

Contin.

Law
School
Coll
MI

LAW QUADRANGLE NOTES

UNIV. OF MICH.

APR 04 2003

LAW LIBRARY

A taxing settlement

ADR without borders

*Competition, corporate
responsibility, and the
China question*

Markets as social actors



The University of Michigan Law School
Volume 45 • Number 3 • Fall/Winter 2003

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 45, NUMBER 3
FALL/WINTER 2003

Copyright © 2003, 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:
Evan Caminker, Edward Cooper,
and Yale Kamisar

EXECUTIVE EDITOR:
Geof L. Follansbee Jr.

EDITOR/WRITER: Tom Rogers

WRITERS: Nancy Marshall
Lindsay Vetter

DIRECTOR OF COMMUNICATIONS:
Lisa Mitchell-Yellin

DESIGN:
Brent Futrell

www.law.umich.edu

On the cover:
Between the solstice and the equinox:
Snow, light, and shadow mingle
to ornament the Law Quad.

PHOTO BY PHILIP T. DATILO

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, Office for a Multicultural Community, 2072 Administrative Services Building, Ann Arbor, Michigan 48109-1432, 734-763-0235, TTY 734-647-1388.

THE REGENTS OF THE
UNIVERSITY OF MICHIGAN

David A. Brandon, Ann Arbor
Laurence B. Deitch, Bingham Farms
Olivia P. Maynard, Goodrich
Rebecca McGowan, Ann Arbor
Andrea Fischer Newman, Ann Arbor
Andrew C. Richner, Grosse Pointe Park
S. Martin Taylor, Grosse Pointe Farms
Katherine E. White, Ann Arbor
Mary Sue Coleman, *ex officio*

PHOTO CREDITS INSIDE:

Gregory Fox
Brent Futrell, University of Michigan Law School Communications
Paul Jaronski, University of Michigan Photo Services
Marcia Ledford, University of Michigan Photo Services
Thomas Treuter
Imagebank
Photodisk

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 South 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
1041 Legal Research
Building
Ann Arbor, MI 48109-1215

Phone: 734.647.3589

Fax: 734.764.8309

trogers@umich.edu

LAW QUADRANGLE NOTES

FALL | WINTER 2003



'A time to build' — Page 4



Reunions — Page 62

3 DEAN'S MESSAGE

4 BRIEFS

- Completing William W. Cook's vision
- How will international law cope with terrorism?
- The law and the clock: A good partnership?

28 FACULTY

- Schneider spotlights *The Law of Bioethics*
- *Modern Criminal Procedure* — 10 editions and counting
- Bruno Simma elected to International Court of Justice

48 ALUMNI

- Speaking with Michigan State Bar President Reginald M. Turner, '87
- Deputy U.S. Attorney General Larry Thompson, '74: 'The battlefield is right here'
- Construction law builds a treatise

72 ARTICLES

• A taxing settlement

Citizens sue industries for tort injuries. That is familiar. Governments sue the same industries for cost suffered in ameliorating or preventing those injuries. That is unfamiliar. The new pattern of litigation and settlement inherently puts the government in competition with its citizens.

— Hanoeh Dagan and James J. White, '62

• ADR without borders

Until recently, labor disputes were localized and highly site-specific in their regulation. Even if the employer was a multinational enterprise, a workplace controversy would almost invariably involve a particular union or group of employees in a given geographic location. At most, the conflict might affect the company's plants in a whole country. All that is now changing.

— Theodore J. St. Antoine, '54

• Competition, corporate responsibility, and the China question

Corporate responsibility is a debatable question worth having a discussion about — exemption and difference from the norm. There is necessarily the implication of the alternative, corporate non-responsibility or, some would like to say, irresponsibility.

— Joseph Vining

• Markets as social actors

In healthcare, the role and scope of markets as a means of resource allocation is contestable. The role of markets as opposed to current backlash against managed care illustrates the continued contestability of markets in healthcare.

— Peter J. Hammer, '89

To Our Readers: This issue of Law Quadrangle Notes introduces a new design. Our long-time freelance designer, Linda Liske, died last May and we have brought design “in-house” within our Communications Office. Our lead designer, Brent Futrell, has brought new ideas and his own talent to the redesign. We hope you find it to your liking. All of us who have direct involvement in the magazine welcome your reactions and hope you will share them with us. You may e-mail me at follansb@umich.edu, connect with Brent by e-mailing him at brents@umich.edu, or contact editor Tom Rogers at trogers@umich.edu.

—Geof Follansbee

Executive Editor and Assistant Dean for Development and Alumni Relations

EVENTS

- | | | | |
|------------------------------|---|------------------------|--|
| January 3 – 7 | Association of American Law Schools Annual Meeting, Washington, D.C. | March 27 | Student Funded Fellowships Auction |
| January 20 | Martin Luther King Day
Panel Discussion: “A Dream Deferred? The Intersection of Race, Class, and Gender in American Society” | March 28 | American Indian Law Day
⊙ |
| January 31 | Conference — Lewis and Myrtle Moskowitz Symposium on “Resilient Capitalism” (Law School and Business School)
⊙ | April 3 | Campbell Moot Court Competition Final Round |
| February 7 – 8 | Symposium — “Judging Judicial Review: Marbury After 200 Years” (<i>Michigan Law Review</i>) | April 11 – 13 | Critical Tax Conference |
| February 15 | 18th Annual Juan Tienda Banquet | April 12 | Scholarship Dinner
⊙ |
| February 21 – 22 | Conference — “The Future of the Corporate Tax: A Competitive Perspective” | May 2 | Law School Honors Convocation |
| February 28 – March 2 | Jessup Moot Court Competition (Regional Finals)
⊙ | May 3 | Senior Day (Crisler Arena) |
| March 7 – 8 | Symposium — “Life Sciences, Technology, and the Law” (<i>Michigan Telecommunications and Technology Law Review</i>) | May 10 – 15 | Clarence Darrow Death Penalty Defense College
⊙ |
| March 22 | 25th Anniversary Butch Carpenter Banquet/Dance | September 5 – 7 | Reunions of the classes of 1953, '58, '63, '68, and '73
⊙ |
| | | October 19 – 21 | International Alumni Reunion |
| | | October 24 – 26 | Reunions of the classes of 1978, '83, '88, '93, and '98 |

This calendar is correct at deadline time but is subject to change.

MESSAGE

from Dean Lehman

This summer I will be stepping down as dean of our Law School to become the eleventh president of my other alma mater, Cornell University.

My nine years as dean have been extraordinarily satisfying for me. I have had the good fortune to serve during a period in which our faculty has been brilliantly productive, creative, and daring; our graduates have been ferociously loyal; and our students have been devoted to sustaining that distinctive Michigan culture — a school where students take the enterprise of being a lawyer seriously without taking themselves too seriously.

One of the great privileges of my service as dean has been the opportunity to write a message to you in each issue of *Law Quadrangle Notes*. In these messages (I call them “homilies”), I have had the luxury of employing an unapologetically aspirational voice to offer a vision of what it means to be an outstanding lawyer. In an era when many others have written trenchantly about the practice of law as a service industry, I have enjoyed being able to reflect publicly about other dimensions of success in our calling.

At alumni gatherings over the years, many of you have told me that I am not alone in believing that we are privileged to belong to a noble profession. You have spoken passionately for the proposition that the quality of American society depends upon the leadership of a cadre of outstanding lawyers. I have appreciated your willingness to explore

what qualities of heart and mind distinguish the lawyers whose work defines our civilization as healthy and strong.

No law school in the world does a better job of preparing its students to be outstanding lawyers than the University of Michigan Law School. When I first came to the Law Quadrangle as a student over 25 years ago, I recognized how fortunate I was to be here. As a graduate of the Law School, I realize every day how my experiences as a student in Ann Arbor shaped my identity and made possible all of the opportunities I have enjoyed.

Thanks to your devotion and support, Michigan today is vastly better than the Michigan I attended as a student. And I am absolutely certain that in the future our School will continue to thrive, providing inspiring leadership for our nation and our world.

As for myself, I know that even as I move on to new challenges, I will always be grateful to have had the opportunity to be a student, a professor, and a dean at the University of Michigan Law School. Thank you.



“No law school in the world does a better job of preparing its students to be outstanding lawyers than the University of Michigan Law School. When I first came to the Law Quadrangle as a student over 25 years ago, I recognized how fortunate I was to be here. As a graduate of the Law School, I realize every day how my experiences as a student in Ann Arbor shaped my identity and made possible all of the opportunities I have enjoyed.”

IN DETAIL

- 4 *'A Time to Build'*
- 4 *Completing Cook's vision*
- 7 *A Renaissance man*
- 8 *William W. Cook and his architects:
Edward York and Philip Sawyer*
- 10 *How will international law cope with terrorism?*
- 12 *The law and the clock: A good partnership?*
- 13 *What is a 'women's issue'?*
- 14 *Early interview week earns high marks*
- 15 *'Breathtaking' freedom comes after 17 years, 3 months, 5 days*
- 16 *The path to government*
- 17 *Indian law offers variety, change, challenge*
- 17 *How to gauge pro bono commitment?*
- 18 *Orienting to the law*
- 19 *Olin lecturer: Legal nature shapes investment nurture*
- 19 *A glimmer of light*
- 20 *The unique U.S. Constitution*
- 20 *Eyes on the world*
- 21 *U.S. Supreme Court will hear Law School admissions case*
- 21 *The class of 2005*
- 22 *Issues facing the U.S. Supreme Court*
- 23 *Students win woman's freedom*
- 23 *Speaker: 'Asian Americans want to be part of this democracy'*
- 24 *Commencement*
- 25 *The Law School's new (virtual) look*

Architect Renzo Piano's "rough morphology" of additional space for the Law School drew positive responses when it was unveiled for the Committee of Visitors (COV) last fall.

The Genoa, Italy- and Paris-based architect's concept of the 190,000-square-foot construction project has five main features, according to Piano partner Antoine Chaaya. Using early-stage conceptual models of the project, Chaaya outlined this conceptual stage of the project during the COV meeting at the Law School in October:

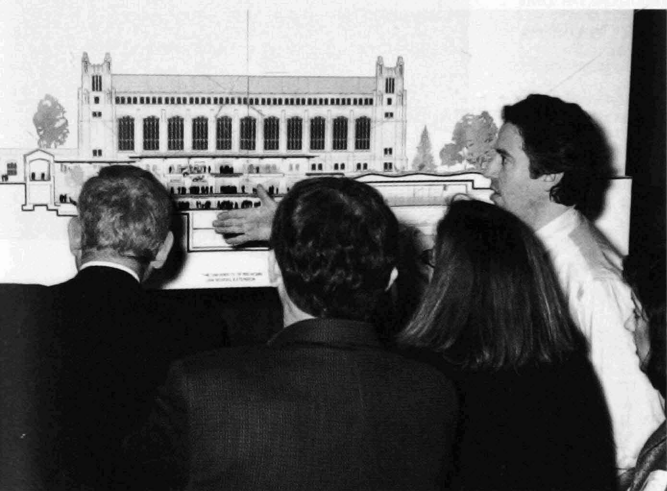
- The plan completes the Quadrangle that William W. Cook envisioned. A new building, similar to older Quadrangle buildings in its emphasis on stone as the construction material, will realize Cook's full vision by adding the fourth side to the Quadrangle at the corner of Monroe and Tappan Streets. "This is an historical opportunity to complete the Quad," Chaaya noted.
- The project will enhance "the dignity and beauty of the Quadrangle" and open the grandeur of the Reading Room exterior to view. The Reading Room interior will become brighter because the stone that fills some of the arches on the structure's southern exposure will be replaced with glass windows like those on the northern side of the building.
- The "backpack" (the Legal Research Building and its aluminum cladding) will be removed and the current backyard-like area off Monroe Street will become a new entrance area on the sun-lit side of the Quadrangle.
- The entrance piazza [on Monroe Street] will create "an open space in the sunny part of the Quad." It will be a "social and convivial space," an architectural metaphor for urban verve that will provide room for social

Architect Antoine Chaaya of the Renzo Piano Building Workshop uses the initial phase model to answer questions from Development Officer Erica Munzel, '88, Francis A. Allen Professor of Law Christina B. Whitman, '74, Committee of Visitors (COV) member Alberto A. Munoz II, '74, Assistant Professor Michael S. Barr, and COV member David Haron, '69.



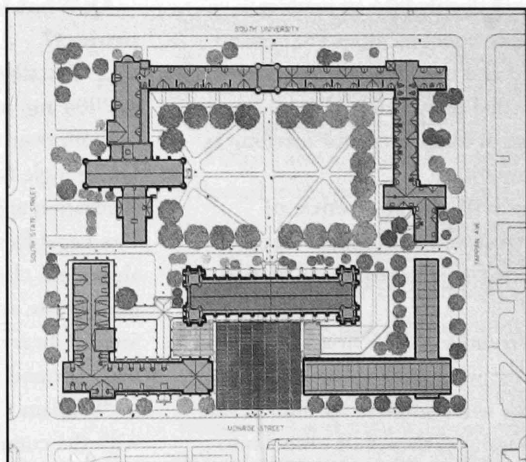
'a time to build'

COMPLETING COOK'S VISION



Associate Dean for Academic Affairs Evan Caminker discusses early stage models of the proposed piazza/entryway to the Law School that will provide the School with a "front door" for the first time as well as open the view toward the Reading Room from that entryway.

This drawing shows how William W. Cook's vision of the Law Quadrangle would be completed with construction of a right-angled building at the now-open corner of Tappan and Monroe Streets. The new structure is shown here at the lower right of the diagram.



activities, meetings, and conversation. "This is the dream of every student we talked to," Chaaya said. "The piazza is the beating heart of the School. Everybody will meet here."

- The design of the expansion is to be "a reflection of the epoch of the School" and will not replicate the current Quad's architecture, Chaaya explained. "I talk mainly about stone and glass on the corner [of Tappan and Monroe]," and "in the center space about glass and stone," he said, emphasizing the altered priority given to stone and to glass at the different locations.

The Renzo Piano Building Workshop is unusual in that its architects use models from the start, rather than waiting until they are well along in planning the project, Dean Jeffrey S. Lehman, '81, explained to COV members. It is premature to see these models as representations of final designs, the dean said. Instead, the architects use them to

Dean Jeffrey S. Lehman, '81, outlines for the Committee of Visitors the Law School's need to expand its space and initial plans for new structures to update and improve current facilities.



represent “where they are in their thinking right now. We have not yet begun the process of schematic design.” In other words, what COV members examined in October were ideas forged into three-dimensional forms, ideas that remain subject to major change.

Lehman outlined how realization of the need for additional space has been jelling and clarifying since Law School leaders began their analysis about five years ago. Some clinical programs, as well as the alumni and admissions offices and their staffs, have had to be housed outside the Law Quadrangle; support staff members are crowded two and three to an office throughout the Law School; it's like playing musical offices to find space for incoming and departing visiting faculty; and “we are not able to meet all our students' needs within the constraints of a tightly rationed space budget.”

In addition, the way that law is taught has shifted from mostly large-capacity lectures to smaller, interactive faculty and student groups. And the numbers of academic journals and student organizations housed at the Law School has grown significantly. Too, some incoming students have said they feel the Law Quadrangle, beautiful as it is, no longer seems contemporary with modern legal education.

The architecture firm Venturi Scott Brown of Massachusetts a few years ago confirmed the need for expansion and recommended two possibilities: add 130,000 square feet by building across Monroe Street south of the current Law Quadrangle, or, the preferred option, tear

down the above-ground library stack space and connect the new space to Hutchins Hall and the balance of the Law Quadrangle. In architect's terms, the latter option would avoid “dissipating” the energy that makes for Law School vitality and would provide for “a more dense interaction” of Law School students, faculty, staff, and visitors.

The presentation brought several questions:

Q: Does the plan include more classroom space?

A: Yes, but of a kind tailored to contemporary teaching practices. Hutchins Hall's large classrooms will continue to be used for lecture-size classes. The new spaces will include smaller classrooms and seminar rooms as well as an additional moot court room. The Law School curriculum now includes more offerings than ever before and most of these courses are designed for smaller-than-lecture size enrollments. In addition, the curriculum also features more small-group seminars in which faculty and students bore deeply into an issue. Current moot court facilities are booked to the limit, and the second moot court room is needed to accommodate the ever-growing use of mock trials for teaching as well as competition.

Q: How will the sequence of construction accommodate the need to continue to operate at full capacity?

A: The tentative plan is first to build the Tappan Street wing of the right-angled building that will complete the fourth side of the Quadrangle, then shift offices into

that new space while the Legal Research Building stacks are removed and the piazza constructed.

Q: What is early thinking on space allocations?

A: The tentative allocations of public space (stacks removal eliminates 60,000 square feet):

- Classrooms — 11,500 square feet
- Faculty offices — 11,000 square feet
- Clinical spaces — 10,500 square feet
- Auditorium/conference space — 4,800 square feet
- Admissions space — 4,500 square feet
- Library — 12,600 square feet
- International Center — 3,300 square feet
- Student activity spaces — 14,400 square feet (study rooms, locker areas, lounge/café, and other facilities)

The 190,000-square-foot expansion will provide a net gain of 130,000 square feet after the removal of the 60,000-square-foot Legal Research Building library stacks.

Q: What is the time line for this project?

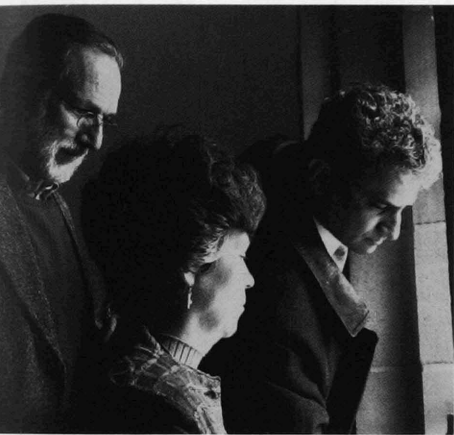
A: Tentatively, groundbreaking will be in 2004 and occupancy in 2008.

Built over the years 1924-32, the Law Quadrangle has undergone substantial renovation approximately every 30 years. The Legal Research Building stacks and aluminum cladding were added in the mid-1950s, and the Alene and Allan F. Smith Library Addition was added underground in the early 1980s.

“William Cook's vision is completed” with the current project, Lehman explained, and Michigan Law School will be offering facilities that are unrivaled in American legal education.

'a time to build'

A RENAISSANCE MAN



Renzo Piano, left, architect Antoine Chaaya, and Law School Building Committee Co-chair Rebecca Eisenberg, the Robert A. Luciano Professor of Law, examine features of Hutchins Hall as part of the Renzo Piano Building Workshop's appraisal of current facilities. At top right, Piano discusses Law School features with those who accompanied him as he examined the Law Quadrangle and its buildings.

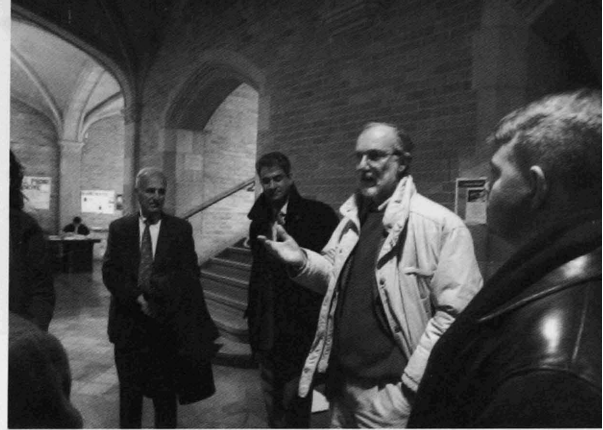
Douglas S. Kelbaugh, dean of the University of Michigan's A. Alfred Taubman College of Architecture and Urban Planning, is an unabashed admirer of architect Renzo Piano, who last summer agreed to design the expansion that will carry the Law School well into the 21st century.

"The University of Michigan has never had an opportunity to work with an architect of this caliber," Kelbaugh said of Piano and his Renzo Piano Building Workshop. That's heady company, when you consider Albert Kahn and Hill Auditorium, Hobbs & Black and the Alumni Center, and Quinn-Evans and renovations to the Law School's Faculty Lounge, Moot Court Room, and Reading Room.

Kelbaugh left no doubt of Piano's stature as he elaborated on "Renzo Piano and His Work" for the Law School's Committee of Visitors during its fall meeting. Piano came to international attention in 1976 with his design for the Pompidou Center, "the most visited building in Paris," Kelbaugh said. He also went full circle from the steel and glass futurism of the Pompidou Center to using a clapboard finish to ensure that the Houston Museum fit neatly into its residential neighborhood.

There's also a utilitarian side to Piano, reflected in projects like his light rail system in Genoa. Or the man-made island and mile-long building of the Osaka-Kobe airport in Japan, or the cultural center in New Caledonia that echoes traditional thatched architecture.

Other U.S. projects that the Piano Workshop has completed or is working on include expansion of the Chicago Art



Institute, the Harvard University Art Museums, and the Woodruff Arts Center in Atlanta; renovation and expansion of the California Academy of Sciences in San Francisco; the Nasher Sculpture Center in Dallas; the New York Times Office Tower in Manhattan; and the Pierpont Morgan Library in New York City.

In 1998, Piano received the Pritzker Architecture Prize, architecture's counterpart to the Nobel Prize. In 2001, he became the first architect ever to receive the Wexner Prize for outstanding lifetime achievement in the arts, conferred by the Wexner Center for the Arts in Columbus, Ohio.

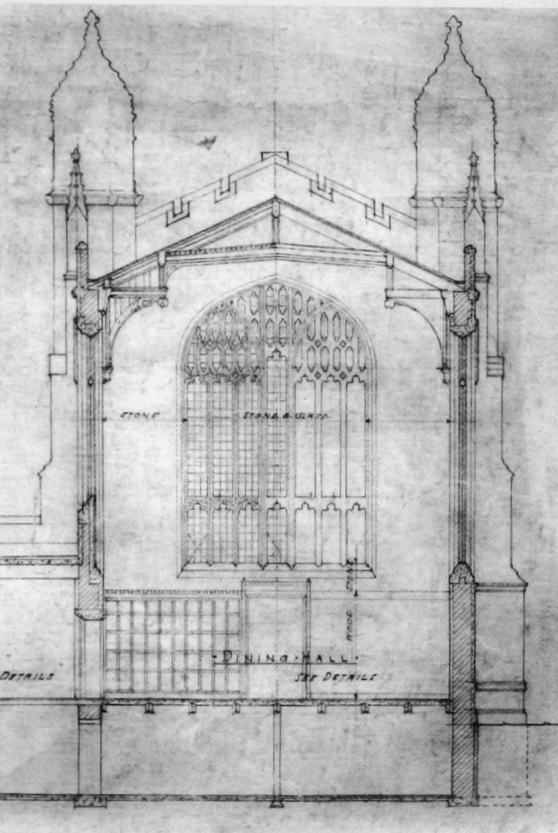
Piano is educated as an engineer, not an architect, and he has grounded himself in the idea of what's functional and useful, Kelbaugh said. Piano also is deeply concerned with how his designs affect people who work or live within the spaces he creates. People's comfort and movement are as important to his architectural vision as the dynamics of space and the play of light.

"He is very socially sensitive," said Kelbaugh. "He's a real Renaissance man."

Piano toured the Law School last spring before taking on the expansion project. "He spent two days here, walking, talking to people, touching the stone," recalled Dean Jeffrey S. Lehman, '81, who accompanied the architect on much of his visit. Piano was awed by the vista from the entry arch at the northern side of the Law Quadrangle along South University.

He eyed the leaded windows and the colors and shadows of the Reading Room, framed in the hard stone and soft curve of the entry archway.

"Genius," he said.



Original York and Sawyer pencil drawing, west facade.

'a time to build'

WILLIAM W. COOK AND HIS ARCHITECTS: EDWARD YORK AND PHILIP SAWYER

The following narrative outlines the role of donor William W. Cook and the architects who built the Law Quadrangle 70 years ago. The report is excerpted and adapted from 94 Law Library Journal 395-425 (2002-26). The author is director of the University of Michigan Law School's Law Library.

By Margaret A. Leary

William W. Cook first worked with the architectural firm of Edward York and Philip Sawyer in 1911, when he contracted with them to build his New York town house at 14 East Seventy-first Street. He then used them for his first gift to Michigan, the Martha Cook Building (named in honor of his mother), and continued to work with them on subsequent Michigan projects. Cook also used the same interior finishing specialists, the Hayden Company, also based in New York City.

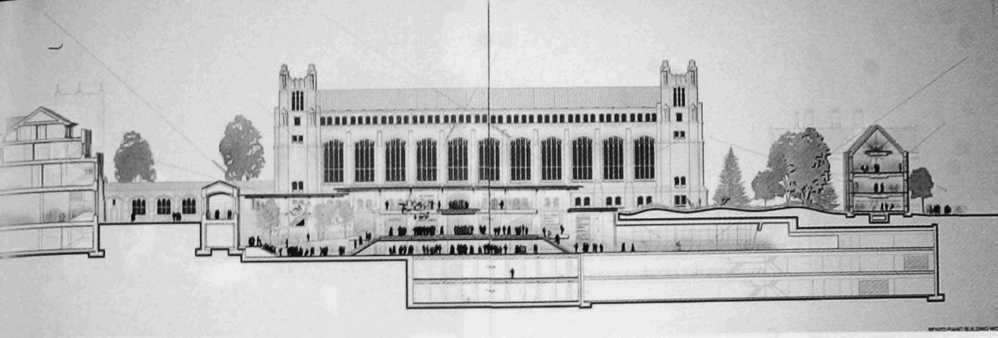
Ilene H. Forsythe's book, *The Uses of Art: Medieval Metaphor in the Michigan Law Quadrangle* (1993), includes many examples of the dialectical process that created the Law Quadrangle — determining the site, siting the individual buildings, selecting the type of stone — and quotes Cook's description to York of this process as “Going over the designs together, you furnishing the art and I the philosophy.”

York and Sawyer met as associates at the preeminent New York City firm of McKim, Mead, and White, where they worked together from 1891-1898. They left to form their own firm when they

won a competition for Rockefeller Hall at Vassar College, where they eventually did six more buildings. They were influenced by the partners in their former firm, and so was William Cook. Stanford White designed, for Cook's employer Clarence MacKay, a very grand mansion called Harbour Hill on Long Island, between 1899-1901. Cook's aesthetic education was undoubtedly affected by that building, which David Garrard Lowe described in *Stanford White's New York* (rev. ed. 1999) as “fashioned of the finest pale gray Indiana limestone. . . [with] rooms crammed with priceless paintings, rare tapestries, and fantastic furniture.”

York and Sawyer, following their departure from McKim, Mead, and White, won 11 of the 14 competitions they entered in the next few years, when the usual rate was one in four. After five years they had \$5 million worth of work, more than their former firm. Even so, Sawyer would recall later (in *Edward Palmer York: Personal Reminiscences by His Friend and Partner Philip Sawyer and a Biographical Sketch by Royal Cortissoz* 9 [1951]) that York carried little cash and had to borrow a quarter from Sawyer to pay for lunch.

The same book describes the working relationship between the two men. York was the “thoughtfully directed energy behind” the partnership who nurtured clients and developed the overall strategy for the firm's future. He was “innately philosophical and serene,” a “rationalizing, constructive architect.” According to Sawyer, York did his work almost invisibly, “got his stuff drawn by others, let the contracts, built it satisfactorily without



noise, working so intangibly that no one ever caught him at it.” And, Sawyer continued, his “scope was unlimited. He never lost patience with any client, no matter how foolish his suggestions, and when I once complained bitterly of a Building Committee who would not allow me to do the thing which seemed so obviously the best to me, he said, ‘But Sawyer, think of all the fool things that our clients have prevented you from doing.’”

Sawyer, in his own words, “was a draftsman. I would have confined myself to drawing, sketching, and painting, if I could have afforded it. I had compromised on architecture as the next best thing, and my interest was in rounding out the building on paper to the last detail. What happened to the drawing afterward didn’t much matter to me.”

The firm developed specializations in college buildings, banks, and hospitals. York and Sawyer designed about 50 banks, including the Franklin Savings Bank at 8th Avenue and 42nd Street, and the Bowery Savings and Federal Reserve banks in New York City. Among their hospitals was Tripler Army Hospital in Honolulu. They did a score of private residences, including a 26-room apartment for Mrs. W.K. Vanderbilt in 1927. They also did office buildings in Montreal and Toronto, and the U.S. Steel Sphere at the 1939 World’s Fair in New York.

One measure of the extent and quality of York and Sawyer’s work is their 67 entries, as of May 7, 2002, in the Avery Index to Architectural Periodicals. A measure of the historical influence of the firm is that entries begin in 1905, and extend to the March 2002 issue of *Architectural Digest*, which details the restoration of “one of the great, grand apartments in Manhattan, a seldom-seen, beautifully preserved time capsule,” the very maisonette originally built for Mrs.

Vanderbilt. An article in the June 2000 issue of *Interiors* describes the restoration of the 1923 Bowery Savings Bank.

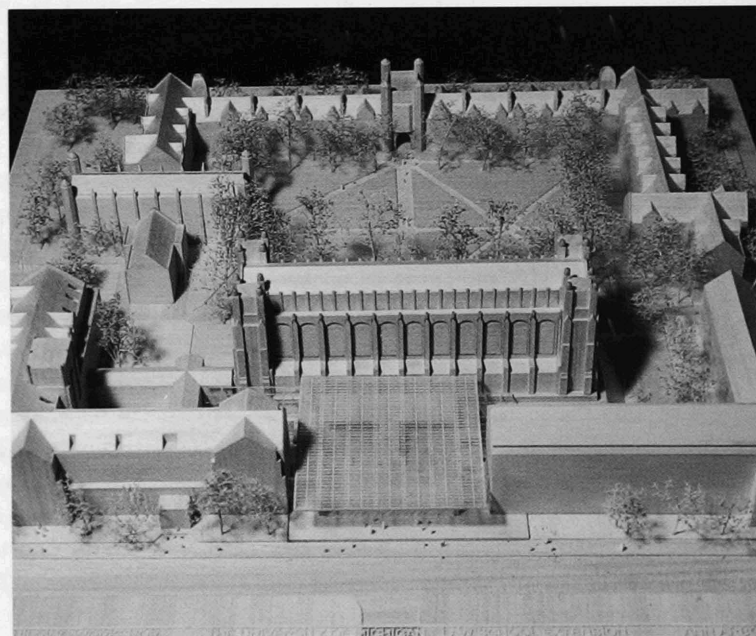
York was the lead architect on the Michigan project until he died in December 1928. Thus, he personally created the style of the Lawyers Club buildings and worked extensively on the concepts for the Legal Research Building.

Cook announced, in early 1929, his intent to give that building to the Law School. York’s role in the design and detail of the buildings was critical to a dialectical process in making the Law Quadrangle. For example, he educated Cook about the comparative qualities of various stones and the rationale for using Gothic-style architecture.

After York’s death, Sawyer became equally influential, and Cook accepted his suggestions about the higher foundation and towers for the Legal Research Building. The two men seem to have developed a close relationship; Sawyer was one of three witnesses to sign the final version of Cook’s will on August 8, 1929.

Cook’s death in June 1930 touched off a two-year contest over his will, and the University did not receive proceeds from the estate until the fall of 1932. Hutchins Hall was completed in 1934 and is less detailed and ornate than any of the earlier buildings, probably because of the Depression, the somewhat smaller estate after the will contest, the drop in the value of stocks, and Cook’s absence from the last stages of planning.

A new piazza/entryway, above in cross section and below as part of a three-dimensional model, is to give the Law School its first “front door,” an entry from Monroe Street, as well as provide a breathtaking view of the Reading Room from that entryway. It also will provide below-ground connection with the Law Library and the new building at the southeastern corner of the Law Quadrangle. The current “backpack” of aluminum and the library stacks will be removed.



HOW WILL INTERNATIONAL LAW COPE WITH TERRORISM?

If Bruno Simma knew on that Friday that he would be elected a judge on the European Court of Justice the following Monday (see story on page 35), he didn't let on.

Yet as he posed questions opening the third joint symposium of the Law School and the *European Journal of International Law*, he foreshadowed some of the questions he may face during his nine-year term on the court — questions that, indeed, the world and international law practitioners and scholars will face for some time to come.

“‘A War Against Terrorism’: What Role for International Law?” was the title of the two-day joint symposium held at the Law School in October. Begun three years ago and alternately held at the Law School and in Europe, the annual symposia bring together U.S. and European thinkers to contrast, compare, and perhaps synthesize views. Last fall's gathering took on special meaning because it came barely a year after the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, and dealt with still unanswered questions arising from those tragedies.

“We all agree that 9/11 shattered certainties and certain complacencies,” began Simma, an Affiliated Overseas Faculty member at the Law School. Simma opened the conference by posing questions like these:

- Does the Geneva Convention protect terrorists, or “do new developments need new law?”

- Will the web of the human rights regime be strong enough to contain anti-terrorist moves?
- If preemptive force is allowable, is the UN Charter obsolete in its requirement that force be used only for self-defense?

For two days, leading legal thinkers from both sides of the Atlantic pondered these and other issues. Sometimes they looked back to traditional, post-World War II guidelines, like the UN Charter. At other times they looked to the purely practical, like “Can you strike back when you know the missile has been launched, or do you have to wait for it to hit you?” The conference was organized around five sessions:

- International Humanitarian Law: Should It Protect Terrorists?
- Human Rights: The Substantive and Institutional Implications of the War Against Terrorism.
- Pushing the Margins of International Law: Sanctions, Asset-Freezing, Judicial Cooperation, and other Means of Combating Terrorism.
- Terrorism and the Legality of Preemptive Force.
- What Courts Should Try Persons Accused of Terrorism?

The first panel opens the conference with discussion of “International Humanitarian Law: Should It Protect Terrorists?” From left are Gerald Neuman, Columbia University School of Law; Jan Klabbbers, the Eric Castrén Institute of International Law and Human rights; and Karima Bennouna, '94, Rutgers University School of Law.



Affiliated Overseas Faculty member Bruno Simma, left, chats with Jan Klabbbers of Finland during a break in the conference.

Despite wide differences of opinion on the role and power of international law in combating terrorism, participants left no doubt that anti-terrorism efforts have been unalterably changed by the immensity of the U.S. response to the loss of lives and property that it suffered on September 11, 2001. As panelist Joan Fitzpatrick of the University of Washington School of Law put it: Since October 2001 there has been a “re-conceptualization” of anti-terrorism. It is no longer crime control. It's a war.

Many panelists struggled to define a terrorist. One noted that yesterday's terrorists, like former South African President Nelson Mandela, may be driven by political goals and perhaps later become respected leaders. Others wondered: Can human rights law and due process safeguards be maintained in the no-holds-barred kind of war the fight against terrorism seems to demand? Are captured terrorists prisoners of war? Is most anti-terror effort in the realm of asset-freezing and similar non-military moves, and, if so, what does that mean for questions regarding the use of military force?



Sabine von Schorlemer of the Technische Universität in Dresden, adds to the discussion from the audience. Listening at left is Michael Bothe of Johann Wolfgang Goethe University in Frankfurt.



With the question of a U.S. strike against Iraq hanging like a ghost in the wings, the panel on Terrorism and the Legality of Preemptive Force generated the most heated debate — and drew the largest audience.

To panelist Michael Bothe, professor of public and international law at the Johann Wolfgang Goethe University in Frankfurt, the UN Charter is where debate must start, and the Charter offers only three exceptions to its prohibition on the use of force: self defense; Security Council authorization; and intervention by invitation. The “classical formula” for allowing preemptive self-defense is when there is no choice of means and no chance for deliberation, he said.

But Bothe was a minority of one on the panel. Former State Department advisor Abraham D. Sofaer, a professor and George P. Shultz Distinguished Scholar and Senior Fellow at the Hoover Institution, countered: “We can’t defend ourselves with passive measures, so we turn to preemption. Preemption is the best form of self defense.” The UN Charter is “clearly ambiguous” on the issue, and does not forbid the use of preemptive force, Sofaer said.

Commentators Oren Gross of the University of Minnesota School of Law and Professor Robert Howse of the U-M Law School agreed that terrorist tactics change the equation. “Let’s not take the Security Council out of the picture,” advised Gross, who formerly taught at Tel Aviv University. If there’s not enough time

to get Security Council approval, act first and then go back and seek approval, he advised.

Added Howse: “Interpretation in international law generally remains decentralized in the sense that international law is and will remain a law of nations [that] is interpreted as much by generals and men of state as by professors and judges.”

“If you have an 800-pound gorilla, how can you have a meaningful discussion about the use of force?” Howse asked. Measures of strict scrutiny and necessity should be applied to the interpretation of the UN Charter, he advised.

Mainly, commented A. W. Brian Simpson, the Charles F. and Edith J. Clyne Professor of Law, “terrorism is fought by good intelligence and good police work, not by law.” Law can ensure “that you don’t rubbish your own decent culture.”

“I concede that you will always get people going beyond the law in these situations,” Simpson added. “All the law can do is exercise restraint.”

And “what’s going to happen to the United Nations in all this?” he asked. “It’s all we’ve got.”

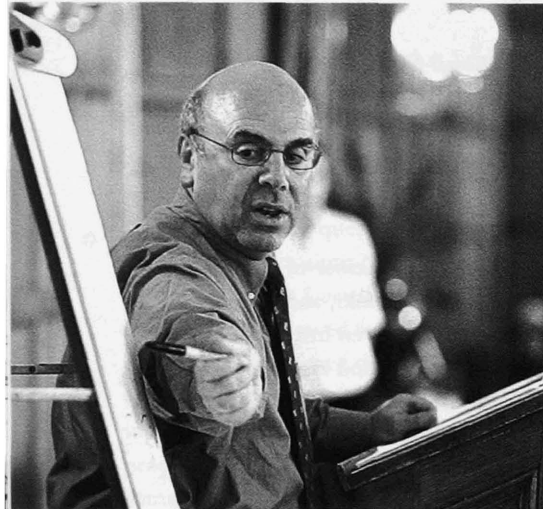
Other conference panelists and commentators included:

- From the Law School, Assistant Professor **Michael S. Barr** and **Richard D. Friedman**, the Ralph W. Aigler Professor of Law.
- **Karima Bennoune**, ’94, assistant professor at Rutgers School of Law.
- **Günther Handl**, Eberhard P. Deutsch Professor of Public

International Law, Tulane University Law School, and a visiting professor at the U-M Law School.

- **Florian Hoffman**, doctoral student, European University Institute, Florence, Italy.
- **Jan Klabber**, professor of law, University of Helsinki, and deputy director, Erik Castrén Institute of International Law and Human Rights.
- **Frédéric Mégret**, research associate, European University Institute.
- **Sean D. Murphy**, associate professor, George Washington University School of Law.
- **Gerald Neuman**, Herbert Wechsler Professor of Federal Jurisprudence, Columbia University School of Law.
- **Andreas L. Paulus**, assistant professor, Ludwig-Maximilian-University, Munich.
- **Ernst Ulrich Petersmann**, professor of international and European law, European University Institute, Florence.
- **Jean-Marc Sorel**, professor of law, University of Paris I.
- **Detlev Vagts**, Bemis Professor of Law, Harvard Law School.
- **Sabine von Schorlemer**, professor of international law and international relations and co-director of the School of International Studies, Technische Universität, Dresden.

THE LAW AND THE CLOCK: A GOOD PARTNERSHIP?



Jeffrey Liss, '75, chief operating officer of Piper Rudnick LLP in Washington, D.C., and a visiting adjunct professor at the Law School during the fall, outlines findings and recommendations from the ABA Commission on Billable Hours. Liss co-chaired the commission.

The billable hours system dominates in the American law firm scene. Its advantages are that it's simple, easily tracked, eliminates negotiation over the price of legal services, and provides a convenient metric for use in evaluating associates for pay increases, promotion, and partnership. Over the past 40 years the system also has become comfortable for firm managers and a good tool for income prediction.

But the billable hour system also can produce unfortunate effects. As billable hour requirements rise, they may substitute quantity for quality and crowd out other worthwhile pursuits, such as *pro bono* work. While even its critics don't expect it to be scrapped, they'd like to see it become more flexible and co-exist with other billing methods.

With that goal in mind, then-American Bar Association President Robert E. Hirshon, '73, appointed the Commission on Billable Hours to study the system and make recommendations to alleviate its shortcomings. Co-chaired by Jeffrey Liss, '75, chief operating officer for Piper Rudnick LLP, and Anastasia Kelly, senior vice president and general counsel for Sears, Roebuck and Company, the commission issued its 60-page report plus appendix last summer after one and one-half years of work. The next phase is to spread the word about the commission's findings and recommendations, a phase that Liss kicked off last fall when he addressed a standing room only audience in the Lawyers Club Lounge. Liss was a visiting adjunct professor at the Law School during the fall term.

