national from Northern Ireland claimed refugee status in New Zealand because of persecution in Belfast. The Authority found that *Butler* was "not a refugee within the meaning of Article 1A(2) of the Refugee Convention," refused to grant refugee status, and dismissed his appeal.

As Haines wrote for the Refugee Appeals Status Authority, "it could be said that the *Michigan Guidelines* and the New Zealand jurisprudence are in accord, subject to the

exception that the *Michigan Guidelines* explicitly quantify the nature of meaningful domestic protection and dispense with the reasonableness inquiry. As to the latter point, it is true that the Court of Appeal in *Butler* did not explicitly require the reasonableness element to be removed. But by requiring that element to be related to the primary issue of protection, the expressly intended effect was to remove 'reasonableness' as a freestanding inquiry. In many ways, the *Butler* decision prepared the way for New Zealand to adopt the more principled approach to internal protection that is now suggested by the *Michigan Guidelines*."

The Authority wrote the full *Guidelines* into its decision in *Butler* and said it was "of the view that the *Michigan Guidelines* properly reflect and summarize, though more succinctly and more elegantly, the principles to be applied in New Zealand and which we have earlier endeavored to state. The *Michigan Guidelines* may therefore be properly used to inform the New Zealand law."

In addition, the *Michigan Guidelines* on Internal Protection were formally presented to judges from around the world at the biennial meeting of the International Association of Refugee Law Judges in Bern last autumn. And most recently, the UN High Commissioner for Refugees (UNHCR) has commissioned Professor James C. Hathaway, who organized the 1999 colloquium that produced the *Guidelines* and directs the Law School's Program in Refugee and Asylum Law, to prepare the working paper on this issue for discussion at the Global Consultations on Refugee Protection later this year. The goal of these consultations is to stimulate governments to re-think traditional approaches to refugee protection, suggesting that the novel approach of the *Michigan Guidelines* may soon enjoy more global support.



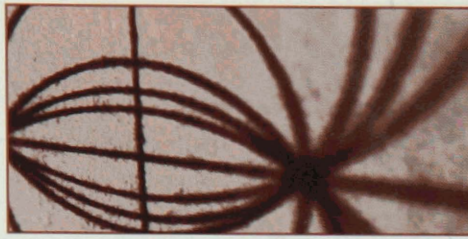
JAPAN

MAPPING

JAPAN'S CHANGING LEGAL LANDSCAPE



Commentator Shozo Ota of the University of Tokyo Faculty of Law speaks to a full house gathered for the conference Change, Continuity, and Context: Japanese Law in the Twenty-First Century, held at the Law School in April.



In many fundamental ways, Japan and its legal system may have changed but little through the 20th century. Yet in many equally important ways, it has undergone significant change, with more changes on the horizon for the 21st century.

Scholars from around the world gathered at the Law School in April to examine the nature of these changes, and to try to determine if they will be lasting or ephemeral.

As the conference organizer, Assistant Professor Mark D. West, framed it for the two-day series of discussions, "the tension between change and continuity continues to define the development of Japanese law in the 21st century. The conference's

emphasis on context reflects the view that an interdisciplinary approach to law, including dialogue among legal and non-legal experts on the subject of Japanese law and its place in economic, political, and social life, provides richer descriptions and explanations than a purely doctrinal approach."

To that end, the conference brought together not only specialists in Japanese law, but also women and men who are experts in political science, anthropology, and other fields.

"The goal is discussion," West said in remarks opening the conference "Change, Continuity and Context: Japanese Law in the 21st Century." And discussion there

was, from the opening talk by Washington University Professor of Law John O. Haley through the closing papers delivered by University of Tokyo Professor of Law Yoshiko Terao and New York University Professor of Law Frank K. Upham. Knots of pre- and post-talk conversations and animated question-answer sessions reflected the collegiality and sense of lively criticism that marks specialists in Japanese law and related fields.

Separate sessions focused on Change and Continuity, Contracts, Commerce and Consumers, Education, Corporations, Health Issues and The Law, Social Roles and Discrimination, and Nation-Building: Past, Present, Future.



ABOVE: Social scientist Patricia Steinoff of the University of Hawaii at Manoa questions one of the conference speakers after hearing him deliver his paper. Behind Steinoff is Patricia Boling of the Political Science Department at Purdue University.



ABOVE: Noboru Kashiwagi, a law professor at the University of Tokyo, listens to a questioner after speaking on "I Can't Turn You Loose: The Termination of Distributors and Agents in Japan." At left is George Washington University School of Law Dean Michael K. Young, who spoke on "Japanese Attitudes toward Contracts: An Empirical Wrinkle in the Debate."



LEFT: Co-authors Carl E. Schneider, '79, Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law, and Atsushi Kinami, LL.M. '84, of Kyoto University chat before speaking on "Becoming a Lawyer: A Preliminary Report from the United States and Japan."

PHOTOS BY PAUL JARONSKI/UNIVERSITY OF MICHIGAN PHOTO SERVICES

Special guests for the conference included The Honorable Gen Kajitani, M.C.L. '63, of the Supreme Court of Japan, and Yasuharu Nagashima, founder (now of counsel) of Japan's largest law firm, Nagashima, Ohno & Tsunematsu, and representative director of the Japan Branch of the Japanese American Society for Legal Studies.

The conference was sponsored by the Japan Foundation, the University of Michigan's Center for Japanese Studies, and the Law School endowments of Nippon Life Insurance Company and the Sumitomo Bank, Limited.

Over the past decade there has been "major change" in Japanese law, but the question persists, how superficial, or how fundamental, are the changes, Haley asked in his opening talk, "Japanese Law in Transition?"

For changes in Japanese law to be fundamental, Haley said, there must be deep change in one of two areas: there must arise an enforcement system separate from the "socially strong, enduring mechanisms" that now provide most enforcement; and Japan's distinctive lack of lateral hiring (a result of huge corporations' practice of using centralized personnel systems to hire people at entry level and retain them until retirement) must be altered to accommodate a more flexible labor system.