Many lawyers are required to bill 2,000 or more hours a year, Liss explained. Adding the ABA-recommended 3-5 percent of work time for *pro bono* work (100 hours), 75 hours for training and mentoring, 75 hours for client development, 100 hours for service to the firm, and 375 hours of "dead" time like lunch and errands, brings the total to 2,800 hours per year. Subtract four weeks for holidays and vacation, and another week for personal time off or illness. That leaves 47 workweeks of 5 days each. That's 11.5 hours per day to make the 2,000 billable hours goal. Add an hour commute each way and you get a 13.5-hour day. Give yourself 8 hours' sleep, and you've got 2.5 hours left each day "to live a balanced life."

"Something on this list has to give, or maybe a lot of things have to give, if a lawyer is going to have some semblance of a balanced life," Liss said. "The impact of this is why Bob Hirshon appointed the commission."

"It has become increasingly clear that many of the legal profession's contemporary woes intersect at the billable hour," Hirshon said in the report's Preface. "The 1960s marked the coming of age of the billable hour — an economic model that was created to address antitrust concerns with bar association fee schedules, to provide lawyers with a better handle on their own productivity, and, more urgently, to address clients' demands for more information about the legal fees charged.

"Today, unintended consequences of the billable hours model have permeated the profession. A recent study by the ABA

shows that many young attorneys are leaving the profession due to a lack of balance in their lives. The unending drive for billable hours has had a negative effect not only on family and personal relationships, but on the public service role that lawyers traditionally have played in society. The elimination of discretionary time has taken a toll on *pro bono* work and our profession's ability to be involved in our communities. At the same time, professional development, workplace stimulation, mentoring, and lawyer/client relationships have all suffered as a result of billable hour pressures."

U.S. Supreme Court Associate Justice Stephen G. Breyer supported the commission's investigation and wrote the Foreword to its report.

"The villain of the piece is what some call the 'treadmill' — the continuous push to increase billable hours," wrote Breyer. "As one lawyer has put it, the profession's obsession with billable hours is like 'drinking water from a fire hose,' and the result is that many lawyers are starting to drown. How can a practitioner undertake *pro bono* work, engage in law reform efforts, even attend bar association meetings, if that lawyer also must produce 2,100 or more billable hours each year, say 65 or 70 hours in the office each week. The answer is that most cannot, and for this, both the profession and the community suffer."

Liss described "the corrosive impact on the profession caused by an overemphasis on billable hours" that the commission found:

- Crowding out other valuable professional activity with *too many* billable hours.
- Discouraging *pro bono* and mentoring work.

- Creating a "value disconnect" between the value of legal service and its cost.
- Penalizing efficiency.
- Driving a wedge of mistrust between the client and the lawyer.
- Chilling lawyer/client communications because the client knows every conversation "turns on the meter."

The commission recommends changes like using fixed fees for a specific matter, a portfolio, or each stage of a case; "value billing" that depends on results; or a hybrid approach like a discount with a result-based kicker, or other "alternative pricing methods." The report lays out numerous such methods. Firms also could adopt more reasonable billable hour requirements or offer "model citizenship" and "*pro bono*" bonuses for attorneys who contribute to the firm through excellence in non-billable work. The commission's report contains profiles of firms that use these methods.

In addition, Liss said, law professors can study and develop plans and analyses of these alternative systems and examine how they worked well in the past. And students can make the issue "a market factor" by querying potential employers about billable hour requirements, how *pro bono* hours count toward that total, how much formal training time and mentoring is available, and how many hours associates were reporting when they made partner.

"I don't mean for these to be accusatory questions," Liss said. "I mean these as information-seeking questions."

"Our commission is not looking to bash the billable hours system," he explained. "We recognize that it has its place. The idea is to break the logjam, [perhaps to] move 25-35 percent of a firm's inventory off the clock. If we can do that, the impact on our profession could be positive and profound."



Melody C. Barnes, '89

What is a 'women's issue?'

Melody C. Barnes, '89, chief counsel to U.S. Senator Edward Kennedy of Massachusetts, speaking at the Law School a few days before last November's elections, encouraged women to vote and to work to show that issues like bankruptcy reform are "women's issues," too.

"What is a women's issue?" she asked. "Part of the problem is how you define what a women's issue is."

Take bankruptcy, for example. It's seldom thought of as a women's issue, she said, yet more than half of the 1.6 million bankruptcies filed in the United States each year are filed by women. Some reform proposals may increase this share by lowering the priority given to seeing alimony and child support as payments equal in importance to those demanded from other creditors.

Barnes also emphasized the important role that judicial appointments play in U.S. life. "If you care about the issues, then you have to care about the federal judiciary," she said.

Barnes' talk was sponsored by the Women Law Students Association and the Law School's Office of Public Service.



Many students booked multiple interviews during the early interview week — the appointment board was a magnet for arranging their day.

EARLY INTERVIEW WEEK EARNS HIGH MARKS

Chris Timura's easy smile belied the seriousness of his day's schedule: job interviews that could decide what the third-year law student will be doing after he graduates this May.

Timura and hundreds of other law students flocked to an off-campus hotel in late August for the job interviews that traditionally have been squeezed between classes in a packed room on the second floor of Hutchins Hall. More than 600 potential employers participated in the early interview week. (Later in the fall, other employers also came to the Law School to do interviews.)

"It's a lot more relaxed," reported Timura, who also has interviewed in the well-known "Room 200" of Hutchins Hall. There's no rushing from class to an interview, then rushing back to class, he explained. You can concentrate better on what you're doing.

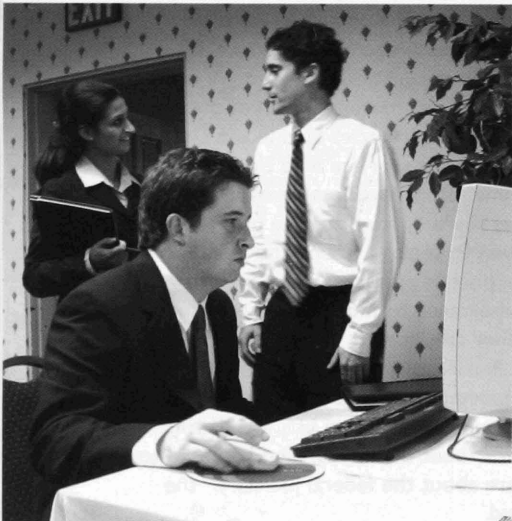
Students are more "focused," explained Susan Guindi, '90, assistant dean of career services. Guindi and her staff organized the early interview week as a trial run, and reported that initial signs indicated it was successful and popular with both students and interviewers. Guindi said she expects the early interview week to become a regular feature of the Law School schedule, as it has at many other U.S. law schools.

"While it was an intense week for students, they were happy that they didn't have to concentrate on interviewing and their classes at the same time," Guindi explained. "Alumni who came back to interview were happy that their success at recruiting was not dependent on whether their scheduled date was early or late in the recruiting season, although a few noted that they missed being on campus."

The Office of Career Services provided a break space and lunch for employers, giving them a chance to gather together, relax and visit with fellow graduates who also were interviewing, and offer their perspective on the early interview week for Career Services staff members.

Career Services used some 100 rooms at Ann Arbor's Holiday Inn North for the interviews. Between interviews, students gathered around tables set up in a ballroom and enjoyed refreshments provided by the Law School and various law firms. Other law firms sponsored hospitality rooms.

In a room adjoining the ballroom, the Law School's Information Technology Services set up computers so that law students could do research on law firms and check their e-mail between interviews.



Computers provided by the Law School's Information Technology Services offered interviewing students the chance for last-minute research on law firms and to keep up with their e-mail.

'Breathtaking' freedom comes after 17 years, 3 months, 5 days

After 17 years, 3 months, and 5 days in prison for a crime he did not commit, Eddie Joe Lloyd won his freedom on August 26 — the first person in Michigan to get his conviction reversed because of advances in DNA testing.

It's "breathtaking" to be free, the 54-year-old Detroit native told a Law School class during a visit here early in the fall term. "I feel like my family's been exonerated, too."

Lloyd and his Michigan-based attorney, Saul Green, '72, outlined Lloyd's case for law students in the seminar on Innocent Defendants taught by Professors Phoebe Ellsworth, the Kirkland & Ellis Professor of Law, and Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law. Green, a senior partner with Miller, Canfield, Paddock and Stone PLC in Detroit (and chair of the firm's new Corporate Crime Group; see page 55), is a former U.S. attorney for the Eastern District of Michigan. He studied under Gross at the Law School.

The Lloyd case began in 1984, when a 16-year-old Detroit high school junior was abducted, raped, and strangled. Lloyd confessed to the crime and was sentenced to life in prison without parole. He was in a psychiatric hospital and on medication when he made the confession, according to his attorneys.

Today he says his confession was false and designed "to smoke out the real killer."

"Fortunately, Michigan is one of 10 states without the death penalty," Lloyd told the Law School class. "If it weren't, I wouldn't be here talking to you."

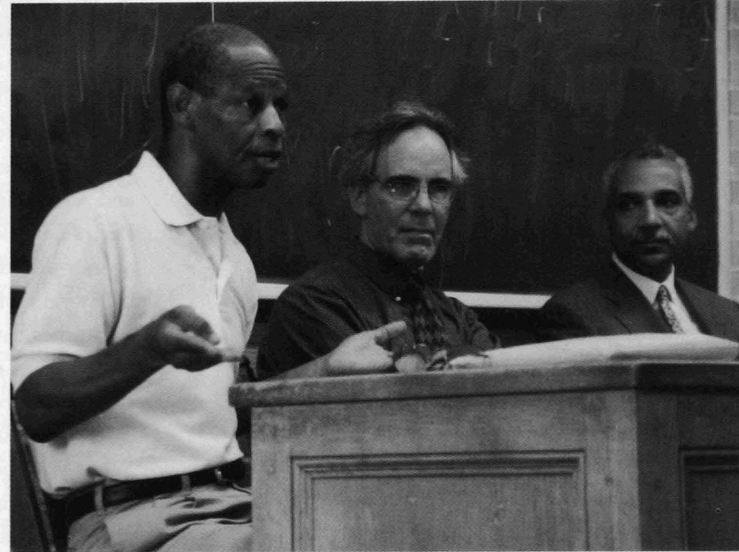
Lloyd's long road back to freedom

began seven years ago, when the Innocence Project, which uses DNA evidence to prove wrongly convicted people's innocence, began working on his case. Innocence Project Director Barry Scheck founded the organization in 1992 at the Benjamin N. Cardozo School of Law in New York. The project has been involved in most of the more than 100 recent cases that have used new DNA testing capabilities to win reversals of people's convictions.

Lloyd saw Scheck on The Phil Donahue Show, contacted him, and convinced Scheck to take his case. Green joined the case last year after Scheck asked Gross to recommend a Detroit-based attorney to join Lloyd's legal team.

Green told the seminar students that he had misgivings about Lloyd's defense — his second lawyer had only eight days to prepare after his first lawyer died suddenly — as well as about tactics the police used to get the confession that Lloyd says was false.

"I think a properly prepared, properly motivated defense counsel could have raised many inconsistencies," Green said. And "of the 110 [prisoners] who have been exonerated, about one-third of them gave confessions, so I'd suggest we have to look at the interrogation practices."



Eddie Joe Lloyd tells a Law School class how he became the first person in Michigan to have his life imprisonment sentence reversed because of new DNA evidence. At center is Thomas G. and Mabel Long Professor of Law Samuel R. Gross; at right is Lloyd's Detroit-based attorney, Saul Green, '72.

The former U.S. attorney also praised Wayne County Prosecutor Michael Duggan and Detroit Police Chief Jerry Oliver for joining in the request to overturn Lloyd's conviction.

"You'll be on both sides of legal cases," Green explained. "The legal system is operated by human beings, and we make mistakes. When new evidence shows that a conviction you fought to get should be overturned, don't be defensive. Be open-minded. Be open to the continuing search for truth."



Max Stier, president of Partnership for Public Service, explains how working in the government offers satisfaction, early responsibility, and the sense of doing a public service. Stier was the first speaker in last fall's Inspiring Paths series, sponsored by the offices of Public Service and Career Services.

The path to government

For Max Stier, "I don't believe there is any better place to go as a lawyer than the government."

Stier now devotes full time to helping others come to the same conclusion. He has worked for a large law firm and all three branches of the federal government, and now heads the Washington-based Partnership for Public Service, a nonprofit agency dedicated to increasing the number of lawyers who enter government careers.

Studies have shown that people in government service and public service say they are more satisfied in their work, said Stier, the first of three speakers in the Law School's Inspiring Paths series last fall. But, he continued, government agencies advertise and recruit less than private firms, so it's harder to find the government openings. And government agencies make hiring decisions more slowly than private firms. Government pay scales also are lower than in private firms, but wage levels rise quickly and provide a comfortable livelihood.

Stier, a graduate of Yale College and Stanford Law School, served on the staff of U.S. Congressman Jim Leach, and clerked for Chief Judge James Oakes of the U.S. Court of Appeals for the Second Circuit and for Justice David Souter of the U.S. Supreme Court. He also has been special litigation counsel to Assistant Attorney General Anne Bingaman at the U.S. Justice Department, and deputy general counsel for litigation at the U.S. Department of Housing and Urban Development. In addition, he has worked with the law firm of Williams & Connolly, where he specialized in white-collar defense.

He offered five tips for finding and landing the job you want:

- Break the rules. Don't let usual job-hunting practices limit your chances. Stier landed his job with the U.S. Justice Department after sending a bouquet of balloons with the message "Call Me" to the official who had interviewed him.
- "Don't take the easy path or the path of least resistance. It is worth putting in the time and the energy to find out what's out there."
- "Persistence pays off." Once, between jobs, he did 60 interviews in about three weeks before making the contact that led to his current position.
- "Know your propensities and compensate for them." For example, if you know you're reluctant to make that second telephone call, force yourself to make it.
- "Make sure you do what is right for you now. Find the job you'll be happy with now." Following your interests and finding a good fit at the outset "will maximize your opportunities."

In a new feature this year, the Inspiring Paths speaker also acts as "mentor for a day" during his Law School visit, meeting privately with students to explore their questions regarding public service, *pro bono* work, and similar opportunities. Stier's post-talk appointment slots all were filled, and students reported that they found their time with him enjoyable and "extremely useful."

The Inspiring Paths series is sponsored by the Office of Public Service and the Office of Career Services. Last fall's series also included talks by:

- Barbara Cohen, '90, former general counsel for The Village Voice.
- Bonnie Tenneriello, '97, a Skadden Fellowship winner who worked with migrant workers in Michigan before taking her current position with the National Voting Rights Institute in Boston.

Indian law offers variety, change, challenge

The Native American Law Students Association's Federal Indian Law Lunch Series of lectures demonstrated the challenges and variety that accompanies practice in the Indian law area. Speakers discussed work ranging from the defense of "warriors" to issues of taxation, sovereignty, and jurisdiction.

Although Indian law is a special niche of legal practice, it does not exist in a vacuum, Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law, explained in his talk that opened the series in October. Gross worked with the Wounded Knee Legal Defense/Offense Committee as part of the network of lawyers who defended American Indian Movement leaders facing charges stemming from their 71-day takeover of a trading post at Wounded Knee on the Pine Ridge Reservation in South Dakota in 1973. Gross worked on the case of Vernon Bellecourt, which ended in a dismissal of charges.

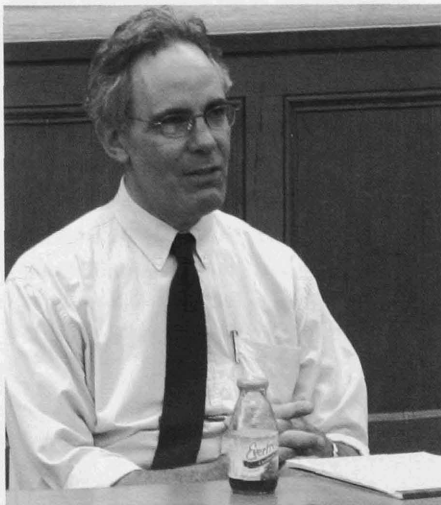
The takeover at Wounded Knee was one of several high profile American

Indian protests at the time. Others included a sit-in at the Bureau of Indian Affairs in Washington, D.C., and occupation of Alcatraz Island in San Francisco Bay. Cases from these incidents flooded into the courts — all of the hundreds of Wounded Knee cases were moved out of South Dakota — and already clogged dockets were further burdened as cases from the earlier Attica Prison uprising in New York State came into the legal system.

Not all Indian law cases are this high profile, however. For Colette Routel, '01, an associate at Faegre & Benson in Minneapolis, being an Indian law generalist means working on a challenging variety of cases. One of two Indian law generalists in her 250-lawyer firm, Routel has a case before the South Dakota Court of Appeals to determine if the state's authority to tax gasoline extends onto the Pine Ridge Reservation. As a measure of the variety of her practice, she also has been asked to develop an ordinance to bar pit bulls from a reservation.

In another case, she won a Minnesota Appeals Court decision forbidding a state court to subpoena a tribal leader. Generally, she explained, Indian tribal leaders are willing to provide the information or documents that state authorities seek, but will resist a subpoena to appear. Their position is that the tribe is sovereign on its reservation, and its leaders cannot be compelled by another jurisdiction. In other areas of Indian law, she added, tribes are establishing power utilities and looking into gaming via the Internet.

Thomas G. and Mabel Long Professor of Law Samuel R. Gross describes the context of the Wounded Knee occupation cases in the opening program of the Native American Law Students Association's Federal Indian Law Lunch Series.



How to gauge *pro bono* commitment?

Sure, you need to be an intelligent consumer when choosing what law firm to work for.

But how?

If doing *pro bono* work is important to you, Robert Precht, assistant dean for public service, and Joel D. Kellman, '67, of Dykema Gossett in Bloomfield Hills, have three questions you should ask:

- Does the firm have a coordinator of *pro bono* work? If so, is the coordinator a full partner, a paralegal, or an associate? The higher the rank of the coordinator, the deeper the firm's probable commitment to *pro bono* work.
- What is the depth of partners' involvement in the firm's *pro bono* work? Here again, the amount of partner involvement is a good indicator of the firm's commitment.
- How many billable hours are you expected to produce, and how many *pro bono* hours can count toward this total?

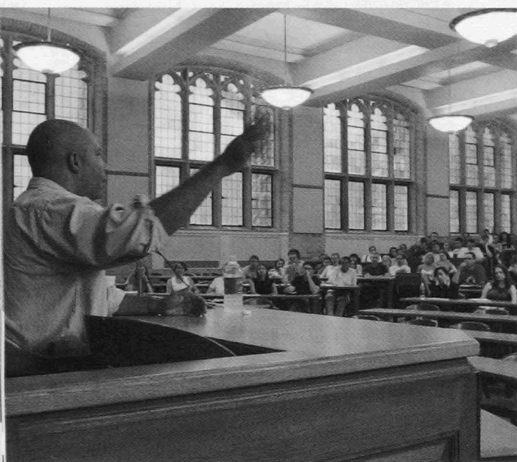
These questions emerged as Precht and Kellman debated law firms' *pro bono* involvement during a program in October. Kellman, past president of Detroit's Legal Aid and Defender Association and also active with Community Legal Services of Detroit, won the John Cummiskey Pro Bono Award in 2000 for his commitment to *pro bono* involvement.

Such work usually does not need to be within the firm's regular fields of practice, he explained. In most cases, he said, firms place very few restrictions on the type of *pro bono* work their lawyers do. Probably the most common restriction is that a *pro bono* case may not be brought against a firm's client or a client in the field in which the firm does a great deal of representation. For example, if many of a firm's clients are banks, the firm would be unlikely to approve a *pro bono* case even on behalf of a non-client bank.

Assistant Deans David Baum, '89, and Charlotte Johnson, '88, confer after addressing incoming law students.



ORIENTING TO THE LAW



Professor Sherman Clark gestures as he addresses incoming students.

Learning how to find your way through the halls of Hutchins, Legal Research, and the Law Library may seem to be the major benefit of new student orientation. But learning to listen like a lawyer also begins here, as seasoned professional educators share with newcomers the wealth of their experience.

For example, when four professors formed a panel and discussed classroom expectations, the message was clear: students should participate freely, celebrate and strive to understand their differences, and learn from each other as well as from professors.

- Professors want “active engagement” from students, according to Associate Dean for Academic Affairs Evan Caminker. Speak up in class and “recognize that public speaking is an important part of being a lawyer.”
- Sure, classes can be large, especially at the beginning, acknowledged Professor Sherman J. Clark. “We try to hear you, but you’ve got to go for it. Get in there and play.”
- Said Rebecca S. Eisenberg, the Robert and Barbara Luciano Professor of Law, “We live in a very diverse society and we just don’t see eye to eye on a variety of issues. . . . Your diversity can be a very enriching part of your Law School experience.”
- Christina B. Whitman, '74, the Francis A. Allen Collegiate Professor of Law, noted that “you need to know the other side’s best argument. You will be

required to argue positions you do not agree with.”

“We look at you as people who will be representing clients in just a few years,” added Whitman, a former associate dean and one of the first women to join the Law School faculty. “We are not just educating you. We are also initiating you into a profession.”

Dean Jeffrey S. Lehman, '81, in his welcome remarks to new students similarly stressed the intellectual rigor and hardheaded rationality that are integral to a successful legal career. “By coming here, you have chosen to give up an unexamined and unreflective life,” he told the new students.

He also noted:

- “The first thing you’re supposed to learn is that the law is not just a set of rules. . . . Law is the power to draft norms, interpret norms, and enforce norms.”
- “Lawyers are inescapably autonomous moral agents. A good lawyer is a lawyer who encourages clients to step outside themselves.”
- “Your mission as a student is to engage your professors the same way you will engage judges [when you are lawyers].”
- On classmates: “Get to know them. They are smart, incredibly smart. They are here because they are some of the smartest people you ever will meet.”
- “You will be amazed by how really diverse a group you are.”

Olin lecturer: Legal nature shapes investment nurture

The origins of a legal system, as well as its enforcement can affect development, investment, and the protection of investment, according to the Harvard University economist who delivered the John M. Olin Lecture in Law and Economics at the Law School early in the fall term.

Andrei Shleifer explained to his standing room only audience that "there is a very intimate relationship between investor protection, legal origin, and financial development." Generally, common law-based systems are more supportive of financial development than civil law-based systems. And among civil law-based systems, the French legal system in practice is among the least supportive of investment and development.

Shleifer's research has produced three tentative findings:

1. Investor protection is an important determinant of financial development.
2. The quality of investor protection is intimately related to the origin of commercial laws, and common law-based countries are better than civil law-based countries at protecting investors.
3. Enforcement of the law is a key factor.

Legal systems that require more steps to start a business are less hospitable to development than those that expedite business startups, Shleifer said. In other words, high-regulation

systems and high-intervention legal systems impede financial development more than low-regulation, low-intervention systems.

"Often, even when you see failures, the optimal response is not to do anything."

In the question period following his talk, Shleifer elaborated on how the wealth of a country also can affect the speed of its changes to accommodate financial development. "There is much more legal evolution in rich countries than in developing countries," he explained.

Shleifer's lecture was sponsored by the John M. Olin Center for Law and Economics, which is located at the Law School and headed by Professor Omri Ben-Shahar. The Center also sponsors a series of Law and Economics workshops during each term, and supports several fellows each academic year.

Andrei Shleifer chats with, from left, U-M Business Economics Professor James R. Hines Jr. and Law Professors Richard Friedman and Merritt Fox after delivering the John M. Olin Lecture in Law and Economics early in the fall. Fox is a member of the advisory committee for the Law School's John M. Olin Center for Law and Economics.



A glimmer of light

The past century "has given moral relativism its longest run in western history," according to the author of a recent book on Oliver Wendell Holmes. But that run may be ending as emotive and cognitive approaches to truth are reuniting to fuel "a wholistic process of understanding" and "a resurgence of moral realism," said the speaker, Albert W. Alschuler, the Wilson-Dickinson Professor at the University of Chicago Law School.

"What makes this system just?" asked Alschuler. "Does even this homocentric system require some external justification?"

The talk by Alschuler, author of *Law Without Values: The Life, Work, and Legacy of Justice Holmes* (University of Chicago Press, 2001), was the first in the lecture series presented this academic year by the Christian Legal Society.

Alschuler decried the moral skepticism that he believes marked 20th century jurisprudence. Ideas that there is good and there is bad "seem to be off the table," he said.

But "I do believe that things are now changing. I see a resurgence of moral realism. Lawyers of our new century may develop a new awareness of their natural law heritage."

The unique U.S. Constitution

The U.S. Constitution unites the different peoples who make up the American citizenry, so “there is a particular duty to understand how valuable and important the Constitution is,” according to a judge of the U.S. Court of Federal Claims.

“We’re a people made up of every other group” and “committed to a common set of values,” Judge Loren A. Smith explained during a program last fall sponsored by the Federalist Society for Public Policy Studies.

There are three principle bases for our Constitution, Smith said:

- Federalism, which “keeps issues in a manageable form.”
- Economic liberty, which is “inescapable in any politically free society.”
- The common law tradition that places special responsibility on the lawyer.

“What gives the law its dignity and its majesty is that lawyers and judges are seeking to make concrete the rules that society has agreed on,” explained Smith, who also teaches at the law schools of Catholic University and George Mason University. “Judges have a very important responsibility in maintaining the Constitution as the framers have written it.”

EYES ON THE WORLD

No one questions that 9/11, as the infamous terrorist attack on New York and Washington, D.C., has come to be known, has etched its indelible mark on international law. It is one more entry among the ever-growing number that make up the pattern of international legal activity. Take a glance at the lineup of speakers for the fall term of the Law School’s International Law Workshop and you immediately see the breadth and pervasiveness of international legal issues and the unmistakable new presence of 9/11-generated issues among them.

From talks on global critical race feminism and the trial of Slobodan Milosevic to how U.S. companies manage compliance with U.S. law by foreign subsidiaries, the series’ speakers ranged over a wide area of subjects. Each term during the academic year the workshop presents programs on “today’s most debated issues in international and comparative law.” Coordinated by Professors James C. Hathaway, Daniel Halberstam, Robert Howse, Merritt Fox, and Assistant Dean Virginia Gordan, each weekly program includes a talk by a world-renowned expert, response by a Law School faculty member, and a question-answer period in which members of the audience — students and faculty members alike — marshal their own knowledge and experience to query the speaker.

A capsulation of the fall term presentations:

- **Adrien Katherine Wing**, Bessie D. Dutton Murray Professor at the University of Iowa College of Law and a visiting professor at the University of Michigan Law School, “Global Critical Race Feminism: Islam and Women’s Rights a Year after 9/11.” U.S. anti-terrorist response has “essentialized all

Muslims” by acting as if all people in this group are potential suspects and denying the variety of philosophies, perspectives, roles, and other characteristics that exist within the group, according to Wing. “To focus on just two things, race and gender, is too narrow for how oppression exists. . . . Globally, you have to look at many identities. I call this global multiplicative identity (gender, sex, religion, marital status, age, geographic identity, etc.). I’m trying to look at the intersection of all these identities.”

- **Elizabeth Anderson**, executive director of Human Rights Watch, Europe and Central Asia Division, “The Trial of Slobodan Milosevic: Courtroom or Carnival?” The special tribunal for trying crimes in the former Yugoslavia is threading its way between its adjudicatory role and its pedagogical function, Anderson said. Allowing Milosevic to defend himself lets him entertain and play to his home audiences, but it also fulfills a requirement of fair trial. This and other procedural moves by the court guarantee the possibility of Milosevic’s acquittal, according to Andersen. “I would argue that this actually is cementing the court’s long-term legitimacy.”

- **Joanne Scott**, reader in European Union Law, University of Cambridge and Fellow of Clare College, Cambridge, and visiting professor at Columbia Law School, “European Regulation of Genetically Modified Organisms and the WTO.” There are “great differences among the countries of the European Union” on the issue of genetically modified food, she said, but there also is “a perceived need for a



Debra Steger, '79, LL.M. '83, addresses the International Law Workshop. Formerly chief counsel with the Appellate Body of the World Trade Organization, Steger now is senior counsel with Thomas & Partners in Ottawa, Canada.

centralized European response because 10 years of a non-centralized response haven't worked."

- **Sarah Cleveland**, professor, University of Texas School of Law, "Powers Inherent in Sovereignty: Indians, Aliens, Territories, and the Nineteenth-Century Origins of Plenary Power over Foreign Affairs." The idea that the United States has extra-constitutional powers over foreign relations that are part of its status as a sovereign nation, voiced by the U.S. Supreme Court in *United States v Curtiss-Wright* in 1936, arose in the setting of the Gilded Age and continues in effect. For example, the doctrine supports detention of suspected enemy aliens at the U.S. Naval Base at Guantanamo Bay, Cuba.
- **Günther Handl**, Eberhard Deutsch Professor of Public International Law at Tulane University Law School and a visiting professor at the U-M Law School, "Serious Environmental Degradation as a Violation of the Human Right to Life: Some Reflections on *Rodolfo v Southern Peruvian Copper Company*." Handl criticized last summer's decision by the U.S. District Court for the Southern District of New York to dismiss the Alien Tort Claims Act (ATCA) lawsuit filed by Peruvian plaintiffs charging that Southern Peru Copper Corporation activities subjected them to pollution that caused harm to life, health, and sustainable development. Senior Judge Charles S. Haight ruled that plaintiffs could not establish any violation of "well-established rules of customary international law." Said Handle: "You have to adjust human rights treaties to the exigencies of modern life."
- **Debra Steger**, '79, LL.M., '83, senior counsel, Thomas & Partners, Ottawa, Canada, and former general counsel to the Appellate Body of the World Trade

Organization (WTO), "The Struggle for Legitimacy in the WTO." Issues of openness and democracy are very real within the WTO, but the organization is "in a stage of evolution" that seems to be leading it in the direction of greater transparency and democracy, Steger said.

- **Kerry Rittich**, assistant professor, Faculty of Law/Women's Studies, University of Toronto, "Engendering Development: Gender Justice and the International Financial Institutions." The World Bank's recent policy research report *Engendering Development — Through Gender Equality in Rights, Resources, and Voice*, "is unabashedly enthusiastic about market forces eliminating discrimination," said Rittich, who criticized the report for failing to consider wage and poverty levels. "I want to suggest that at its heart the bank's report subordinates gender equality to economic growth," she noted.
- **John Yoo**, deputy assistant attorney general, Office of Legal Counsel, U.S. Department of Justice, and professor of law, Boalt Hall School of Law, University of California-Berkeley, "The War on Terrorism and International Law." Posing the questions "What legal regime applies to terrorism?" and "What questions does it raise?", Yoo outlined how waging war against terrorism differs from treating it as a crime; the implications of this choice, such as the issue of whether the Geneva Conventions apply; the status of the Taliban and Al-Qaeda combatants; and questions for the future like how to handle trials, how long to detain combatants, and use of information that has been gathered. "The hardest question with terrorism [is]: When is the conflict over?" he said. "You can hold combatants until the conflict is over, but what of terrorists? How do you arrange a peace treaty with Al-Qaeda?"

U.S. Supreme Court will hear Law School admissions case

The Law School's admissions suit, *Grutter v Bollinger*, will be heard before the U.S. Supreme Court this spring and a decision is expected later this year. The Court granted *certiorari* to hear the case in early December.

Law School admissions policies were upheld by the U.S. Appeals Court for the Sixth Circuit last spring after being declared illegal by the U.S. District Court for the Eastern District of Michigan early last year.

(See story on page 22 for other issues the Court is hearing this term.)

The class of 2005

Here is a statistical snapshot of this year's entering class:

- Number: 352
- Mean age: 24
- In-state residents: 27 percent
- Women: 42 percent
- Minorities: 24 percent
- Colleges and Universities represented: 132

And here is a snapshot of this year's LL.M. candidates:

- Number: 37
- Women: 38 percent

These students come from all around the world:

- Western Europe: 8
- Eastern Europe: 3
- Japan: 6
- China: 3
- New Zealand: 2
- Pacific Rim (other than New Zealand): 5
- Latin America: 5
- Israel: 3
- Africa: 2

Source: U-M Law School Office of Admissions

Issues facing the U.S. Supreme Court

The U.S. Supreme Court, now in its eighth year of unchanged membership, may be expected to continue its shift toward a federalism of decreased central government powers during its current term, three law professors predicted during a preview of the term held at the Law School in early October.

The panelists — Law School professors Roderick M. Hills Jr. and Richard Primus, and Brian C. Kalt of the Detroit College of Law at Michigan State University — appeared in a program co-sponsored by the American Constitution Society and The Federalist Society for Law and Policy Studies.

Primus said *Nevada Department of Human Resources v William Hibbs, et al.*, which involves the Family and Medical Leave Act, is the most recent in the line of cases to consider Congress' power to regulate beyond the limits of Section 5 of the Fourteenth Amendment. Primus noted that the Court previously has constrained this power in cases involving the Age Discrimination Act, Violence Against Women Act, and Americans with Disabilities Act.

"There has been a contraction of power beyond the Fourteenth Amendment," he said, so there would be no surprise if the trend continues with this case. He added that although the Court has outlined its "congruent and proportional" principle to measure what that limit should be, it has not set a bright line boundary.

Hills focused on the Washington State case of *Pierce County v Guillen, et al.*, which centers on congressional action that prohibits the use of data gathered for federally aided highway safety

improvement as evidence in state or federal courts, raises questions of whether Congress can create a situation that exempts a state-created jurisdiction — the county — from the control of the state that created it. To put it simply, Hills said, can state authority be commandeered by federal regulations?

Kalt said highlights from the docket divide into "three main topics" — sex offender registration, the "three strikes" law, and tort reform — "and four smaller topics" — the death penalty, abortion, alien detention and bail, and cross burning. He outlined the "main topics":

- On registration, the Alaska case of *Delbert W. Smith and Bruce M. Botelho v John Doe I, et al.*, centers on the Constitution's *ex post facto* clause and asks if sex offenders whose crimes were committed and sentences served before enactment of the Sex Offender Registration Act can be included in the public registration. *Connecticut Department of Public Safety v John Doe, et al.*, which centers on the Fourteenth Amendment and the Due Process clause, asks if sex offenders can be publicly listed without a hearing to determine their dangerousness.
- Concerning the Three Strikes Law, *Gary Albert Ewing v California* and *Bill Lockyer, Attorney General of California v Leandro Andrade*, raise Eighth Amendment and cruel and unusual punishment issues. Together, the cases consider the constitutionality of the law as well as the narrow question of whether the 25-



The Supreme Court may use its measure of what is "congruent and proportional" to limit the Family and Medical Leave Act, Assistant Professor Richard Primus predicts during a preview of the current U.S. Supreme Court term. With Primus in the program last fall were, left, Brian C. Kalt, an assistant professor at Detroit College of Law at Michigan State University, and Law School Professor Roderick M. Hills Jr.

to-life sentence requirement for a third conviction can be applied when the third conviction is for petty theft.

- In tort reform, *Norfolk & Western Railway Company v Freeman Ayers, et al.*, considers the question of awarding emotional distress damages under the Federal Employers' Liability Act to retired employees who allege workplace exposure to asbestos but show no physical signs of injury. And the Utah case of *State Farm Mutual Auto v Campbell, Curtis, et ux.*, which involves BMW and its Alabama manufacturing facility, considers the question of whether the Constitution allows a state court to impose and inflate punitive damages based on the defendant's out-of-state conduct or its worldwide wealth and profits.

(This preview of the Supreme Court term was presented before the Court announced it would hear the Law School admission case. See Story on page 21.)

Students win woman's freedom

After being behind bars for a decade, Kyleen Hargrave-Thomas stepped out of prison last fall into the arms of her family, thanks to several years of work on her behalf by Law School Clinic students and faculty.

At deadline time, Hargrave-Thomas still faced a new trial, and her release had been appealed, but she was savoring a freedom won for her by a total of nearly



Bridget McCormack

20 law students who worked on her case for approximately five years. When some students graduated, others took on the case and continued to press it. Clinic students will continue to handle her case in the future.

Hargrave-Thomas had been imprisoned since 1992, when she was convicted and sentenced to life without parole for killing her then-boyfriend after a bench trial in which her attorney called no witnesses. Hargrave-Thomas had never before been arrested or accused of any crime and was a working single mother of two boys. "The students who worked on the case over the years turned up evidence and police reports that had not been previously provided to our client, and which

indicated that she did not commit the crime," explained Clinical Assistant Professor of Law Bridget McCormack, who has been supervising the students on the case.

"For example, we discovered that a man who had been stalking our client at the time of the crime had failed a polygraph test in connection with the case. The clinic also found evidence that her trial attorneys had not provided her with effective assistance."

McCormack continued: "The federal court judge who heard the *habeas* action gave us broad discovery — we did about 30 depositions last year and held an evidentiary hearing on our claims of ineffective assistance of counsel and the state's failure to provide exculpatory evidence.

"At the end of the hearing, Judge Gadola [the Hon. Paul V. Gadola, '53, of the U.S. District Court for the Eastern District of Michigan] issued an opinion granting the writ of *habeas corpus* and ordering a new trial because our client had not been provided with effective assistance of counsel.

"Shortly after that, he granted our motion for bond and our client was released from prison to the very excited greeting of about 30 family members, including her elderly parents, six brothers and sisters, two now-grown sons, and one grandson."

The State of Michigan has appealed the order to the U.S. Court of Appeals for the Sixth Circuit at Cincinnati.

Another clinical faculty contributor, Andrea Lyon, is now teaching at DePaul Law School in Chicago, and returns to Ann Arbor each year to direct the Clarence Darrow Death Penalty Defense College at the U-M Law School.

Speaker: 'Asian Americans want to be part of this democracy'

People of Asian descent are facing new pressures as immigration rules and anti-terrorism measures tighten, according to an attorney with the New York-based Asian American Legal Defense and Education Fund. These new difficulties aggravate the ongoing lack of available Asian language translators, sweatshop/workplace abuse, and other issues, Glenn D. Magpantay told a Law School audience in a program in October. His talk was sponsored by the Asian Pacific American Law Students Association.

Magpantay criticized the use of indefinite detention without due process and lack of public hearings that have marked some anti-terrorism work. "When I learned criminal law there were certain things that the state couldn't do, there were protections," he said. But "the [U.S.A.] Patriot Act guts many of these protections." In addition, "so many of our clients are facing deportation. They were swept up in the anti-terrorism [efforts]."

At the same time, he continued, "Asian Americans have grown as a political force. Asian Americans want to be part of this democracy, but all too often they are neglected."



COMMENCING

TO BE THE COMPLETE LAWYER

Intellectual as well as empathetic skills characterize the best lawyers, speakers told Law School graduates at commencement ceremonies in December. So do self-knowledge and the wisdom sometimes to counsel inaction.

A large crowd of family members, spouses, friends, and other supporters filled the Michigan Theater for ceremonies marking the completion of Law school for the December graduates. Cheers, whistles, and camera flashes greeted many of the more than 70 graduates listed on the program as they were installed with the hoods of their academic regalia and walked across the stage to receive congratulations from Dean Jeffrey S. Lehman, '81.

"Your legal education has been punctuated by a series of extraordinary events," Lehman told graduates in his commencement remarks: the case challenging Law School policies that use race as one of many factors that go into admissions decisions — a case that will be heard by the U.S. Supreme Court this spring; the 2000 presidential race that eventually went to the U.S. Supreme Court to be decided; and the terrorist attacks of September 11, 2001.

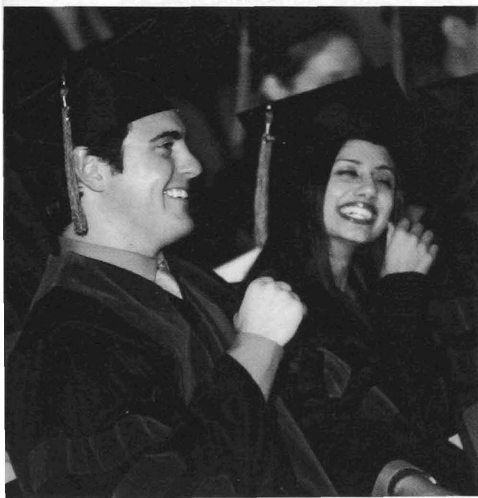
Lehman also told graduates that the Law School has taught each of them to hold two competing perspectives in their head simultaneously — the intellectual exercise called sympathetic engagement with counterargument — and also has instilled the emotional components of compassion and empathy. Together, these intellectual and emotional properties are components of the great lawyer.

Solid judgment and good counsel also characterize the good lawyer and sometimes this means advising that legal action may not be the best action to take, Associate Dean for Academic Affairs Evan Caminker told graduates in his commencement address. Having the legal right to keep loaded weapons around your home does not mean that it is wise to exercise that right, Caminker said. "My point here: there will be occasions when you should tell your client: 'You might have a non-frivolous claim, maybe even a persuasive one — but just let it go. . . .'"

"Lawyers are frequently asked to be arbiters of the law. But lawyers are 'counselors' as well, and we would all be better off if more lawyers counseled their clients to follow common sense, rather than just calculating their contingency fees."

Caminker also noted that graduates must seek what satisfies them — and not fear making the changes that may make this possible. "First, you can always change your situation and your surroundings," he explained. "Many of you currently have a pretty good idea of what you want to do professionally, and either have a job lined up or have job prospects that fit that vision. You hope that your first job will also be your last — you'll absolutely love it, and never want to leave. Maybe.

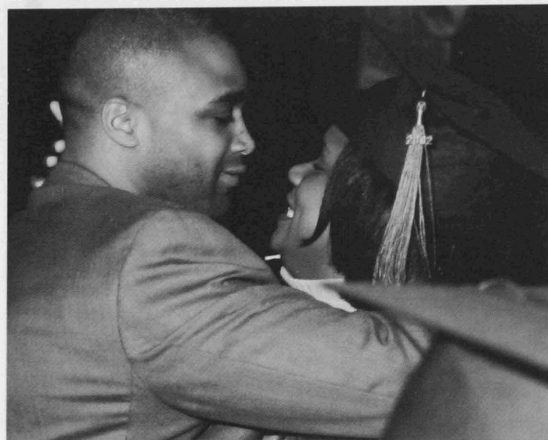
"But, frankly, for many of you this is a bit unrealistic. Some of you will find that the job — or perhaps the city — does not live up to your expectations. But for some of you it might feel like an admission of failure, or a badge of dishonor, to quit your job. That, in my view, is a mistake.



Jason Osborn, Amy Parekh



From left,
Charles Marchand,
Katy Logan, Pyper Logan,
and Katherine Locker



Anthony Thomas,
Felicia Brooks

There's no reason for you to feel wedded to your first choice just because it was your first choice. If a job isn't right for you, it's OK to look for another one that is."

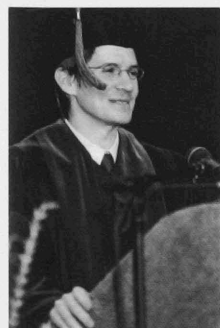
"More broadly," he continued, "not only can you change where you work, but it's also OK to change your priorities in life. Comedienne Lily Tomlin once said: 'When I was young, I wanted to grow up to be somebody. But now I realize I should have been more specific.'

"Well, it's never too late to be more specific, to develop new dreams and aspirations. Some of you will switch careers entirely, perhaps leaving law practice and going into politics, or business. Some of you will choose to de-emphasize professional goals somewhat, in order to raise a family, or to focus on improving your local community.

"If you recognize today that nothing about your life or career is set in stone, you might feel more free to explore, with

both your eyes and heart, all of the various paths available, and to stroll down the ones that are right for you."

Other speakers on the program included Law School Student Senate President Maren R. Norton



David R. Mullé

and graduate David Richard Mullé, who was chosen by his fellow graduates to address them.



From left, Margaret Frost, Anne Frost (mother of grad), Catherine Frost, Carey Frost (spouse of grad), Elinor Frost, and John Frost (grad)



Na Na Park,
Neha Lail

THE LAW SCHOOL'S NEW (*virtual*) LOOK

The sprightly look of the Law School's redesigned Web site (www.law.umich.edu) is just the beginning. The site also features greater functionality, easier navigation, a dynamic panel for news and bulletins, and other new features. And it's quicker to download and easier to print.

A Web site should be attractive, filled with useful information, and easy to use, according to Brent Futrell, the Law School designer who fashioned the Web site's new, leaner look and functionality. (Futrell also did the re-design of *Law Quadrangle Notes* that you're holding in your hand.)

That's a tall order, and Futrell, Law School Communications Director/Web Architect Lisa Mitchell-Yellin, Web Producer Dolfin Leung, and others spent a great deal of time researching how to meet those demands. They also listened to comments from users of the previous Web site to design and develop the new package.

Each time you visit the Home Page — or many of the site's subject sections, like Prospective Students or Alumni & Development — you're greeted by a different, randomly generated photo. Moving through the site is easy and straightforward, with navigation destinations always on your left and at the top of your screen. Direct mouse-click travel from and to nearly any part of the site is possible from most anywhere else within it, thanks to the new global navigation capabilities.

No longer must you check back in at Home to go from one interior tier to another, from Alumni & Development to Journals & Organizations, for example, or

to or from any of the subsequent tiers that are incorporated into them. The navigation aids on the left side and top of the screen remain the same as you surf through the site, so you've got the identical menu options you had on the Home Page.

"It was time to update the site," explained Mitchell-Yellin. "The former one had been up for nearly two and one-half years, and technology has changed since then. By using stylesheets, we've created a unity in the overall look across platforms and browsers, but each of the sections, like Career Services or Faculty & Curriculum, also are tailored to the special needs and information of that subject area."

A convenient new feature of the site is the dynamic space at the right side of each screen that can be used for updated deadlines, news items, calendars, and other notices that change frequently. For example, this panel on the Home Page provided the perfect spot for posting the November 15 Early Decision deadline for J.D. applicants. In early December, it was used effectively to report the U.S. Supreme Court's decision to hear the Law School admissions case and to present the Law School's response to the Court's announcement.

The Law School's Web site is heavily used by prospective students, so the new design was developed, implemented, and launched last fall to coincide with the busiest season of admissions activity. "This can benefit students," said Mitchell-Yellin, "but it also is useful to anyone who's interested in the Law School and its activities. The Office of Career Services pages, for example, include information many practitioners might find helpful. The same is true for tiers devoted to Alumni & Development and many other parts of the site."



The Law School's new Home Page.



Additional menu area at top of page.



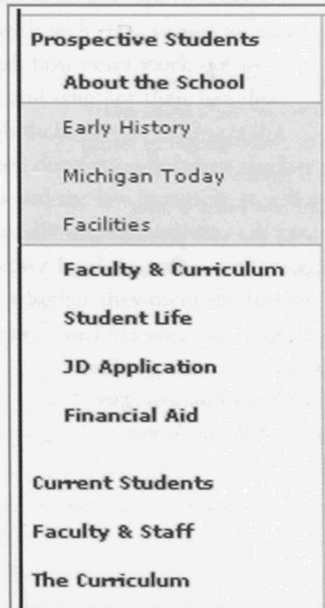
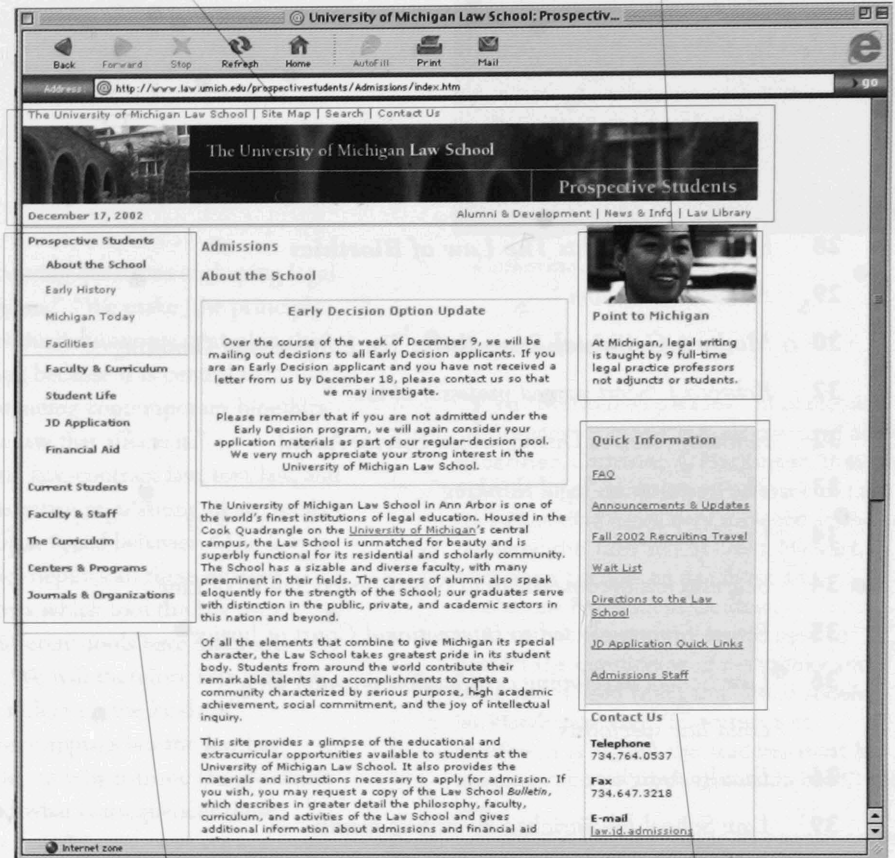
Rotating photos of students.

Some other site features are:

- A site map, or contents list, as part of the Home Page. You just scroll down to it. There's no need to follow any links to the interior of the site to see what sections and subsections it contains.
- A single-click link to contact Web administrators. User comment had significant impact on the design, architecture, and functionality of the new site, and those who developed and administer the site are interested in what users think of it.
- The site is quick to open and navigate, and is useable over an extensive range of computer hardware. It uses HTML (HyperText Markup Language) instead of digital images for many of the sections of each page. HTML requires less computer capacity to access than a comparably sized digital photo.
- A restrained use of color backgrounds accompanied by richly colored photographs creates a contemporary, yet classically elegant, look. This efficient use of computer capacity also makes it quicker to print pages and eliminates the need to switch to a "print friendly version."

Futrell, Mitchell-Yellin, and Leung work together and with the Law School's Information Technology staff to keep the site up to date. They also work with department leaders and others throughout the Law School to tailor each section of the site to that department's special needs while retaining the unifying look and logical functionality and organization of the overall site.

We hope you like the site's new look and enjoy navigating through it. Now, start those mice clicking. . . .



Prospective Students includes About the School, Early History and other sub-sections, and is easy to track and navigate.



This dynamic panel provides space for quick information, links, announcements, events, and other timely items.

IN DETAIL

- 28 *Schneider spotlights **The Law of Bioethics***
- 29 *Academic Freedom*
- 30 ***Modern Criminal Procedure: Ten Editions and Counting***
- 32 *Rebecca J. Scott named professor of law*
- 32 *Kennedy receives Distinguished Service Award*
- 33 *The question of "legal thinking"*
- 34 *Legal Advice*
- 34 *Scarnecchia becomes dean at New Mexico School of Law*
- 35 *Bruno Simma elected to International Court of Justice*
- 36 *Law School developing certification program for child law specialists*
- 36 *Faculty Activities*
- 39 *Law School life enriched by visiting faculty*

Faculty Scholarship 1999-2002 — *Law School faculty members engage in a rich variety of research, and regularly share their scholarly work via journals, books, and other publications. Each year the Law School makes available a bibliography of faculty writings covering a four-year period. In the past, this list has appeared within Law Quadrangle Notes, but the continuing expansion of the list now makes it more practical to print the bibliography as a stand-alone publication. This new publication, Faculty Scholarship 1999-2002, is a compendium of faculty output covering the end of one century and the launch of another.*

Faculty Scholarship 1999-2002 is available without charge to graduates and Law Quadrangle Notes recipients who request a copy. If you wish to receive a copy, please contact Barbara Gregg in the Law School's Development and Alumni Relations office. The telephone number is 734.615.4505; e-mail is bldgregg@umich.edu. To mail a request, please write:

*Faculty Scholarship 1999-2002
c/o Barbara Gregg
U-M Law School Development and Alumni Relations
721 South State Street
Ann Arbor, Michigan 48104-3071*

Schneider spotlights *The Law of Bioethics*

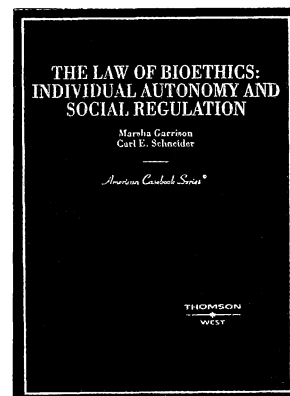
Sometimes, if you're lucky, you can feel the slow pulse of the law. You know then that law is a living thing that grows and changes even as it strives to endure.

For teachers of the law, this understanding means recognizing the right time to bring together the until-now disparate pieces that fuse into a specialty, a new field of law. Ten editions ago, in the mid-1960s, Professor Yale Kamisar and his co-author made this kind of leap when they brought out the casebook that moved criminal procedure out of constitutional law to stand on its own. (See story on page 30.)

A year ago, Catharine A. MacKinnon, the Elizabeth A. Long Professor of Law, did the same with her pioneering casebook *Sexual Equality*. This academic year it's Professor Carl E. Schneider, '79, (with co-author Marsha Garrison) who has solidified the field of law and bioethics by launching a casebook that brings together the legal questions, issues, and strands that have been moving in this inevitable direction. Schneider is the Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law and Professor of Internal Medicine.

"Such a casebook is now urgently necessary because 'law and bioethics' has come into its own as a subject but has not been blessed with casebooks of its own," Schneider wrote to West Publishing to propose the groundbreaking casebook.

West's officials agreed and late last fall published *The Law of Bioethics: Individual Autonomy and Social Regulation*, by Schneider and Marsha Garrison, a law professor at





Brooklyn Law School. The field of bioethics is now several decades old, and the law of bioethics has proliferated at an accelerating rate. Schneider and Garrison's just-published casebook reflects between its covers the legal impact of medicine and technology in a way that illuminates the legal issues by portraying them within the context that breeds them. Thus, the casebook broadens the law student's perspective (and the legal scholar's) while being instructive to non-lawyers.

To Schneider, bioethics "is an expanding field of inquiry that is now generally recognized as a discipline in its own right and that attracts widespread attention and interest. The core issues with which bioethics is concerned — patients' decisions, end-of-life care, reproductive and genetic technology — are critical aspects of medical practice. They are also issues with which legislatures and courts are more and more concerned. New scientific developments, such as the advent of cloning technology, continue to swell the field of inquiry and to present fresh and fertile legal problems."

That is why *The Law of Bioethics* casts a wide net. It includes not just cases and statutes, but also patients' accounts of their illnesses, physicians' reports of encounters with patients, ethicists' reflections, sociologists' investigations, and psychologists' studies.

• You're told in the Preface that this cutting-edge casebook emphasizes three themes to help budding lawyers think systematically "about some of the recurring substantive issues in governance through law and some of

the recurring questions in shaping legal institutions." "We make [the principle of individual] autonomy central in this casebook because it is central to understanding contemporary bioethics and the law that affects it."

- Criminal law, contract law, tort law, and administrative regulations all are used to regulate social behavior. "The law of bioethics deploys all these devices. . . . It matters which tool the law uses, since different tools have different effects. We will therefore regularly ask you to reflect on the kinds of regulatory approaches the law has available, on why it made the choices it did, and what consequences those choices have."
- Law "is more than a pleasing system of rules. Law is an attempt to make the world work well. This means we must always ask how rules work out in practice and whether their benefits outweigh their costs. . . . This is the celebrated distinction between the law in books and the law in action. It will be repeatedly our reminder to ask not just whether legal doctrines are logical, but also whether they meet the test of experience."



Catharine A. MacKinnon

Academic Freedom

The "overlooked paradox" of academic freedom is that it is both overused and underused, Catharine A. MacKinnon, the Law School's Elizabeth A. Long Professor of Law, told a standing room only audience as she delivered the 12th annual Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom in October.

Academic freedom seldom is used to protect the questioning of orthodoxy and often is not used when and how it should be, MacKinnon said. "To preserve its freedom, it is argued, the academy must be unaccountable to anything outside itself," she said.

Academic freedom began as opposition to power and now sometimes is used to abuse power, as in cases where it is used to defend teachers against a student's charge of harassment, she explained. "Our challenge is to re-shape academic freedom, to extend it to people who need it and would use it and have been kept out of it for so long, and to re-claim it for those who would use it as it was intended to be used."

The annual lecture commemorates three University of Michigan faculty members who lost their positions during the 1950s because they refused to cooperate with federal investigators who were probing the extent of Communist activity in the United States.

Lecture sponsors include the University of Michigan-Ann Arbor Chapter of the American Association of University Professors, the Law School, the U-M Senate Advisory Committee on University Affairs (a faculty group), and the University of Michigan Office of the President.

MODERN CRIMINAL PROCEDURE *Ten Editions and Counting*

Yale Kamisar loves the story:

It's summer 1965, 1:30 a.m. on a Sunday morning, and the light in his office still is burning as he hustles to complete the first edition of his casebook *Modern Criminal Procedure*. He's hurrying to incorporate the latest Supreme Court cases into the pioneering casebook. He's also just joined the Law School faculty, after teaching at the University of Minnesota, and his wife and three children have not yet moved here from Minneapolis.

"I was living in the Law Quad with the students, and I was working long hours on the first edition," he recalls.

Below, law students returning from their own late night's "work," tossed good-natured jibes at the lighted office: "We know you're not there, Kamisar. Who are you trying to kid?"

The Clarence Darrow Distinguished University Professor of Law grins as he recalls their surprise: He threw open his window and shouted down, "Would you tone it down? I'm trying to get some work done up here." (Kamisar says he remembers the names of the students and will supply them upon request.)

No one has questioned Kamisar's capacity for work since. Nor has anyone questioned the major role that 10 editions of *Modern Criminal Procedure* have played in American legal education in the nearly 40 years since the casebook appeared.

Originally, the book was the work of Kamisar and Livingston Hall of Harvard; Wayne R. LaFare of Illinois University and a young Michigan Law School professor named Jerold H. Israel joined the author's

list with the third edition. (Hall, who was nearing retirement, dropped off the book after that.) Nancy J. King, '88, of Vanderbilt University Law School, became a co-author beginning with the ninth edition.

The third edition, recalled Kamisar, turned out to be almost twice as long as the previous edition and contained 11 new chapters. "Thanks to LaFare and Israel," noted Kamisar, "the casebook was transformed from one that dealt with selected topics in criminal procedure to a truly comprehensive criminal procedure book. I kept right to counsel and police interrogation and confessions (my first love), but Wayne took over the search and seizure — a huge chapter."

"LaFare," observed Kamisar, "is also the sole author of three editions of far and away the greatest treatise ever written on search and seizure." He also has a deep interest in such topics as police and prosecutorial discretion, and he added chapters to the casebook on these topics as well.

Israel is an expert on the nature and scope of due process, Supreme Court practice and methodology, *habeas corpus*, the grand jury, double jeopardy, and discovery and other aspects of pre-trial practice. He took over, or, in most cases, added new chapters treating these subjects. Several editions later, King took over the *habeas corpus* chapter from Israel. She is greatly interested in, and has written extensively about, sentencing and the role of the jury and criminal trials generally, so she made important contributions to these areas.

The tenth edition appeared in June

2002 and the authors already are planning the 11th. A mainstay of law schools across the country — and a reference book in many judges' chambers — *Modern Criminal Procedure* has spawned a host of imitations and spin-offs while evolving to remain abreast of developments and teaching practices.

"For decades, it has been an extremely popular book," reported Louis Higgins, acquisition editor with West Publishing. *Modern Criminal Procedure* "has stood up very nicely" against increased competition in the field, he noted.

Higgins added that it is rare for a writer to stay as active with a casebook as Kamisar has. "I think it's very uncommon for an author to be on it at the outset and stay on the book in more than name only for as many as 10 editions. Kamisar's been very much involved since its inception. He's very much on top of it."

Back in the 1960s, criminal procedure was taught as part of courses in evidence and constitutional law. "I had just co-authored a casebook on constitutional law in 1964, and I said to West [Publishing] that there were no teaching materials just on criminal procedure," Kamisar explained. West responded by printing the first edition of *Modern Criminal Procedure* in 1965. Designed for use in a seminar or short course, the book dealt with due process, right to counsel, search and seizure, police interrogation and confessions, double jeopardy, and "trial by newspaper" — and TV. "That sold about 500 copies, and I was pretty discouraged," Kamisar recalled.

"Then came *Miranda*. The Supreme Court's decision caught the public's attention, injected suspects' rights into practices of interrogation and confession

At top right, Jerold H. Israel, the Alene and Allan F. Smith Professor of Law Emeritus, and Yale Kamisar, Clarence Darrow Distinguished University Professor of Law, are shown with the editions of their casebook *Modern Criminal Procedure*. The U-M law professors have worked together on eight of the casebook's 10 editions. In the bottom photo, Israel and Kamisar are shown as they began working together during the 1960s on the third edition of the casebook. Israel also is the Ed Rood Eminent Scholar in Trial Advocacy and Procedure at the University of Florida College of Law; Kamisar also is Professor of Law at the University of San Diego.



gathering, and revolutionized the legal education curriculum. It established criminal procedure as a field of teaching and scholarship — and drove Kamisar to “seven days and nights a week” of work to incorporate *Miranda* and the ripples spreading from the decision into the second edition. The first year of its publication, the post-*Miranda* edition sold more than 10,000 copies.

“We were developing new teaching materials on criminal procedure,” Kamisar explained. He and Hall included extracts from government reports, scholarly articles, the briefs in *Escobedo*, the oral arguments in *Miranda*, and other documents. The second edition’s 800 pages more than doubled the size of its predecessor. *Modern Criminal Procedure* eventually reached 1,700 pages, and in recent editions its authors have been struggling to decide what to leave out in order to contain its size.

Although the tenth edition was nearly 30 pages shorter than its predecessor, “this is still (and we have ‘probable cause’ to believe always will be) a big book,” the authors note in their Preface.

“This is so,” they continue in the Preface, “because we have taken pains to set forth the views of all the justices in the leading cases; because we believe that often the student should see the subsequently overruled or distinguished opinion ‘in the original’ rather than rely on the overruling and distinguishing case’s version of the earlier opinion; because we have retained older cases which contribute significantly to an understanding of new trends and developments; because we have covered significant non-constitutional issues, as well as traditional constitutional

matters; because, in treating non-constitutional issues, we have looked to state law (with its frequent variations) as well as federal law; and because, at many places, we have sought to enrich the case materials with authors’ notes and questions or extracts from illuminating and stimulating books, reports, articles, model codes, and proposed standards.”

Modern Criminal Procedure is rare among casebooks for its inclusion of discussion materials and questions. Israel, for one, says that this is what makes the book more fun to write than others. “This is a way of inserting ideas — our ideas,” he laughs. Besides, “we don’t have to answer the questions.”

The casebook’s content also has varied over the editions as the authors included emerging ideas and contracted sections on receding events. In two editions, for example, there were chapters on criminal procedure in a time of civil disorders, a reflection of the disruptions that marked the 1960s. Little new law emerged from the issue, however, so the sections were dropped.

“Now,” Kamisar notes, “we’re thinking of adding a chapter on the administration of justice in times of terrorism.” The Enron and WorldCom scandals also are providing fodder for expansion.

A strongpoint of *Modern Criminal Procedure* is its astonishingly comprehensive index (40 double-column, small print pages), which Israel compiles. It’s a solid two-week job to do the index, Israel reports. He tries to list entries under a variety of headings to make them easier to find. Cases, for example, are indexed

under their popular names — the “Stomach Pumping Case” and the “Christian Burial Speech Case” — as well as their official titles. “Bugging” cross-references with “Surveillance,” and both cross reference with “Tapping” and “Wiretapping.”

“Jerry is a perfectionist,” Kamisar says of Israel. “He’s absolutely compulsive. The trick is to think of every way you can list items.”

For Israel, joining *Modern Criminal Procedure* “shaped my career. I got into it basically because I was here. And then I wound up moving into the area, giving up Constitutional Law, and teaching Criminal Procedure.”

He added that he is especially gratified to have Nancy King, ’88, join him, Kamisar, and LaFave on the casebook because she was his student here at the Law School and also worked for him as a research assistant.

Rebecca J. Scott named professor of law

The Law School is known worldwide for its interdisciplinary capabilities and the ability of its faculty to cross specialty lines to illuminate the nature of the law. In doing so, they further the understanding of how law affects other aspects of life as well as how those aspects affect law.

Historian Rebecca J. Scott is solidly in this tradition, shedding light on the law as she approaches it from the vantage point of the past. Scott, the Frederick G. L. Huetwell Professor of History at the University of Michigan, joined the law faculty in September as professor. She



previously had been a Sunderland Fellow in residence at the Law School and has taught a cross-listed seminar for law and history students called Race and Citizenship in Comparative Historical Perspective: The United States and Cuba.

“In both capacities, she has been a model member of the Law School community, participating and contributing energy and ideas, in ways that uplift all who come in contact with her,” Dean Jeffrey S. Lehman, ’81, and Terrence J. McDonald, interim dean of the U-M’s College of Literature, Science & Arts (LSA), wrote of Scott in recommending her Law School appointment to the Board of Regents. The U-M’s history department is part of LSA.

Scott earned her A.B. *summa cum laude* from Harvard University, a M.Phil. from the London School of Economics, and her Ph.D. from Princeton University. She has been a U-M faculty member since 1992, was the Arthur F. Thurnau Professor from 1994-97 in recognition of her contributions to undergraduate education, and has been the Huetwell Professor since 1995. She was founding director of the Program in Latin American and Caribbean Studies and chaired the U-M History Department from 1996-99.

Scott was honored with a MacArthur Fellowship, an unrestricted cash prize sometimes called “the genius award,” and is a highly regarded scholar of postemancipation societies. She is the author of *Slave Emancipation in Cuba* and co-author of *The Abolition of Slavery and the Aftermath of Emancipation in Brazil and Beyond Slavery: Explorations of Race, Labor, and Citizenship in Postemancipation Societies*. She also is co-editor of the just-published bibliography *Societies After Slavery*. Her recent work deals with voting rights and property relations — a field of inquiry that has led her to draw on the research and collegial resources of the Law School.

Kennedy receives Distinguished Service Award

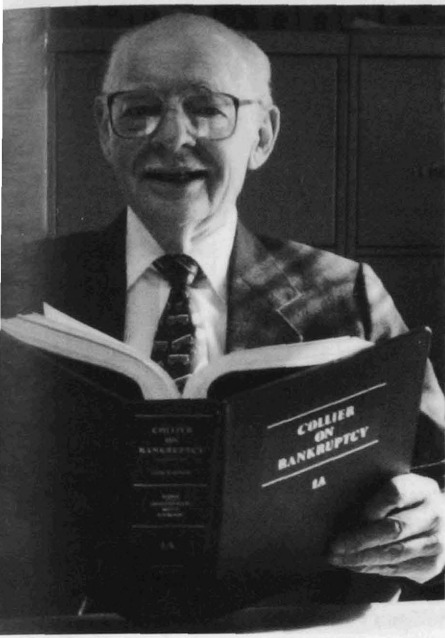
Thomas M. Cooley Professor of Law Emeritus Frank R. Kennedy has been awarded the Distinguished Service Award by the *Bankruptcy Developments Journal*, and last spring’s edition of the *Journal* was a tribute to the longtime University of Michigan faculty member.

When consideration of the Distinguished Service Award recipient began last year, “one individual who can only be described as a true visionary in the field of bankruptcy practice, scholarship, and teaching emerged as the most deserving,” Editor-in-Chief Joseph G. Minias wrote in the Spring 2002 tribute edition.

Kennedy, continued Minias, “has had a profound influence in the field of bankruptcy through his instrumental role as reporter for the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States from 1960-76, which contributed greatly to the Bankruptcy Reform Act of 1978.”

“In addition, the field has felt his influence both through his desire to promote and improve the practice of bankruptcy law, and through his career in education and scholarly writings on the subject of bankruptcy.”

Kennedy taught bankruptcy law and related subjects at the Law School from 1961-84. He previously had taught at the University of Iowa. He has chaired the Drafting Committee of the National Bankruptcy Conference, as well as served as a member of the Executive Committee and secretary. He was appointed executive director of the Commission on Bankruptcy Laws in 1970.



The Hon. William L. Norton Jr., who has served as bankruptcy judge for the U.S. Bankruptcy Court for the Northern District of Georgia, and received the *Journal's* first Distinguished Service Award, had high praise for Kennedy's impact on bankruptcy law. Kennedy is "a national resource for bankruptcy" and "the principal architect of the Bankruptcy Reform Act of 1978," wrote Norton.

To review Kennedy's life, continued Norton, "is to review the growth and development of bankruptcy in the 20th century. . . . He has prepared 160 printed articles, co-authored volumes 4, 4A, and 4B of *Collier on Bankruptcy* (14th ed., 1967), and contributed extensively to other treatises."

Two years ago, the *Bankruptcy Developments Journal* honored Kennedy with its Lifetime Achievement Award. In 2000, he received the Education Award of Matthew Bender and the Endowment for Education Award for Excellence in Education from the National Conference of Bankruptcy Judges. In 1996, he received the American College of Bankruptcy's Distinguished Service Award.

THE QUESTION OF 'LEGAL THINKING'

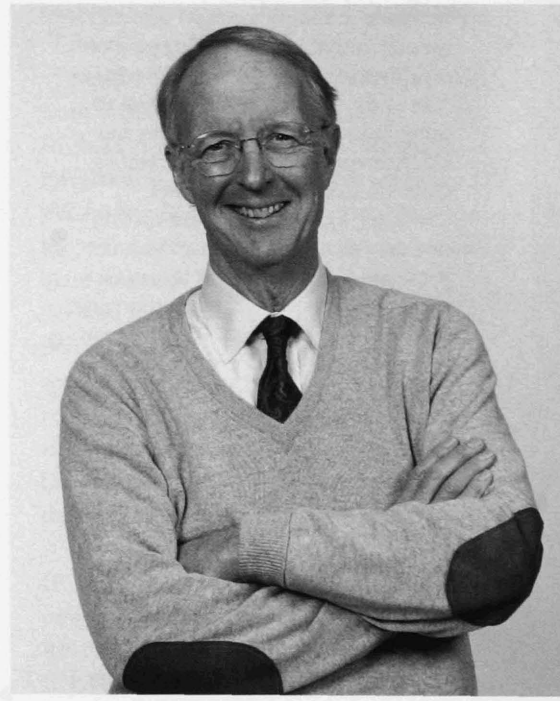
"What is distinctive about legal thinking?"

That's the question that James Boyd White, the L. Hart Wright Collegiate Professor of Law, posed last spring in his remarks at the *Harvard Law Review* symposium "Law, Knowledge, and the Academy." White was a panelist for the symposium, which featured speakers Judge Richard Posner, of the U.S. Court of Appeals for the Seventh Circuit; William Lee, managing partner of Hale & Dorr; and Professor Richard Epstein of the University of Chicago.

To White, "legal thinking" is different from "thinking like a lawyer." He explained: "To put it in a phrase, it is that every actor asked to make a judgment in the law does so in a context in which others — the constitution, the legislature, earlier courts, the parties themselves in their contract — have already spoken to the issue. This means that the lawyer or judge must decide which of these judgments are to be entitled to respect, and how much, and for what reasons; and must also decide what those judgments should be taken to mean in the particular context.

"This kind of work has an inherent discipline that is at once intellectual, ethical, and political in kind. It gives content to the idea of separation of powers. I have some fear that our contemporary focus on matters of theory and policy tends to disregard the actual processes of legal thinking, with all of its special risks and merits. For me, it is a crucial question how we know when this kind of thinking is done well or badly, by lawyer or judge, and by ourselves."

"This is not a merely aesthetic matter," White continued, "but has intellectual and ethical substance: What does it mean, for ourselves and for the world, that we have a profession constructed on these modes of thought and expression? How can we improve, protect, reform what we do? How can we do a good job of giving definition and meaning to our deepest values — autonomy, or liberty, or speech — in the context in which this matters, that of legal dispute and judgment?"



James Boyd White



Evan Caminker

Legal Advice

Evan Caminker, associate dean for academic affairs and professor of law, details the makeup and function of the Office of Legal Counsel (OLC) in the U.S. Justice Department during a lunchtime program last fall. Caminker served as a deputy assistant attorney general with the OLC during part of the Clinton administration. "The basic role of the office is to be counsel to other lawyers" through advising the U.S. Attorney General, White House Counsel, Congress, and others, Caminker explained. For example, in one case that Caminker worked on, President Clinton wanted to use his computer for signing a bill authorizing the signing of contracts via computer, but officials were uncertain about the legality of such action. Asked to research the constitutionality of the proposal, Caminker found that the President's computer signature would be valid but the electronic copy of the law did not satisfy the U.S. Constitution's requirement that the President sign the actual, original copy of the law as Congress passed it. OLC represents the history, tradition, precedent, and future of the office of the presidency, Caminker explained. The White House Counsel, in contrast, works directly with the currently sitting president. The different perspectives create "a healthy tension within the Executive Branch," he said.



SCARNECCHIA BECOMES DEAN AT NEW MEXICO SCHOOL OF LAW

Suellyn Scarnecchia, '81, the Law School's first associate dean for clinical affairs, has become dean of the University of New Mexico School of Law in Albuquerque. She assumed the deanship January 1, replacing Dean Robert Desiderio.

"This opportunity to build on the fine tradition of legal education at the University of New Mexico is a true privilege and I am honored to receive it," Scarnecchia said last spring when she was named dean. She is the UNM School of Law's first woman dean.

"You have made an incalculable difference to all of our lives," Dean Jeffrey S. Lehman, '81, said in remarks at the Law School's farewell dinner for Scarnecchia in December. "I consider you to be the consummate advocate for a cause."

Scarnecchia joined the University of Michigan Law School in 1987 as a clinical assistant professor with the Child Advocacy Clinic. She became a clinical professor of law in 1993, and the same year represented the prospective adoptive parents in the high profile custody dispute over "Baby Jessica." In 1994 she became the clinic coordinator and in 1996 was named the Law School's first associate dean for clinical affairs. Under her leadership, the Law School's clinical programs have gained national recognition for faculty and program excellence.

Most recently, Scarnecchia has been on special assignment to the University of Michigan's Office of the Provost.

Scarnecchia also has been an active member of the University and professional communities. She has been a member of the U-M's Interdisciplinary Research Program on Violence Across the Lifespan and the Campus Safety and Security Committee, and served as chair for the latter. She is a member of the Association of American Law Schools' (AALS) Committee on Sections and the Annual Meeting, AALS' Resource Corps, and has co-chaired AALS' Clinical Section Committee on Dealing with Difference. She also is a past president of the Women Lawyers Association of Michigan.

Scarnecchia earned her bachelor's degree in history from Northwestern University. After graduation from the Law School, she practiced for six years and became a partner with McCroskey, Feldman, Cochrane & Brock in western Michigan. Her practice specialized in employment discrimination litigation on behalf of plaintiffs.

Her research interests include bias in the courts, children's rights, and corporal punishment of children. She has published articles on children's rights and race bias, and, in addition to clinical courses, she has taught Negotiation and a course about civil legal services for the poor called Access to Justice.

Bruno Simma elected to International Court of Justice

Bruno Simma, an Affiliated Overseas Faculty member at the Law School since 1997 and a member of the United Nations International Law Commission since 1996, has been elected a judge of the International Court of Justice (ICJ).

The 15-judge court is the principal judicial organ of the United Nations and sits at the Peace Palace in The Hague. Judges serve nine-year terms, with one-third of the bench elected every three years. Judges are elected by the UN General Assembly and Security Council sitting separately.

The court hears cases submitted to it by countries and also gives advisory opinions on legal questions referred to it by international organizations and agencies.

Simma was nominated to the ICJ by the Permanent Mission of Germany to the United Nations. "Professor Simma is one of the world's most renowned and reputable German experts in international law," the mission said in its nomination. "With his many years of academic and forensic experience in the field of international law, Professor Simma is an outstandingly well-qualified candidate."

The nomination statement continued: "Alongside his role as dean of the Munich University Law Faculty and his work as professor of international law at Munich University and the University of Michigan Law School, Ann Arbor, Professor Simma was a member of several international bodies, including the United Nations Committee on Economic, Social, and Cultural Rights. He has held guest professorships at the universities of The Hague and Sienna, has had power of

attorney presented in cases before the International Court of Justice (ICJ), and is a member of various academic institutions, including the American Society of International Law and the International Law Association. The American Society for International Law honored Professor Simma by awarding him a Certificate of Merit."

Nominators noted the "particular importance" of Simma's membership on the International Law Commission of the United Nations, to which he was elected in 2001.

Simma has been professor of international law and European Community law and director of the Institute of International Law at the University of Munich since 1973, and served as dean of the Munich Faculty of Law from 1995-97. He also is a member of the International Olympic Committee's Court of Arbitration in Sports. A native of the Saar region of Germany, he earned his Doctorate of Law at the University of Innsbruck.

Simma also has a long association with the University of Michigan Law School. Before becoming an Affiliated Overseas Faculty member, he was a visiting professor here in 1986 and 1995, and a professor of law from 1987-92. He is co-founder and co-editor of the *European Journal of International Law*, which holds an annual joint conference with the Law School (see story on page 10).

Simma's affiliation with the Law School gave two law students the opportunity during the summer of 2000 to work with him on a case to be tried before the ICJ. Then-students Joshua A. Brook, '02, and Noah S. Leavitt, '02, worked in Germany with Simma and the team working on *Germany v United States*. The case involved two German nationals who were tried and



executed in Arizona without being informed of their right to assistance from the German Consulate.

Brook and Leavitt flew to The Hague the following spring to hear Simma argue the case before the ICJ. (They wrote of their experiences in the Spring 2001 issue of *Law Quadrangle Notes*.) The Great Hall of Justice "cracked with drama" and the large number of journalists and television cameras attested to "the global significance of the dispute," they reported.

"At the table in front us sat the German team. After a brief introduction by Gerhard Westdickenberg, legal advisor to the German Foreign office, that stressed the abiding friendship and respect between the two countries, Professor Simma began his arguments. Pressing Germany's demand for assurances and guarantees of non-repetition, Simma argued, "an apology may constitute an adequate remedy in isolated cases but it is neither sufficient nor appropriate if illegal conduct has become a consistent pattern, as is unfortunately the case here."

The court agreed, finding that the United States had breached its obligations under the Vienna Convention on Consular Relations and a provisional order issued by ICJ. The court found that U.S. assurance of meeting convention requirements in the future "must be regarded as meeting Germany's request for a general assurance of non-repetition."

Law School developing certification program for child law specialists

Court outcomes for children in abuse and neglect cases are likely to improve through a new federally-funded certification program to assist child welfare lawyers.

The University of Michigan Law School and National Association of Counsel for Children (NACC) are starting this pilot program through a three-year, \$600,000-grant from the U.S. Department of Health and Human Services Children's Bureau.

By improving the level of law practice, children in abuse and neglect proceedings have a better chance at living in safer environments, said Donald N. Duquette, a

clinical professor in the Law School's Child Advocacy Law Clinic and project co-director.

The pilot will operate at Denver-based NACC, while certification exam sites have been tentatively

identified as Michigan, Colorado, New Mexico and the District of Columbia. Accreditation – which would be classified as “juvenile law child welfare” – could come from the American Bar Association by 2004.

Lawyer participation is voluntary, but Duquette said certification incentives range from raising one's status and compensation to seeking non-economic

rewards to be better prepared to handle cases. Certification criteria will include minimum years in the practice, peer review, minimum hours of continuing education, and passing a written exam. The exam – which will include questions about federal and state laws, as well as non-law topics such as child development, dynamics of child abuse and treatment for children and neglectful parents – will be offered in Spring 2004.

Approximately 3 million children are reported abused and neglected each year and many of the cases go into the court system. Research indicates that children are not well served in court, due in part to the failure to place competent and well-trained attorneys in cases representing the child, parent, and child welfare agency. To correct this problem, the new program will measure competence and will certify representatives to the courts and other employers of child welfare legal services.

“Quality legal representation is essential to obtaining good outcomes,” said Marvin Ventrell, NACC executive director and project co-director. “A process dependent on individual advocacy for information will not produce good outcomes for individuals who lack skilled independent legal counsel.

“While this is true for adults in our legal system, it is even more important for children, who are least able to speak for themselves.”

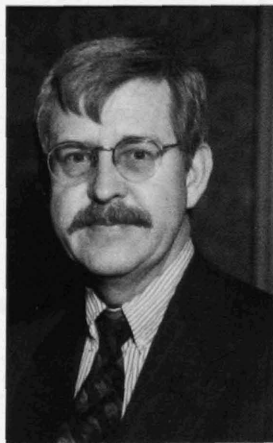
“This is a very exciting program,” Duquette said. “It will do no less than transform this entire area of law and result in a great improvement in the quality of justice for children.”