"None of the changes I have seen fundamentally alter that," Haley said of the social mechanisms of enforcement. As to labor patterns, he said, the growing impact of foreign firms doing business in Japan may be altering the traditional, centralized practices of domestic companies.

With bankruptcies and unemployment at 50-year highs in Japan, "it is possible we're seeing a search for greater labor market mobility," said commenter Tom

Ginsburg, of the University of Illinois College of Law. Cautioned Haley: It's good to remember that what seems a misfit today was very functional 20 years ago. And, asked moderator Joseph Hoffmann of the Indiana University School of Law, "What is supposed to be accomplished by change?"

A highlight of the conference was attorney Yukiko Tsunoda's discussion of "Gender-Motivated Violence in the Japanese Legal System." Tsunoda, who studied at the Law School as a research scholar and whose son, Taro, receives his LL.M. here this year, is widely regarded as Japan's leading expert on feminist legal issues. Speaking to a packed room, she assayed legal and social developments in the areas of sexual assault, sexual harassment, and domestic violence and encouraged legal and educational reform to address these issues. "I believe Japan's goal should be to establish a society where people are not discriminated against at all," she concluded.

Speaking during the session on education, Daniel H. Foote, a professor of law at the University of Tokyo (and one of only two non-Japanese scholars to hold that title), described a trans-Pacific seminar

A distinguished group with ties to the Law School take time to be photographed. Back row: Hiroo Sono, LL.M. '90, of Kyushu University Faculty of Law and a visiting scholar at the University of Virginia Law School; Atsushi Kinami, LL.M. '84, of Kyoto University; Assistant Professor Mark D. West of the University of Michigan Law School; Yoichiro Yamakawa, LL.M. '69, and a visiting professor at the Law School, of Koga & Partners; and Makoto Toda, LL.M. '75, president of Nissay Athletics Co. Ltd. Front row: Professor Emeritus Whitmore Gray of the University of Michigan Law School; Justice Gen Kajitani, M.C.L. '63, of the Supreme Court of Japan; and Yukiko Tsunoda, a Law School research scholar in 1995-96, of Tanaka & Partners.

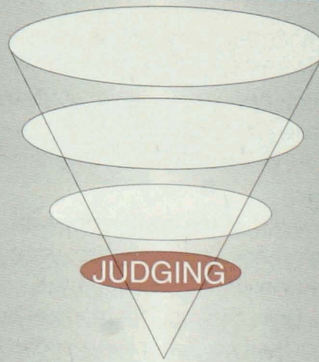


that he conducted with 18 students at the University of Tokyo and 9 students at the University of Washington. Videoconferencing and other technical aspects of the seminar worked beautifully, Foote said. Difficulties arose over coordinating time and content.

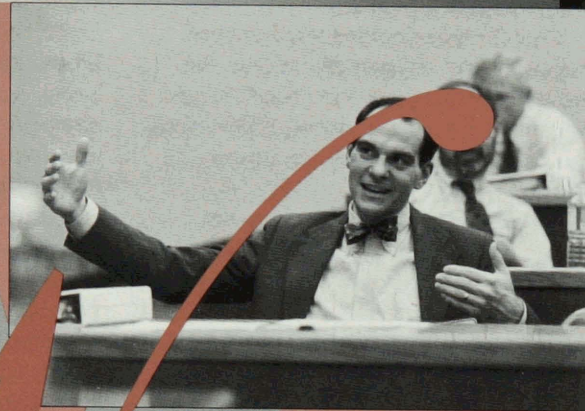
Carl E. Schneider, '79, the Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law, described a study of young lawyers he had conducted with co-author Atsushi Kinami, a law professor at Kyoto University. Japanese and American lawyers share many characteristics, Schneider said. Among them: coming from professional families; giving little thought to a career until after high school; coming to the legal profession by a process of elimination; beginning legal training with unrealistic ideas of legal work; and choosing first jobs "with a fair amount of nonchalance."

Other presenters and their papers included:

- Noboru Kashiwagi, University of Tokyo law professor, "I Can't Turn You Loose: The Termination of Distributors and Agents in Japan";
- Michael K. Young, George Washington University School of Law dean, "Japanese Attitudes toward Contracts: An Empirical Wrinkle in the Debate";
- Ronald J. Mann, University of Michigan Law School professor, "Credit Cards and Debit Cards in the United States and Japan";
- Curtis J. Milhaupt, Columbia University law professor, "Creative Norm Destruction: The Evolution of Non-legal Rules in Japanese Corporate Governance";
- J. Mark Ramseyer, Harvard University law professor, "The Fable of the Keiretsu" (with Yoshiro Miwa, professor of economics, University of Tokyo);
- John C. Campbell, University of Michigan political science professor, "Japan's New Long-Term-Care Insurance System";
- Eric A. Feldman, associate director of the Institute for Law and Society, New York University, "Rolling Big Tobacco in a Silk Kimono: Smoking and the Japanese State";
- Karen Nakamura, doctoral candidate in anthropology at Yale University and visiting assistant professor at Bowdoin College, "Manipulating the System from Within: Deaf Civil Society in Japan";
- Yoshiko Terao, University of Tokyo law professor, "The Public and the Private in the Construction of Public Space for Desired Land Use"; and
- Frank K. Upham, New York University law professor, "Ideology, Experience, and the Rule of Law in Developing States: Lessons from Japan and Elsewhere."



Assistant Professor Adam C. Pritchard queries a speaker during the conference *Judging Business: The Role of Judicial Decisionmaking in Corporate and Securities Law*. Pritchard organized the conference, the first to be held by the Law School's recently-launched John M. Olin Center for Law and Economics.



H A T I S

JUDGES' ROLE IN CORPORATE AND SECURITIES LAW?

Mix together legal scholars and sitting judges and you have just what Dean Jeffrey S. Lehman, '81, promised: "an illuminating series of discussions."

For two days in April, participants in the conference *Judging Business: The Role of Judicial Decisionmaking in Corporate and Securities Law* traded insights and critiques over issues ranging from shortcuts in deciding what cases to dismiss to questions of loyalty in corporate law.

Organized by Assistant Professor Adam C. Pritchard and presented as the first conference supported by the Law School's new John M. Olin Center for Law and Economics, the conference showcased a half dozen papers, with formal comment on many of them coming from sitting

judges. Lively question and answer sessions also frequently illustrated the different perspectives of those who interpret the law and those who study it.

Hillary A. Sale, a law professor at the University of Iowa, for example, noted her concern with judges' "systematic error" in applying shortcuts to dismiss actions brought under the Private Securities and Litigation Reform Act of 1995. Dismissal rates have increased so that "the actual law of fraud doesn't exist anymore," she said.

"Maybe we need to start over and have a judiciary that specializes" [in these cases], Washington University School of Law Dean Joel Seligman, a former Law School faculty member, suggested in his commentary.

Countered fellow commentator Judge William Young, of the U.S. District Court, District of Massachusetts: The jurisprudence of the 20th century is the jurisprudence of the motion for summary judgment and the motion to dismiss. "Cut us away from juries and you significantly reduce our moral authority. The idea of a specialized court further removes us from the people."

Coming at the same law from another angle, Pritchard assayed how the ambiguity that Congress wrote into the act played out in subsequent court cases. Pritchard and co-author Joseph A. Grundfest, of Stanford Law School, statistically analyzed the 173 district court cases and 16 appellate cases that had occurred since passage of the law and found three levels of standards for the "strong inference" provision. The least strict interpretation closely matched the emerging standards from the Second Circuit that Congress apparently wanted to incorporate as a minimum when the law was passed in 1995. Plaintiffs won their appeals only in the Second Circuit.

"We argue in the paper that courts are resistant to having policy choices delegated to them [by Congress]," Pritchard said of their paper, called "Statutes with Multiple Personality Disorders: Evidence from the Strong Inference Provision of the Private Securities Litigation Reform Act of 1995."

Pritchard and Grundfest came to four conclusions:

- The tools of statutory interpretation are no match for a Congress intent on creating ambiguity.
- The political background of judges does not predict their decisions.

- There is no evidence that judges are dismissing cases in an effort to control their dockets.
- There is some evidence that "familiarity breeds contempt," that judges who see larger numbers of security fraud cases have a higher tendency to dismiss them.

"All judges are not jurisprudential wizards," commented the Hon. Harold Baer Jr. of the U.S. District Court for the Southern District of New York. "It may be," he suggested, "that you have to give the judiciary a little more credit for their effort, and even the effort of their law clerks."

Other presenters and commentators included:

- William B. Chandler III, chancellor, Delaware Court of Chancery, "An Empirical Analysis of Attorneys' Fees in Derivative and Class Action Suits in the Delaware Chancery Court." Comment by John Coffee, professor of law, Columbia University, and Professor Merritt Fox, director of the Law School's Center for International and Comparative Law.
- Stephen M. Bainbridge, professor of law, UCLA and Harvard University (visiting), and G. Mitu Gulati, acting professor of law, UCLA, "Judging Shortcuts." Comment from law professors Donald Langevoort and Lynn Stout, both of Georgetown University.
- Robert B. Thompson, professor of law, Vanderbilt University, "Toward a New Theory of the Shareholder Role." Comment by Michael Dooley, professor of law, University of Virginia, and Leo Strine, vice chancellor, Delaware Court of Chancery.
- Lyman Johnson, professor of law, Washington and Lee University, "Loyalty Discourse in Corporate Law." Comment by William Allen, professor of law, New York University, and Edward Rock, professor of law, University of Pennsylvania.



The Hon. William Young, of the U.S. District Court, District of Massachusetts, criticizes moves that separate the judiciary from juries and says such changes whittle away at the moral authority of the courts.

PHOTOS BY GREGORY FOX



FAR LEFT: Maybe it's time to go develop a judiciary that specializes in hearing fraud cases, Joel Seligman, dean of the Washington University School of Law, suggests. Seligman is a former member of the University of Michigan Law School faculty.

University of Iowa Professor of Law Hillary A. Sale tells conference participants that dismissal rates have increase so much that "the actual law of fraud doesn't exist anymore."



— BY REUVEN AVI-YONAH

GLOBALIZATION & TAX COMPETITION

**implications for
developing countries**

The following essay is based on a paper delivered at a meeting of the UN Economic Commission for Latin America and the Caribbean in Santiago, Chile, in January.

The current age of globalization can be distinguished from the previous one (from 1870 to 1914) by the much higher mobility of capital than labor (in the previous age, before immigration restrictions, labor was at least as mobile as capital). This increased mobility has been the result of technological changes (the ability to move funds electronically), and the relaxation of exchange controls. The mobility of capital has led to tax competition, in which sovereign countries lower their tax rates on income earned by foreigners within their borders in order to attract both portfolio and direct investment. Tax competition, in turn, threatens to undermine the individual and corporate income taxes, which remain major sources of revenue (in terms of percentage of total revenue collected) for all modern states.

G

lobalization and tax competition lead to a fiscal crisis for countries that wish to continue to provide those government services to their citizens, at the same time that demographic factors and the increased income inequality, job insecurity, and income volatility that result from globalization render such services more necessary.

The response of both developed and developing countries to these developments has been first, to shift the tax burden from (mobile) capital to (less mobile) labor, and second, when further increased taxation of labor becomes politically and economically difficult, to cut government services. Thus, globalization and tax competition lead to a fiscal crisis for countries that wish to continue to provide those government services to their citizens, at the same time that demographic factors and the increased income inequality, job insecurity, and income volatility that result from globalization render such services more necessary.