FACULTY ACTIVITIES

Reuvan S. Avi-Yonah, Irwin I. Cohn Professor of Law, served as panelist for a conference on tax and trade sponsored by the International Tax Policy Forum in Washington, D.C., in December; in November he presented a paper on inversion transactions at the annual meeting of the National Tax Association in Orlando. Last summer, he taught about U.S. corporate tax at the National Accounting Institute in Beijing, delivered a paper on transfer pricing to the State Tax Administration Training Institute in Wuxi, China; taught a course on U.S. international taxation at ITAM in Mexico City; and served as commentator for the American Tax Policy foundation conference on transfer pricing in Washington, D.C.

Assistant Professor **Susanna Blumenthal** presented her paper “The Apprehension of Evil in Nineteenth-Century American Jurisprudence” at Yale University in May as a participant in “Freedom, Race, and Bondage: A Conference in Honor of David Brion Davis.” The same month she received the George Washington Eggleston Historical Prize at the Yale Graduate School Honors Convocation for her doctoral dissertation “Law and the Modern Mind: The Problem of Consciousness in American Legal Culture, 1800-1994.”

Alene and Allan F. Smith Professor of Law **Merritt B. Fox**, director of the Law School's Center for International and Comparative Law, presented his paper “Law, Share Price Accuracy & Economic Performance: The New Evidence,” at the International Conference on Regulatory Competition and Economic Integration within the European Union, held last fall



Donald N. Duquette

at Tilburg University in The Netherlands. Last spring, he delivered a variety of guest talks: "Recent Scholarship on Russian Corporation Governance," for the Advisory Council Meeting of the University of Toronto Business School Russian Corporate Governance Program in London; "Roe's Corporate Law's Limits: A Comment," at the Conference on Global Markets and Domestic Institutions at Columbia Law School; and "Canadian Mandatory Disclosure Reforms and the Issuer Choice Debate," for a symposium on Canadian securities regulations at the University of Toronto's Capital Markets Institute.

Assistant Professor **Daniel Halberstam**, who is director of the University of Michigan's European Union Center, spoke on "Why Democracy, and Not Efficiency, Lies at the Core of Transnational Market Regulation," at a workshop on transnational market regulation at New York University in September.

Assistant Professor **Peter J. Hammer**, '89, has received the Robert Wood Johnson Foundation Health Policy Investigator Award.

Professor **James C. Hathaway**, director of the Law School's Refugee Law Program, served as course director for the first Advanced Refugee Law Workshop, an event for senior appellate judges convened in Auckland, New Zealand, last October by the International Association of Refugee Law Judges (IARLJ). While in Auckland, he addressed judges of the New Zealand High Court and gave a public lecture at Auckland University sponsored by the International Law Association. He also traveled to Wellington, where he chaired the opening session of the biennial meeting of the IARLJ, delivered a paper on the future of refugee law supervision within the United Nations, and hosted a

workshop to explore collaboration by the IARLJ in the design and operation of the University of Michigan's Refugee Caselaw Site (www.refugeecaselaw.org).

In November, Professor **Robert Howse** lectured on WTO law and global governance at the University of Frankfurt and the Max Planck Institute in Heidelberg; in October, he served as commentator for the conference on Terrorism and International Law co-sponsored by the Law School and the *European Journal of International Law* and joined with co-author Kalypso Nicolaidis to present their paper at the workshop on Legitimacy, Democracy, and Justice in Global Governance at NYU Law School; and in September he presented his paper on "Democracy and the WTO" at the Fordham Law School International Law Workshop.

In November **John H. Jackson**, Hessel E. Yntema Professor of Law Emeritus, delivered the Lauterpacht Lectures at the Lauterpacht Research Centre for International Law at Cambridge University. Jackson's title for the three-part series was "The Changing Fundamentals of International Law and International Economic Law: Perspectives on Sovereignty, Subsidiarity, Power Allocation, and International Institution Building." The lectures and the research center commemorate the late international lawyer Hersch Lauterpacht. (Also see **A.W. Brian Simpson**, below.)

Douglas A. Kahn, the Paul G. Kauper Professor of Law, joined his son Jeffrey H. Kahn, '97, a Santa Clara Law School professor, to give a presentation to the Vanderbilt Law School faculty on their co-authored article on gifts.

Thomas E. Kauper, '60, the Henry M. Butzel Professor of Law, served as chairman and principal lecturer for the Antitrust Short Course presented at the

Center for American and International Law in Dallas in November. In October, he served as lecturer for the ABA Antitrust Section's Antitrust Masters Course at Sea Island, Georgia, and for the Golden State Antitrust Institute at Los Angeles. He served as commentator for the Conference on Global Antitrust Law and Policy at the University of Minnesota Law School early last fall, and during the summer served as International Academy Lecturer for the Center for American and International Law at Dallas. He was John M. Olin Visiting Professor of Law, Economics, and Business at Harvard Law School from January through May, and in April received the 50th Anniversary Award for contributions to Antitrust Law and Policy from the Antitrust Section of the American Bar Association.

Richard O. Lempert, '68, the Eric Stein Distinguished University Professor of Law and Sociology, discussed the Seventh Amendment implications of the *Daubert* case and its progeny at a conference on scientific evidence last fall at Wayne State University Law School. Last spring he participated in a conference at Wake Forest Law School on "Empirical Research and Medical Malpractice Standards." Lempert currently is on leave to serve as division director for the Social and Economic Sciences at the National Science Foundation.

Assistant Professor **Adam C. Pritchard**, who is teaching as a visiting professor at Georgetown University Law Center this academic year, presented versions of his paper (co-authored with Marilyn F. Johnson and Karen K. Nelson) "Do the Merits Matter More? Class Actions under the Private Securities Litigation Reform Act" at Boalt Hall School of Law, University of California-Berkeley in October, Georgetown University Law Center's Sloan

Interdisciplinary Workshop in September, and the annual meeting of the American Law and Economics Association last May.

Donald H. Regan, the William W. Bishop Jr. Collegiate Professor of Law, this year: presented papers at a conference on the "Moral Philosophy of Joseph Raz" at Columbia University; on G.E. Moore's *Principia Ethica* at Georgia State University; at the WTO's Law and Economics Workshop in Geneva; and to the workshop on transnational markets at New York University. He also served as commentator at the World Trade Forum 2002 in Bern, Switzerland.

Hessel E. Yntema Professor of Law **Mathias W. Reimann**, LL.M. '83, taught during part of the fall at the Bucerius Law School in Hamburg, Germany. (The founding president of Bucerius, Germany's first private law school, is Professor Hein Kötz, M.C.L. '64.) Reimann also served as general reporter on product liability law at the 16th Congress of the International Academy of Comparative Law in Brisbane, Australia, in July.

Clinical Professor **Paul D. Reingold** has completed his term as chairman of the Institute for Continuing Legal Education Executive Board. In the Michigan Clinical Law Program, which he directs, Reingold has been working with students on cases to gain re-sentencing for defendants who opted for parolable life sentences over term-of-year sentences but now have found that because of changes in parole law and policy they remain in prison long after they would have been released had they opted for term of years sentences.

Theodore J. St. Antoine, '54, the James E. and Sarah A. Degán Professor of Law Emeritus, has been appointed chairperson of the Michigan Attorney Discipline Board by the Michigan Supreme Court. The nine-member board is the court system's appellate body for enforcing the state's Rules of Professional

Conduct; St. Antoine has served as vice-chair for two years and been a board member for three years. In September, he was named a Champion of Justice by the State Bar of Michigan. Champion of Justice awards are given to a maximum of five people each year who have been State Bar members for at least 10 years, "have integrity and adherence to the highest principles and traditions of the legal profession" and have "an extraordinary professional accomplishment that benefits the nation, state, or local community in which the lawyer or judge lives."

A.W. Brian Simpson, the Charles F. and Edith J. Clyne Professor of Law, presented the Lauterpacht Memorial Lecture (named for the late noted international lawyer Hersch Lauterpacht) for the British Institute of International and Comparative Law. In October Simpson helped conduct a course on human rights for Croatian lawyers in Dubrovnik; and earlier in the year he visited the Isle of Man to participate in a training session for local lawyers organized by the AIRE Centre on the European Convention on Human Rights. (Also see **John H. Jackson**, above.)

Eric Stein, '42, Hessel E. Yntema Professor of Law Emeritus, last fall delivered the opening lecture of the four-part Dean Rusk Lectures that marked the 25th anniversary of the founding of the Dean Rusk Center at the University of Georgia School of Law. The lecture series also inaugurated the center's new Annual Dean Rusk Lecture series. Stein spoke on "Democracy Beyond Nation State: The World Trade Organization and European Union." Other speakers in the series included Louis Henkin of Columbia University School of Law, Abiodun Williams of the Office of the Secretary-General of the United Nations, and European Parliament member Manuel Medina Ortega of Spain. Stein also served as a panelist for the opening of the "Czech

Art" exhibition at Eastern Michigan University in October.

In late October, **Joseph Vining**, the Harry Burns Hutchins Collegiate Professor of Law, spoke on the relationship between law and human capital development at the International Forum on Fundamental Principles of Human Resources for the Modern International City in Shanghai. He also visited China earlier in the year as the Sir Edward Youde Distinguished Visiting Professor at Hong Kong University of Science and Technology and spoke there in a program co-sponsored with the Yale Club of Hong Kong, the Harvard Club of Hong Kong, and the Oxford & Cambridge Society of Hong Kong. (A version of one of his lectures begins on page 83.) Earlier in the year, he lectured on the question "Is There an Implicit Theology in the Practice of Ordinary Law?" at a program at Mercer University on "The Theology of the Practice of Law;" other participants included **James Boyd White**, the L. Hart Wright Collegiate Professor of Law, British novelist/biographer Peter Ackroyd, and Old Testament theologian Walter Brueggemann. Last winter, Vining also discussed "Corporate Crime and the Religious Sensibility" as part of a program on "Religion and the Criminal Law: Legal and Philosophical Perspectives" co-sponsored by Arizona State University's College of Law, Department of Philosophy, and Department of Religious Studies.

Lewis M. Simes Professor of Law **Lawrence W. Waggoner**, as director of research, attended the meeting of the Joint Editorial Board for Uniform Trust and Estate Acts in Washington, D.C., in December. In September, as reporter, he chaired the meeting of Advisers to Restatement (Third) of Property in Philadelphia.

James Boyd White, the L. Hart Wright Collegiate Professor of Law, last spring was a speaker for the *Harvard Law Review* symposium “Law, Knowledge, and the Academy.” White was a panelist for the symposium, which featured speakers Judge Richard Posner, of the U.S. Court of Appeals for the Seventh Circuit; William Lee, managing partner of Hale & Dorr; and Professor Richard Epstein of the University of Chicago. (His talk is reported on page 33.) Earlier in the year, he spoke at Mercer University as part of the program “The Theology of the Practice of Law” with Professor **Joseph Vining** and others. (See above.)

Assistant Professor **Mark D. West** presented versions of his paper “Losers: Recovering Lost Property in the United States and Japan” in October at the Law School’s Law and Economics Workshop and for the Harvard University Program on U.S.-Japan Relations. He also serves on the Executive Committee of the University of Michigan’s Center for Japanese Studies.

Christina B. Whitman, ’74, the Francis A. Allen Collegiate Professor of Law, last spring spoke on graduate legal education at the annual meeting of the Canadian Association of Law Teachers and also discussed first-year curriculum in a program at Arizona State University.

VISITING AND ADJUNCT FACULTY ACTIVITIES

Scott E. Masten, a professor in the S-U-M School of Business Administration, has been named to *Who’s Who in Economics*, which lists the world’s most influential economists since 1700. The list includes about 1,200 living economists, selected for the usefulness of their research as measured by the Social Science Citation Index.

Leonard Niehoff, ’84, of Butzel Long, has been named to the Advisory Board of the Michigan Chapter of the American Civil Liberties Union and will be listed in the 2003 edition of *The Best Lawyers in America*. He has been serving as counsel to *The Detroit News* in a case to open certain immigration proceedings to the public and has prevailed in federal district court and the Sixth Circuit. In October, he spoke on “Political Correctness Reexamined” at a University of Vermont conference on higher education law. In September, he spoke on legal issues related to newsgathering at the 2002 Libel Conference sponsored by the Newspaper Association of America, National Association of Broadcasters, and Media Defense Resource Center.

Frank H. Wu, ’91, a law professor at Howard University and a visiting professor at the Law School this academic year, during the fall delivered the Frank J. Battisti Memorial Lecture at Case Western Reserve University Law School as well as talks for the City Club of Cleveland, opening of Asian American Heritage Month at the University of Connecticut, the Society of American Law Teachers conference, and the “Racial Justice” series at Pendle Hill, a nationally known Quaker retreat in Philadelphia.

Adrien Katherine Wing, the Bessie Dutton Murray Distinguished Professor of Law at the University of Iowa College of Law, presented two special lectures during her fall term visit to teach at the Law School: “Global Critical Race Feminism: Islam and Women’s Rights a Year After 9/11,” to the International Law Workshop; and “The Promise of a Post-Genocide Constitution: Healing Rwandan Spirit Injuries,” for the Legal Theory Workshop. She also was a panelist at Fordham Law School for the Society of American Law Teacher’s Conference on “Teaching in Crisis, Teaching about Crisis: Law, Peace, and Pedagogy.”

LAW SCHOOL LIFE ENRICHED BY VISITING FACULTY

Each year, visiting and adjunct faculty members from a variety of academic and practice specialties take up residence at the Law School. Inside the classroom as well as outside it, they share their experience and expertise with students and colleagues and frequently also contribute to lectures, conferences, and symposia. Here are the visiting and adjunct faculty this academic year. These biographies have been edited for space. For the full version visit the Law School Web site at www.law.umich.edu. (Teaching term and courses appear in parenthesis at the conclusion of each entry.)

Robert H. Abrams, ’73, who earned both his A.B. and law degree at the University of Michigan, is an expert in the natural resources field. He teaches courses in environmental law, water law and hazardous waste, as well as civil procedure. Abrams enjoys a national reputation in the water law field and is co-author of *Legal Control of Water Resources*, a leading casebook on the subject, now in its second edition. He is also co-author of *Environmental Law and Policy: Nature Law and Society*, a casebook used for teaching environmental law. Abrams has been a member of the Wayne State University Law School faculty since 1977. He served as associate dean in 1985-86 and as interim dean in 1986-87. Abrams has visited on the faculty of the University of Michigan Law School three times, most recently in the winter term of 1989. Prior

FACULTY

to joining the Wayne State faculty, he taught at Western New England and practiced in the personal injury field. He is an elected member of the American Law Institute, vice chair of the American Bar Association Water Resources Committee, and a contributing editor of the *Preview of United States Supreme Court Cases*. **(Fall Term 2002; Civil Procedure; Water Law)**

Jenna Bednar is an assistant professor in the University of Michigan Department of Political Science and is an associated faculty member with the Olin Center for Law and Economics at the Law School. She earned a B.A. at the University of Michigan and an A.M. and Ph.D. at Stanford University. She has served as an assistant professor in the Department of Political Science at the University of Iowa, and as an Olin Fellow in Law and Rational Choice at the University of Southern California Law Center. Her work has been published in the *Southern California Law Review* and the *International Review of Law and Economics*. Her current research and teaching interests include theories of federal stability, comparative constitutional design, political economy of institutions, game theory for political scientists, and the politics of judicial review. **(Fall Term 2002; Analytical Methods)**

Lan Cao is professor of law at the College of William and Mary Marshall-Wythe School of Law. She holds a J.D. from Yale University and a B.A. from Mount Holyoke College and joined the faculty at Marshall-Wythe in 2001 after teaching at Brooklyn Law School for six years. Cao clerked for Judge Constance Baker Motley of the U.S. District Court for the Southern District of New York, practiced with Paul, Weiss, Rifkind, Wharton & Garrison in New York City, and was a Ford Foundation Scholar in 1991. She has published on a range of topics, such as privatization in transitional economies, particularly China,

globalization and U.S. trade laws, ethnicity and economic development, and law and economics. In 1996, Cao lectured on international business law at the University of Ho Chi Minh City Law Faculty and the University of Hanoi Law Faculty. In 1998, she was a visiting associate professor at Duke Law School. Cao also writes fiction. Her critically acclaimed novel, *Monkey Bridge*, published in 1996 by Viking (hardback) and in 1997 by Penguin (paperback), is one of the first novels about Vietnam written by a Vietnamese American and published by a major publishing house. She recently finished a second novel, tentatively titled *Chinaman's Chance*, about human smuggling from Fujian, China, to Chinatown in New York City. **(Winter 2003; Enterprise Organization; International Business Transactions)**

Marion Crain is the Paul Eaton Professor of Law at the University of North Carolina. She received her B.S. from Cornell University and her J.D. from the UCLA School of Law. A member of the California State Bar, she began her law career in 1984 with the Los Angeles firm of Latham & Watkins, where she specialized in labor and employment law. The following year she clerked for Judge Arthur Alarcon of the Ninth Circuit Court of Appeals. Since 1986, Professor Crain has taught labor law, labor arbitration, employment law, ADR and the workplace, sex equality, and family law. She has held permanent or visiting appointments at several U.S. universities. Crain researches and publishes mostly in the field of labor law, and is the co-author of a Michie/Lexis Law Publishing Textbook, *Labor Relations Law* (with Theodore St. Antoine, '54, and Charles Craver). Her scholarly articles have appeared in numerous prestigious law reviews. In 1998-99 Professor Crain chaired the American Association of Law Schools

Section on Labor and Employment Law. She serves on the board of editors for the *Employee Rights and Employment Policy Journal* (jointly sponsored by the Chicago-Kent College of Law and NERI), and is a member of the West Labor Law Group. Crain has received research grants from the National Science Foundation and the AFL-CIO Lawyers Coordinating Committee. **(Winter Term 2003; Family Law; Labor Law)**

Tsilla Dagan is an assistant professor at Bar Ilan University Law School. She earned a J.S.D. at Tel Aviv University in 1999, an LL.M. in taxation at New York University in 1993, and an LL.B. at Tel Aviv University in 1988. She has also served as an adjunct professor at Tel Aviv University Law School and as a visiting assistant professor at University of Michigan Law School. Professor Dagan teaches tax law, international taxation, tax policy, international tax policy, and corporate taxation. She has published in both English and Hebrew. Among her English publications are: "National Interests in the International Tax Game," 18 *Virginia Tax Review* 363 (1998); "The Tax Treaties Myth," 32 *New York University Journal of International Law and Politics* 939 (2000); and "The Covert Regressivity of Progressive Ideas in International Taxation," in *Globalization and the Welfare State*, Eyal Benvenisti and Georg Nolte editors. Publications in Hebrew include "National Interests in International Taxation," 20 *Tel Aviv University Law Review* 327 (1996); and "The Hidden Distributive Effects of Tax Law" in *Distributive Justice in Israel*, Menachem Mautner editor (2000). **(Fall Term 2002; International Tax Policy Seminar)**

Frances H. Foster, a professor of law at Washington University in St. Louis, teaches and writes in the areas of trusts and estates, Chinese law, and socialist law in transition. She received an A.B. degree

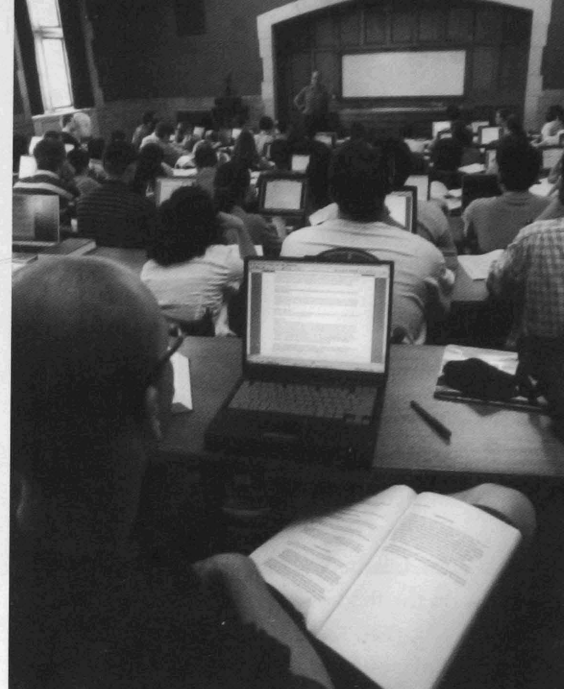
from Princeton University in Slavic Languages and Literature, Russian Studies, and Latin American Studies; J.D. and M.A. degrees from Yale University in Law and International Relations; and a J.S.D. from Stanford University, where she completed a dissertation examining Soviet influences on pre-1949 Chinese law. Foster has been a research fellow at Harvard Law School's East Asian Legal Studies program, a visiting professor at the Cornell Law School, a fellow of Harvard University's Russian Research Center, and a member of the American Bar Association's Task Force on Cuban Technical Assistance. Foster's most recent scholarship examined the pervasive role of family in American inheritance law. In earlier work, she compared the Chinese and U.S.

inheritance systems, based on her original translations of Chinese inheritance cases. She has written extensively on freedom of the press issues in China, Hong Kong, and Russia, and produced the first analysis of post-Soviet approaches to restitution of expropriated property and possible lessons for Cuba. Foster's current research focuses on trust law issues in both China and the United States. **(Fall Term 2002; Trusts and Estates I; Chinese Legal System Seminar)**

David H. Getches is the Raphael J. Moses Professor of Natural Resources Law at the University of Colorado School of Law. He has published several books, including: *Federal Indian Law*, with Wilkinson and Williams (1998); *Water Resource Management*, with Tarlock and Corbridge (2002); *Water Law in a Nutshell* (1997); *Searching Out the Headwaters: Change and Rediscovery in Western Water Law and Policy*, with Bates, MacDonnell, and Wilkinson (1993); and *Controlling Water Use: The Unfinished Business of Water Quality Control*, with MacDonnell and Rice (1991). Getches was the first attorney in the Southern California office of California Indian Legal Services, which he

opened in 1969, and was the founding Executive Director of the Native American Rights Fund (NARF), where he remained from 1971-78. From 1983-87 Getches served as executive director of the Colorado Department of Natural Resources under Governor Richard D. Lamm. He is on the Board of Trustees of the Grand Canyon Trust, the Governing Board of the Wilderness Society, the Board of Directors of Defenders of Wildlife, and the Board of Trustees of the Rocky Mountain Mineral Law Foundation. He is on advisory boards for the Natural Resources Law Center, American Rivers, and Trust for Public Land, and has consulted widely in the United States and other countries. He served as a special consultant to the Secretary of the Interior in 1996. Getches' research focuses on a variety of topics, including the United States Supreme Court's Indian law decision-making, changing patterns of governance in water law, the law of the Colorado River, and indigenous and water law issues in Latin America. Getches graduated from Occidental College with an A.B. and earned a J.D. at the University of Southern California Law School. **(Winter Term 2003; American Indian Law; Natural Resources Law Seminar)**

Rodger Haines QC, who earned his bachelor of arts and law degrees at Auckland University, New Zealand, has been practicing refugee law since 1983 and was appointed Queens Counsel in May 1999. He also practices administrative, immigration, citizenship, and customs and extradition law. He has presented papers at conferences around the world, and serves as deputy chairperson of the New Zealand Refugee Status Appeals Authority. Haines has written many of the Authority's principal decisions. Since 1993 he has lectured on immigration and refugee law at the Faculty of Law, Auckland University. He has participated in both colloquia on



Challenges in International Law convened by the U-M Law School's Program in Refugee and Asylum Law (international protection alternative; causation). Haines was visiting professor of law at the University of Michigan Law School in the fall term 2000 and is the author of the paper on gender-related persecution commissioned by the United Nations High Commissioner for Refugees as part of the UNHCR's Global Consultations on International Protection in the lead-up to the 50th anniversary of the 1951 Convention relating to the Status of Refugees. He publishes a Web database on New Zealand refugee law known as New Zealand Refugee Law (RefNZ). **(Winter Term 2003; Comparative Asylum Law Seminar [with Professor James C. Hathaway])**

Günther Handl is the Eberhard Deutsch Professor of Public International Law at Tulane University Law School. He holds law degrees from the University of Graz (Dr. iur), Cambridge (LL.B.) and Yale (J.S.D.). He has been a Fellow at the Max Planck Institute of Public International Law in Heidelberg, and has taught at universities in the United States, Canada, and Europe, including Cornell, Texas, Duke, and Michigan (in 1992). He is the founder and a former editor-in-chief of the *Yearbook of International Environmental Law* and served as consultant to many international organizations and governmental agencies. In 1998 he served as a special adviser in the Legal Adviser's

FACULTY

Office of the Austrian Ministry of Foreign Affairs. He has published widely on public international law, international environmental law, law of the sea, and nuclear energy law. In 1998, Handl was awarded the Elisabeth Haub prize for achievements in the field of international environmental law. (Fall Term 2002; International Environmental Law; Corporate Conduct Seminar)

Kyron Huigens is a graduate of Washington University, where he earned an A.B., and Cornell Law School, where he earned his J.D. He has served on the faculty at Benjamin N. Cardozo School of Law in New York City since 1996. Prior to his teaching career, Huigens practiced law in the Seattle-Tacoma area as a prosecutor and as a criminal defense attorney. He teaches criminal law, criminal procedure, death penalty, *habeas corpus*, and theories of punishment at Cardozo. Huigens' primary scholarly interest is in the theory of punishment. His articles have been published in the *Harvard Law Review*, *California Law Review*, and *Georgetown Law Journal*, among others. (Academic Year 2002-03; Criminal Law; Criminal Procedure: Bail to Post-Conviction Review; Death Penalty and Habeas Corpus)

Sherman A. Jackson is associate professor of Islamic Studies in the Department of Near Eastern Studies at the University of Michigan. A specialist in Islamic law and theology, he earned his B.A., M.A., and Ph.D. at the University of Pennsylvania between 1982 and 1990. Jackson has taught at Wayne State University, Indiana University, University of Texas at Austin, American University in Cairo, Egypt, and Middlebury College. He also has received numerous fellowships and awards and has served as interim president of the Shari'ah Scholars Association of North America and as a member of the Board of Trustees for the

North American Islamic Trust. Jackson is the author of *Islamic Law and the State: The Constitutional Jurisprudence of Shihab al-Din al-Qarafi*, as well as numerous articles on Islam. He speaks classical Arabic, Egyptian, Levantine, Saudi Arabian, and Sudanese dialects, and has a reading knowledge of French, German, and Persian. (Winter Term 2003; Islamic Law)

Orit Kamir, LL.M. '95, S.J.D. '96, is a professor of law specializing in interdisciplinary cultural analysis of law, law and film, and feminist legal thought. She has taught a variety of courses, including Israeli Law, Culture and Society, The Israeli Legal System, and Sexual Harassment Law at the Hebrew University in Jerusalem, and Criminal Law, Law and Film, and Feminist Jurisprudence at the University of Michigan. Her book (published by the University of Michigan Press), *Every Breath You Take: Stalking Narratives and the Law*, offers a cultural analysis that locates America's anti-stalking laws within the contexts of world mythology, religion, literature, film, and the social sciences. Her recent book, *Feminism, Rights and the Law* (in Hebrew), is the first textbook on Israeli feminist jurisprudence. Kamir drafted a sexual harassment bill that was adopted by the Israeli Parliament and legislated into law in 1998 and has been actively engaged in oral and written explication of its new legal concepts to the Israeli public, academic, legal, and otherwise interested, as well as to international forums. Professor Kamir wrote her dissertation in the field of law-and-literature under Professors James Boyd White and William I. Miller. Prior to that, she clerked in the Israeli Supreme Court and in the Israeli Parliament, and served as legal advisor to Israeli organizations such as the Israel Women's Network. Her publications, in Hebrew and English, offer analyses of law, society, and culture, often focusing on the

construct of gender. Her recent publications are in the new field of law-and-film, offering integrated analyses of two influential discourses and exploring the dialogue between them. (Academic Year 2002-03; Criminal Law; Law and Film: Women as Victims and Villains; Feminist Theory and Jurisprudence Seminar)

Dino Kritsiotis is Reader in Public International Law at the University of Nottingham in the United Kingdom. He earned his LL.B. (Wales) and his LL.M. (Cambridge), and was recently visiting professor of law at the Fletcher School of Law and Diplomacy at Tufts University. Kritsiotis specializes in international law on the use of force and armed conflict, democracy, the United Nations, as well as the history and theory of international law. He has served as Rapporteur of the International Law Association (British Branch) Committee on Theory and International Law and became Co-Rapporteur of the Project on Humanitarian Protection in Non-International Armed Conflicts of the San Remo International Institute on Humanitarian Law in January 1999. Kritsiotis has served as a member of the Board of Editors of the *Journal of Conflict and Security Law* since 1996 and of *Human Rights and Human Welfare* since 2001. (Winter Term 2003; International Criminal Justice; International Law and Armed Conflict Seminar)

Scott E. Masten is the Louis and Myrtle Moskowitz Research Professor in Business and Law and Professor of Business Economics and Public Policy at the University of Michigan Business School. He joined the faculty at the Business School in 1984, following two years as a member of the economics faculty at the University of Virginia. Masten received his Ph.D. in economics from the University of Pennsylvania and his A.B. from Dartmouth College. His

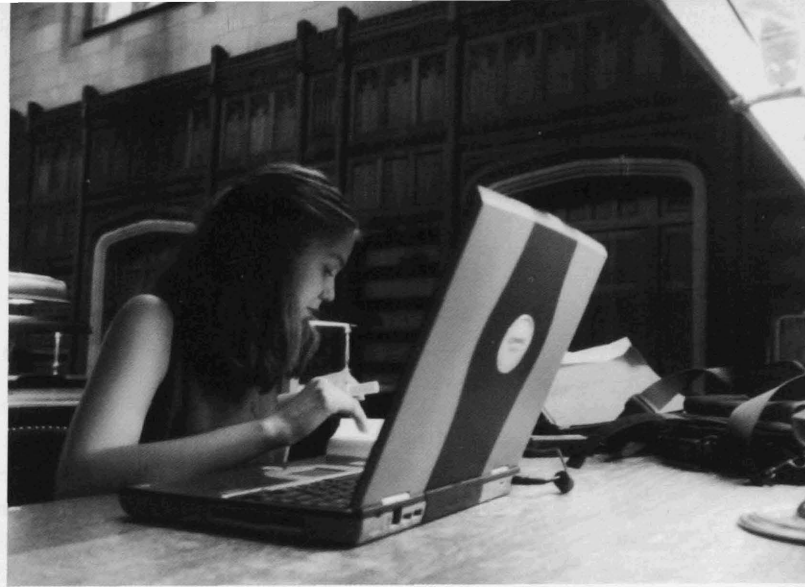
research focuses on issues at the intersection of law, economics, and organization, and he is a leading scholar of transaction cost economics, publishing numerous articles relating to contracting, vertical integration, and antitrust. Masten is working on a book titled *The Organization and Governance of Higher Education*. Since joining the University of Michigan, Masten has taught the core MBA Applied Microeconomics course and MBA electives on The Structure of Business Transactions and Contracting and on Nonprofit and Cooperative Enterprise. He also teaches a doctoral seminar on the Economics of Institutions and Organization and has taught Economic Analysis of Law at the University of Michigan Law School. Masten is an editor of *Economic Inquiry* and serves as associate editor or editorial board member of several other journals. He is a founding board member of the International Society for New Institutional Economics and chairs the University of Michigan's Committee on the Economic Status of the Faculty. **(Winter Term 2003; Law and Economics Workshop [with Alene and Allan F. Smith Professor of Law Merritt B. Fox])**

Dana Muir, '90, joined the University of Michigan Business School faculty in 1993. In addition to her continuing appointment at the Business School, she has taught at the University of Michigan and University of Iowa law schools. Prior to joining the Business School faculty, she practiced law with two large law firms with national practices. Her scholarly work has garnered a variety of regional and national research awards. In 2002 the United States Supreme Court cited her research in an important decision on ERISA remedies. Muir was a delegate to the first and second White House/Congressional National Summits on Retirement Savings and has served as a Congressional Fellow. She currently serves as a member of the Department of Labor's

Advisory Council on Employee Welfare and Pension Plans. During 1997-98 she was the Sanford R. Robertson Assistant Professor of Business Law. Muir

holds an M.B.A. from the University of Michigan in addition to her J.D. **(Fall Term 2002; Employee Benefits)**

Richard W. Painter received his B.A. from Harvard University and his J.D. from Yale University. He clerked for Judge John T. Noonan Jr., of the U.S. Court of Appeals for the Ninth Circuit, and later worked at Sullivan & Cromwell in New York City. He published a second edition of his legal ethics casebook with Judge Noonan in 2001 and has recently published 10 articles, book reviews, and essays in law reviews. These include "Rules Lawyers Play By," in the *New York University Law Review*; an article on multidisciplinary law practice in the *Minnesota Law Review*; an article on European corporate takeover law (co-authored with Christian Kirchner of the Humboldt University in Berlin, Germany) in the *European Business Organization Law Review* (Max Planck Institute); an article on advance waiver of client conflicts in the *Georgetown Journal of Legal Ethics*; and a book review in the *Michigan Law Review*. During the 2001 spring semester, Painter was the Warren Knowles Visiting Professor of Legal Ethics at the University of Wisconsin, and, in June 2001, was a visiting lecturer in corporate and securities law at the University of Bielefeld in Germany. He was elected to membership in the American Law Institute in 2000. Painter teaches business organizations, market regulation, corporate finance, and professional responsibility. **(Fall Term 2002; Mergers and Acquisitions; Securities Regulation)**



Christopher J. Peters, '92, is an associate professor of law at Wayne State University Law School in Detroit, where he has taught since 1997. He received his B.A. *summa cum laude* from Amherst College in 1989, where he was awarded the Alfred F. Havighurst Prize for the outstanding honors thesis in history, and his J.D. *cum laude* from the University of Michigan Law School, where he served on the *Michigan Law Review*. Peters practiced general civil litigation with the Chicago office of Latham & Watkins and served as a Bigelow Teaching Fellow and Lecturer in Law at the University of Chicago Law School. He teaches and writes in the areas of constitutional law, political and constitutional theory, jurisprudence, procedure, and legal process, and has published articles on those subjects in the *Harvard Law Review*, *Yale Law Journal*, *Columbia Law Review*, *Northwestern University Law Review*, *Iowa Law Review*, *Boston University Law Review*, and the peer-reviewed journal *Legal Theory*. Peters has received three Teacher of the Year Awards from the Wayne State University Law School Student Board of Governors and was awarded the 2001 Donald H. Gordon Award for Teaching Excellence. **(Fall Term 2002; Civil Procedure; Legal Process Seminar)**

Leonard L. Riskin is C.A. Leedy Professor of Law and director of the Center for the Study of Dispute Resolution at the University of Missouri-Columbia School of Law. He studied at the University of Wisconsin-Madison (B.S.) New York University (J.D.) and Yale

FACULTY

(LL.M.). He served as a trial attorney for the U.S. Department of Justice Land and Natural Resources Division, as general counsel of the National Alliance of Businessmen, both in Washington, D.C., and as a professor at the University of Houston Law Center. Much of his work has centered on mindsets with which lawyers and other dispute resolvers approach their work. He has published numerous articles and several books on dispute resolution, including (with James Westbrook) *Dispute Resolution and Lawyers* (West Publishing Co. 1987, 2nd ed. 1997, 3rd ed. 2002), and directed the *Dispute Resolution and Lawyers Videotape Series* (West Publishing Co., 1991). He has published articles on law in many academic journals, including the *California Law Review* and the *Harvard Negotiation Law Review* and personal essays in popular publications, such as the *Atlantic Monthly*, the *New York Times Magazine*, and the *Washington Post*. He won the CPR Dispute Resolution Institute Excellence Awards for “Mediator Orientations, Strategies, and Techniques: A Grid for the Perplexed,” which appeared in the *Harvard Negotiation Law Review*, and for introducing alternative dispute resolution into law school curricula at the University of Missouri and other law schools. He has received and managed numerous grants, and has provided training and consultation in dispute resolution for courts, law firms, bar associations, corporations, government agencies, and law schools in the United States, Europe, and Asia. In recent years, he has taught mindfulness to law students, lawyers, and mediators across North America and in Europe and published articles about the potential benefits of mindful approaches to practicing and studying law. **(Winter Term 2003; Mediating Legal Disputes Seminar; Alternative Dispute Resolution)**

For four decades **William W. Van Alstyne** has been one of the nation’s leading authorities on freedom of expression especially and constitutional law generally. Van Alstyne is a graduate of the University of Southern California *magna cum laude*, and Stanford Law School, where he was Order of the Coif and articles and book review editor of the *Stanford Law Review*. Soon after his admission to the California Bar, he joined the Civil Rights Division of the U.S. Department of Justice, pursuant to its Honors Program, handling voting rights cases in the South. After serving with the U.S. Air Force, he joined the Ohio State law faculty, where he was promoted to full professor in 1964. The following year he joined the Duke law faculty, where he now holds the Richard R. & Thomas S. Perkins Chair of Law. Van Alstyne’s writings have addressed virtually every major subject in the field of constitutional law and have been quoted or cited in a goodly number of U.S. Supreme Court opinions. He has testified in numerous hearings before Senate and House committees on various constitutional issues. A recipient of two honorary degrees, past president of the American Association of University Professors, and a former member of the National Board of Directors of the American Civil Liberties Union, Van Alstyne was elected into the American Academy of Arts and Sciences in 1994. In 1987, he was selected in a poll of federal judges as “one of the 10 most qualified persons in the country for appointment to the Supreme Court” — a distinction repeated in a similar poll by the *American Lawyer*. In 2000, the *Journal of Legal History* named him one of the 40 “most frequently cited” legal scholars in the 20th century. **(Winter Term, 2003; Introduction to Constitutional Law; Federal Practice in Civil Rights and Liberties Seminar)**

Adrien Katherine Wing is the Bessie Dutton Murray Distinguished Professor of Law at the University of Iowa College of Law, where she has taught since 1987. She holds an A.B. degree *magna cum laude* from Princeton, an M.A. from UCLA in African Studies, and a J.D. from Stanford Law School. She practiced international law in New York City, with an emphasis on Africa, the Middle East, and Latin America. At Iowa, Wing teaches constitutional law, critical race theory, human rights, law in the Muslim world, comparative law, and comparative constitutional law. She is also the director of the College of Law’s summer abroad program in Arcachon, France. Author of over 60 publications, she is the editor of *Critical Race Feminism: A Reader* (New York University Press, 1997) and *Global Critical Race Feminism: An International Reader* (New York University Press, 2000). **(Fall Term 2002; Critical Race Theory; Law in the Muslim World)**

Frank H. Wu, ’91, joined the faculty of the Howard University School of Law in Washington, D.C., in 1995 and served as clinic director from 2000-02. Wu’s *Yellow: Race in America Beyond Black and White* was published by Basic Books in January 2002. His co-authored textbook, *Race, Rights, and Reparation: Law and the Japanese-American Internment*, was published in 2001. His more than 200 articles and op-ed pieces have appeared in many periodicals and most of the nation’s leading newspapers. Wu is a member of the Board of Trustees at Gallaudet University, founded to serve the deaf and hard of hearing. He also is a hearing committee chair for the D.C. Bar Board of Professional Responsibility, which adjudicates attorney discipline matters. In addition, he chaired the D.C. Human Rights Commission in 2001-02. Wu’s versatility is demonstrated by the fact that he has been a Scholar in Residence at

Deep Spring College, a highly selective all-male full-scholarship school located on a student-run cattle ranch in rural California. Before beginning his academic career, Wu clerked with the late U.S. District Court Judge Frank J. Battisti in Cleveland and then joined the civil litigation practice group at Morrison & Foerster in San Francisco. (**Academic Year 2002-03; Immigration Law; Civil Procedure; Asian Americans and the Law**)

ADJUNCT FACULTY

Uzma Ahmad received her A.B. in Biology *cum laude* from Harvard College, her J.D. from Harvard Law School, and practiced corporate and securities law with Dechert, Price & Rhoads in its Philadelphia and Boston offices. (**Winter Term 2003; Securities Disclosure Seminar**)

Jonathan Alger is assistant general counsel and adjunct faculty member at the University of Michigan. He coordinates the University's work on the admissions lawsuits and related affirmative action matters, and also provides leadership on intellectual property, media and information law, and cyberspace legal issues. He is a graduate of Swarthmore College and Harvard Law School. (**Winter Term 2003; Higher Education Law**)

John E. Bos, '64, is a partner at Bernick, Omer & Radner PC in Lansing, where he specializes in estate planning, elder law, and business planning and served as an adjunct professor of estate planning at Thomas M. Cooley Law School from 1978-80. (**Academic Year 2002-03; Estate and Gift Tax; Estate Planning Seminar**)

Adjunct Clinical Assistant Professor **Lorray S. C. Brown** is managing attorney and consumer law attorney at the

Michigan Poverty Law Program (MPLP). She received her J.D. from the University of Pittsburgh School of Law and her B.A. from the University of Pennsylvania. She has several years of law teaching experience, most recently teaching Legal Practice at the University of Michigan Law School. (**Fall Term 2002; Children's Rights Appellate Practice**)