From its beginnings late in the 19th century, the modern state has been financed primarily by progressive income taxation. The income tax differs from other forms of taxation (such as consumption or social security taxes) in that in theory it includes income from capital in the tax base, even if it is saved and not consumed. Because the rich save more than the poor, a tax that includes income from capital in its base is more progressive (taxes the rich more heavily) than a tax that excludes income from capital (e.g., a consumption tax or a payroll tax). However, the ability to tax saved income from capital (i.e., income not vulnerable to consumption taxes) is impaired if the capital can be shifted overseas to jurisdictions where it escapes taxation.

Two recent developments have dramatically augmented the ability of both individuals and corporations to earn income overseas free of income taxation: the effective end of withholding taxation by developed countries, and the rise of production tax havens in developing countries. Since the United States abolished its withholding tax on interest paid to foreigners in 1984, no major capital importing country has been able to impose such a tax for fear of driving mobile capital elsewhere (or increasing the cost of capital for domestic borrowers, including the government itself). The result is that individuals can generally earn investment income free of host country taxation in any of the world's major economies. Moreover, even developed countries find it exceedingly difficult to effectively collect

the tax on the foreign income of their individual residents in the absence of withholding taxes imposed by host countries, because the investments can be made through tax havens with strong bank secrecy laws. Developing countries, with much weaker tax administrations, find this task almost impossible. Thus, cross-border investment income can largely be earned free of either host or home country taxation.

For example, consider a wealthy Mexican who wishes to earn tax-free interest income from investing in the bonds of an American corporation. All he needs to do is set up, for a nominal fee, a Cayman Islands corporation to hold the bonds. The interest payments are then made to the Caymans corporation without any U.S. tax withheld under the so-called "portfolio interest exemption" (Internal Revenue Code section 871(h)). The individual does not report the income to the Mexican tax authorities, and they have no way of knowing that the Caymans corporation is effectively an "incorporated pocketbook" of the Mexican resident. Nor are the exchange of information provisions of the U.S.-Mexico tax treaty of any help, because the IRS has no way of knowing that the recipient of the interest payments is controlled by a Mexican resident and therefore cannot report this to the Mexican authorities. As a result, the income is earned completely free of tax (the Caymans, of course, impose no income taxes of their own).

When we switch our attention from passive to productive investment, a similar threat to the taxing capacity of both home

and host jurisdictions emerges. In the last decade, competition for inbound investment has led an increasing number of countries (103, as of 1998) to offer tax holidays specifically geared to foreign corporate investors. Given the relative ease with which an integrated multinational can shift production facilities in response to tax rates, such "production tax havens" enable multinationals to derive most of their income abroad free of host country taxation. Moreover, most developed countries (including the United States) do not dare impose current taxation (or sometimes any taxation) on the foreign source business income of their resident multinationals, for fear of reducing the competitiveness of those multinationals against multinationals of other countries. If they did, new multinationals could be set up as residents of jurisdictions that do not tax such foreign source income. Thus, business income can also be earned abroad largely free of either host or home country taxation.

For example: Intel Corporation, a top 10 multinational, has operations in more than 30 countries around the globe. The company states that "[a]n Intel chip developed at a design center in Oregon might be manufactured at a wafer fabrication facility in Ireland, packaged and tested in Malaysia, and then sold to a customer in Australia. Another chip might be designed in Japan, fabricated in Israel, packaged and tested in Arizona, and sold in China." Specifically, outside the United States, Intel has major manufacturing facilities in Puerto Rico, China, Malaysia, the Philippines, Ireland, and Israel. Thus, outside the United States, all of Intel's manufacturing facilities are located in countries granting tax holidays. Nor does Intel pay current U.S. tax on its income from those foreign operations, because under U.S. law, active income earned by foreign subsidiaries of U.S. multinationals is not taxed until it is repatriated in the form of dividends, which Intel can delay for many years. Thus, the effective tax rate on Intel's foreign source income is far below the nominal U.S. corporate rate of 35 percent.

TAX COMPETITION AND THE DEVELOPING COUNTRIES

If income from capital can escape the income tax net, the tax becomes in effect a tax on labor. Several empirical studies have in fact suggested that in some developed jurisdictions the effective tax rate on income from capital approaches zero, and tax rates on capital have tended to go down sharply since the early 1980s (when exchange controls were relaxed). As a result, countries that used to rely on the revenues from the income tax are forced to increase relatively regressive taxes. The two fastest growing taxes in OECD (Organization for Economic Cooperation and Development) member countries in recent years have been consumption taxes (from 12 percent of total revenues in 1965 to 18 percent in 1995) and payroll taxes (from 19 percent to 27 percent), both of which are more regressive than the income tax. Over the same period, the personal and corporate income taxes have not grown as a percentage of total revenues (the personal income tax accounted for 26 percent of total revenues in 1965 and 27 percent in 1995, while the figures for the corporate income tax are 9 percent and 8 percent respectively). The total tax revenue as a percentage of GDP (Gross Domestic Product) in developed countries went up sharply during the same period (from an average of 28 percent in 1965 to almost 40 percent in 1994), and this increase is largely accounted for by the rise of consumption and payroll taxes. Moreover, there is evidence that as the degree of openness of an economy in OECD member countries increases, taxes on capital tend to go down while taxes on labor go up (the income tax is imposed on both capital and labor, so that its stability may mask this trend).

The same trends can be observed in developing countries as well. In non-OECD member countries (outside the Middle East) total government revenues as a share of GDP rose from an average of 18.8 percent in 1975-80 to 20.1 percent in 1986-92. This growth was financed primarily by the growth of revenues from the VAT in the same period (from 25.5 percent of total revenues to 31.8 percent). At the same time, revenues from both the individual and the corporate income tax were flat or declined.



The drawbacks of tax competition for developed countries are relatively clear, because such countries have an elaborate social insurance safety net that requires a high level of government expenditure and that is threatened by tax competition. But how does tax competition affect developing countries?

First, it should be pointed out that developing countries need the revenues at least as much as developed countries do, if not more. A common misperception is that only OECD member countries are confronted by a fiscal crisis as a result of the increasing numbers of elderly people in the population. In fact, the increase in dependency ratios (the ratio of the elderly to the working population) is expected to take place in other geographic areas as well, as fertility rates go down and health care improves. Outside the OECD and the transition economies, the dependency ratio starts in the single digits in the 1990s, but rises to just below 30 percent by 2100. Moreover, while outside the OECD and the transition economies direct spending on social insurance is much lower, other forms of government spending (e.g., government employment) effectively fulfill a social insurance role. In Latin America, for example, direct government spending on social insurance is much lower than indirect spending through government employment and procurement programs.

Moreover, it seems strange to argue that developing countries need tax revenues less than developed countries because they have less developed social insurance programs. If one accepts the normative case for social insurance, it applies to developing countries with even greater force because of widespread poverty, which means that losing a job can have much more dire consequences. But the need for revenues in developing countries goes far beyond social insurance. In some developing countries revenues are needed to insure the very survival of organized government, as the Russian experience

demonstrates. In other, more stable developing countries, revenues are needed primarily to provide for adequate education (investment in human capital), which many regard as the key to promoting development. For example, the UN has estimated that for only \$30-\$40 billion, all people in the world can obtain basic social services (such as elementary education). Given current trends in foreign aid, most of these funds have to come from developing country governments.

Second, the standard advice by economists to small open economies is that they should refrain from taxing foreign investors, because such investors cannot be made to bear the burden of any tax imposed by the capital importing country. Therefore, the tax will necessarily be shifted to less mobile factors in the host country, such as labor and/or land, and it is more efficient to tax those factors directly. But while this argument seems quite valid as applied to portfolio investment, it seems less valid in regard to FDI (foreign direct investment, i.e., investment by multinational enterprises), for two reasons. First, the standard advice does not apply if a foreign tax credit is available in the home country of the investor, which frequently would be the case for FDI. Second, the standard advice assumes that the host country is small. However, an extensive literature on multinationals suggests that typically they exist in order to earn economic rents. In that case, the host country is no longer "small" in the economic sense. That is, there is a reason for the investor to be there and not elsewhere. Therefore, any tax imposed on such rents (as long as it is below 100 percent) will not necessarily drive the investor to leave even if it is unable to shift the burden of the tax to labor or landowners.

This argument clearly holds in the case of rents that are linked to a specific location, such as natural resources or a large market. But what if the rent can be earned in a large number of potential locations? In this case, the host country will not be able to tax the rent if the multinational can credibly threaten to go elsewhere, although once the investment has been made the rent can be taxed. This

situation, which is probably the most common, would require coordinated action to enable all host countries to tax the rent earned within their borders. Some possibilities for such action are described below. This relates to the final argument, which is that host countries need to offer tax incentives to be competitive. An extensive literature has demonstrated that taxes do in fact play a crucial role in determining investment location decisions. But all of these studies emphasize that the tax incentives are crucial *given the availability of such incentives elsewhere*. Thus, it can be argued that given the need for tax revenues, developing countries would in general prefer to refrain from granting tax incentives, if only they could be assured that no other developing country would be able to grant such incentives.

Thus, restricting the ability of developing countries to compete in granting tax incentives does not truly restrict their autonomy or counter their interests. That is the case whenever they grant the incentive only for fear of competition from other developing countries, and would not have granted it but for such fear. Whenever competition from other countries drives the tax incentive, eliminating the competition does not hurt the developing country, and may aid its revenue raising efforts (assuming it can attract investment on other grounds, which is typically the case). Moreover, under the proposals described below, developing countries remain free to lower their tax rates generally (as opposed to granting specific tax relief aimed at foreign investors).

Two additional points need to be made from a developing country perspective. The first concerns the question of tax incidence. Since the tax competition that is most relevant to developing countries concerns the corporate income tax, it is important to attempt to assess the incidence of that tax in evaluating the effects of collecting it on the welfare of the developing country. Unfortunately, after decades of analysis, no consensus exists on the incidence of the corporate tax. While the older studies have tended to conclude that the tax is borne by shareholders or by all capital providers, more recent studies have suggested that the

tax is borne to a significant extent by consumers or by labor. Another possibility is that the tax on established corporations was borne by those who were shareholders at the time the tax was imposed or increased, because thereafter it is capitalized into the price of the shares. It is unlikely that this debate will be decided any time soon (in fact, the incidence may be shifting over time, especially as globalization may enable corporations to shift more of the tax burden to labor).

However, from the perspective of a developing country deciding whether to collect taxes from a multinational, three out of the four possible alternatives for incidence (current shareholders or capital providers, old shareholders, and consumers) are largely the residents of other jurisdictions, and therefore from a national welfare perspective the developing country gains by collecting the tax. And even if some of the tax is shifted to labor in the developing country, it can be argued that as a matter of tax administration it is more efficient (as well as more politically acceptable) to collect the tax from the multinational than to attempt to collect it from the workers.

Finally, it should be noted that a developing country may want to collect taxes from multinationals even if in general it believes that the private sector is more efficient in using the resources than the public sector. That is because in the case of a foreign multinational, the taxes that the developing country fails to collect may indeed be used by the private sector, but in another jurisdiction, and therefore not benefit the developing country. One possible solution, which is in fact employed by developing countries, is to refrain from taxing multinationals while they re-invest domestically, but tax them upon remittance of the profits abroad. However, such taxation of dividends and other forms of remittance is subject to the same tax competition problem that we discussed above. Thus, it would appear that overcoming the tax competition problem is in most cases in the interest of developing countries, and the question remains how to do so in the face of the collective action problem described above.