Elena Bruntseva received her J.D. with honors from the Kazakh State University School of Law in Alma-Ata, Kazakhstan, and an LL.M. from Yale Law School. She was a law professor at her *alma mater* and, later, at the St. Petersburg Juridical Institute and a professor and Professor at the St. Petersburg Institute of Law in St. Petersburg, Russia. (**Winter 2003; International Commercial Arbitration; Legal Reform in Russia**)

Andrew P. Buchsbaum earned his B.A. *magna cum laude* from Harvard College, his J.D. from Boalt Hall School of Law at the University of California-Berkeley, and his Master of Laws from Georgetown University Law Center. He has served on the staff of the National Wildlife Federation's Great Lakes Natural Resource Center as the Water Quality Project Manager since December 1998. (**Fall Term 2002; Federal Litigation: Environment Case Study**)

Laurence D. Connor, '65, has been a frequent visiting faculty member at the Law School and continued in that status last fall while also joining the teaching ranks fulltime as an assistant clinical professor in the Legal Practice Program. (See *Law Quadrangle Notes*, Summer 2002, page 28.) He earned his B.A. *cum laude* from Miami University. Connor was a senior litigation member at the law firm of Dykema Gossett PLLC in Detroit until 2001. (**Fall Term 2002; Mediating Legal Disputes Seminar**)



Timothy L. Dickinson, '79, is a partner with Dickinson Landmeier LLP, Washington, D.C., and has taught at Georgetown Law Center as an adjunct professor. (**Winter Term 2003; Transnational Law**)

Diane Eisenberg holds a J.D. from Harvard Law School and has served as attorney for the Judicial Council of California, which establishes and implements policy for the California State judicial system. She earned an M.A. in English and American Literature from Princeton University and a B.A. from the State University of New York at Stony Brook. (**Fall Term 2002; Law and Literature Seminar; Professional Responsibility and Ethics Seminar**)

Paula Ettelbrick was most recently the family policy director for the Policy Institute of the National Gay and Lesbian Task Force and served as legal director for Lambda Legal Defense and Education Fund. (**Fall Term 2002; Sexuality and the Law**)

James Forman is a graduate of Brown University and Yale Law School. He clerked for both U.S. Supreme Court Justice Sandra Day O'Connor and Judge William Norris of the Ninth Circuit, and worked for six years with the Public Defender Service in Washington, D.C. He co-founded the Maya Angelou Public Charter School in 1997. (See the school's Web site [www.seeforever.org] for more information.) (**Academic Year 2002-03; Race, Poverty and the American City Seminar; Urban Education: Law and Reform Seminar; Police and Policing Seminar; The War on Drugs Seminar**)

FACULTY

Roderic M. Glogower, the Rabbinic Advisor for the B'nai B'rith Hillel Foundation at the University of Michigan, received his rabbinic ordination (with honors) in Jerusalem in 1974. He is a *cum laude* graduate of Loyola University in Chicago and holds master's degrees in Jewish philosophy from Yeshiva University and Brandeis University. (Fall Term 2002; Jewish Law)

Saul A. Green, '72, joined Miller Canfield Paddock and Stone in September 2001 after serving for seven years as United States Attorney for the Eastern District of Michigan. Green graduated from the University of Michigan in 1969 with a B.A. in Pre-Legal Studies, and then went on to earn his J.D. at Michigan. (Winter Term 2003; Racial Profiling Seminar)

Chari K. Grove, an adjunct clinical assistant professor, graduated *magna cum laude* from Michigan State University with a B.A. and a teaching certificate (for grades 6-12) and earned her J.D. *cum laude* at Wayne State University. She is an assistant defender in the State Appellate Defender Office. (Academic Year 2002-03; Criminal Appellate Practice [with Valerie Newman, see below])

Alison E. Hirschel received her B.A. from the University of Michigan and graduated from Yale Law School. She clerked for the Hon. Joseph S. Lord III in the U.S. District Court for the Eastern District of Pennsylvania. For 12 years, she worked at Community Legal Services in Philadelphia as a staff attorney, then co-director of the Elderly Law Project, and finally deputy director. Hirschel has practiced elder law with Michigan Protection and Advocacy Service Inc. and the Michigan Poverty Law Project. She has taught elder law at the Law School since 1998 and previously taught at the University of Pennsylvania from 1991-97. (Winter Term 2003; Law and the Elderly Seminar)

William R. Jentes, '56, is a partner at Kirkland & Ellis, Chicago. He has been a lecturer at the University of Chicago Law School and for the American, federal, Texas, Illinois, and Chicago bar associations, in addition to having taught frequently here at the Law School. (Fall Term 2002; Complex Litigation Seminar)

Adjunct Clinical Assistant Professor **Neil S. Kagan** is a senior counsel for the National Wildlife Federation (NWF) working on water quality and wolf issues nationally and in the Great Lakes states. Kagan has a B.Sc. in Biology from Pennsylvania State University and a J.D. from the University of Oregon School of Law, with a certificate in Environmental and Natural Resources Law. (Academic Year 2002-03; Environmental Law Practicum)

Marvin Krislov, the University's vice president and general counsel, received his B.A. *summa cum laude* from Yale University in 1982. A Rhodes Scholar, he studied at Oxford University's Magdalen College, where he received an M.A. degree in modern history in 1985. He earned a doctor of laws degree from Yale Law School in 1988 and then clerked for Judge Marilyn Hall Patel of the U.S. District Court in San Francisco. (Winter Term 2003; Role of In-House Counsel Seminar)

Margaret A. Leary is director of the Law Library. She received a B.A. from Cornell University, an M.A. from the University of Minnesota School of Library Science, and a J.D. from the William Mitchell College of Law. (Winter Term 2003; Advanced Legal Research)

Jeffrey F. Liss, '75, is partner and chief operating officer of the Washington, D.C., law office of Piper Marbury Rudnick & Wolfe LLP. He earned three degrees at the University of Michigan: B.A. with high honors, M.A., and J.D. Liss is a long-standing member of the adjunct

faculty at Georgetown University Law Center, where he has taught business arbitration, remedies, and legal history. He also has taught for the law schools at the University of Michigan, University of Maryland, and American University. (Fall Term 2002; Remedies)

Karl E. Lutz, '75, retired as a partner in 1997 from Kirkland & Ellis in Chicago, where he specialized in private equity, venture capital, leveraged buyouts, mergers and acquisitions, debt and equity financings, and board representations. (Academic Year 2002-03; Law Firms and Legal Careers; Private Equity Seminar)

Robert A. Mikos, '01, is the John M. Olin Fellow in Law and Economics for this academic year. He earned his A.B. *cum laude* from Princeton University and before entering law school worked as a strategy consultant with the Parthenon Group in Boston. He earned his J.D. *summa cum laude* from the University of Michigan Law School and clerked for Chief Judge Michael Boudin of the U.S. Court of Appeals for the First Circuit. (Fall Term 2002; Economic Analysis of Law)

Jeffrey H. Miro, '67, is chairman of Miro, Miro & Weiner in Bloomfield Hills, Michigan. He holds a bachelor's degree from Cornell University, a J.D. from Michigan, and an LL.M. from Harvard. He has previously been a lecturer on taxation at the Detroit College of Law, an adjunct professor of law at Wayne State University, and regularly teaches at the Law School. (Fall Term 2002; The Board of Directors Seminar)

Roberta J. Morris earned an A.B. from Brown University, a law degree from Harvard, and a Ph.D. in physics from Columbia University. She has practiced at White & Case and at Fish & Neave, a patent law firm, and served as assistant general counsel for Mt. Sinai Medical Center in New York. Morris has been a

frequent adjunct at the Law School since 1991, mostly teaching patent law and related subjects. (**Academic Year 2002-03; Advanced Topics in Patent Law Seminar; International Patents and Copyrights Seminar**)

Cyril Moscow, '57, has been an adjunct professor at the Law School since 1973. He is a partner at Honigman, Miller, Schwartz & Cohn in Detroit, where he practices corporate and securities law. He chairs the State Bar Subcommittee on the Revision of the Business Corporation Act. (**Academic Year 2002-03; Business Planning: Closely Held Corporations; Business Planning for Publicly Held Corporations**)

Valerie R. Newman, an assistant defender in the State Appellate Defender Office in Detroit, is a graduate of the University of Michigan with a B.A. and earned her J.D. at Wayne State University Law School. (**Academic Year 2002-03; Criminal Appellate Practice [with Chari K. Grove, see above]**)

Leonard Niehoff, '84, is a graduate of the University of Michigan as well as the U-M Law School. He practices with the Butzel Long law firm, where he manages the Media Law, Intellectual Property Law, and Higher Education Law practice groups. Niehoff has been a member of the adjunct faculties of Wayne State University Law School and the University of Detroit-Mercy Law School. (**Academic Year 2002-03; Legal Profession and Legal Ethics**)

Terrence G. Perris, '72, is a partner with Squire, Sanders & Dempsey LLP in Cleveland, Ohio, leading the firm's taxation practice. Prior to joining the firm, Perris served as a law clerk to Justice Potter Stewart of the U.S. Supreme Court, and prior to that, he served as law clerk to Judge J. Edward Lumbard, the former chief judge of the U.S. Court of Appeals for the Second

Circuit. He earned his B.A. *magna cum laude* at the University of Toledo. (**Winter Term 2003; Tax Plans for Business Transactions Seminar [with Paul G. Kauper Professor of Law Douglas A. Kahn]**)

Steven Rhodes, '73, is the Chief Bankruptcy Judge for the Eastern District of Michigan and serves on the Bankruptcy Appellate Panel for the Sixth Circuit. His undergraduate degree is from Purdue University. He clerked for the Hon. John Feikens, '41, of the U.S. District Court for the Eastern District of Michigan. (**Winter Term 2003; Bankruptcy**)

Mark D. Rosenbaum is general counsel for the American Civil Liberties Union in Los Angeles. He received a B.A. from the University of Michigan and a J.D. from Harvard Law School. Rosenbaum has taught at Loyola Law School, Harvard Law School, and the University of Southern California Law Center, and began teaching at Michigan in 1993. (**Winter Term 2003; Fourteenth Amendment; Public Interest Litigation Seminar**)

Joel H. Samuels, '99, received his J.D. *cum laude* from U-M Law School. He received his A.B. *magna cum laude* in politics from Princeton University in 1994. At Princeton, he also received certificates in Russian Studies and European Cultural Studies and won the Asher Hinds Prize in European Cultural Studies, the Montgomery Raiser Prize in Russian Studies, and the Caroline Picard Prize in Politics. Following law school, he clerked for Judge Barry Ted Moskowitz of the Southern District of California. Samuels most recently practiced with Covington & Burling in Washington, D.C., where he was involved in a wide range of international litigation matters. (**Winter Term 2003; International Litigation [with Hessel E. Yntema Professor Mathias W. Reimann, LL.M. '83]; Transnational Law**)



Edward R. Stein, '66, specializes in civil litigation at Stein, Moran, Raimi & Goethel in Ann Arbor. He regularly teaches for the National Institute for Trial Advocacy (NITA) and is author of NITA's *PowerPoint for Litigators*. (**Winter Term 2003; Trial Practice**)

Stevie J. Swanson, '00, holds a B.A. in African and African American Studies from Yale University where she graduated With Distinction. She worked in the litigation department of a small Virginia law firm where she practiced criminal, personal injury, domestic relations, construction, and landlord/tenant law. (**Academic Year 2002-03; Legal Assistance for Urban Communities Clinic**)

Beatrice A. Tice, an adjunct instructor, is the Foreign and Comparative Law Librarian at the University of Michigan Law Library. She holds a B.A. *magna cum laude* from Pomona College, an M.A. (Linguistics) from Yale University, a J.D. With Distinction from Stanford Law School, and an M.L.I.S. with a Special Certificate in Law Librarianship at the University of Washington Information School. She also practiced as a commercial litigator in southern California before earning her M.L.I.S. (**Fall Term 2002; Researching Transnational Law**)

IN DETAIL

- 48 *Speaking with Michigan State Bar President Reginald M. Turner, '87*
- 53 *Deputy U.S. Attorney General: 'The battlefield is right here'*
- 53 *Chief Judge Tacha takes office as treasurer of American Inns of Court*
- 54 *Construction law builds a treatise*
- 55 *Green, '72, Maritzak, '95, named to firm's Corporate Crime Group*
- 55 *Grad leaves on a 'winning Note'*
- 56 *Learning from inside the court*
- 58 *Mapping the road taken*
- 60 *International Reunion will be September 19-21*
- 60 *Roger Conner, '73: I'd rather win than fight*
- 62 *Coming home*
- 64 *Class Notes*
- 71 *In memoriam*

Reunions — Page 62



Reginald M. Turner, '87, was installed as the 68th president of the Michigan State Bar Association at the association's annual meeting last September. He also recently was elected a vice president of the National Bar Association.

A member of the Labor and Employment Practice Group of Clark Hill PLC in Detroit, Turner also is a member of the Labor and Employment Sections of the American Bar Association, the National Bar Association, and the Detroit Metropolitan Bar Association, and is state membership chair for the American Bar Association. He served a White House Fellowship in Washington in 1996-97.

Turner chairs the City of Detroit Board of Ethics, represents Detroit Mayor Kwame Kilpatrick on the Detroit Board of Education, is vice chairman of the board of the Detroit Institute of Arts, a director of United Way Community Services and the Greater Downtown Partnership Inc., and a member of the Old Newsboys' Goodfellows Fund.

At the Law School, Turner received the Irving Stenn Jr. award for excellence in leadership. After graduation, he clerked for Justice Dennis Archer of the Michigan Supreme Court. (Archer later served as mayor of Detroit and now is president-elect of the American Bar Association.)

In his initial President's Page letter in the Michigan Bar Journal, Turner recalled the enduring impact of an experience he had during his first year at the Law School:

"I was among a small group of students selected to have lunch with then-State Bar President Dennis Archer. Of course I had heard of him, and I even had vague knowledge of the function of the bar. The two converged in this articulate, nattily attired barrister. Archer spoke in quiet, thoughtful tones of professionalism, diligence, duty, service, and honor. He answered our skeptical, occasionally

SPEAKING WITH MICHIGAN STATE BAR PRESIDENT REGINALD M. TURNER, '87

impertinent questions with patience and candor. In response to one of mine, which expressed some bewilderment regarding the route to success in practice, he replied that the most important influence on my career would be my adherence — in the real world — to the values he described. He was right."

Media Specialist Naseem Stecker interviewed Turner for the October issue of Michigan Bar Journal. The interview appears here with permission.

By Naseem Stecker

Could you give me some background and personal/family information?

I was born and raised in Detroit. My late father was in law enforcement and my mother works for the Detroit Public Library. Dad ran a number of law enforcement agencies. He was a deputy chief in the Detroit Police Department, public safety director in Cleveland, Ohio, and chief of police in Pontiac, Michigan. I have two sisters and one brother, all of whom still live in Michigan. I graduated from Cass Technical High School, went to Wayne State University, and to the University of Michigan Law School. After law school, I clerked for Dennis Archer at the Michigan Supreme Court for two years and then joined the Sachs Waldman law firm, where I practiced labor and

employment law for about 10 years. In 1996, I went to Washington, D.C., for a year and worked in the Clinton administration as a White House Fellow. In 2000, I joined Clark Hill, where I practice labor and employment law and advocate for clients on public policy matters.

Why did you decide to become a lawyer?

I have a firm belief in our American system of justice and a strong desire to improve it. One goal has been to pursue better labor-management relations through the practice of law. I am also attracted to the law as an intellectual challenge.

Do you have any role models? Has anyone inspired you?

I have many role models — Dennis Archer has been an inspiration to me in terms of public service, service to the bar, service to the community, and devotion to family. U.S. Court of Appeals Judge Damon Keith has been a great influence in these areas too. My former partner, Tom Lenga, helped to shape my understanding of the importance of our profession in our community. He also inspired my transition to Clark Hill. Judge Victoria Roberts is a great jurist and an excellent role model for bar and community service. In fact, I have learned a great deal from many State Bar presidents in the last several years, and I am grateful to them for their leadership and service: Bruce Neckers, Thomas Ryan, Alfred Butzbaugh ['68], Edward Brady, Thomas Kienbaum, George Googasian,

Fred Woodworth ['65], James Robinson ['76], John Muth, George Roumell Jr., and my partners Robert Webster ['57] and Patrick Keating have all personally mentored me. I also give much credit to my former law firm — Sachs Waldman. Theodore Sachs ['51] was its president. He was one of the finest lawyers in Michigan. Ted and the firm's other labor division partners took the time to train me in the firm's distinguished tradition. Jennifer Granholm is also an inspirational role model. She is a lawyer-statesperson of the highest order.

As an African American, did you face any barriers on the road to becoming a lawyer?

Race is still a factor in American life. I don't dwell on my own anecdotal experiences but I have certainly felt the sting of overt prejudice. Fortunately, a lot of men and women of all races have labored mightily to increase opportunities that benefit my peers and me today. I will continue efforts to break down barriers that exist for people of color and women in our society.

Do you think that there are adequate opportunities for minorities in the profession?

I'm very proud of the fact that the State Bar of Michigan continues to support an open justice system to provide opportunities for people of color, women, and diverse religious and ethnic groups to be full participants in the mainstream of our profession. There is still a lot of work to do.

Bar Journal

October 2002

Reginald M. Turner—
68th President,
State Bar of Michigan,
2002–2003

Psychology and the Law

Diffusing Anger 20
De-stressing the Profession 24
Is Domestic Violence
About to Spill Into
Your Client's Workplace? 28
Interviewing Children 32
What You Didn't Say
Speaks Volumes 36

Affirmative action in university admissions and hiring, which has always been controversial, faces a legal challenge. A number of federal courts have rejected such programs while others have supported it and many people predict that the Supreme Court will use the U of M case to resolve the issue. How do you think the Supreme Court will rule?

I have spent the last four and a half years working as *pro bono* counsel for the African American and Latino students who are interveners in the undergraduate case, *Gratz v. Bollinger*, involving the University of Michigan College of Literature, Science and the Arts. We are supporting the

University's arguments that it has a compelling interest in creating a diverse student environment and that its affirmative action program is a narrowly-tailored means to achieve a diverse student environment. Those arguments are supported by the opinion of the U.S. Supreme Court in *University of California Regents v. Bakke*. In addition to supporting the University's position, the interveners have also asserted that affirmative action remains a reasonable and necessary means to remedy the present effects of past and present racial discrimination. The lawyers on the case, including counsel for the University and counsel for other civil rights organizations, think this case will have a tremendous impact on equality of opportunity under the law in all of our public and private institutions.

How do you think the Supreme Court will rule?

I've been a lawyer long enough to know better than to predict the outcome of a case.

What will be the consequences if it rules that these affirmative action programs are unconstitutional?

Our society would become even more segregated on the basis of race. An adverse decision would further polarize our nation at a time when unity, tolerance of diversity, and meaningful opportunities are critical to our continued development as a great society, and vital to our national security.

You're very involved in civic and public service projects, both in Detroit and nationally; can you describe some of these programs and explain why you're drawn to them?

I serve in the American Bar Association and the National Bar Association as an extension of our bar work here in

Michigan. I serve on the Detroit Board of Education because I believe that improving public education is one of the great challenges of the 21st century. Over the last 30 to 40 years, there has been a steady decline in the quality of education for students in our metropolitan cities. We have to reverse that trend and help to ensure that our young people have adequate education so they can understand the American dream, embrace the American dream, and become full participants in our society. I serve on the Board and Executive Committee of United Way Community Services, which serve over 100 organizations that provide assistance to families throughout Michigan. I serve as vice chair of the Detroit Institute of Arts and my wife, Marcia, serves on the Detroit Institute of Arts Founder's Junior Council Board of Directors. We want as many people as possible exposed to the beautiful works of art at the museum. I chair the City of Detroit's Board of Ethics, because I helped draft the ethics ordinance and I believe its successful implementation bodes well for the quality of government in our city.

1996/97 were special years — a White House Fellowship, touring South Africa and Mozambique. Could you recount those days for me? What did you learn from that experience?

We planned an international delegation to explore political and economic issues in South Africa, which had recently turned to democracy and the rule of law to enfranchise all of its citizens. We also wanted to examine what had been occurring in Mozambique in the aftermath of a 17-year civil war, where a democratic government is now attempting to rebuild under the rule of law. Our journey began in Johannesburg and Pretoria, went to Cape Town, Durban, and Ulundi. One of

the most disturbing things to me about South Africa was the huge disparity in living conditions that resulted from the apartheid system. People of color were legally relegated to the worst possible settlements. It makes one appreciate freedom and democracy. In Mozambique, the thing that struck me most was the devastation of that country as a result of this proxy fight between former colonial powers of the West and the former Soviet Union. Most of the country's institutions were literally and figuratively in ruins — roads, bridges blown up, or knocked out. There were land mines across the agricultural landscape of the country. I watched a de-mining operation, with soldiers painstakingly crawling inch by inch across fields, using mine detectors, so that farming could resume. I was horrified by the devastation and the destruction of this war.

Do you keep in touch in any way, with what has been going on there?

I do. My church, Fellowship Chapel, has helped. After the floods, which occurred in late 2000/early 2001, we provided assistance to the flood victims in Mozambique. We also made some contributions to the de-mining operations. One of the tragic results of the flood was that some areas that had been de-mined were now dangerous again because mines were loosened by the floodwaters. I also continue to have contact with some of the people that I met over in South Africa, including the leadership of the Bafokeng Tribe, which provided us with hospitality while we were there. I monitor issues that arise for President Tabo Mbeki's government as he attempts to implement many of the reforms that were promised when democracy was restored in South Africa.

Let's switch gears here and talk about matters closer to home. The bar has been actively surveying members — for the Strategic Plan, the Visionary Committee, the Bar Journal Survey — what is our membership telling us and are we responding appropriately?

The members are telling us that they want the bar to help them be more successful in providing high quality service to their clients in a cost-efficient way. They want us to address public policy issues that are central to the administration of justice, not unduly divisive, and on which the bar can achieve impact either in the legislature or with the Supreme Court regarding court rules and legislation. They want us to support Access to Justice and Open Justice. They want us to run the bar with sound fiscal management and cost-efficient services to lawyers and the public. Our strategic plan encompasses all of those things. I'm very proud of the fact that Dadie Perlov, the consultant who helped us develop our strategic plan, came back to view our progress and said that we are among the organizations with whom she has worked that successfully implemented their strategic plans. Our bar used to be an organization that changed its focus from year to year as officers changed. Now, with our strategic plan, we are focused for the long term on the needs of members and the public.

Which aspects of the plan will you be concentrating on as president?

As a student, our leadership at the bar, the executive director, the staff, the officers, and the Board of Commissioners, are devoted to the entire strategic plan. We are not going to pick and choose which parts of it we like and which parts we don't like. There was an arduous process

to create the strategic plan. We owe it to those who gave their time, energy, and ideas to implement it, and not to pick and choose those things that are easier to do or more popular with narrow constituencies.

What's the current financial picture of the State Bar of Michigan?

We're healthy. We have a balanced budget. Our reserves probably should be a bit stronger, but we're going to work very hard to address that in the coming year. We have put into place additional management controls to ensure that all of our members have confidence that the resources of the bar are being managed in an efficient and effective way.

What will the focus of Justice Initiatives be?

The focus will be to develop the synergies between Access to Justice and Open Justice, making both more effective. On the Access to Justice side, we decided to focus on the things we do well to support legal services. They include raising money through the Access to Justice Development Campaign and providing technological support to legal services programs around the state. We found that we weren't playing as constructive a role in trying to manage the delivery of legal services to the poor. We can certainly be a part of the team that helps to consider major issues regarding delivery of legal services. Before strategic planning we had a lot of staff that were really involved in nuts and bolts decision making on legal services delivery. We went from a total of eight staff to four and one-half positions now, and I think we're supporting legal services more than ever.

What about the relationship between Access to Justice and Open Justice?

The concept of Justice Initiatives will develop the synergies that exist between our Access to Justice efforts and our Open Justice efforts. Access to Justice is designed to ensure equal access to the justice system regardless of economic status. Open Justice is designed to ensure access to the justice system regardless of superficial variables like gender, race, or ethnic origin. We will coordinate our resources so that we get the maximum impact from our investment in this worthwhile effort.

Critics of the bar say, amongst other things, that it's elitist and that it needs to do more to advocate on behalf of lawyers. How do you respond to comments like that?

I would encourage all of our members to look at our public policy agenda. The key points of our public policy agenda relate to the independence of the justice system and the independence of the legal profession so that the public receives all of the benefits of our American system of justice. Often when we are really effective, some harmful proposals never emerge from legislative committees, so they don't get a lot of attention and members might not become aware of the bar's efforts. We have worked hard to prevent unnecessary, burdensome regulation of lawyers and the justice system. We are constantly working on behalf of our profession with the Michigan Supreme Court and with the Legislature.

How can the State Bar work more closely with local and special purpose bars?

We work pretty closely with them now. The president of the bar, our executive

director, and a committee of members and staffers visit with and work on programs with many local and special purpose bar associations across the state. We hold the Bar Leadership Institute each year, which helps their leaders understand the role of the State Bar and develop their leadership styles as they prepare to lead. So we're doing quite a lot. We can always do more to enhance our relationships with members around the state. We're reaching out to our members through more direct involvement with the Sections of the Bar. We've made tremendous progress in the last six months on that. We involved the Sections in the Bar Leadership Forum for the very first time this year and the feedback from the Sections and from the local bar leaders has been very positive.

You work in a large firm, but the majority of Michigan lawyers are small or solo practitioners. What is the bar doing to help this group?

The last three presidents have all worked in firms with fewer than 50 lawyers. Two of the last three have been in firms of five lawyers or less. We've had lawyers from large firms and sole practitioners as presidents of the State Bar of Michigan. Accordingly, there is recognition among the leadership of the bar of the diversity of members' practice settings. Our Strategic Plan envisions even more aggressive efforts to provide practical assistance to lawyers in their offices, at their desks, with technological support, research support, and practice tips that will enable them to deliver higher quality legal services to their clients in a more cost-efficient way in small, medium, and large firms.

What issues should lawyers pay special attention to in the 21st century?

Improve the administration of justice; ensure the independence of the judiciary; protect the public as we work to prevent the unauthorized practice of law; regulate multi-disciplinary and multi-jurisdictional practice to ensure that the highest quality standards are met; and enhance access to justice for people who traditionally have been disenfranchised.

What do you want to be remembered for?

I want to be remembered as one member of a team that successfully implemented the strategic plan so that we can be more effective in serving our members and the public.

What are some of your thoughts on the profession of law? Is the field very over crowded?

No. Right now in America we meet only about 20 percent of the need for legal services to the poor. I think there needs to be even greater access to the justice system and to the advice and counsel of attorneys so that people understand their rights and their responsibilities. I think that lawyers serve an important role in our justice system and in my humble opinion, the more lawyers that we have, the more justice is dispensed more widely.

Do you have any interest in running for political office?

Right now I'm focused on implementing the State Bar's strategic plan. Doing well at the task at hand prepares one to take on more important tasks in the future.

*Deputy U.S. Attorney General
Larry D. Thompson, '74, speaking
to a Law School audience.*



Deputy U.S. Attorney General: 'The battlefield is right here'

It was one day before the first anniversary of the 9/11 terrorist attacks and federal officials had set the danger alert at the Orange level, the second highest, when Deputy U.S. Attorney General Larry D. Thompson, '74, visited the Law School to discuss challenges and career opportunities at the U.S. Justice Department.

The Justice Department entered "a new era" after the terrorist attacks of 9/11, reported Thompson, the country's second-ranking law enforcement official after Attorney General John Ashcroft. Justice's role has changed from investigation and prosecution to prevention, Thompson said, and there is "no more righteous call" than to work on the protection of your countrymen.

We are "the first group of Americans ever to face the threat of mass murder of Americans on our soil," he told listeners. "The battlefield is right here."

The Justice Department is using new laws, like the USA Patriot Act, and new techniques to fulfill this new role, he said. Some critics have charged that some moves have ignored or endangered civil liberties, "but the most basic liberty all of us have, and the one I will defend, is our life, to be safe and secure in our neighborhoods, on our streets, and in our homes and classrooms. And that right is in jeopardy."

Justice Department and law enforcement officials adopted anti-terrorist measures "out in the open," Thompson said. No one has disappeared in the United States; of some 700 people detained as a result of the 9/11 attacks, only about 40 remain in detention.

Anti-terror efforts are high profile, but they are not Thompson's only tasks. He heads the National Security Coordination Council and the Justice Department's Corporate Fraud Task Force, which is probing the Enron debacle.

A former U.S. Attorney and long-time partner in King & Spalding of Atlanta before becoming Deputy U.S. Attorney General, Thompson encouraged law students to consider Justice Department or other public service careers. There's "a great team" at Justice, he reported.

"I would like you to consider a career in the Department of Justice. We need you. . . . We need a diverse department" and there are many areas of practice: tax, environmental, civil rights, and a wide variety of civil litigation.

Chief Judge Tacha takes office as treasurer of American Inns of Court

The Board of Trustees of the American Inns of Court Foundation has elected the Hon. Deanell R. Tacha, '71, to a two-year term as treasurer of the Foundation. She has served on the Board since 2000.

Tacha, chief judge of the U.S. Court of Appeals for the Tenth Circuit, is a frequent guest speaker and visitor to the Law School. She graduated from the University of Kansas, Phi Beta Kappa with Honors in American Studies in 1968, before earning her J.D. from the University of Michigan. After serving as a White House Fellow as Special Assistant to the Secretary of Labor, she entered private practice with Hogan & Hartson in Washington, D.C., before moving to Kansas as an associate with the Thomas Pitner law firm in Concordia and

then director of the Douglas County Legal Aid Clinic in Lawrence.

She returned to the University of Kansas and served as a professor of law, associate dean of the School of Law, associate vice chancellor, and vice chancellor for academic affairs before taking the bench in 1986.

Tacha is a member of the Tenth Circuit Judicial Council; the American Bar Association, the Kansas Bar Association, and the American Trial Lawyers Association, and participated in the 1999-2000 Anglo-American Exchange.

The American Inns of Court is a national legal association with more than 24,000 federal, state, and local judges, lawyers, and professors and students of law in 325 chapters across the United States. The organization is dedicated to promoting ethics, civility, and professionalism through mentoring and educational programs at the local level.

The American Inns of Court was the vision of U.S. Supreme Court Chief Justice Warren E. Burger, who was instrumental in founding the first American Inn in 1980. The organization developed from a discussion in the late 1970s between Burger, Ninth Circuit Chief Judge J. Clifford Wallace, and others.

In 1983, Burger created a committee of the Judicial Conference of the United States to explore the value of a national organization to promote, establish, and assist American Inns, and promote the goals of legal excellence, civility, professionalism, and ethics on a national level. The Judicial Conference endorsed the American Inn, recommended formation of a national structure, and the American Inns of Court Foundation formally was organized in 1985.

CONSTRUCTION LAW BUILDS A TREATISE

Philip L. Bruner, '64, learned about construction contracts when he was in law school. But not about construction law.

Yet for nearly 40 years he has been practicing construction law, and now he and co-author Patrick J. O'Connor Jr. have written a seven-volume treatise on the subject that one reviewer described as "long-awaited and eagerly anticipated." The treatise breaks new ground in the field, and is unusual because it is written by two practicing attorneys instead of by legal educators.



NEW! Bruner & O'Connor on Construction Law

"Construction law now has its Williston and Corbin."
—James F. Nagle

Bruner and O'Connor are partners with the international law firm Faegre & Benson LLP. Since 1983 they have been writing West Publishing's *Construction Review* and contributing to the publisher's *Construction Briefings*.

They also practice construction law, and have watched it develop. So they knew that when West's Roger Noreen asked them to do a two-volume, 1,200-page treatise on construction law that Noreen was on the right track. He just needed a bigger train.

Bruner and O'Connor on Construction Law is just that. Published by West last summer, the seven-volume treatise totals 6,600 pages and included more than 14,000 citations. "This treatise endeavors to address comprehensively the major issues of modern American construction law, to illuminate those issues in relevant factual and historical context, and to offer a brief 'road map' to international construction law, a subject worthy of its own multi-volume treatment," Bruner writes in his Preface to the treatise.

Founding head of Faegre & Benson's Construction Law Group and a founding fellow of the American College of Construction Lawyers, Bruner earned his A.B. at Princeton University. He also earned an M.B.A. from Syracuse University, and is listed in *Who's Who in America* and *Who's Who in American Law*.

Co-author and fellow Faegre & Benson partner Patrick J. O'Connor Jr. also practices construction law, chairs the Bond and Insurance Division of the American Bar Association's Forum on the Construction Industry, and is a fellow of the American College of Construction Lawyers. He earned his law degree at American University's Washington College of Law.

Construction law nearly has been ignored by legal scholars, but "construction is the largest single production sector of the United States economy — and quite likely of the world economy."

"In the 19th and 20th centuries, construction experienced a revolution in design and construction procedures, processes, materials and techniques that has not yet reached its zenith," Bruner continues in his Preface.



Philip L. Bruner, '64

"Following in the wake of construction, construction law itself was transformed by the revolution in construction and by fundamental trends in the law that favored a host of legal innovations, such as the modern 'contextual contract,' which was construed to incorporate not only terms and conditions expressly stated but also those implied from surrounding circumstances; the ascendancy of the doctrines of impracticability over absolute impossibility and of substantial performances and economic waste over strict compliance; and the use of consensual alternative dispute resolution methods of arbitrations, mediation, dispute review boards, and other non-traditional approaches. So many legal concepts developed in the 20th century to address the rights, obligations, and allocation of risks in the construction process as to merit recognition of 'construction law' as a specialized subject of law."

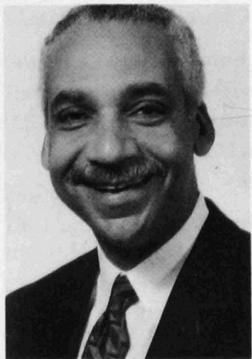
(Law School faculty members similarly have broken new ground with casebooks in criminal procedure [see story on page 30] and bioethics [see story on page 28].)

Green, '72, Maritzczak, '95, named to firm's Corporate Crime Group

Two Law School graduates, Saul Green, '72, and Kristina D. Maritzczak, '95, are members of the new three-person Corporate Crime Group organized by Detroit-based Miller, Canfield, Paddock and Stone PLC. The firm says the new group advises organizations on "how to prevent and detect criminal activity, [and] what steps to take if criminal activity is suspected." It also advises and defends organizations that face investigation or indictment.

Green heads the new group. The third member is Senior Council Michael Gordner.

A former U.S. Attorney for the Eastern District of Michigan, Green also heads Miller Canfield's



Minority Business Practice Group and is a member of the firm's Dispute Resolution Practice Group. In addition, he coordinates Miller Canfield's antiracial profiling education and training programs for public law enforcement agencies and private sector retailers.

A frequent visitor to the Law School (see related story page 13), Green also is president of the University of Michigan Alumni Association. He previously has served as president of the Wolverine Bar Association and for many years chaired the Michigan State Bar's Committee on the Expansion of Under-Represented Groups



in the Law. He is a fellow of the State Bar Foundation and the American Bar Association.

Maritzczak, an associate who joined Miller Canfield in 2002, formerly practiced with

Maddin, Hauser, Wartell, Roth & Heller PC and served as an assistant prosecuting attorney in Oakland County. Fluent in Ukrainian, Maritzczak served as legal consultant to the Ukrainian government and was selected by the Brookings Institute, Council for the United States and Italy, to participate in an international leadership conference to address issues over the future roles of NATO and the European Union in Central and Eastern Europe. She specializes in labor and employment law.

Grad leaves on a 'winning Note'

Benjamin C. Mizer, '02, has received the Ross Essay Writing Contest award from the American Bar Association (ABA) Law Student Division for his Note, "Toward a Motivating Factor Test for Individual Disparate Treatment Claims," 100 *Michigan Law Review* 234 (2001). The *Reviews's* managing editor and note editors selected Mizer's piece to enter the competition, which included entries from 37 other institutions.

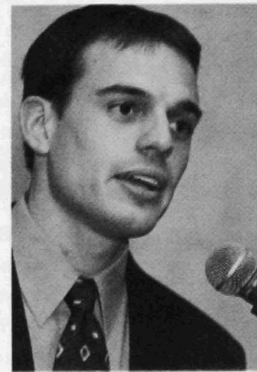
The Ross Student Writing Contest is one of the most lucrative legal writing competitions in the country, according to the ABA Web site. The winner receives an

expense paid trip to the ABA annual meeting as well as a \$7,500 cash prize. The contest goes back to 1934 when the first prize was awarded.

In June, when Mizer was contacted about the award, he had just finished three very full years of legal study and related activities. While a law student, he also had sung with the Headnotes, the Law School's *a cappella* student vocal ensemble; served as a peer tutor; worked as a research assistant to Assistant Professor

Ellen Katz; and steered *The Michigan Law Review* through its centennial as editor-in-chief of Volume 100.

He also spent much of his third year chalking up victories in the preliminary phases of the



Benjamin C. Mizer, '02

Campbell Moot Court Competition. He and his moot court partner, Coreen Duffy, were one of the two teams that made it through the preliminaries to face each other in the finals last April.

This year, Mizer is clerking for Judge Judith Rogers of the U.S. Court of Appeals for the District of Columbia Circuit. Next year, he will serve a clerkship with Justice John Paul Stevens of the United States Supreme Court. After that, he says, he'll be ready for a break and plans to use some of his prize toward a vacation "somewhere fun and relaxing."

— Lindsay Vetter

LEARNING FROM INSIDE THE COURT

To many a graduate, clerking for a state or federal judge becomes the next step after graduation, providing a continuing opportunity to learn and perfect her or his work in the legal profession. While in trial courts, the clerk often may be in court observing litigators at work. In appeals courts, much of the work may involve research and writing. Each kind of court and each kind of clerkship offers its own rewards, and often the judge for whom you work as a clerk becomes a lifelong professional ally and mentor.

The graduates who have notified the Law School of their clerkships for this year are listed below. Unless otherwise noted, the clerk graduated from the Law School in May 2002.

Seth Abrams

The Hon. Peter H. Ney
Colorado Court of Appeals,
Denver

Narai Ahn, '01

The Hon. Diane P. Wood
U.S. Court of Appeals for the
Seventh Circuit, Chicago

Stacy Arnold

The Hon. John Feikens, '41
U.S. District Court for the Eastern
District of Michigan, Detroit

Anne Becker

The Hon. Sarah Evans Barker
U.S. District Court for the
Southern District of Indiana,
Indianapolis

Jennifer Boatwright

The Hon. Joe Billy McDade
U.S. District Court for the Central
District of Illinois, Peoria

Jill Brady

The Hon. Marianne O. Battani
U.S. District Court for the Eastern
District of Michigan, Ann Arbor

Christina Brandt

The Hon. Walter L. Carpeneti
Alaska Supreme Court, Juneau

Joshua Brook

The Hon. Carol Bagley Amon
U.S. District Court for the Eastern
District of New York, Brooklyn

Caroline Brown

The Hon. Jon Phipps McCalla
U.S. District Court for the
Western District of Tennessee,
Memphis

Neil Buchanan

The Hon. Robert H. Henry
U.S. Court of Appeals for the
Tenth Circuit, Oklahoma City

David Burland

The Hon. Vaughn R. Walker
U.S. District Court for the
Northern District of California,
San Francisco

Catherine Carroll

The Hon. Harry T. Edwards, '65
U.S. Court of Appeals for the
District of Columbia Circuit,
Washington, D.C.

Dora Chen

The Hon. Thomas S. Ellis III
U.S. District Court for the Eastern
District of Virginia, Alexandria

Kristin Collins, '01

The Hon. D. Brock Hornby
U.S. District Court for the District
of Maine, Portland

Mary Beth Constantino

The Hon. R. Guy Cole Jr.
U.S. Court of Appeals for the Sixth
Circuit, Columbus, Ohio

Rasheeda Creighton

The Hon. Roger L. Gregory, '78
U.S. Court of Appeals for the
Fourth Circuit, Richmond, Virginia

Ryan Danks

The Hon. Thomas B. Russell
U.S. District Court for the
Western District of Kentucky,
Paducah

Chandra Davis

The Hon. Vanessa D. Gilmore
U.S. District Court for the
Southern District of Texas,
Houston

Celia Devlin

The Hon. Janet C. Hall
U.S. District Court for the District
of Connecticut, Bridgeport

Jamal Edwards

The Hon. Raymond A. Jackson
U.S. District Court for the Eastern
District of Virginia, Norfolk

Benjamin Faulkner

The Hon. Joseph E. Irenas
U.S. District Court for the District
of New Jersey, Camden

Louis Gabel

The Hon. Robert H. Cleland
U.S. District Court for the Eastern
District of Michigan, Detroit

Richard Gallagher, '01

The Hon. Arthur J. Tarnow
U.S. District Court for the Eastern
District of Michigan, Detroit

Brian Gallini

The Hon. Robert W. Clifford
Maine Supreme Judicial Court,
Auburn

Charlotte Gillingham

The Hon. Jeffrey Amestoy
Vermont Supreme Court,
Montpelier

Fortune Glasse

The Hon. Lawrence R. Leavitt
U.S. District Court for the District
of Nevada, Las Vegas

Ernest Hahn, '01

The Hon. Percy Anderson
U.S. District Court for the Central
District of California, Los Angeles

Christiaan Johnson, '99

The Hon. Faith S. Hochberg
U.S. District Court for the District
of New Jersey, Newark

Nicholas Joseph

The Hon. Timothy B. Dyk
U.S. Court of Appeals for the
Federal Circuit, Washington, D.C.