WHAT CAN BE DONE ABOUT TAX COMPETITION?

The tax competition problem is thus essentially a problem of coordination and trust. Each jurisdiction would prefer to tax investors from abroad to gain the revenue, but is afraid that by doing so it would drive the investors to other jurisdictions that do not tax them. If there were a way to coordinate actions among the relevant jurisdictions, they all could gain added revenues without running the risk of losing the investment.

A good illustration of how this dynamic works is the history of German taxation of interest income. In 1988, Germany introduced a 10 percent withholding tax on interest paid to bank depositors, but had to abolish it within a few months because of the magnitude of capital flight to Luxembourg. In 1991, the German Federal Constitutional Court held that withholding taxes on wages but not on interest violated the constitutional right to equality. The government thereupon

reintroduced the withholding tax on interest, but made it inapplicable to non-residents. Non-residents may, however, be Germans investing through Luxembourg bank accounts. To cope with this problem, the Germans have led an EU effort to introduce a 20 percent withholding tax on all interest payments to EU residents. However, both Luxembourg and the United Kingdom have so far blocked the adoption of this plan, arguing that it will lead to a flight of investors to Switzerland or the United States.

Thus, the key to finding a solution to the tax competition problem is to attack it on a broad multilateral basis, through an organization such as the OECD. Under current conditions, the OECD is the natural choice for leading such coordinated actions against tax competition, for three reasons. First, for individual investors to earn decent returns on their capital without incurring excessive risks, they need to invest in an OECD member country. Tax havens do not offer adequate investment opportunities, and developing countries are generally considered too risky for portfolio investment (other than through mutual funds, which do not offer tax avoidance opportunities). Thus, if all OECD members

It can be argued that given the need for tax revenues, developing countries would in general prefer to refrain from granting tax incentives, if only they could be assured that no other developing country would be able to grant such incentives.

enforced taxation of portfolio investment, it could be subject to tax without requiring cooperation from the tax havens.

Second, about 85 percent of the world's multinationals are headquartered in OECD member countries. This is likely to continue to be the case for a while, because OECD members offer stable corporate and securities law protection to investors that is lacking in other countries. Thus, if all OECD members agreed on a coordinated basis to tax their multinationals currently on their income from abroad, most of the problem of tax competition from direct investment could be solved.

Third, the OECD has the required expertise (its model tax treaty is the global standard) and has already started on the path of limiting tax competition. In 1998, it adopted a report entitled *Harmful Tax Competition: An Emerging Global Issue*. This report is somewhat limited, because it only addresses tax competition for financial activities and services (as opposed to, e.g., Intel's manufacturing plants). It also does not address the taxation of investment income. But it represents an extremely useful first step, and proof that a consensus can be reached on the tax competition issue. (Switzerland and Luxembourg abstained, but did not dare veto the adoption of the report by the other 27 members of the OECD.)

The OECD makes a useful distinction between tax competition in the form of generally applicable lower tax rates, and tax regimes designed to attract foreign investors. This distinction is both normatively and pragmatically sound: Restricting tax competition should not and cannot mean that voters in democratic countries lose their right to determine the size of the public sector through general tax increases or reductions. But it does mean that countries should not provide windfalls for foreign investors at the expense of the ability of other countries to provide those public services their residents desire. Such limitations are particularly appropriate because those foreign investors themselves often reside in countries providing a high level of services, and yet refuse to pay the tax price that providing such services entails.

Depending on the OECD for solving the tax competition problem suffers from one major drawback: Developing countries are left out, and may perceive actions by the OECD as a cartel of rich countries operating at their expense. In fact, as pointed out above, it is unlikely that tax competition benefits developing countries, who can also use the tax revenues they give up to attract foreign investors. If all developing countries could be prevented from competing in this fashion, they all could gain. But in the longer run, it may be better to entrust the fight against harmful tax competition to the WTO, in which developing countries are adequately represented. This would also solve the problem of what to do about the 15 percent of multinationals who are not headquartered in OECD member countries (a percentage that can be expected to grow if the OECD indeed moves to restrict tax competition for its multinationals).

To sum up: As a result of globalization and tax competition, tax rules can no longer be set by countries acting unilaterally or by bilateral tax treaties. In a world in which capital can move freely across national borders and multinationals are free to choose among many investment locations, the ability of any one country (or any two countries in cooperation) to tax (or otherwise regulate) such capital is severely limited. Any such unilateral attempt will be undercut by other countries, and will probably not even be attempted in the name of preserving national competitiveness. Thus, a multilateral solution is essential if the fundamental goals of taxation or other regulation are to be preserved. Private market activities that span the globe can only be regulated or taxed by organizations with a similar global reach.



Reuven S. Avi-Yonah earned his B.A. in history, summa cum laude, from Hebrew University, and then continued his education at Harvard University. Ultimately, he received three degrees from Harvard: an A.M. in history, a Ph.D. in history, and a J.D., magna cum laude, from Harvard Law School. Professor Avi-Yonah's teaching experience is extensive. Before joining the permanent faculty at the University of Michigan Law School, he had been a visiting professor of law at the University of Michigan Law School and the University of Pennsylvania. He also has served as an assistant professor of law at Harvard Law School and as an assistant professor of history at Boston College. In addition, he has practiced law with Milbank, Tweed, Hadley & McCloy, New York; Wachtell, Lipton, Rosen & Katz, New York; and Ropes & Gray, Boston; and has co-chaired several committees of the New York State Bar Tax Section and served as a member of the U.S. Income Advisory Board for Tax Management since 1995. In addition to English, Professor Avi-Yonah is fluent in French, German, and Hebrew, and reads in Arabic, Greek, Italian, Latin, Portuguese, and Spanish. His teaching interests focus on various aspects of taxation and multinational enterprise. He has written extensively on national and international tax issues. Professor Avi-Yonah's research currently focuses on the interaction of tax and trade law.