Jeffrey Kahn

The Hon. Thomas P. Griesa
U.S. District Court for the
Southern District of New York,
New York

Sanne Knudsen

The Hon. Ronald M. Gould
U.S. Court of Appeals for the
Ninth Circuit, Seattle

Beth Koivunen

26th Judicial Circuit Court of
Michigan, Alpena

Noah Leavitt

The Hon. Steven D. Pepe, '68,
U.S. Magistrate Judge
U.S. District Court for the Eastern
District of Michigan, Ann Arbor

Joshua Lee

The Hon. Marilyn Kelly
Michigan Supreme Court, Detroit

Marty Lentz

The Hon. Robert Isaac Richter
Superior Court of the District of
Columbia, Washington, D.C.

Scott Martin, '01

The Hon. Emilio M. Garza
U.S. Court of Appeals for the Fifth
Circuit, San Antonio

Todd Mesibov

The Hon. Terence T. Evans
U.S. Court of Appeals for the
Seventh Circuit, Milwaukee

Markeisha Miner

The Hon. Anna Diggs Taylor
U.S. District Court for the Eastern
District of Michigan, Detroit

Benjamin Mizer

The Hon. Judith W. Rogers
U.S. Court of Appeals for the
District of Columbia Circuit,
Washington, D.C.

WonKee Moon

The Hon. Mary J. Mullarkey
Colorado Supreme Court, Denver

Michael Moreland

The Hon. Paul J. Kelly Jr.
U.S. Court of Appeals for the
Tenth Circuit, Santa Fe

Courtenay Morris

The Hon. Katharine S. Hayden
U.S. District Court for the District
of New Jersey, Newark

Emily Morris

The Hon. Bruce M. Selya
U.S. Court of Appeals for the First
Circuit, Providence, Rhode Island

Jon Nathan

The Hon. Jay C. Waldman
U.S. District Court for the Eastern
District of Pennsylvania,
Philadelphia

Peter Nemerovski

The Hon. Damon J. Keith
U.S. Court of Appeals for the Sixth
Circuit, Detroit

Christopher Noyes

The Hon. Marilyn Skoglund
Vermont Supreme Court,
Montpelier

Mariela Olivares

The Hon. Deborah G. Hankinson
Texas Supreme Court, Austin

Katherine Page

The Hon. Bobbe Jean Bridge
Washington Supreme Court,
Olympia

Emily Palacios, '01

The Hon. Cornelia G. Kennedy, '47
U.S. Court of Appeals for the Sixth
Circuit, Detroit

Samir Parikh, '01

The Hon. Alan M. Ahart
U.S. Bankruptcy Court for the
Central District of California,
Los Angeles

Jasmine Patel, '01

The Hon. Alan C. Page
Minnesota Supreme Court,
St. Paul

Dustin Pickens

The Hon. Adriana Arce-Flores
U.S. District Court for the
Southern District of Texas, Laredo

Bree Popp, '01

The Hon. Michael F. Cavanagh
Michigan Supreme Court, Lansing

Benjamin Roberts

The Hon. Carinne K. Watanabe
Hawaii Intermediate Court of
Appeals, Honolulu

Tara Sarathy

The Hon. Stephen H. Glickman
District of Columbia Court of
Appeals, Washington, D.C.

Ani Satz

The Hon. Jane R. Roth
U.S. Court of Appeals for the
Third Circuit, Wilmington

Blake Schulman, '01

The Hon. Steven M. Gold
U.S. District Court for the Eastern
District of New York, Brooklyn

Ellie Shefi

The Hon. E. Clifton Knowles
U.S. District Court for the Middle
District of Tennessee, Nashville

Daniel Spies

The Hon. Stephen P. Lamb
Delaware Court of Chancery,
Wilmington

Rebecca Strauss

The Hon. Nancy G. Edmunds
U.S. District Court for the Eastern
District of Michigan, Detroit

Peter Tomczak

The Hon. John W. Noble
Delaware Court of Chancery,
Dover

Ellisen Turner

The Hon. Robert E. Payne
U.S. District Court for the Eastern
District of Virginia, Richmond

Samantha Tuttle

The Hon. Terri J. Stoneburner
Minnesota Court of Appeals,
St. Paul

John Ursu

The Hon. Richard H. Kyle
U.S. District Court for the District
of Minnesota, St. Paul

Veronica Vela

The Hon. Frank S. Maas
U.S. District Court for the
Southern District of New York,
New York

Vernon Walling

The Hon. Erithe A. Smith
U.S. Bankruptcy Court for the
Central District of California,
Los Angeles

Jeffrey Walsh, '01

The Hon. Suzanne B. Conlon
U.S. District Court for the
Northern District of Illinois,
Chicago

Charles Wilkinson, '01

The Hon. John C. Coughenour
U.S. District Court for the
Western District of Washington,
Seattle

Adam Ziegler

The Hon. James L. Ryan
U.S. Court of Appeals for the Sixth
Circuit, Detroit

Law graduates with a second clerkship in 2002**Katherine Barnes, '00**

The Hon. Sonia Sotomayor
U.S. Court of Appeals for the
Second Circuit, New York

Jason Casell, '01

The Hon. Michael M. Baylson
U.S. District Court for the Eastern
District of Pennsylvania,
Philadelphia

Stephen Hessler, '01

The Hon. Thomas L. Ambro
U.S. Court of Appeals for the
Third Circuit, Wilmington,
Delaware

Daniel Kelly, '01

The Hon. Pasco M. Bowman II
U.S. Court of Appeals for the
Eighth Circuit, Kansas City

Jamie Raulerson, '01

The Hon. Andrew S. Hanen
U.S. District Court for the
Southern District of Texas,
Brownsville

Sarah Schrup, '98

The Hon. Ruben Castillo
U.S. District Court of the
Northern District of Illinois,
Chicago

Martin Tittle, '01

The Hon. Maura D. Corrigan
Michigan Supreme Court, Detroit

Adam Wolf, '01

The Hon. Ronald Lee Gilman
U.S. Court of Appeals for the Sixth
Circuit, Memphis

Law graduates with a third clerkship in 2002**Eric Olson, '00**

The Hon. John Paul Stevens
Supreme Court of the United
States, Washington, D.C.

LEARNING FROM INSIDE THE COURT

MAPPING THE ROAD TAKEN



Plaintiff-side legal practice is satisfying but fraught with uncertainty, David Haron, '69, of Frank, Stefani, Haron & Hall in Troy, Michigan, and Michael Dowd, '84, of Milberg, Weis, Bershad, Hynes & Lerach in San Diego, explain during a talk on doing public good in private practice. The graduates teamed up to offer the kickoff program in a three-part series last fall sponsored by the Office of Career Services.

Representing plaintiffs in the recent tobacco litigation, the Enron case, whistleblower and Medicare fraud cases, and other high-profile cases is a mix of satisfaction, excitement, delayed gratification, and uncertainty, according to attorneys who described their work to law students last fall.

Michael Dowd, '84, of Milberg, Weis, Bershad, Hynes & Lerach in San Diego, and David Haron, '69, of Frank, Stefani, Haron & Hall in Troy, Michigan, described their work for a luncheon program sponsored by the Office of Career Services. The program, "Protecting the Public's Interest While Practicing in a Private Law Firm," was the first in a three-part series that brought several graduates back to the Law School to describe their legal careers and why they chose them. Other talks in the series dealt with practice in small to medium-size firms and international practice.

In the opening program, Dowd and Haron emphasized the need to train and practice if you want to be a litigator. They urged students to use clinical practice at the Law School and summer placements toward that end.

Said Dowd: "If you want to be a litigator, get out there and try cases." Seek summer placements and volunteer work with public defenders, U.S. Attorneys' offices, or other agencies. And in regular classwork, Haron added, "look at the cases. See what the litigators did, rather than just look at the black letter law."

Dowd's firm is best-known for representing lead plaintiffs in litigation against Enron. It also was involved in litigation against cigarette makers.

Haron specializes in whistleblower litigation and cases involving the Federal False Claims Act. His firm earned a \$2.5 million jury verdict for a whistleblowing employee who was discharged by his employer, one of the largest verdicts of its kind in Michigan. The firm also obtained one of the largest False Claims Act recoveries in history based on proof of improper clinical laboratory billings to Medicare.

"When we sue, it's life or death for these companies," Dowd said. "You're up against the best law firms in the country." And you're in their territory, he added. "If you sue Boeing, you sue them in Seattle. Every time, it's like playing the Yankees in Yankee Stadium."

Other programs in the series were:

- "How to Find a Job in a Small Law Firm (and Live Happily Ever After)." With panelists Megan Fitzpatrick Bula, '97,



of Shumaker, Loop & Kendrick in Toledo; Mischa Gibbons, '00, with Fink, Zausmer & Kaufman PC in Farmington Hills; and Laura Tilly, '84, of Miner, Barnhill & Galland in Chicago. There are pluses and minuses to affiliation with a smaller firm, the panelists said. Pluses include flexibility, less workplace pressure and somewhat less pressure to reach a billable hours goal, a shorter track to partnership, the satisfaction of doing a variety of work, and often seeing a case through from start to finish. Minuses include somewhat lower pay, the necessity of getting along with co-workers, and less prestige than accompanies large firm affiliation. Bottom line, the panelists said, is that the attorney and the firm must fit each other.

- "Careers in International Law." With panelists Jamal El-Hindi, '90, of the foreign assets control arm of the U.S. Treasury Department; Susan Finston, '86, of the Pharmaceutical Research and Manufacturing Association (PRMA); and Joel Samuels, '99, an adjunct professor at the Law School this winter and formerly with Covington & Burlington in Washington, D.C. Opportunities to combine legal skills and international activity abound, both in the United States and abroad, the panelists said. They advised students and new lawyers to sample firms and different kinds of jobs to determine what best fits them. Knowing one or more foreign languages is helpful if you want to do diplomatic work, noted Finston, who spent 13 years with the U.S. Foreign Service. Samuels advised that the "best value-added [enhancement] is to practice in the United States first, then go abroad." Have "an exit plan" from the outset,

well before you decide that you should leave a position, advised El-Hindi.

Five Law School graduates who are members of the advisory board of the Law School's Center for International and Comparative Law offered a second panel on opportunities in international law the next day.

Panelists were: Timothy Dickinson, '79, a partner in Dickinson Landmeier LLP and a visiting adjunct professor at the Law School; Robert T. Greig, '70, a partner with Cleary Gottlieb Steen & Hamilton in New York City; Jeffrey D. Kovar, '85, assistant legal advisor for private international law, Office of the Legal Adviser, U.S. Department of State; Alfred Mudge, '69, chairman of the International Institute for Rural Reconstruction, and a retired partner of Shearman & Sterling in New York City; and Yoichiro Yamakawa, M.C.L. '69, a partner with Koga and Partners, Tokyo.

During the 1990s there was tremendous growth in the role and number of nongovernmental organizations (NGOs) as officials discovered that the infrastructure they were creating could not work without a legal system, Dickinson reported. So there are "opportunities like never before."

Said Grieg: Cleary Gottlieb has 28 clients that are sovereign nations, and "even in New York, 70 percent of our work is international, and worldwide it is predominantly international. In my own case, more than 90 percent of the work I've done has been paid for in currency other than dollars."

Graduates in international practice take time from the yearly meeting of the advisory board of the Center for International and Comparative Law to discuss opportunities in international practice. From left are: Yoichiro Yamakawa, M.C.L. '69, a partner with Koga and Partners, Tokyo; Alfred Mudge, '69, chairman of the International Institute for Rural Reconstruction, and a retired partner of Shearman & Sterling in New York City; Jeffrey D. Kovar, '85, assistant legal advisor for private international law, Office of the Legal Adviser, U.S. Department of State; Timothy Dickinson, '79, a partner in Dickinson Landmeier LLP and a visiting adjunct professor at the Law School; and Robert T. Greig, '70, a partner with Cleary Gottlieb Steen & Hamilton in New York City.

"There are a tremendous number of opportunities out there," said Kovar, but "you've got to go out and find what suits you. If the State Department is involved in something happening overseas, then there's a lawyer at the State Department who's involved."

Language skills and cultural sensitivity are important skills in international practice, said Mudge. "We have an obligation to use the English language very simply and very clearly. In most of the world, English is the language of business, but it is not the mother language of most of the world."

Yamakawa explained that the Japanese legal system is small in comparison to that of the United States, and offers relatively little opportunity for foreign lawyers. It is growing, however, and the number of foreign law firms in Japan also is increasing, he said.

International Reunion will be September 19-21

Are you a Law School graduate who lives overseas or who has friends from the Law School who live abroad? Does your practice involve international law?

Yes?

Then set aside September 19-21 this year for the Law School's International Reunion, a gathering that will bring together members of the Law School family from around the world for a weekend of socializing, panels and discussions on substantive law topics, and reminiscing about the "good old days" here at the Law Quadrangle. Saturday evening will feature a gala banquet in the Law Quadrangle under the stars.

Increasing numbers of graduates now live outside of the United States, and, even within our national borders, many find themselves dealing with international and transnational matters. The Law School also continues its highly regarded tradition of drawing from among the best students and lawyers abroad to study here for advanced legal degrees.

The International Reunion in Ann Arbor takes place every five-six years. And given the pace of globalization and internationalization in commerce and legal practice, participants find that the gathering offers them the chance to step aside and consider some of these changes in the company of friends and colleagues who share their interests and expertise. For many graduates spread around the world, the return to the Law Quadrangle is like coming home.

For information as it becomes available, send an e-mail to: lawevents@umich.edu.

ROGER CONNER, '73:

I'D RATHER WIN THAN FIGHT

Roger Conner, '73, would rather win than fight. He hasn't always felt that way — he cut his teeth as a new lawyer on the bruising battle over oil drilling in Michigan's Pigeon River country, a case that went to the Michigan Supreme Court and then found itself about to be re-fought in the state legislature.

But that was 30 years ago. Today, as executive director of the new U.S.-based arm of Search for Common Ground (SFCG), Conner looks to the adversarial strategy as "the last resort, the fallback. Our aim is to change the way that Americans deal with public disputes so that a search for win-win outcomes is the first reaction."

SFCG's U.S. programs are called Search-USA in this country.

With a \$10 million annual budget and more than 350 employees worldwide, SFCG is one of the world's largest nonprofit, nongovernmental conflict resolution organizations. It has offices in Washington, D.C., and Brussels, and receives support from the European Union and member governments, the U.S. Agency for International Development, private foundations, international organizations, and individuals.

SFCG has operated in Africa, Europe, and Asia for some 20 years, and had a program in the United States for a time during the 1980s. But Americans weren't yet ready then for widespread use of SFCG's problem-solving approach in the public arena, Conner said. Since then, however, the success of alternative dispute resolution in private disputes and growing

frustration with the public policy gridlock that adversarial politics produces have made its solution-seeking approach to issues much more attractive, according to Conner. SFCG/Search-USA opened its Washington, D.C., office in 2000 and Conner became executive director.

Search-USA recently facilitated deliberations of the Working Group on Faith-Based and Community-Based Initiatives, whose 33 members came from groups as different as the Southern Baptist Convention and the American Civil Liberties Union. Over seven months the group's 33 members unanimously agreed on 29 recommendations whose thrust is that the United States should increase support for religious organizations in their work to solve social problems. The unanimity that the group forged "demonstrates the power of the consensus process," Conner noted. (Congress, however, couldn't find enough common ground to pass the Bush administration's faith-based initiatives proposal. At deadline time, new legislation that incorporated recommendations from the Working Group was expected to be introduced with the support of the Bush administration and backing from Sen. Joseph Lieberman, D-Connecticut, and Sen. Hillary Clinton, D-New York.)

Conner and Search-USA also brought together a bipartisan national consensus task force headed by Republican National Committee Chairman Marc Racicot and Kennedy School of Government head Dan Glickman, who was Agriculture Secretary in the Clinton administration. The task

force has proposed creation of a U.S. Consensus Council as a standing body to organize policy consensus panels on thorny legislative issues. At deadline time, according to Conner, Congress seemed receptive to the idea.

Other SFCG initiatives also reflect this agreement-building approach:

- The Philadelphia (Pennsylvania) Consensus Group on Re-Entry and Reintegration of Adjudicated Offenders brings together prosecutors, defenders, and former prisoners to ease former inmates' re-entry into the community and shows how local leaders can deal with their share of a national issue.
- The Common Ground Communities Program, which fuses skills development, systems change, and leadership into a force for change, shows how solution-seeking solves problems better than assigning blame does.

"The circle of blame is the way that most Americans talk about problems in our schools, our communities, and our political system," Conner explained. "The thing about that circle of blame is that it cannot generate a solution. All it does is try to shift the blame."

To be sure, there are cases where blame should land decisively. "I understand as well as anybody that there is evil in the world," Conner acknowledged. "There are people who only can be stopped by force. We're not talking flowers and kumbaya here."

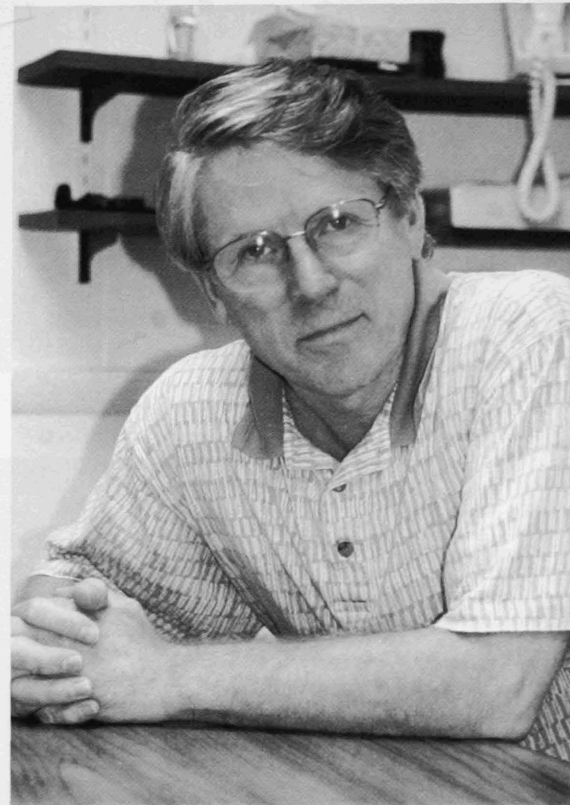
"This is a coldly realistic assessment of how to get things done. There are more win-win outcomes out there than most people think. We are missing opportunities. Our aim is to invent and adapt new tools for cooperation in public policy disputes, and to popularize the tools that are already there."

Conner's work with employers' and immigrant groups during the 1980s taught him how these often-opposing groups could come together in support of the Immigrant Reform and Control Act. He founded the Center for Community Interest in 1989 to use the law to give neighborhoods power, but quickly learned from neighborhood leaders that a legal battle often could cost more than it gained. "They were more interested in winning than in fighting," he explained.

"The reason was, in part, that this was not an intellectual exercise for them. It was a matter of survival. If your kids come home from school past an open air drug market where they might get killed, it is little solace if you win a Supreme Court decision 12 years later, and it doesn't make you feel better if an editorial writer of a local newspaper says you are involved in a just battle. You just want the drug market to go away.

"I had to learn something new, because if I made the mayor and the police the enemy, what good does it do to defeat them if I needed their help? And, indeed, if I made the kids who sold drugs my enemy, most of them weren't going to prison. They would be back in a week, a month, or a year. The whole concept of the 'army' overcoming the enemy doesn't work if the enemy is going to be there the next day, and especially if you need them to cooperate with you to reach the change that you want."

Appointed a Visiting Fellow at the U.S. Justice Department's National Institute of Justice in 1998, Conner continued to fine-tune his ideas of no-fault problem solving with study of the work of community oriented, solution-seeking prosecutors, defenders, legal aid lawyers, municipal attorneys, judges, and private attorneys. He wrote of his findings in "Community



Oriented Lawyering" for the *National Institute of Justice Journal*, and "Community Oriented Lawyering, An Emerging Approach to Practice for the Public Lawyer," which appeared in the summer 2000 issue of *The Public Lawyer*, an American Bar Association publication.

Conner has never shied from a legal battle and his briefcase is well notched. He's a member of the Bar for the U.S. Supreme Court and the State of Michigan. And he co-chairs the Committee on Resolution of Public Disputes of the Dispute Resolution Section of the ABA.

"I don't feel that I in any sense have retired," he emphasized. "I'm not on the sideline watching people. I see that I have shifted from somebody who wants to fight to somebody who wants to win."

"I slowly came to understand that other people had pieces of the puzzle that I never could understand," he explained. "If you want to achieve your goals it will require the cooperation of people in disagreement, and will require knowledge and insights from people in disagreement."



COMING HOME

Eighty degrees and sunny at 3 p.m. Nothing could improve on such weather for a reunion — except of course a winning football game. The Wolverines provided that on September 21, holding on to win 10-7 against a scrappy University of Utah team. For the classes of 1942, '46 and '47, '57, '62, '67, and '72, it was a terrific weekend filled with the recollections of Law School days, seeing former classmates again, renewing contacts with faculty members, and sharing the splendor of the Law Quad with family members who may not have seen it.

Several classes held Saturday morning discussion sessions:

- 1957: “Changes at the University of Michigan Law School Since 1957.” Led by Professor Emeritus John Reed.
- 1962: The University of Michigan Law School Today.” Led by James J. White, '62, the Robert A. Sullivan Professor of Law.
- 1967: “What’s Next . . . In Our Lives?” Led by Sally Katzen, '67.
- 1972: “The Lawyer’s Role in Corporate Responsibility.” Led by Joseph Vining, the Harry Burns Hutchins Collegiate Professor of Law. This was a special

session for Vining because it included the first class of graduates he taught after joining the Law School faculty in 1969.

Temperatures were somewhat lower, sunlight more restricted, and the Wolverines fell to Iowa’s Hawkeyes 34-9, but the reunion spirit was no less for all that for the Law School’s second reunion weekend October 25-27. In fact, the larger than usual gathering — several classes held their reunions this weekend because they were postponed after the tragedy of September 11, 2001 — generated a special conviviality by bringing together many people who had attended the Law School but graduated in different years. This fall weekend brought together graduates from 10 classes: 1976, '77, '81, '82, '86, '87, '91, '92, '96, and '97.

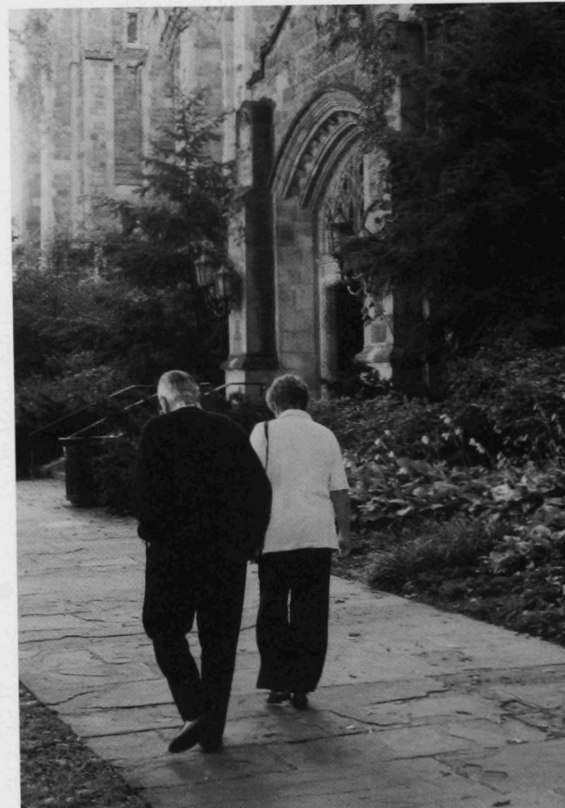
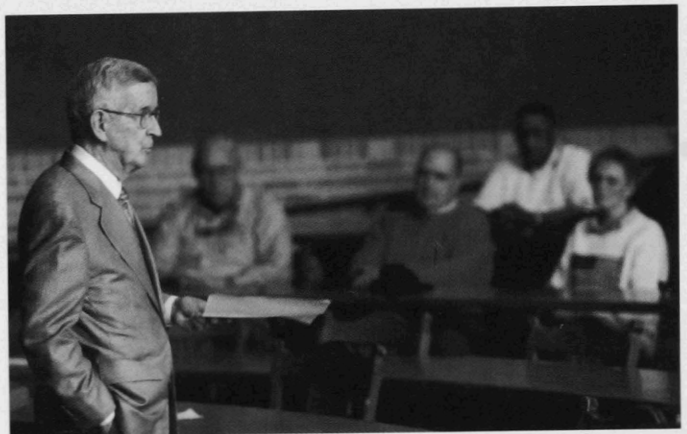
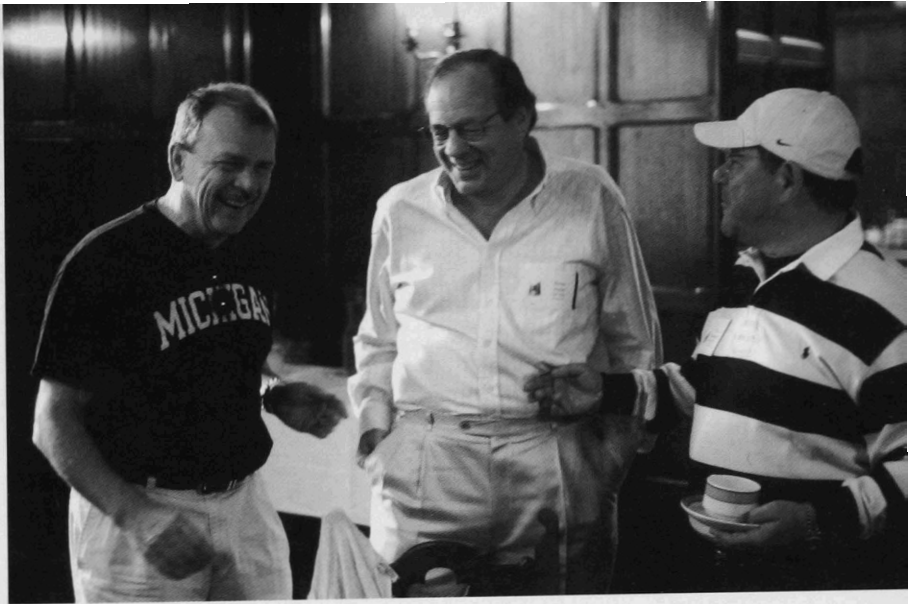
Many of these classes also presented special programs:

- 1976: Open Session.
- 1977: “What U of M Law School Did Not Prepare Me For: A Michigan School Education from the Perspective of 25 Years.”
- 1977 and 1996: “Bakke Goes to Law School: Affirmative Action and the Michigan Law School Litigation.”

- 1981 and 1982: “Law School and the Real World.”
- 1991: “Pursuing Non-Legal Careers: Perspectives from a CEO, a Professor, and a Sports Handicapper.”

In the belief that a good picture is worth at least 1,000 words — even 1,000 words carefully chosen by a lawyer — *Law Quadrangle Notes* offers you scenes of these special reunion gatherings at the Law School.





CLASS NOTES



From left,
Asher N. Tilchin, '49
Richard M. Leslie, '61
Ronald J. Santo, '65
Ronald R. Gilbert, '67
Ronald L. Rose, '67
Bruce F. Howell, '74

1949

Asher N. Tilchin received the Oakland County Bar Association's 2001-2002 Professionalism Award at the association's annual dinner on June 5, 2002. The award honors lawyers exemplifying the highest standards of professionalism and/or judicial practice. Tilchin is a partner in Tilchin, Hall & Reynolds PC, Farmington Hills, Michigan.

1951

Melvin I. Stauffer recently received the prestigious Excellence in Leadership Award, presented by the 2002 class of Leadership Enrichment and Development, Sandusky, Ohio. Over the years, Stauffer has been president of the YMCA, the Erie County Bar Association, and served several community organizations. In addition, he and his wife, Mary, also a UM graduate, were recently given the Lifetime Achievement Award by the Court Appointed Special Advocates for abused, abandoned, and neglected children.

50TH REUNION

The Class of 1953 reunion will be September 5-7

1954

Giorgio Bernini (S.J.D. 1959), the head of Studio Bernini e Associati in Bologna, Italy, has joined firms with Baker & McKenzie, giving Baker & McKenzie a third Italian office. Bernini is a high profile figure in Italian law. One of his specializations is competition advice. He also has spent time as an academic, served at the Italian Antitrust Authority, and served as Italian Foreign Trade Minister.

1956

Judith Liberman, of Newton Centre, Massachusetts, has published *Holocaust Wall Hangings*, a 96-page hardcover book that features reproductions of 45 of her Holocaust wall hangings, her annotations to these works, her essay on creation of the hangings, and three experts' essays about the pieces. In addition, nine of her major series of artworks, comprising several hundred individual works, have been acquired by museums and public institutions; the acquisitions include her Holocaust Paintings, Holocaust Wall Hangings, Self Portraits of a Holocaust Artist, Wall Hangings of Biblical History, Genocide series, Vietnam paintings, Skulls series, and her *Homo Sapiens* work.

45TH REUNION

The Class of 1958 reunion will be September 5-7

1961

Harold S. Barron, counsel to McDermott, Will & Emery and resident in the Corporate Department in the Chicago office, has been elected chair of the 60,000-plus-member Section of Business Law of the American Bar Association.

Richard M. Leslie, a senior partner with the Miami law firm of Shutts & Bowen LLP, was recently elected to a new two-year term as a member of the American Bar Association's House of Delegates. Leslie will also serve a third term as a delegate from the Dade County Bar Association. A commercial litigator for 40 years, he has handled maritime litigation, products liability, insurance defense, and class action litigation. He is also active in other professional associations.

1963

40TH REUNION

The Class of 1963 reunion will be September 5-7

Lawrence K. Snider, a partner in Mayer, Brown, Rowe & Maw in Chicago and co-administrator of the firm's Bankruptcy Practice Group, has been elected a member of the Board of Directors of the American College of

Bankruptcy (ACB). Snider has been a member of the ACB since 1990. He is also a member of the National Bankruptcy Conference.

1964

The U.S. Senate has confirmed **Robert J. Battista** as a member of the National Labor Relations Board (NLRB) and President Bush has designated him as NLRB chairman. Battista was a shareholder practicing in Butzel Long's Detroit office. He has chaired the State Bar Labor and Employment Section; served as chief negotiator, counsel, and trial attorney for educational institutions, companies, multi-employer associations, and public employers; and successfully has handled matters before the NLRB, U.S. Department of Labor, Office of Federal Contract Compliance Programs, Michigan's Labor and Civil Rights departments, the Michigan Employment Relations Commission, and the Michigan Teacher Tenure Commission.

James M. Powell, a senior partner in Hughes, Thorsness, Powell, Huddleston & Bauman, located in Anchorage, was recently elected to a five-year term as a trustee for the Sheldon Jackson College, Sitka, Alaska. Sheldon Jackson, which opened in 1878, is the oldest educational institution in continuous operation in Alaska.

1965

Ronald J. Santo was elected to the Dykema Gossett PLLC Executive Board effective May 2002. A new Executive Board is elected every three years and is responsible for establishing the strategic direction of the firm. Santo, who was a member of the firm's Executive Committee and is the former leader of the firm's Employment Law Practice Group, works in the Detroit office. He represents clients in employment matters ranging from violence in the workplace to civil rights.

Laurence S. Schultz of the Troy, Michigan, law firm Driggers, Schultz & Herbst was elected to the Board of Directors of the Public Investors Arbitration Bar Association (PIABA) at the organization's annual meeting in Colorado Springs. Schultz also delivered a talk on arbitration issues at the meeting. Formed in 1990, PIABA is a national bar association of more than 500 lawyers who represent investors in claims against brokerage firms.

1966

Stephen W. Jones, chair of the Estate Planning Practice Group of Beier Howlett PC in Bloomfield Hills, Michigan, has been included in the 2003-2004 edition of *The Best Lawyers in America*.

Stuart Sinai, who practices with Kemp, Kline, Umphrey, Endelman & May PC in Troy, Michigan, has authored an article on insider trading entitled "A Challenge to the Validity of Rule 10b5-1," which was recently published by *The Securities Regulation Law Journal*. His previous article, which also dealt with insider trading, was published in the American Bar Association's *The Business Lawyer*.

1967

Lewis T. Barr, a member of the Tax, Trust and Estates and Business Law groups at Ulmer & Berne LLP in Cleveland, Ohio, has been named to *The Best Lawyers in America*. He focuses on taxation, corporate law, estate planning and probate, family businesses, mergers and acquisitions, and loss-company transactions.

Ronald C. Gilbert was elected chairman of the National Aquatic Coalition in May 2002 and is the founder and chairman of the Foundation for Aquatic Injury Prevention. Gilbert promotes training and lifeguard professionalism on a state and national level. A solo practitioner representing tragically injured spinal cord victims and seriously injured aquatic victims throughout the United States, his goal is preventing litigation by preventing accidents.

Ronald L. Rose has been appointed managing member of the Chicago office of Dykema Gossett PLLC. Rose focuses on bankruptcy, insolvency, reorganization, and commercial matters. He is listed among *The Best Lawyers in America*.

1968

35TH REUNION

The Class of 1968 reunion will be September 5-7

David L. Callies, of Honolulu, Hawaii, was recently inducted into the College of Fellows of the American Institute of Certified Planners. Selections are based on individual achievements in the field of urban and rural planning. Callies has over 30 years of experience in planning and is currently the Benjamin A. Kudo Professor of Law for the William S. Richardson School of Law at the University of Hawaii.

1969

"Title Insurance Issues in Limited Liability Company Transactions," by **John C. "Jack" Murray**, has been named Best Overall Article in the Real Property Category by *Probate & Property Magazine*. Murray is vice president/special counsel for national commercial services with First American Title Insurance Company in Chicago. His article appeared in the

May/June 2001 issue of the magazine, a bi-monthly publication of the Real Property, Probate, and Trust Law Section of the American Bar Association.

Jeffrey W. Shopoff has formed the San Francisco law firm Shopoff & Cavallo LLP, with a practice limited to civil litigation and dispute resolution.

David M. Schraver, managing partner of the Rochester, New York, office of Nixon Peabody LLP, has been elected president of the Metropolitan Bar Caucus of the National Conference of Bar Presidents.

1973

30TH REUNION

The Class of 1973 reunion will be September 5-7

Ronald L. Kahn of Ulmer & Berne LLP in Cleveland, Ohio, has been listed in *The Best Lawyers in America*. He chairs his firm's Tax Practice Group and is a member of its Employee Benefits, Business Law, Trust and Estates, Employment and Labor Law, and Health Care groups.

1974

Bruce F. Howell, a partner in the Dallas office of Arter & Hadden LLP, graduated from

CLASS NOTES



From left,
W.C. Blanton, '75
Connie Y. Harper, '75
Dennis M. Haffey, '76
Ned Othman, '77
David B. Kern, '79
Judy A. O'Neill, '80
Patricia Lee Refo, '83

the University of North Texas with a Master's of Science degree in biology/statistical genetics in May 2002. He has practiced in the health care law field since 1985 and is now poised as one of the foremost authorities on the legal aspects of genetic technology and the many issues it raises. Howell advises hospitals, physicians, and healthcare providers on regulatory and transactional issues. In addition, Howell served as an adjunct professor of bioethics at the University of North Texas in summer 2002. He has published widely in his areas of interest.

Craig A. Wolson, of Westport, Connecticut, is included in *Who's Who in the World for 2003*. He previously has been listed, and will continue to be listed, in *Who's Who in America*, *Who's Who in Finance and Industry*, *Who's Who in American Law*, and *Who's Who in the East*. Wolson has specialized in securities and finance law throughout his 28 years of practice, and for a time during the 1980s served as vice president, general counsel, and secretary of J.D. Mattus Company, a no-longer-operating firm that specialized in real estate syndications.

1975

W.C. Blanton has joined the Kansas City office of Blackwell Sanders Peper Martin LLP as a

partner in the firm's Litigation Department and will lead the firm's Environmental Practice. He brings more than 25 years of environmental law experience to the firm. Most recently, Blanton was a partner with Oppenheimer Wolff & Donnelly LLP in Minneapolis, where he concentrated in environmental law and natural resources law since 1982.

Connie Y. Harper was elected to the Council of the Section on Labor and Employment Law of the American Bar Association at its annual meeting in August 2002. Harper is an associate general counsel of the International Union, United Auto Workers in Detroit, Michigan.

Jeffrey K. Haynes, chair of the Environmental Law Practice Group of Beier Howlett PC in Bloomfield Hills, Michigan, has been included in the 2003-2004 edition of *The Best Lawyers in America*.

1976

Dennis M. Haffey has been appointed director of the Litigation & Advocacy Department for Dykema Gossett PLLC. His litigation experience includes shareholder rights and complex business disputes related to accounting procedures, fraud, professional malpractice, negligence, software licensing,

warranty claims, product liability, and other issues. He has represented plaintiffs and defendants including corporations, shareholders, dealers, partners, owners, and franchises. Haffey is listed among *The Best Lawyers in America* for business litigation. He lives in Bloomfield Hills, Michigan.

1977

Martha Mahan Haines, chief of the Office of Municipal Securities at the U.S. Securities and Exchange Commission, has also been appointed an assistant director in the Division of Market Regulation. Her office recently received a "Law Office Accomplishment Award" from the American Bar Association's State and Local Government Law Section, marking the first time this award has been given to an office of a federal agency.

Ned Othman has joined Kelley Drye & Warren LLP as a partner in the Chicago office. Othman represents domestic and international institutions in a wide range of public and private finance and investment transactions, and counsels his clients in their continuing financial and business relations. Prior to joining Kelley Drye, Othman was a partner and chair of Corporate Finance at Duane Morris LLC in Chicago.

1978

25TH REUNION

The Class of 1978 reunion will be October 24-26

W. Robert Kohorst, president of Everest, which offers assistance for limited partnership holders, real estate investors, brokers, and the self-storage industry, announces that Everest has moved its headquarters to 155 North Lake Avenue, Suite 1000, Pasadena, California 91101.

Frederick R. Nance was appointed managing partner of the Cleveland office of Squire, Sanders & Dempsey LLP in March 2002. In this role, he helps frame the strategic direction for the firm's Northeast Ohio and statewide practices. His law practice focuses on general commercial litigation, construction law, and public-private partnerships. Nance has represented the City of Cleveland in important local legal matters in the city's recent history: negotiating for the Cleveland Hopkins International Airport, the Cleveland Browns, and the Cleveland Public Schools. He has also been active in a variety of business and community groups in greater Cleveland.

Mark Yura, a partner in Piper Rudnick's Chicago office and an adjunct professor for the John Marshall Law School's LL.M. Program in real estate law, is teaching a course this fall in real estate finance law.

1979

Beverly Hall Burns of the Detroit office of Miller Canfield Paddock and Stone PLC has been elected to the Board of Trustees of the Michigan Women's Foundation. The foundation promotes economic self-sufficiency and personal well being for women and girls. Burns has served as deputy chief executive officer at Miller Canfield since 1994. She is a labor and employment law attorney, focusing her practice in the automotive, governmental entities, public law, and school arenas and is active in numerous professional and civic organizations.

Brant A. Freer has returned to the Detroit office of Miller Canfield Paddock and Stone PLC as senior counsel. He is a member of the Public Law Group and Federal Tax and Employees Benefits Group, focusing on the federal income tax aspects of public finance and federal tax issues generally. Freer developed his expertise both at Miller Canfield and at two California law firms. In addition to his other responsibilities with the firm, he also heads Miller Canfield's Information Systems Committee and directs the firm's knowledge management efforts.

David B. Kern of Milwaukee has been named chair of Quarles & Brady LLP's national

Labor and Employment Practice Group, which includes more than 50 attorneys practicing in Quarles & Brady offices in Milwaukee, Madison, Chicago, Phoenix, Tucson, and Naples, Florida. Kern's practice includes emphasis on discrimination litigation, employer counseling, and collective bargaining.