How to talk about religion

— BY JAMES BOYD WHITE

The following essay is to be part of an Occasional Paper published by the Erasmus Institute at the University of Notre Dame. It is drawn from an introduction to a book currently in progress, How Should We Talk About Religion?, to be based on the proceedings of a faculty seminar held last summer under the auspices of the Erasmus Institute at Notre Dame and to be published next year by the University of Notre Dame Press. (When they become available, full copies of the Occasional Paper and information on the forthcoming book will be available from the Erasmus Institute, 1124 Flanner Hall, Notre Dame, Indiana 46556-5611, or by e-mail to Erasmus@nd.edu.) James Boyd White was the director of the seminar; the other members, drawn from several disciplines and several parts of the world as well, were:

- Luis Bacigalupo, who teaches medieval philosophy at the Catholic University of Peru.
- Clifford Ando, a classicist at the University of Southern California.
- Scott Appleby, an historian at Notre Dame.
- Sabine McCormack, from the Classics and History departments of the University of Michigan.
- Belinda Straight, an anthropologist at Western Michigan University.
- Patrick Deneen, a political scientist at Princeton.
- Wayne Booth, from the English Department and the Committee on Ideas and Methods at the University of Chicago.
- Eugene Garver, a philosopher from St. John's University in Collegeville, Minnesota.
- Javier Iguiniz, an economist at the Catholic University of Peru.
- Ruth Abbey, a political theorist at the University of Kent.
- Sol Serrano, an historian from the Catholic University of Chile.
- Carol Bier, a curator at the Textile Museum in Washington, D.C.
- Jeffrey Kripal, who teaches religious studies at Westminster College.
- Luis Gomez, who teaches Buddhist studies and psychology at the University of Michigan.
- Ebrahim Moose, who was trained as a Muslim theologian and teaches at Stanford University.

This project had its genesis in a faculty summer seminar held in June 2000 at Notre Dame University under the auspices of the Erasmus Institute. Our topic was how to talk about religion, particularly in the languages of our various academic disciplines.

Our experience, supported we think by that of others, is that it is most difficult to do this well, whether we are trying to talk about religion within a discipline, such as law or psychology or anthropology, or even in more informal ways, with our friends and colleagues. There are many reasons for this: It is in the nature of religious experience to be ineffable or mysterious, at least for some people or in some religions; different religions imagine the world and its human inhabitants, and their histories, in ways that are enormously different; and there is

no superlanguage into which all religions can be translated, for purposes of understanding, comparison, or mutual intelligibility. This point can be put even more strongly: The deepest truths and commitments of one religion, its fundamental narratives, are likely to appear simply irrational, or even weird, to those who belong to another religious tradition, or who are themselves without religion; this means that the attempt to study and talk about a religion (other than one's own) is likely to have a built-in element of patronization, at least when one is studying beliefs one could not imagine oneself sharing.

Yet it is of enormous importance to learn to talk about religion well, if only for the obvious political and practical reason that religious divisions, both within nations and among them, are often intractable and bitter, and mutual understanding very difficult to attain. And it is hard even to imagine an intellectually respectable way of doing this. Think of the anthropologist of religion for example: Is he or she simply to assume that there is a cross-cultural phenomenon called "religion," and if so on what basis? "Religion" is our word, and why should we assume that the Samburu of Kenya, or the Hindus of the Indian subcontinent, have practices or beliefs that in any way parallel what we know in the west? (Perhaps we should use their words, and see what happens.) Or consider the psychologist, especially the psychotherapist: Is he or she to regard the religious beliefs and experiences of a patient as fantasies and wishes of a pathological kind, of which the patient should be cured? Or as healthy formations, and if so, how can that position be explained in the language of psychology? Or think of the historian of the Middle Ages, interested say in architecture or philosophy or social life more generally: How is he to come to understand the world of religious meaning in which the people he is describing lived, and how can he represent it in anything other than reduced terms? Or: How is the political scientist or theorist to resist the tendencies of the field to reduce religion to its civic utility or to treat it as an object to be discussed simply in sociological terms? Or, to shift to another field, how is the economist to think about the tensions between the premises of economic thought and those of the religious life of his own culture, in which he perhaps participates? Such are the questions that brought us to our work together.

The working idea of the seminar was to collect a dozen or so people from very

different disciplines and backgrounds, and of different religious outlooks, too, each of whom in his or her professional work faced our question in a significant way. Each member of the seminar was responsible for leading a two-hour session on his or her work, beginning with a presentation that was then the subject of questions and comments. As we proceeded we found ourselves engaged in a conversation with its own shape and life, which continues today.

Our main object was not to produce a book, but to educate ourselves and each other, expanding in various ways our sense of the reality and complexity of religious experience and intensifying our sense of the difficulty and necessity of talking about it in our various languages and disciplines. When we finished, we looked back over what we had done, saw that certain themes and questions emerged prominently in our conversations across our lines of difference, and we came to the conclusion that we did have at least the beginnings of a book.

Here are the questions that recurred most prominently in our work:

1. Is reason alone, however defined, sufficient for a full intellectual, practical, and imaginative life? To the extent it is not sufficient, what else is required, and what relation should it have to reason?
2. How adequate are our languages of description and analysis for the representation of religion?
3. To what degree must confrontation with the religious experience of others be a challenge to our own commitments — whether these are theistic or agnostic or atheist — in order to be real and valid?
4. Can there be a pluralism that does not dissolve into universal relativism?
5. To what degree must any attempt to talk seriously and deeply about religion be communal, rather than simply the voice of an individual speaking to the world?
6. What is the significance of the fact that although religion obviously has its public face, as a branch of culture, as a system of thought, and as a set of practices, it also has a private face, in the world and mind of the individual person?

It should be clear by now that the title of our seminar — *How Should We Talk About Religion?* — is to be taken as a

statement of the problem we collectively addressed, not as holding out the promise of a prescriptive answer, offered by any individual or by us collectively. Each of the authors had his or her own way of talking about religion, and the merit of our work lies to a large part in the diversity of approach — of discipline and background, of age and nationality, of religious outlook and intellectual commitment — reflected in it. Yet perhaps there is something of an answer to our question that can be found in this collection of performances, for we found that we talked together much better — more fully, more deeply, more intelligently — than any of us did alone. To build on one of the themes identified above, if we have an answer to the question “How to talk about religions?” it is this: In intellectual and personal community.

For in talking to one another over two intense weeks we found, not surprisingly, that our conversation improved enormously as time went on. We came to know each other better, and responded to each other more fully; and as we came to know and trust one another, we discovered that a wider range of sentences became sayable by the speakers and comprehensible by the listeners. (Perhaps a wider range of sentences became unsayable as well.) In some sense, a larger part of the mind of each of us came to be engaged in this conversation than is normally the case in academic life. As we proceeded, the particularities of each person — in training, commitment, experience, disposition — came to be acknowledged as a necessary part of the conversation itself, for they were what we brought to it, and what we were responding to in each other. We were engaged in a kind of collective thought, which over time became richer and deeper. One way to put this is to say that the question for each of us became not only how to talk, but how to listen to each other talk, about religion.

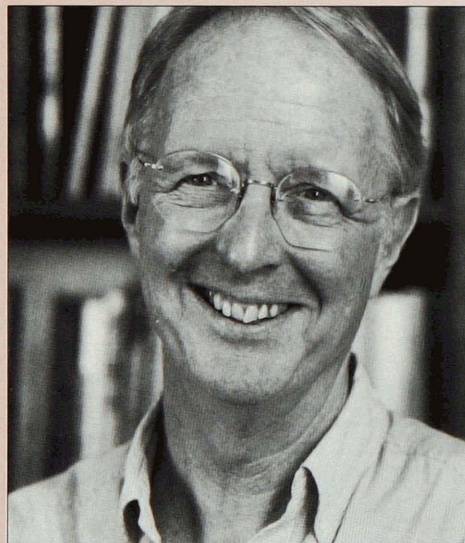
None of this is, I think, surprising, but it is different from much discourse about religion. Compare with the kind of conversation I am describing, for example, a standard academic attempt to speak on the subject of religion — as a psychologist, say, or anthropologist, or theologian, or sociologist — beginning, as Plato somewhere has Socrates advise us to begin every intellectual exercise, with a definition: “By *religion* I mean,” or “by *Protestantism* I mean,” or “by *fundamentalism* I mean. . .” Here one would be attempting to speak in a universal voice

to a universal audience, or if not quite universal, in the voice of a discipline to all members of the discipline. This kind of talk is driven by understandable and meritorious impulses towards clarity, rationality, and neutrality, and of course the enterprise can have great value. But we need to recognize that we may get farther in a different direction working in a different mode, the heart of which is the recognition of particularity: the particularity of the speaker and the audience, the particularity of their context, and the particularity of their subject — which is not “religion” as a whole, but this or that practice or belief, these sentences or actions, this or that way of imagining the world and acting within it, and as seen from this or that perspective, as the object of this or that question cast in this or that language.

The very fact that we were talking across lines of discipline and language, which was from some perspectives frustrating — we could not assume that our audience knew what everyone in our

disciplinary audience knows — had the virtue, among other things, of leading us to think and talk not only about our subject, religion, but also about how we were talking — about the assumptions we were making and about the terms in which we cast our thought. All this gave rise to valuable, if imperfect, self-consciousness about our own disciplinary assumptions and habits, what they were and how they differed from others.

This context made it harder than it often is in an academic setting for each of us to come up with hardened positions we were prepared to explicate and defend to the death. And even if we had had such positions, the disciplinary context to which they would have been framed would have been largely meaningless to the others in the group. We were thus forced as it were into a terrain between the languages of our disciplines, or among them, where none of us claimed to know much, and all of us were ready to learn. This was an accident of our organization, but one that may have larger lessons for us as a general matter.



James Boyd White is a graduate of Amherst College, Harvard Law School, and Harvard Graduate School, where he obtained an M.A. in English. After graduation from law school, he spent a year as a Sheldon Fellow in Europe and then practiced law in Boston for two years. He began his teaching career at the University of Colorado Law School and moved in the mid-1970s to the University of Chicago, where he was a professor in the Law School, the College, and the Committee on the Ancient Mediterranean World. He served as a governor of the Chicago Council of

Lawyers and is a member of the American Law Institute and the American Academy of Arts and Sciences. He has received fellowships from the Guggenheim Foundation and the National Endowment for the Humanities, and in 1997-98 was a Phi Beta Kappa Visiting Scholar. At Michigan, he is a professor of English and an adjunct professor of classical studies as well as the L. Hart Wright Professor of Law. He is also chair of the Michigan Society of Fellows. He has published numerous books: *The Legal Imagination* (1973), *Constitutional Criminal Procedure* (with James Scarborough, 1976), *When Words Lose Their Meaning: Constitutions and Reconstitutions of Language, Character, and Community* (1984), *Heraclitus' Bow: Essays in the Rhetoric and Poetics of the Law* (1985), *Justice as Translation: An Essay in Cultural and Legal Criticism* (1990), “This Book of Starres”: Learning to Read George Herbert (1994); *Acts of Hope: The Creation of Authority in Literature, Law, and Politics* (1994); and *From Expectation to Experience: Essays on Law and Legal Education* (1999). His new book, *The Edge of Meaning*, will be published by the University of Chicago Press this summer.

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
1045 LEGAL RESEARCH BUILDING
ANN ARBOR, MICHIGAN
48109-1215

NON-PROFIT
ORGANIZATION
U.S. POSTAGE PAID
ANN ARBOR, MI
PERMIT #144

LAW QUADRANGLE NOTES

ADDRESS SERVICE REQUESTED