Kevin M. McCarthy, a principal in the Kalamazoo, Michigan, office of Miller Canfield Paddock and Stone PLC, has been named by the firm's managing directors to be resident director of the Kalamazoo office. He is a labor law attorney representing management in employment and labor relations law. McCarthy also is active in numerous professional and civic organizations and activities.

1980

Jerry Genberg of Sills Cummis Radin Tischman Epstein Gross in Newark, New Jersey, has been named Philanthropist of the Year by America's Second Harvest, the country's largest domestic hunger relief organization. Genberg established the America's Second Harvest/Genberg-Lerman Family Fund, makes annual gifts to Second Harvest, and has made provisions for his estate to add to the organization's endowment fund. In his acceptance letter, Genberg noted that Second Harvest

helps "more than 23 million Americans annually who otherwise would not have a sufficient amount to eat."

Judy A. O'Neill has been appointed director of the Business Department for Dykema Gossett PLLC. Prior to this position, she was assistant leader of Dykema Gossett's Bankruptcy and Creditor Rights/Reorganization Practice. O'Neill is a leading expert in bankruptcy and reorganization of public and private companies. She has worked with a variety of creditors and debtors in bankruptcy proceedings and out of court restructurings, and provides counsel to buyers of troubled companies. O'Neill is certified as a bankruptcy specialist by the American Bankruptcy Institute. She lives in Grosse Pointe Farms, Michigan.

1981

Amy Wachs Fellner has been named a Fulbright Scholar and awarded a grant to teach law in Riga, Latvia, for the fall 2002 semester.

1982

John J. McEwan has joined the Madison, Wisconsin, firm of DeWitt Ross & Stevens. His practice focuses on real estate transactions, financing, land development, and general business law. McEwan had previously served as senior

counsel for International Paper in Montvale, New Jersey.

John C. Plotkin has announced the opening of his new law office in Denver. He continues to represent clients in complex business and commercial disputes and litigation including bankruptcy, real property valuation (including tax and condemnation), construction defect, real property, contract and general business, and commercial matters. He was formerly with Fleishman Sterling Gregory & Shapiro PC in Denver.

1983

20TH REUNION

The Class of 1983 reunion will be October 24-26

Mark S. Demorest is celebrating four years since he established his solo practice in Dearborn, Michigan. He represents a variety of privately-held businesses.

Patricia Lee Refo became chair-elect of the American Bar Association's Section of Litigation in August 2002 and will serve as chair beginning in August 2003. Refo is a partner with Snell & Wilmer in their Phoenix office and focuses her practice on complex commercial litigation with emphasis on litigation for financial institutions, professional malpractice

CLASS NOTES



From left,
 Marie R. Deveney, '84
 John H. Hern Jr., '86
 Amy S. Farrior, '86
 Lori M. Silsbury, '86
 Susan Hartmus Hiser, '91
 Kevin O'Gorman '93
 Cynthia Leitich Smith, '94

defense, class actions, trade secret litigation, and commercial and business torts. She was also recently appointed by Chief Justice William Rehnquist to serve on the Advisory Committee on the Federal Rules of Evidence for the United States Judicial Conference.

1984

Janet C. Baxter has joined the Grand Rapids, Michigan, firm Peter Kladder III PLC and the name of the firm has changed to Baxter & Kladder PLC. The firm specializes in business and family law, including business formation and law, estate planning, probate, commercial and civil litigation, divorce, adoption, and real estate. (We regret that this announcement, which was originally printed in the Summer 2002 issue, previously misspelled both Ms. Baxter's and Mr. Kladder's names.)

Marie R. Deveney of the Ann Arbor office of Dykema Gossett PLLC recently addressed Comerica Private Banking Relationship Managers from throughout Michigan on planning for retirement distributions under the Treasury Department final regulations. Deveney is a member of the Taxation and Estates Practice Group focusing on gift, estate and generation skipping transfer tax planning, probate and trust administration, wills and trust agreements, and retirement distribution planning.

1985

Craig J. Jones became the tax director of Dow AgroSciences LLC in August 2002. Dow AgroSciences is a global agricultural chemicals and biotech company headquartered in Indianapolis.

Kent K. Matsumoto recently joined the Washington, D.C., based Pharmaceutical Research and Manufacturers of America (PhRMA) as senior director for Intellectual Property. PhRMA represents the country's leading research-based pharmaceutical and biotechnology companies. Matsumoto will serve as point person for intellectual property legislative and strategic initiatives and will lead intellectual property advocacy efforts across all divisions. In addition, he is a board member of the Central Maryland Chapter of the American Red Cross and the president-elect of the Baltimore Chapter of the American Corporate Counsel Association.

Laura Kelsey Rhodes has been elected president of the Maryland Criminal Defense Attorneys' Association. She has served on the organization's Board of Directors for several years. Rhodes focuses her practice at Albright & Rhodes, LLC, Rockville, Maryland, on criminal and immigration litigation.

Timothy J. Stubbs is resuming his role as equity partner in the London office of Salans, after a two-year sabbatical as counsel with the European Bank for Reconstruction and Development (EBRD) in London. He concentrates on cross-border debt and equity financings in Russia and Central and Eastern Europe. Before joining EBRD, he was managing partner of Salans' office in St. Petersburg, Russia.

1986

Ronald S. Betman has joined the office of Winston & Strawn as a partner in the Litigation Department where he concentrates on major class action and complex commercial litigation.

Amy S. Farrior, who practices with Schropp, Buell & Elligett in Tampa, has been re-elected to the Hillsborough County Bar Association Board of Directors and elected to the Executive Council of the Trial Lawyers Section of the Hillsborough County Bar Association. Farrior is Board Certified as an appellate lawyer by the Florida Bar. Schropp, Buell & Elligett's practice areas include plaintiff's personal injury, insurance coverage, and eminent domain.

John H. Hern Jr. became chief executive officer of Clark Hill PLC Attorneys at Law in May 2002. Clark Hill has offices in Detroit, Birmingham,

and Lansing, Michigan. Hern, a business law expert, is the youngest member ever to serve as CEO of Clark Hill. He advises corporations of all sizes, both public and private; has extensive experience interacting with the SEC; his international law practice includes antitrust issues and the application of United States and European Economic Community antitrust laws in a variety of contexts; and he advises his clients on various aspects of intellectual property law.

Lori M. Silsbury was elected to the Dykema Gossett PLLC Executive Board effective May 2002. A new Executive Board is elected every three years and is responsible for establishing the strategic direction of the firm. Silsbury heads the firm's Lansing Litigation Practice, focusing on complex litigation in insurance matters, environmental issues, medical product defense, and employment matters.

1988

15TH REUNION

The Class of 1988 reunion will be October 24-26

Reed D. Benson has joined the faculty at the University of Wyoming College of Law as an assistant professor. He teaches water law, administrative law, environmental law, and Property I. His scholarly focus is on water and natural

resources. Benson worked since 1993 at WaterWatch of Oregon, a nonprofit river conservation group. While there, he served five years as executive director and four years as a staff attorney. He has also worked in private law practice and at the U.S. Environmental Protection Agency.

1990

Christine M. Castellano has been appointed counsel for Corn Products International Inc., Bedford Park, Illinois, a global supplier of food ingredients and industrial products derived from wet milling corn. Castellano oversees legal matters for the U.S. and Canadian operations, and is responsible for international intellectual property and contracting.

1991

Anne E. Collier recently joined Student Achievement & Advocacy Services in Washington, D.C. (www.achievementadvocate.org) as director of outreach programs. Student Achievement is a nonprofit organization that provides on-line educational and mentoring services to help students make the transition to a satisfying and productive adulthood.

Joshua Ditelberg has been elected a partner in the Chicago office of Seyfarth Shaw. He practices labor and employment law and is a

member of the firm's Business Restructuring and Transactional Employment Group. He and his wife, **Jane Gorham Ditelberg** (also a 1991 graduate), a trusts and estates partner in the Chicago office of Foley & Lardner, welcomed their first child, Claire, in April.

Susan Hartmus Hiser, a shareholder at Vercruyse Metz & Murray PC in Bingham Farms, Michigan, has become a Fellow of the Michigan State Bar Foundation. Hiser is also a member of the State Bar of Michigan's Labor and Employment Section, the Employment Law Committee of the Oakland County Bar Association, and the Employee Rights and Responsibilities Committee of the American Bar Association's Section of Labor and Employment Law. In addition, she is a member of the Board of Directors for the United Cerebral Palsy Association of Metropolitan Detroit and the chair of its Personnel Committee. Hiser is currently serving as editor of an American Bar Association book in progress, *Damages in Employment Law Actions*.

Ronald D. Puhala has become counsel to the Morristown, New Jersey, law firm Riker, Danzig, Scherer, Hyland & Perretti LLP. Puhala practices in the firm's Insurance Group in the areas of insurance coverage litigation, reinsurance, and insurance consultation.

1993

10TH REUNION

The Class of 1993 reunion will be October 24-26

Christopher B. Gilbert has been elected partner in Bracewell & Patterson LLP. Based in the Houston office, Gilbert has worked with the School and Public Law Section of the firm since 1993. He focuses on First Amendment rights as they impact public schools and colleges, including free speech rights of students and employees, school prayer, the use of religious literature and music on campuses, and the celebration of religious holidays in schools.

Robert Lee recently left Littler Mendelson (the largest labor and employment law firm in the country) to start the Employment Law Section at Heygood, Orr & Reyes (**James C. Orr Jr.** and **Angel L. Reys III** are 1991 alumni). Lee handles matters throughout the state of Texas. His practice is located in Arlington.

Kevin O'Gorman has been named a partner in Litigation and International Arbitration with the international law firm of Vinson & Elkins LLP. O'Gorman is a resident of the Houston office where his principal practice areas are international arbitration and international and commercial litigation.

1994

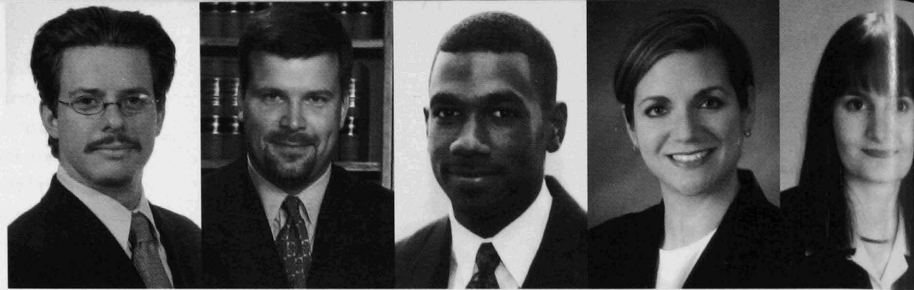
Laurie C. (Burry) Blondy recently formed Medlaw Advantage Services in Northville, Michigan. The new company provides medical and legal consultation and advice to attorneys handling claims involving medical issues.

Julia Ernst co-chaired the American Bar Association (ABA) Section of Individual Rights and Responsibilities Committee on the Rights of Women. In a special issue of the ABA's *Human Rights*, Vol. 29, No. 3, Ernst's work was credited as being invaluable.

Noah A. Finkel has been elected to partnership at Seyfarth Shaw in its Labor and Employment Group in Chicago.

Cynthia Leitich Smith, who attended Law School under the name Cynthia L. Smith, was selected as one of 24 children's authors nationwide to participate in the Second National Book Festival in October 2002. Hosted by First Lady Laura Bush and sponsored by the Library of Congress, the event took place on the West Lawn of the U.S. Capitol. Thus far, Smith has published three books. She is married to **Greg H. Leitich**, also a '94 graduate. In addition to having his own patent practice in Austin, Texas, he has written his first children's novel, which

CLASS NOTES



From left, Frederick Juckniess, '95, Peter J. Paukstelis, '95, Bruce O. Bradford, '97
Polly Ann Synk, '01, Crystal Monahan, '02

will be published by Little Brown in fall 2003.

Heather Martinez Zona has been named one of the United States' "100 Most Influential Hispanics" by *Hispanic Business* magazine. Zona is a litigation associate in the New York office of Heller Ehrman White & McAuliffe LLP and president of the New York Women's Bar Association (NYWBA). She is the youngest woman and first Latina to head the NYWBA.

1995

Christine Eskilsen has been named vice president and corporate counsel for U.S. Bank, headquartered in Minneapolis. She handles labor and employment counseling and litigation management. Eskilsen joined U.S. Bank after practicing labor and employment law at Littler Mendelson in San Diego for seven years.

Rebecca Johnson, LL.M., S.J.D. '00, associate professor, Faculty of Law at the University of Victoria, Canada, has written *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law*. The book looks at the history of Canadian legislative and litigation struggles related to the tax treatment of child care.

Frederick Juckniess has joined the Ann Arbor office of Miller Canfield Paddock and

Stone PLC as a senior attorney in its Litigation and Dispute Resolution Group. He practices in the areas of antitrust, intellectual property, trade secret, and business litigation.

Peter J. Paukstelis recently left Latham & Watkins to open a solo practice in his hometown of Manhattan, Kansas. He represents individuals in personal injury and employment discrimination litigation. Also of note, he and his wife, Dianne, recently had their second child, Nathan.

1997

Bruce O. Bradford has been named staff attorney in intellectual property for Sara Lee Corporation. Prior to joining Sara Lee, Bradford served as an intellectual property associate in the Chicago offices of Kirkland & Ellis. He is a member of the bar in Illinois, the U.S. Court of Appeals for the Federal Circuit, and the U.S. District Courts for the Northern District of Illinois and the Central District of Illinois.

Michael T. Cruz has joined McAndrews, Held & Malloy in Chicago. Cruz has more than five years of patent experience and is registered to practice before the U.S. Patent and Trademark Office. He has overseen national, foreign, and international patent applications in electrical and

mechanical engineering areas, and has successfully appealed cases before the Board of Patent Appeals and Interferences.

Jon Powers has joined the Twin Cities-based intellectual property law firm Fogg Slifer Polglaze Leffert & Jay as an associate. A registered patent attorney, Powers focuses his practice on patent applications, client counseling, opinion practice, and technology licensing. Powers previously worked as a senior intellectual property attorney at Minneapolis-based ADC Telecommunications Inc.

5TH REUNION

The Class of 1998 reunion will be October 24-26

2000

Hideaki Sano has joined the Ann Arbor office of Miller Canfield Paddock and Stone PLC as an associate in the Litigation and Dispute Resolution Practice Group. Prior to joining Miller Canfield, he was an associate with Honigman Miller Schwartz and Cohn LLP, Detroit. Sano also expects to receive his M.S. in aquatic ecology from the University of Michigan this fall.

2001

Katherine Dain, formerly Katherine Thomson Greenfield, has joined Ater Wynne's

Business Department and International Law Group in the Portland, Oregon, office. She advises domestic and foreign corporations on business, securities, and tax matters.

Jonathan W. Fountain has joined the Detroit office of Miller Canfield Paddock and Stone PLC as an associate in the Litigation and Dispute Resolution Group. He is also a member of the firm's E-Business Group.

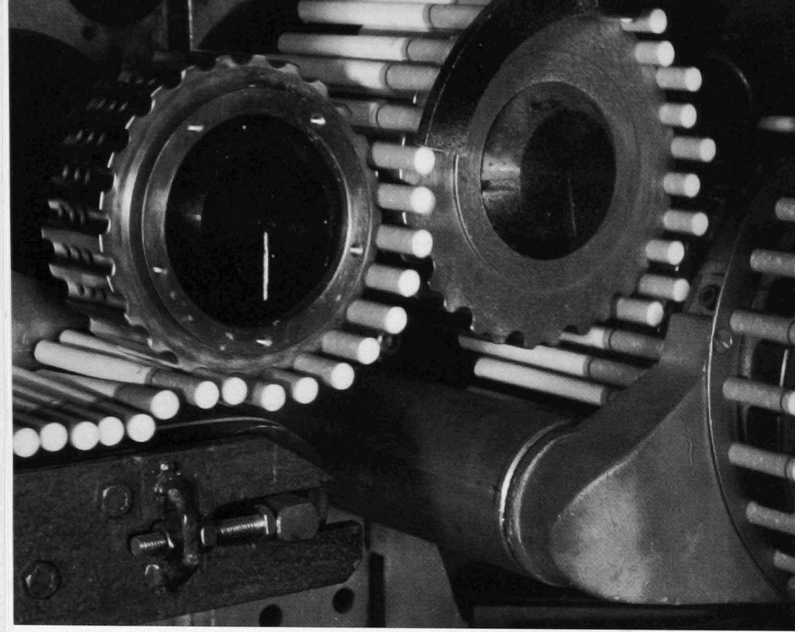
Polly Ann Synk has joined the Lansing office of Miller Canfield Paddock and Stone PLC as an associate in the Environmental and Regulatory Group. She previously worked as a legal research associate for the Natural Resources Division, Department of the Attorney General, Lansing, Michigan.

2002

Crystal Monahan has joined the New York City office of Querrey & Harrow as a resident attorney.

IN MEMORIUM

'27	Daniel L. Brenner	9/6/2002	'49	Arthur Bonk	8/1/2002
'29	George W. Sherr	8/20/2002		James R. Fredrickson	9/29/2002
'30	George R. Snider	9/20/2001		William M. Lambert	12/10/2001
'32	Herman H. Copelon	11/1/2001		Lewis Neilson	1/4/2001
	Donald H. Ford	3/23/2002		Arthur H. Northrup	6/25/2002
'34	Russell A. Smith	1/12/2002		Theodore Souris	6/21/2002
	John W. Watling Jr.	5/18/2002	'50	Arthur B. Cuddihy	9/8/2002
	Leonard J. Winer	6/26/2002	'51	George E. Bushnell Jr.	8/7/2002
'35	George H. Tobias	4/1/2002	'52	The Hon. Harry P. Newblatt	4/10/2002
	Birney M. Vanbenschoten	9/26/2002	'53	James Donovan III	4/27/2002
'37	Eric V. Brown Sr.	6/3/2002	'54	David P. Wood	10/15/2002
	Harvey L. Scholten	2/23/2002	'55	Glenn Grossman	7/8/2002
'38	The Hon. Reino S. Koivunen			Richard R. Robinson	10/24/2001
	Winston C. Moore	7/23/2002	'56	Thomas F. Wilson	6/25/2002
'39	William E. Jetter	7/26/2002	'57	The Hon. Martin Myles Doctoroff	7/9/2002
	John N. Seaman	9/9/2002	'61	James A. MacKinnon	5/7/2002
'40	Morton Jacobs	10/3/2002	'63	G. Harold Posey (LL.M.)	7/5/2002
	Harold M. Street	2/3/2000	'71	Patrick W. Semegen (M.C.L.)	5/26/2002
'41	Joseph B. Klein	7/13/2001	'72	Arthur Lee Morman	6/12/2002
	Robert L. Spencer	7/27/2002	'73	Paul G. Vielmetti	6/24/2002
'42	Everett R. Trebilcock	8/27/2002	'77	Joseph C. Marshall III	9/12/2002
'48	William A. Flory	4/4/2002	'81	Sue Baszler Geiersbach	6/22/2002
			'92	Eugene N. Feingold	10/13/2002
			'96	Jennifer E. Newton	12/2/2001



A Taxing Settlement

The following essay is based on the talk "Government, Citizens, and Injurious Industries: A Case Study of the Tobacco Litigation," delivered by Hanoch Dagan last May to the Detroit Chapter of the International Association of Jewish Lawyers and Jurists, and on the article "Governments, Citizens, and Injurious Industries," by Dagan and James J. White,'62, which appeared in 75.2 New York University Law Review 354-428 (May 2000). The authors hold conflicting views on the underlying issue of this topic: tobacco company product liability. Professor Dagan holds the position that tobacco companies are liable for harm done by their products; Professor White argues that tobacco companies are not liable for harm done by their products.



By Hanoch Dagan
and James J. White

Citizens sue industries for tort injuries. That is familiar. Governments sue the same industries for cost suffered in ameliorating or preventing those injuries. That is unfamiliar. This new pattern of litigation and settlement inherently puts the government in competition with its citizens. It also facilitates the government's fulfillment of its public responsibility. This article deals with these vices and virtues.

The tobacco litigation by the states and the settlement of that litigation (the largest ever) is the most prominent example of this pattern of government suing injurious industries. A similar pattern is developing in the gun industry where more than 20 suits have been brought against the manufacturers. Industries waiting in the wings for this treatment include lead paint makers, and perhaps even brewers, distillers, and producers of fatty foods.

In this article we address some of the questions raised by this recent pattern of litigation and settlement. We assume

throughout that consumers or third parties have actually been harmed by the products at issue, be it cigarettes, guns, etc., and have valid claims against the pertinent industry. We explore the intricate legal questions arising from the triangular relationship among the players in these high-profile cases: governments, citizens, and defendant industries. We have two major purposes: identifying the proper cause of action of governments against industries and setting their appropriate boundaries; and discussing the inherent risks in allowing such claims and pointing to the way they should be addressed.

We begin with the question of the liability of an injurious industry to a government that has incurred preventative and ameliorative costs due to the harms inflicted by that industry on its citizens. The states' litigation against the tobacco industry focused on reimbursement of tobacco-related healthcare costs. Many of the causes of action actually

brought by the states were invalid bases on which to make such claims. The states' complaints did not adequately present their true remedy: subrogation.

Subrogation arises where one person (the subrogee) pays another (the subrogor) to cover a loss or a debt for which a third party is primarily liable. The subrogee then enforces the rights of the subrogor against that third party (the party primarily responsible for the loss) for its own benefit. Subrogation has two forms: contractual (also called conventional) and legal (also called equitable). Our focus is on cases where there are no contractual arrangements (explicit or implicit) respecting subrogation.

Our analysis shows that the states have a valid subrogation claim. To be sure, theirs is a hard case because — unlike core cases of subrogation (such as traditional insurance subrogation) — the interests of the governments and those of the industries are not closely locked-in together: governments, payments are indirect and to some extent discretionary. And yet, like in other subrogation borderline cases, third-party interests should make recovery available: public authorities should be able to respond in an efficient manner to any threat to the public health or safety, without worrying that the provision of services would insulate those who are responsible from these threats from liability and unjustifiably shift the burden of their wrongdoing to the public purse.

The governments' status as subrogees makes their rights derivative of those of the direct victims, due to and to the extent of the unsolicited benefits conferred. As such, the subrogee's rights can be no greater than the rights of the subrogor. Thus, the industry's original liability to injured citizens caps its exposure to subrogation. The governments are also subject to whatever defenses the industry would have had against the injured citizens, most prominently assumption of risk, causation, and statutes of limitations. Moreover, governments are entitled only to the damages attributable to the loss which they have covered (and they carry the burden of proving that these costs were indeed incurred in a way that benefits the injured citizens). Governments are not entitled to damages for pain and suffering, punitive damages, or statutory penalties to which the injured citizens might have been entitled from the industries.

Citizens vs. Governments: Takings

Governments that seek to recover their ameliorative and preventive costs might end up harming citizens who seek remedy for their direct damages. This proposition can be demonstrated by the tobacco settlement. Our analysis of the settlement concludes that some of the *quid pro quo* given by the states to the tobacco manufacturers is actually at the expense of third parties: competitors (and hence future consumers) and injured smokers. In particular, we show that the tobacco settlement secured two things for the tobacco companies: at least momentary safety from bankruptcy and

protection against competition. Regarding the bankruptcy issue, we predict that the settlement has indirectly purchased the allegiance of its beneficiaries, not only [state] attorneys general, but also public employees, contractors, even teachers' unions. All of these beneficiaries now have a reason to support federal legislation, like the McCain Bill, that would cap tobacco companies' liability. Citizens thus help pay for the governments' winnings through reduced opportunities to pursue their private claims against the injurious industries. Indirect evidence for the same phenomenon is the receipt by a government of funds in excess of spent costs and the spending of such funds on causes that have nothing to do with the injured citizens' interests.

These dangers, which are inherent in allowing governments to sue injurious industries for their preventive and ameliorative costs, can, and should be, addressed in the framework of takings law. The takings question regarding a triangular paradigm analogous to ours — where the government's settlement with another sovereign limits a citizens' claim against that sovereign — is unsettled. While the Supreme Court in *Dames & Moore v. Regan* (453 U.S. 654 [1981]) left open as unripe the question of whether such a settlement constituted a taking, Justice Powell noted in concurrence that “[t]he government must pay just



Our analysis of the settlement concludes that some of the *quid pro quo* given by the states to the tobacco manufacturers is actually at the expense of third parties: competitors (and hence future consumers) and injured smokers. In particular, we show that the tobacco settlement secured two things for the tobacco companies: at least momentary safety from bankruptcy and protection against competition.

compensation when it furthers the nation's foreign policy goals by using as 'bargaining chips' claims lawfully held by a relatively few persons and subject to the jurisdiction of our courts." Lower courts have followed this proposition by scrutinizing the constitutionality of such governmental interference.

By exploring the foundations of takings law, we show that a government's interference with its citizens' compensatory claims beyond its role as a legitimate subrogee (via its receipt of more money than it has spent on preventative and ameliorative measures and/or the enactment of caps) justifies compensation. In other words, insofar as the citizen's expected awards are compensatory, and the government spends the money it receives from the industry on programs that do not benefit the injured citizens, the citizen's takings claim should be successful. Governmental interferences with citizens' punitive damages awards present a more complex case. The case of barring punitive damages as part of a government-industry settlement derives complexity from the unsettled nature of punitive damages. We doubt that citizens can claim any entitlement for punitive damages for retribution. But insofar as punitive damages are aimed at deterring the defendant's infringement of the plaintiff's entitlement, thus vindicating the latter's control over the infringed resource, plaintiffs may well have valid takings claims even respecting punitive damage. As long as punitive damages for deterrence will not be disentangled from punitive damages for retribution, these claims would probably remain theoretical. On the other hand, we have no doubt that governmental interference with citizens' compensatory awards should be regarded as a violation of

Our principal quarrel with the settlement as an agreed resolution of a tort claim is that some of the terms — reducing payments by the participating manufacturers if they lose market share to outsiders and inviting the states to enact a tax that deters new market entrants — improperly redistribute costs from the tobacco companies' shareholders to their consumers.



their Fifth and Fourteenth Amendment rights. A strict takings doctrine is the only viable protection for citizens from the dangers inherent in governmental interference with their claims against injurious industries.

Public Policy

Such findings have significant impact on the formation and conduct of public policy. There is considerable risk that governmental interference in the resolution of mass tort claims will violate the legal rights of the individual victims. Our case study of the tobacco settlement highlights an additional disadvantage, that such interference is also bad public policy even where it might not violate the legal rights of the individual victims. This is true whether one considers the settlement to be merely an agreed resolution of a tort subrogation claim or a state imposed tax.

We acknowledge that the states are proper subrogees for their ameliorative and preventative costs and we also see no reason why their claim for those costs could not be resolved by agreement with the manufacturers. But the settlement is unlike a garden-variety subrogation recovery; as true subrogees, the states would surely not have won judgments with a value equal to the amount that the tobacco manufacturers have agreed to pay. The states reached such a favorable settlement only by colluding with the tobacco manufacturers to put a disproportionate share of the cost on their citizen smokers.

Our principal quarrel with the settlement as an agreed resolution of a tort claim is that some of the terms — reducing payments by the participating manufacturers if they lose market share to outsiders and inviting the states to enact a tax that deters new market entrants — improperly redistribute costs from the tobacco companies' shareholders to their consumers. If the agreements in the settlement had been reached between private parties, they would have violated federal antitrust laws. Although states' agreements are immune from federal antitrust prosecution, the anticompetitive provisions of the settlement will have exactly the same effect as if private parties had conspired to exclude competitors. If the agreement with the manufacturers hinders the entry of new competitors, the price of cigarettes will be higher than in a freely competitive market.

The higher price has two effects. First, it frees the companies' shareholders from having to internalize the costs of their tort liability; they can pass on the costs to consumers without a loss in market share. Second, it facilitates the inclusion of additional payments in the settlement (e.g. payments for lobbying) without fear that new entrants to the market will undercut the cigarette prices of the participating manufacturers. If demand for cigarettes is relatively inelastic, if price competition among the participating manufacturers is muted, and if outsiders are barred, the cost of any "bribe" to the state governments can be passed through to purchasers without cost to the manufacturers.

The settlement may be even more offensive to public policy if it is considered to be a tax imposed by quasi-judicial function. The payments have many of the attributes of a tax: they are made to the states; continue indefinitely; are only imperfectly related to past tort injuries; and in many states

will go directly into the treasury and be expended in just the same way as conventional tax revenues would be. As a tax, the settlement is undemocratic and regressive.

The first and most powerful objection is that as a tax the settlement violates the democratic principles that are built into the tax laws of every state. If a state were to enact a multi-billion dollar tax equal to the revenues that it will receive under the settlement, it would have to follow elaborate legislative procedures. Typically, these measures would include legislative hearings, debate, and passage by both houses of the state legislature, and signature by the governor. In contrast, a state's adoption of the settlement required only the agreement of a state official such as the attorney general and the adoption of the settlement in a judgment dismissing the state's suit against the manufacturers. The settlement's bypassing of the traditional mechanisms for the passage of new taxes reduces the visibility of the settlement's provisions. No advocate for cigarette consumers has ever had the opportunity to express the arguments that we consider here. No attorney general has had to respond to questions about the settlement's anticompetitive provisions. No anti-tax governor has had to explain why he or she is proposing a huge new tax.

The lack of public participation becomes even more troubling when we consider that in modern America smokers are drawn disproportionately from classes with limited education and low incomes. The tobacco manufacturers' ability to pass on the costs of the settlement means that the costs will be imposed primarily on working-class smokers. This concern would be alleviated if a disproportionately large share of the tax revenues were to go to the working class, particularly to the smokers, but we see no evidence of that happening.

Consider one final consequence of this unusual tax. Every excise tax on a potentially injurious product is, of course, a bargain with the devil, for more sales mean both more tax revenue and more injuries. But the peculiar nature of this tax ties the states even more closely to current members of the tobacco industry than would be true of a conventional tax. Because the tax arises from an agreement between each state and specific tobacco manufacturers, the tax revenues depend upon the continued existence and solvency of the participating manufacturers. If Philip Morris or RJR goes into bankruptcy and liquidates, and its market share is taken over by a new entrant, every state's tax revenues will decline accordingly. Each state will thus have an incentive to keep these particular taxpayers healthy. If our analysis is correct, the states have made covert, implied promises about lobbying and covert, express promises about erecting barriers to new entrants that the states would probably not make to anyone openly, certainly not to specific members of a particular industry.

Because the settlement revenues go to identifiable beneficiaries in most states, persons in every state will shortly

regard these benefits as an entitlement. The incentive of state officials to maintain the revenues will be correspondingly enhanced by the knowledge that particular, local voters depend on this revenue.

We see much that is bad and little that is good from enacting such a tax by a quasi-judicial process. The absence of the legislature from the adoption process stills the public's voice and facilitates collusive bargains. Characterizing the payments as tort recoveries frees public officials from the pain that they would suffer for enacting new taxes, particularly regressive ones. Finally, the exclusion of smokers from the private bargaining table facilitates other parties taking assets that should belong to the excluded players.



Because the settlement revenues go to identifiable beneficiaries in most states, persons in every state will shortly regard these benefits as an entitlement. The incentive of state officials to maintain the revenues will be correspondingly enhanced by the knowledge that particular, local voters depend on this revenue.

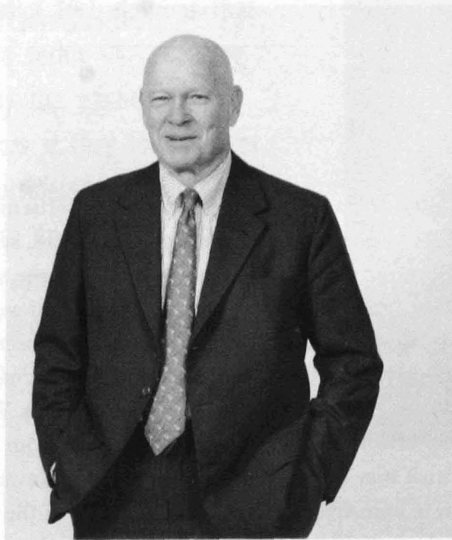
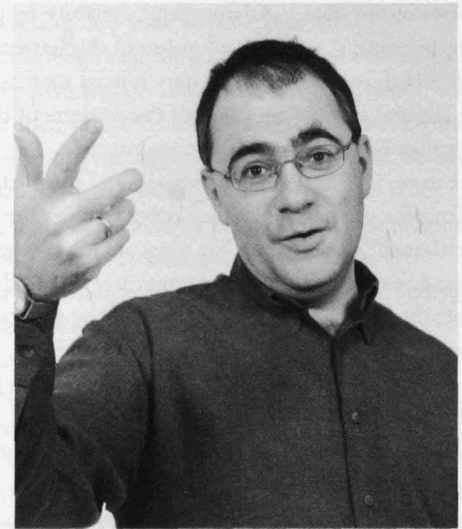
Conclusions

We do not claim that every bargain struck in settlement of a state or federal suit against weapons manufacturers, sellers of fatty foods, brewers, or distillers will have all of the same characteristics as the tobacco settlement. But we believe that when the government asserts a claim that could be asserted by an individual citizen, it will almost always be presented with the same temptation to collusion and conversion. The industry under attack will always want protection from the private suits that may be its only hope for survival. Invariably, therefore, these industries will seek payment out of the resources of the individual plaintiffs. Because these bargains are negotiations for the settlement of suits to which, by hypothesis, the individuals are not parties, the individual plaintiffs will be excluded. But . . . government interference is also beneficial, for it allows governments to pursue their

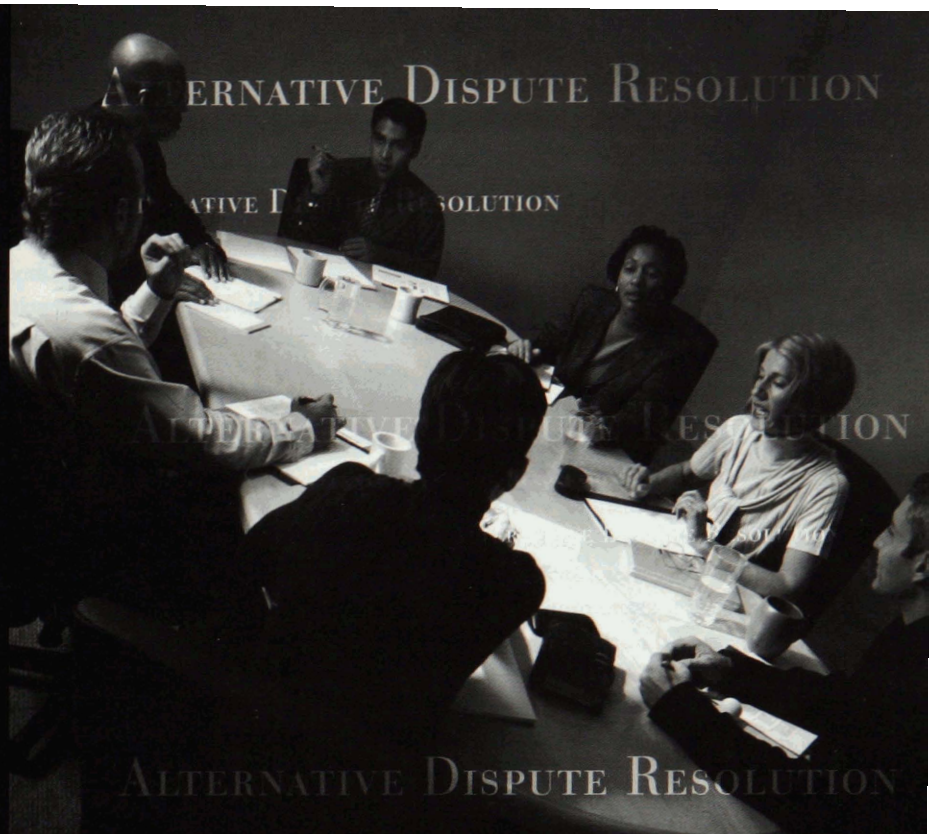
public responsibilities in preventing and ameliorating injuries to their citizens without fear that the public will bear more than its fair share of the cost. Properly asserted, government legal subrogation claims insure the correct internalization of the true costs of an industry's products.

As we claim throughout, government's legal subrogation claims are both salutary and dangerous. Only a generous approach to subrogation accompanied by a strict takings inquiry can capture the advantages of government involvement without opening the door to abuse.

Hanoch Dagan is an Affiliated Overseas Faculty member of the Law School and a professor at Tel-Aviv University Law School in Israel. Professor Dagan received his LL.M. and J.S.D. from Yale Law School after receiving his LL.B., *summa cum laude*, from Tel Aviv University. He is widely published in both English and Hebrew on private law theory, takings law, distributive justice, and property theory, and he is often invited to give lectures and presentations in his areas of interest. He wrote *Unjust Enrichment: A Study of Private Law and Public Values* (Cambridge University Press) and is editor of *Land Law in Israel: Between Private and Public* (in Hebrew). Some of his more recent articles are: "Mistakes," 79 *Texas Law Review* 1795 (2001); "The Liberal Commons" (with Michael Heller) 110 *Yale Law Journal* 549 (2001); and "Just Compensation, Incentives, and Social Meanings," 99 *Michigan Law Review* 134 (2000). He has taught courses and seminars at the Law School on property law, jurisprudence, American legal theory, property theory, legal realism, and unjust enrichment.



James J. White, '62, the Robert A. Sullivan Professor of Law, is a graduate of Amherst College and the University of Michigan Law School. He practiced privately in Los Angeles and began his academic career at the University of Michigan in 1964. Professor White has written on many aspects of commercial law and has published the most widely recognized treatise on the Uniform Commercial Code, *Handbook of the Law Under the Uniform Commercial Code* (with Summers, 1995, 4th ed.). He is also the author of several casebooks on commercial, bankruptcy, and banking law. Professor White has served as the reporter for the Revision of Article 5 of the Uniform Commercial Code; he is a member of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and has served on several American Law Institute and NCCUSL committees. He received the L. Hart Wright Award for Excellence in Teaching for 2001-02. Among courses he recently has taught are Payment Systems, Secured Transactions, and Negotiation.



ADR WITHOUT BORDERS

The following essay is based on a talk delivered in May at the Peace Palace in The Hague as part of the Permanent Court of Arbitration's international law seminar "Labor Law Beyond Borders: ADR and the Internationalization of Labor Disputes."

By Theodore J. St. Antoine

ALTERNATIVE DISPUTE RESOLUTION

Until recently labor disputes were localized and highly site-specific in their regulation. Even if the employer was a multinational enterprise, a workplace controversy would almost invariably involve a particular union or group of employees in a given geographical location. At most, the conflict might affect the company's plants in a whole country. But still the dispute would generally be subject to a single body of familiar laws and customs. The term "international labor dispute" was simply unknown to most practitioners and scholars in the labor field.

All that is now changing. Professor Hepple, in his usual comprehensive and trenchant style, has already mapped out the emerging domain of internationalized labor disputes. Before proceeding to my own topic, the potential role of alternative dispute resolution (ADR), I should merely like to demonstrate with a few examples that the message about this worldwide phenomenon has even reached the parochial precincts of the United States. In April 2002 the *Wall Street Journal* described how several American universities were

considering cancellation of contracts with a firm near Buffalo, New York, that makes sports caps. The Workers Rights Consortium was concerned about safety conditions in the plant. Said a spokesperson for the consortium: "We want to make sure rights are respected, whether it's Bangladesh or Buffalo." Earlier, the National Education Association had reported on the efforts of high school teachers across the country, from New Hampshire to Oregon, to monitor the pay and working conditions, especially of children and pregnant women, in factories in Bangladesh, Pakistan, Nicaragua, and elsewhere, which produce shoes, clothing, and soccer balls worn or used by American students.

Responses and recommended responses have covered a wide range. In June 2001 Arnold Zack, past president of the National Academy of Arbitrators, urged the International Labor Organization (ILO) to establish a mediation office to resolve conflicts among governments, employers, unions, and others over compliance with ILO conventions. About the

same time, going beyond the labor field, President William K. Slate II of the American Arbitration Association announced the opening of the AAA's second International Center for Dispute Resolution, and its first in Europe, in Dublin. The AAA was already handling over 500 international mediation and arbitration cases annually in the commercial area, involving nationals from 70 different countries.

Dispute resolution on an international level presents some unique problems. Commercial litigators, for example, have expressed dissatisfaction with the operation of CIETAC — the China International Economic and Trade Arbitration Commission. They reportedly question the impartiality, independence, and professionalism of the arbitral panels. A majority of the arbitrators deciding cases involving foreign countries are Chinese, and CIETAC does not yet appear to have acquired a truly transnational character. Its caseload has declined steadily, from 829 in 1994 to 543 in 2000. If that is the experience in the commercial field, where business people presumably share many values in common, one can see where the pitfalls multiply in an area like labor and employment, with all its potential for class as well as economic conflict.

My task is to assess the ways in which alternative dispute resolution procedures may be adapted to deal with international labor disputes. ADR refers to various methods by which neutral third parties assist persons engaged in a conflict to settle their differences without invoking the decision-making power of the state or other sanction-imposing body. Both mediation and arbitration are included. In mediation the neutral seeks to get the parties to agree on a mutually acceptable solution. In arbitration the neutral imposes a solution after presentations by the contending parties. A third term, conciliation, is sometimes used and generally connotes a milder form of intervention than mediation. A conciliator may simply get the parties talking and do little to direct the course of their exchanges. A mediator usually aims at a more structured dialogue. In each instance, the ADR procedure is a substitute for a more formal adversarial action before a court or administrative agency. At their best, mediation and arbitration have the advantages of speed, cost savings, and informality over court or administrative proceedings.

INSTITUTIONAL AND CULTURAL DIFFERENCES

Any effort to use ADR procedures to settle labor disputes in an international setting must take into account that the parties may come from very different legal systems and widely varying cultural backgrounds. Even in the so-called Western World, the diversity of civil law and common law approaches to arbitration has created problems that require

harmonization. Examples include distinctions between the "inquisitorial" and "adversarial" processes; the limited or extensive cross-examination of witnesses; elaborate or conclusory written pleadings; neutral or partisan expert witnesses; proof of foreign law as a matter of "law" or of "fact"; and the allocation of costs (an issue on which the common law systems of the United Kingdom and the United States differ).

Legal differences, being primarily intellectual constructs, may be the easier divide to bridge. Cultural differences, going to the essence of who we are, could be the subtler but more stubborn obstacle. They have been said to be a major barrier to the effective use of mediation in resolving disputes under the North American Free Trade Agreement (NAFTA). Yet the "extraordinary diversity" of the workforce at the United Nations has not been found an impediment to the successful operation of that organization's quasi-legal Joint Appeals Board for handling internal grievances.

Are there practical ways to minimize the adverse effects of cultural factors on the implementation of mediation and arbitration? The starting point has to be a recognition that cultural differences and a diversity in the ethnic background of the parties will play a part in any proceedings. It was only in the last couple of decades that neutrals in my country fully faced up to this as a fact of life in the American workplace. A healthy reaction was a deliberate effort to increase the number of minorities and females in the ranks of arbitrators and mediators. In mediation, especially, there is a need for creating trust of the neutral on the part of the disputants. Engaging persons for the neutral role whose backgrounds are similar to the contending parties is invaluable. There must be careful attention to the nuances of language use and communication styles. Some ethnic groups are accustomed to more formal, rational exchanges and others to more relaxed, emotive ones. When agreement is reached, its immediate memorialization in writing may be advisable in Anglo-American cultures. In certain Asian and Hispanic cultures, insistence on speedy documentation might betoken distrust, and caution should be exercised.

MEDIATION

Good arbitrators do not necessarily make good mediators, and *vice versa*. The ideal mediator will be a person of infinite patience, empathy, and flexibility. A topnotch arbitrator in handling a case will tend to be more impersonal and decision-oriented. Probably the more important practical question is when, if at all, a person should try to perform as both mediator and arbitrator in the same proceedings. I am satisfied the answers will vary considerably depending on the temperament of the arbitrator, the chemistry existing between a given arbitrator and the disputants, and a subtle intuition of what particular circumstances permit or ordain. Everyone recognizes there is one substantial risk. If mediation

is attempted and fails, the would-be arbitrator may by then be privy to confidential disclosures from one or both sides — the parties' "bottom line" for settlement, for example — that could be highly prejudicial when the arbitrator moves into a decision-making mode. Once one has been told about elephants, it is hard to put them out of mind. Yet the pragmatic response is that mediation before arbitration often works, and when it does, it saves all concerned much time, money, and psychic wear-and-tear. That has led to the process known as "med-arb."

Various classifications have been devised for analyzing different approaches to mediation. These are not watertight categories and the same mediator may shift from one type to another, even in the same proceedings. But one classification scheme I have found helpful is the following, listed in ascending order of intervention by the neutral:

- **Transformative or collaborative mediation.** The focus is on the state of the parties' relationship and its long-term development. The mediator does not try to lead so much as to get the parties to discover their own separate and mutual resources and to understand the other person's point of view. This is a good starting point from which to move on, if necessary, to other forms of mediation. It is not easy, however, to shift back to transformative mediation from a more active type.
- **Evaluative mediation.** The mediator does not attempt to come up with a specific solution but concentrates on showing the respective strengths and weaknesses of each party's position. Mediators using this technique may begin by holding separate meetings with the parties in an effort to fully understand their perspectives. Thereafter, especially if the parties have had a longstanding relationship, the effort will generally be to keep them together as much as possible, talking and listening to the mediator and each other.
- **Directive or result-oriented mediation.** Here, quite deliberately, the aim is to bring the parties to a certain goal that the mediator, at some point in the process, has concluded is appropriate and achievable. Some mediators employing this approach will sit down with both parties and let them talk to the mediator, not each other, with the more agitated going first. Yet each party hears the other's story with the fervor behind it. The ground rules will forbid personal attacks by the speaker or interruptions by the listener. Even so, caucuses may be required from time to time to cool tempers, to permit confidential communications to the mediator, and to move the negotiations along toward closure. Other mediators will spend the bulk of their time meeting separately with the opposing parties.

Transcending all these questions of technique is a very simple human factor that constitutes a key ingredient of success in mediation: the trust and confidence the parties come to repose in the neutral third party. And for me that

reflects the principal glory of the mediation process. Other aspects of dispute resolution, both traditional and alternative, may be more intellectually challenging and philosophically oriented. But in mediation the emphasis is on the total input of all three participants — the claimant, the respondent, and the neutral — in working together to reach a solution that is mutually acceptable to the contending parties. The result may lack the coherence and elegance of a finely reasoned judicial or arbitral opinion. Yet the mediation product is a joint, voluntary creation, and its frequent rough edges bear testimony to its source in multiple human hands. Even as mediators may wince at the imperfections of the final settlement, they can take pride in the knowledge that the trust and confidence they generated led two opposing camps to find their own common ground, without the fiat of some external force.

The graduated steps of neutral involvement that characterize the various forms of mediation just described have obvious attractions in the international labor field. Parties that may initially be suspicious of or even hostile to any sort of outsider intervention can be introduced to the process through the least intrusive type, transformative or collaborative mediation. Then, once trust and confidence in the mediator have been established, the parties can be led gradually, if that is necessary, into the stages or kinds of mediation where the neutral plays a more active and directive role.

ARBITRATION

In arbitration the neutral is no longer an intermediary or "matchmaker" between the disputants but a decision maker. The process is still generally voluntary in that the parties have agreed to enter into it and have agreed on the arbitrator or on the manner of selecting that person. Yet once the proceedings are under way, the arbitrator is largely in charge. Lacking are much of the informality and nearly all the sense

VEN AS MEDIATORS MAY WINCE AT THE IMPERFECTIONS OF THE FINAL SETTLEMENT, THEY CAN TAKE PRIDE IN THE KNOWLEDGE THAT THE TRUST AND CONFIDENCE THEY GENERATED LED TWO OPPOSING CAMPS TO FIND THEIR OWN COMMON GROUND, WITHOUT THE FIAT OF SOME EXTERNAL FORCE.

of a voice in the outcome that are found in mediation. That makes it especially important, when dealing with parties from widely varying cultural and socioeconomic backgrounds, as often occurs in international arbitration, to ensure fairness and the perception of fairness to all concerned. Nonetheless, arbitration still shines in letting determined combatants meet in an arena that is less intimidating, less rule-driven, and less likely to disrupt ongoing relationships than a courtroom or an administrative agency. And if administered intelligently, arbitration can also be gentler on the parties' pocketbooks, their timesheets, and their psyches.

Other participants in this seminar will address the need to formulate workers' rights in what could otherwise become an oppressive global economy. Arbitrators can play only a limited role in this process. The most common form of arbitration is so-called grievance or "rights" arbitration, dealing with claims arising under existing contracts, statutes, or other regulations. Here the standards or criteria to be applied are external to the arbitrator, typically supplied either by a prior agreement of the disputing parties or by legislative or administrative action. Even in the rarer type of "interests" or new-contract arbitration, the arbitrator will generally be directed to draw upon the models established in the existing contracts of comparable parties. Thus, arbitrators may have a significant hand in the enforcement or even the extension of workers' rights but seldom if ever in their original creation. The latter will largely be the responsibility of other bodies.

In the United States, the single arbitrator has become the norm in labor disputes. Arbitrators may be fulltime professionals or part-timers drawn from university faculties of law, economics, or industrial relations. The individual may be selected by the parties *ad hoc*, either by mutual agreement

or by selection from a list furnished by a public or private "designating agency." Or the arbitrator may be a "permanent umpire" or a member of a rotating panel maintained by a particular company and a particular union.

For most parties, the choice of the arbitrator is a critical matter. There is evidence that this may be less important than it seems, that there is a remarkable similarity in the conclusions reached by different arbitrators, even those with relatively little experience. Nonetheless, it would be hard to convince most parties, especially those coming from the far corners of the earth, that it doesn't make much difference who the arbitrator is. Indeed, in international disputes it may make more difference than it does when both parties are located in the same city or country. In any event, parties everywhere typically want decision makers who "include people who look and think like them."

The solution, at least in the early years of international arbitrations, may be a tripartite panel. This was once fairly common in the United States, and it is still used in some very important or complicated cases, particularly those that require setting the terms of a new contract as distinguished from resolving a grievance under an existing agreement. The usual procedure is for each party to select its own "delegate" or panel member, and then for those two to choose a third, impartial person to act as chair and cast the deciding vote. The great advantage is that now each side knows there is someone who will be able to speak quietly with the arbitrator in executive session, and who can make sure that the arbitrator has not misunderstood some point or discounted the importance of a given position. When parties speak different languages, have different ethnic, socioeconomic, and religious backgrounds, and may be quite unequal in bargaining strength, it could be all the more reassuring to have a voice on the inside.

This also underlines the urgent need to develop a cadre of international labor arbitrators fluent in various languages and comfortable in multicultural settings, who can serve either as chairs of tripartite panels or be the sole decision makers if and when that becomes generally acceptable. I have handled arbitrations with French, Russian, and Spanish translators, and it worked reasonably well. But those cases involved a single system of law and employment practice. We move to another level of complexity and potential mistrust in an international labor dispute.

The biblical King Solomon is often cited as the first arbitrator. In deciding between the two women claiming the one surviving infant, Solomon relied much more on his assessment of maternal instincts than on technical niceties like rules of evidence, burden of proof, and established precedent. It almost seems as if arguments have raged ever since about whether creeping legalism would be the ruination of arbitration. In the labor field in the United States, employers, unions, and their representatives have tended over time to favor increasing formality in the proceedings and a

THE SOLUTION, AT LEAST IN THE EARLY YEARS OF INTERNATIONAL ARBITRATIONS, MAY BE A TRIPARTITE PANEL. THIS WAS ONCE FAIRLY COMMON IN THE UNITED STATES, AND IT IS STILL USED IN SOME VERY IMPORTANT OR COMPLICATED CASES, PARTICULARLY THOSE THAT REQUIRE SETTING THE TERMS OF A NEW CONTRACT AS DISTINGUISHED FROM RESOLVING A GRIEVANCE UNDER AN EXISTING AGREEMENT.

reliance on prior rulings in the decisions. That structured approach promotes predictability and the autonomy of the parties, since it limits the discretion of the arbitrators.

The Anglo-American common law has devised an elaborate body of evidentiary rules to determine what kinds of testimony and exhibits are admissible in court proceedings. The aim is to accept only what is competent, that is, of a credible nature, and relevant, that is, bearing a logical relationship to the issues in a case. A major function of these rules is to protect juries from misleading and extraneous evidence. Most arbitrators will point out they are not jurors in a civil trial and thus they do not feel bound by the technical rules of evidence.

Nevertheless, there is a wealth of common sense in the principles or rationales underlying most evidentiary rules, and arbitrators will generally pay heed to these.

An example is the treatment of hearsay. Hearsay is the testimony of a witness about what someone else said, when offered to prove the truth of that other person's statement. It is objectionable because it is not subject to cross-examination and is therefore less credible. Hearsay also includes documents like affidavits, reports, etc. Courts exclude hearsay, subject to a number of exceptions such as records prepared in the normal course of business. Much hearsay is admitted in arbitrations but it is given less weight than direct evidence. Doctors' certifications that an employee was absent from work because of illness are usually accepted, although they are not necessarily conclusive. On the other hand, an employee's discharge would rarely if ever be upheld on the basis of hearsay alone.

The burden and the standard of proof are other areas where arbitration draws on legal concepts but introduces its own variations. As in a court, the moving party, whether union, employee, or employer, ordinarily has the burden of proof, i.e., the requirement of satisfying the arbitrator that its position should be upheld. That is certainly accepted in claims of a contract violation. But in employee disciplinary cases, the long-established practice in labor arbitrations in the United States has been that the employer bears the burden of proof. Now, as a practical matter it makes sense that the employer, which best knows why it decided to discipline or discharge the worker, should go first in presenting its evidence. That alone, however, does not justify placing the ultimate burden of proof or persuasion on the employer. Perhaps the loss of a job (or other serious discipline) is such a major blow, economically and otherwise, to an employee that it is thought fair and reasonable for the employer to have to demonstrate the appropriateness of its action.

In civil actions at common law, the standard of proof, or required *quantum*, is a simple preponderance of the evidence, that is, the factual position of the party with the burden of proof must be more likely true than not (51-49) for that party to prevail. Most arbitrators will apply that standard in contract interpretation cases. It gets more complicated in employee disciplinary cases. A few arbitrators will accept the



argument that a termination amounts to "economic capital punishment" and that the criminal law standard of proof beyond a reasonable doubt ought to apply. Other arbitrators emphasize that a discipline case, even one involving a discharge, is still a civil proceeding, and the standard of proof by a preponderance of the evidence should suffice. Because of the impact on the employee, a substantial number of arbitrators, perhaps a majority, demand "clear and convincing proof" in a discharge case, at least when the alleged misconduct involves acts of moral turpitude which could adversely affect the worker's future job prospects and reputation in the community.

There are respected American arbitrators who insist that concepts like the burden or standard of proof are of no practical significance. They feel they must always decide which party is more convincing. But once in a great while I find I cannot make any such determination; the evidence is in equilibrium. It is then that burden of proof comes into play, and the party bearing it loses. Similar variations exist in arbitrators' attitudes about the standard of proof, especially in discharge cases. Regardless of how one answers these questions, however, I believe they will occasionally have to be confronted and resolved.

One preliminary step that is generally unnecessary in union-management arbitrations may frequently be required in arbitrations involving individual employees and their employers. That is discovery, the process by which interrogatories (a set of written questions) or depositions (sworn pre-hearing testimony) are used to obtain disclosure of pertinent background information. In the collective bargaining context, such material is customarily secured in the contractually provided grievance procedure preceding the hearing or even preceding the decision to arbitrate. But the individual employee does not normally have access to this relatively informal method of getting the facts needed to prepare for and conduct the arbitration.

Discovery calls for a difficult balancing act by the arbitrator. Enough discovery must be granted to apprise both parties of the critical facts of the case. But discovery must not be permitted to be carried to such lengths that it becomes a tactic for stall-and-delay, draining the resources of the weaker party, as often happens in court litigation. Somewhat arbitrary quantitative limits may have to be placed on the questions asked, depositions taken, and time allowed. Perfect justice is not a feasible goal for arbitration; the price is simply too great. A reasonably fair result, without an excessive expenditure of time and money, is the realistic objective.

JUDICIAL ENFORCEMENT

American courts enforce both agreements to arbitrate and awards issued by arbitrators. The U.S. Supreme Court has held that a dispute is subject to arbitration if the claim "on its face is governed by the contract," adding: "Doubts should be resolved in favor of coverage." In enforcing an arbitral award, courts should not attempt to "review the merits" and correct mistaken findings of fact or misinterpretations of the contract. A court may set aside an award only on such grounds as fraud or corruption, the arbitrator's exceeding of the authority granted by the parties' submission, or a violation of positive law or "some explicit public policy" that is "well defined and dominant, and is to be ascertained by reference to laws and legal precedents and not from general considerations of supposed public interests." The net effect is a high degree of judicial deference to the arbitration process. The arbitrator's judgment is what the parties bargained for and their commitment should be honored.

American courts have been similarly expansive in enforcing international arbitration agreements, applying both the United Nations [New York] Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the United States Arbitration Act. The Convention provides that a state may declare it is applicable only to "relationships, whether contractual or not, which are considered as commercial. . . ." A "commercial" relationship in this context has been held to include employment. The New York Convention, to which some 125 countries are now parties, limits the grounds for not enforcing a foreign arbitral award. They include the invalidity of the arbitration agreement under whatever law is applicable, a denial of due process to a party, an award in excess of the scope of the submission, an unauthorized arbitral tribunal or procedure, or a violation of the public policy of the country where enforcement is sought. In light of the worldwide acceptance of the New York Convention, it appears that judicial enforcement will be the least of the problems in making ADR an effective device for handling international labor disputes.

CONCLUSION

ADR procedures exhibit some very special attractions in the international arena, and perhaps especially for less affluent disputants from developing nations. Properly administered, ADR does not entail the cost or time or trauma of a court suit. Beyond that, it possesses one supreme attribute: it maximizes the involvement of the opposing parties. This is preeminently true of mediation, of course, where nothing is final until the parties themselves say so. Yet even in arbitration they have a major voice. Subject to legal restrictions, they can select the arbitrator, frame the issue, define the remedies, and even spell out procedural details. Participation and empowerment are central to ADR. And the resolution of any dispute is most likely to be accepted and lasting when the contending parties have had a hand in its fashioning.



Theodore J. St. Antoine, '54, is a graduate of Fordham College and the University of Michigan Law School. He also spent a year as a Fulbright Scholar at the University of London. He practiced in Cleveland, in the U.S. Army, and for a number of years in Washington, D.C. Professor St. Antoine is known for his writing in the field of labor relations and has engaged in arbitration. He was president of the National Academy of Arbitrators in 1999-2000. He began his academic career at the University of Michigan Law School in 1965 and served as its dean from 1971 to 1978. He is the James E. and Sarah A. Degán Professor Emeritus of Law. Professor St. Antoine also has taught as a visitor at Cambridge, Duke, George Washington, and Tokyo universities, and in Salzburg.



COMPETITION, CORPORATE RESPONSIBILITY, AND THE CHINA QUESTION

The following essay is based on a talk presented in June while the author was serving as the Sir Edward Youde Distinguished Visiting Professor at Hong Kong University of Science and Technology. The presentation was co-sponsored by the university, the Yale Club of Hong Kong, the Harvard Club of Hong Kong, and the Oxford & Cambridge Society of Hong Kong.

By Joseph Vining

The subject I have been asked to address is the impact of China's WTO [World Trade Organization] accession on "the question of corporate responsibility." We might begin by asking why corporate responsibility should ever be a question at all.

We do not ask such a question about you or me. You might say of me that I'm not a responsible person, or I'm being irresponsible in the circumstances, but your assumption is that I should be responsible or try to be. You and I look out for and care about the consequences of our actions. There is tort law out there with its threat of damages, and we pay premiums for insurance against liability, for being held "responsible" for what happens to someone else. But that is

not the reason why we are careful if we are responsible people. We actually don't want someone else to be hurt, and if we really don't care, and really are indifferent to the consequences of our actions, we are viewed as a bit of a psychiatric case and a threat — certainly not someone who can be dealt with in ordinary affairs.

But "business," it is urged, is different, and that is why corporate responsibility is something that has to be argued about and is often pictured as an interference in business, an imposition on it and on its central institution, the business corporation. I should quickly say that the legal profession, or the legal business if you will, also wants to be set apart as not responsible for consequences of its actions, despite Justice Brandeis' oft-quoted remark that the lawyer's pen does more harm than the burglar's tool. Our, lawyers', claim is that we do not have to be concerned about the consequences of what we do. Our clients may, and our clients' other agents may, but we do not. This is a pulling of what lawyers do under the umbrella of immunity that applied from ancient times to the lawyer in adversary litigation, who was in a form of war. And we might note, speaking of war, that the military, as a profession and a field of human endeavor, wants to be exempt

from the ordinary criminal law, indeed from the ordinary law governing human experimentation. I think of what has come to light in the United States about radiation or biological weapons experiments on soldiers, or vaccines in the Gulf War. And institutional science, too, if you come to think about it. What would be assault, or homicide, or criminal cruelty to animals, is not, it is claimed, if it is done by a scientist engaged in scientific research following the rules of research. These exemptions, parallel to the exemptions sometimes claimed for business, are matters of lively debate now in the United States and internationally. Actually, so is the lawyer's claim that the lawyer is not his brother's keeper a matter of increasing debate. So this I think is what we are talking about when we say that corporate responsibility is a debatable question worth having a discussion about — exemption and difference from the norm. There is necessarily the implication of the alternative, corporate non-responsibility or, some would like to say, irresponsibility.

What are the issues? It used to be thought that the context for talking about corporate responsibility was charitable contributions. There was famous litigation over contributions by business corporations from corporate funds to, for example, Princeton, arguing this was using the shareholders' money, wasting it, taking it from them since the corporation was receiving nothing back. But corporate charitable contributions were everywhere upheld, partly on the ground that if they were not too large they could be viewed as public relations moves, as appearing to be a good citizen, but equally on the ground that a corporation was a citizen, that regardless of its particular circumstances it had a stake in the country, the social fabric, the arts, the relief of poverty. And we all know that business corporations now are major patrons. A refusal to take Philip Morris' grants, on moral grounds relating to smoking, meant a substantial loss for Canadian arts organizations.

But charity is not where the question of corporate responsibility really bites, or becomes what our topic calls a "China question." The question really bites at the deepest level of everyday business decision making. The question is presented over and over and over again, and presented also to lawyers advising corporate decision makers — what is the attitude to take toward the consequences of a business decision and the action that follows it? In discussion this often becomes a question of attitude toward identifiable groups in China and America and beyond on whom the consequences fall: workers, retirees, long-term middle management,

IN ECONOMIC THEORY THESE EFFECTS ARE CALLED "EXTERNALITIES" BUT THAT ASSUMES AN ANSWER TO THE QUESTION [OF] WHAT IS INTERNAL AND WHAT IS EXTERNAL TO A BUSINESS CORPORATION. AN ANSWER THAT ECONOMICS ITSELF CANNOT GIVE AND ONLY THE LAW CAN PROVIDE.

customers, suppliers, creditors, local and national communities, even committed long-term equity investors. In economic theory these effects are called "externalities" but that assumes an answer to the question [of] what is internal and what is external to a business corporation, an answer that economics itself cannot give and only the law can provide.

Is one's attitude to be that one attends to adverse consequences or attends to these groups only insofar as one is forced to, and one uses one's ingenuity and imagination to avoid doing even that?

Or is one's attitude to be that one takes into account, for their own sake, these interests or the values these interests represent? If one does attend to them as values that are in some sense one's own and not merely someone else's, imagination is fired, as it always is by what one holds dear, to find new ways and more efficient ways of realizing them or reducing hurt to them.

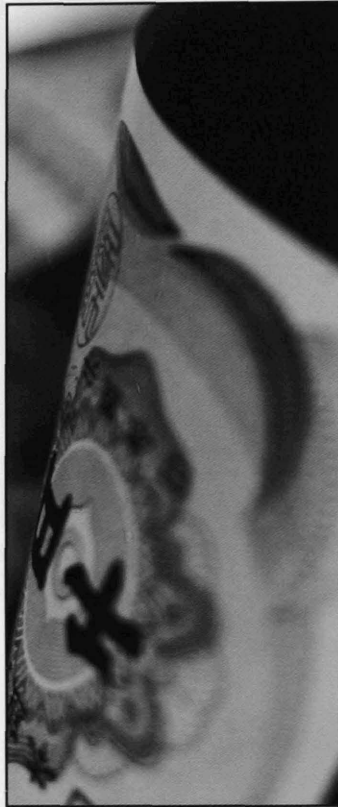
Corporate leaders sometimes say their company is like a family, and the example of the head of a family trying to take into account the various interests of its various members, while keeping an eye on the growth and prosperity of the whole, is as good an example as any, and a contrast to the opposite attitude, a military general's for example, for whom the enemy's interests have no weight at all, and appear in his thought only as costs his organization would be forced to bear and would seek to minimize. The question is whether the corporate attitude, the duty really, conceived and mandated by business law, is to be like the general's, or like that of the family head. Realistically, I think the alternative possibilities are the general, on the one hand, and on the other, something on a range between the general and the family head.

Let me give some examples of actual cases.

- The Ford Motor Company is designing a car, and it appears that the gas tank is so situated and attached that there is a high likelihood of explosions and fires in relatively mild rear-end collisions. At Ford, what is your attitude and reaction to be? Is it to work at the governmental level for the theoretical calculation of a low dollar figure for the value of a human life, use that figure in a static cost-benefit equation, and decide that the cost in human lives lost to fiery deaths and any damages Ford might be required to pay is less than the gain that could be obtained by going ahead with the design as it is? Or do you internalize the value of human life, and work with it as such in your decision? This has to do with customers.
- The Chisso Chemical Company in Japan notices that fishermen's families around the Bay of Minamata where its plant is located are giving birth to horribly deformed

children. A company scientist samples the plant's chemical discharge into the bay and discovers that his laboratory animals fed it show all the signs of mercury poisoning. At Chisso, what is your attitude to be? The discharge satisfies the environmental standards then in effect. Your wastewater is cleaner than the wastewater of your competitors. In making decisions on what to do on behalf of the corporation, do you follow up this suspicion and warning, or do you stop the company scientist's investigations and leave it to others to be concerned about the rising number of deformed babies? This question has to do with the environment and the local community.

- A Chicago company called Film Recovery Systems extracts silver from used photographic film by dissolving it in vats of cyanide solution. The question arises whether to spend money on ventilation equipment for the cyanide vats and whether to provide training, impermeable gloves, and goggles for the non-union immigrant labor steadily available and anxious to have jobs in the plant. Profits would be higher if these costs were not incurred — safety inspectors tell you that ventilation and safety equipment are inadequate, but inspections are few and the penalties are light for not observing safety regulations. Public relations problems are not an issue for you. In making these daily decisions on equipment purchases, do you take the value of human health itself into account? This has to do with workers and their interests.
- The Dow Chemical Company in my own state of Michigan made napalm under contract with the Department of Defense, and in the Vietnam War the dropping of napalm was injuring civilians and especially children. A group of shareholders seeks to raise at the shareholder meeting the question whether the company should continue to manufacture napalm. In response, and in making decisions on behalf of the company, do you seek to prevent discussion of the issue on the ground that the concern motivating the shareholders is not a concern for profit? Or do you let the discussion go forward and lead where it may? Then this contract for napalm with the Defense Department becomes unprofitable in part by its own terms and in part because of adverse publicity from napalm affecting the recruitment of good chemical engineers from engineering schools. Do you go forward with the manufacture of napalm anyway because of your commitment to the national interest? These questions have to do with humanity in general and patriotic duty.



In each of these decisional problems which eventually came to a court, there were arguments made that the values involved were of no concern to the business decision making of the corporation, and that the groups affected — workers, customers, residents, the nation — ought to look out for themselves, and I emphasize the word “ought” or “should” because, remember, this was argument about the way corporations ought to make their decisions and an argument about what those affected by the consequences legitimately ought to expect. The question was corporate responsibility, put in operational terms.

I think of the way the question has been raised frequently in the Enron case we are in the midst of in the United States. California, as you know, recently suffered power blackouts, about which a good many non-Californians were not so terribly unhappy. But it has been discovered that Enron traders were using schemes named Fat Boy,

Death Star, Richochet, and Get Shorty, to profit hugely from manipulation of the rules desperately put into place in response to the blackouts. An internal Enron memo noted that the strategy “appears not to present any problems, other than a public relations risk,” arising from the fact that “it may have contributed to California’s declaration of a Stage 2 Emergency yesterday.” The public relations risks were something to be costed out, but the Stage 2 Emergency was not Enron’s concern. On the other hand, the very fact that Enron’s decisions ran a public relations risk and that the memo was not one they wanted anyone to see points to the problem of corporate responsibility. There would be no public relations risk if this were what it was agreed business corporations should do.

We do not know what the outcome will be at Enron, whether the verdict of the market will be the only verdict. I can say what happened in the other cases involving customers, workers, and other groups. Some of you may know these cases. In the Ford case, Ford did the cost-benefit analysis and went ahead with the gas tank unchanged. The corporation itself was indicted for manslaughter in the deaths of customers who bought a Pinto and were burnt to death. Ford’s cost-benefit calculation in the circumstances was relevant to its criminal intent, which was, for purposes of manslaughter, “indifference to the value of human life.” There was no resolution of the case at trial because of evidentiary problems with regard to the particular Pinto involved. A good many books appeared about the case with titles like *Reckless Homicide*, and it became a staple in professional studies of organizational behavior.

In the Japanese case, with regard to what came later to be known as Minimata disease, Chisso stopped its scientist's investigations. The deformities were eventually linked to Chisso, and the victims sued. The Japanese court ruled that "the defendant's plant discharged acetaldehyde wastewater with negligence at all times, and even though the quality and content of the wastewater of the defendant's plants satisfied statutory limitations and administrative standards, and even if the treatment methods it employed were superior to those taken at the work yards of other companies in the same industry, these are not enough. . . . No plant can be permitted to infringe on and run at the sacrifice of the lives and health of the regional residents." Over time Chisso paid out indemnity of tens of millions of dollars.

In the case of the silver recovery company in Chicago, workers sickened and were blinded from cyanide, and one died. The company itself was prosecuted under the general criminal law and convicted of negligent homicide, and the company's officials were convicted of murder, convictions that were eventually reduced to manslaughter.

In the Dow Chemical case, in which I was the shareholders' counsel for a time, management lost its argument in federal court that concerns other than profit had no place in discussion at a shareholder meeting, though it was supported by the Securities and Exchange Commission. The shareholder proposal with respect to napalm was defeated, the management inconsistently introducing the national interest into the argument. Eventually Dow ceased manufacturing napalm.

These of course are examples that have become public. Questions whether values are going to be taken into account for their own sake and whether corporate managers are to think themselves in any way responsible for the consequences of the decisions they make arise in myriad milder ways every day.

Some of these example cases involve the criminal law, and I should emphasize how much that has entered the debate over corporate responsibility in the United States in the last 15 years, really since the Reagan revolution reduced administrative regulation and it simultaneously became clear that in any case the regulated could often effectively "capture" the regulators. The general criminal law in the United States, the common law of crime, is now directed at corporations themselves as persons and supplements specific provisions directed at corporations as such. As you know, the accounting firm [Arthur] Andersen was recently indicted and convicted. There was much surprise that only one Andersen partner was indicted individually; in fact this is a common pattern.

But there is opposition to the application of the criminal law to corporations, not just because they are corporations and not individuals, but because they are business corporations. It surfaced with force in 2000 in the widespread debate over the Ford-Firestone vehicle rollover

problem, which ended with Congress introducing criminal sanctions into auto safety regulation, one of the few remaining regulatory fields where there had been only civil fines. Of interest to us here is the distinctive feature of criminal law, that the values it protects, life, safety, environmental integrity, and competitive markets, are to be internalized. You are generally not convicted for breaking a rule: the very rule is that you are not to be indifferent to the value. You cannot define criminal homicide, for instance, in any more definite way than a showing of indifference to the value of human life.

This reaches deep into business decision making. Even if there is a quite specific administrative rule forbidding on pain of criminal sanction the trucking of explosives through New York's tunnels, it is standard law that a trucking company may be convicted for such trucking of explosives though it does not know about the rule. "Ignorance of the law is no defense" is the awkward way it is put, awkward because a sane defendant is not thought to be ignorant of what counts in criminal law. It's not a "rule" that limits your choice of routes, it's a value. The criminal mind, the mental element that makes such trucking a crime, is precisely indifference to the possibility of explosion in the tunnel, not indifference to "rule-breaking."

What will develop in China in this respect will depend upon the nature and processes of Chinese criminal law, and one can imagine some period of contraction in its application. The expanding application of the criminal law in a business setting in the United States produces continuing, strong opposition. But I think we can see that what is really being argued about is much more general, the nature of the decision making within business corporations that we as a community want to have, or that we as the world want to have now that we are in a globalized business setting.

The other major development that bears on corporate responsibility, other than the recent turn to the criminal law, is a new focus on the functioning and responsibility of corporate lawyers. Professional ethics, or the law applying to lawyers, is sometimes thought of as set apart from questions of substantive law, or the law governing what lawyers' clients should do, and its remedies as also set apart from the remedies of substantive law. But ethics and substantive law are not so separate where the corporation is the client and the lawyer is counsel to the corporate entity and not to particular individuals associated with the entity.

The fusion occurs in two ways. The corporation can't speak for itself. What its interests are has to be decided in order to say whether lawyers have fulfilled their duty to it. You can't simply ask it directly what its interests are. The other fusion of ethics and substance, where the corporation is the client, is in the fact that a lawyer is not merely advisor, negotiator, and defender, but an actor deeply involved in the doing of what corporations do.

Corporate lawyers' recent experience in the United States reflects this fusion.

Government agencies, such as the Securities and Exchange Commission and the Office of Thrift Supervision overseeing banking institutions, have disciplinary authority and can bar lawyers from whole fields of practice, and they have done so, on the ground that, given substantive corporate law, the lawyer has violated his or her fiduciary duty to the client, which is clearly the entity. Management representatives of the entity may be arguing on behalf of the accused lawyer, that she did what they told her to do, but they too have been deemed to be speaking for themselves and not for the entity.

Very large damage awards have been paid to bondholders, minority stockholders, and government agencies representing the customers of bankrupt savings and loan institutions, by law firms that are among our best known. When I say large, I mean large. The partners of Kaye Scholer in New York were sued for \$275 million by the government on behalf of depositors and settled for \$41 million. Jones Day settled for \$24 million with investors in one savings and loan, and settled with the government for \$51 million after facing possible damages of \$500 million. Paul, Weiss settled for \$45 million. Implicit in these rulings and settlements is a determination that the interests of the business entity include to some degree the interests of these groups and the values they represent, bondholders, depositors, small shareholders. And — here is the second aspect of the blending I mentioned — lawyers were held personally responsible for losses that were caused (as a matter of fact) by their actions and failure to act, where these actions could not be protected or defended by a claim that they were fulfilling a duty to their client, the entity as a whole.

This means that the inevitable presence of lawyers, inevitable because organizations cannot do without them, acts as an independent check on the business decision making going on under the corporation's authority and on its behalf. Introduce as a client a creature that cannot speak for itself, an entity that is not an individual human being, and the most interesting things occur, among them that the lawyer herself is seen as an actor in the world with responsibility for consequences.

Most recently, just a few months ago, the American Bar Association changed its Model Rules of Professional Responsibility to provide that a lawyer was authorized to reveal client confidences, without the consent of other representatives of the client — and here I quote the new rule — “to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.” This change was not effected without a considerable fight;

BUT ETHICS AND
SUBSTANTIVE
LAW ARE NOT SO
SEPARATE WHERE
THE CORPORATION
IS THE CLIENT AND
THE LAWYER IS
COUNSEL TO THE
CORPORATE ENTITY
AND NOT TO
PARTICULAR
INDIVIDUALS
ASSOCIATED WITH
THE ENTITY.

indeed in February there was a reconsideration and a reaffirmation of this change. Before, the confidentiality rules required that the client be committing a criminal act and that the danger be “imminent.” Now there is no requirement of criminality and the danger of death or substantial bodily harm need only be reasonably certain. The lawyer is not required to warn and prevent harm, not yet. But he has no longer a defense that his responsibility to his client absolves him from being concerned about the consequences of his silence. In the same way others, accountants, even someday engineers perhaps, may have no defense that their responsibility to the business corporate entity absolves them from responsibility for consequences. Again, as the corporate bar

and professional regulation in China develop along with the reorganization of Chinese industry after accession to the WTO, lawyers and other professionals may begin to have something of a similar role in China.

In the largest view, the “China question” as it relates particularly to corporate responsibility seems to me to have two parts or sides.

One concerns the decision making and the constituents of the emerging private corporations in the People's Republic [of China (PRC)], whose guiding purposes as defined in the Company Law of 1993 and 1999 are not put in terms of exclusive profit “maximization.” Chinese statutory language is not unlike the law's language of business corporate purpose in America. My English translation of the corporate purpose clauses in the People's Republic Company Act contemplates operation “with a view to improving economic return.” The American Law Institute contemplates making corporate decisions “with a view to enhancing corporate profit,” and this parallel language was chosen by the Institute after a proposal to describe the purpose of an American business corporation as “long-term profit maximization” was specifically rejected.

The PRC Company Act provides further that “in conducting its business, a company must . . . strengthen the development of socialist spiritual civilization,” again, in my English translation. Perhaps someone during discussion will say how this reads in Chinese and what alternative translations would be. And the Act requires consultation with workers before making decisions affecting them, giving them a status somewhat less definite than in European companies where workers elect part of the Board of Directors, or even in British corporations, where British law instructs directors to take into account the interests of the employees in general as well as the interests of the shareholders. But, as one might expect in China, the interests of workers are at least

introduced explicitly into the decision-making process even if they are not given specific weight. However enforced or enforceable these company law provisions may be at the moment, they do define the standard and the shape of the present ideal.

Then there are the state-owned enterprises, which have quite definite obligations to a variety of the groups that I listed as examples earlier. The question there will be how far those responsibilities will be legally modified and whether, indeed, competition and rigorous financial accounting will make some or many of those obligations impossible. I might say that such modifications or shedding would fall far short of moving to a position in law or in fact of corporation irresponsibility, the mode of thought in which all substantive value is external, none is internalized, and all mental activity is calculation.

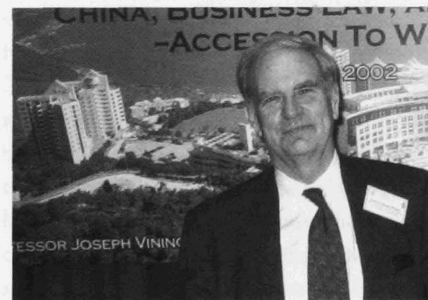
This, the Chinese side of the question, is matched by the question raised for the United States and other Western economies by China's looming presence in the business of the world. As competition from Chinese industry increases, advantaged presumably for some time by lower labor costs, market constraints on corporate decision-making processes in the United States may increase. I say may increase. We do not know how competition is going to play out, what the relative advantages are going to be or how large a factor labor costs will be. We do know that there has historically almost never been a perfect market in the ideal sense of economic theory that takes away all discretion. Business decisions will not become virtually automatic, with bankruptcy and disappearance attending any incorrect decision in the way extinction attends any incorrect "decision" of the genes in evolutionary competition. We know that the market itself will not answer our question. The question of corporate responsibility, as a question of real responsibility for the consequences of a corporation's actions in the world, will remain as far as we can see.

Nor will it do in the future, in China, America, or the world as a whole, to say the responsibility is the customer's and the corporation is the slave or tool of the customer, who can name a price for the protection of a value and protect it by paying the price to a seller who offers to protect it, "vote" as it were, put his money where his mouth is. Values do not work that way, choices are not presented that way, time does not work that way. Around the world we organize and are organized in order to live together, and the business corporation may already be the major form of human organization that surrounds decision making through governmental organization. We no more present ourselves with a choice whether to respond to and sustain the activities of a sociopathic mentality in business, utterly indifferent to value, than we present ourselves with the choice whether to sustain a sociopathic person at large on the street. "Business" is not a set of value-free machines. "Business" is a set of living human organizations allowing us as individuals to live in a

way we can stand to live — to have lives as individuals we can justify to ourselves and each other.

But we should not forget, in the debate over corporate responsibility, that there is no intrinsic conflict between markets and competition on the one hand and the protection of substantive value on the other. Competition may be necessary to keep action and care and attention and energy up to the mark when the absence of such care, attention, and energy does violence to others. It is tragic, but love and concern are not enough, as I think all of us know. Passengers burn to death in a train whose emergency doors will not open in a crash. The train crash itself is produced in part by scheduling breakdowns and chronic delays in starting. All of this, including the violent and fiery deaths and unimaginable pain and loss that occur, might have been avoided by one or another individual going further to check and repair despite his fatigue, or taking risks to avoid delay, or worrying about scheduling when that was not precisely within her instructions. Competition, nagging fear of losing and of exclusion from property and employment, may sometimes be the only way of avoiding the daily assaults on life and health and fair expectation with which corporate responsibility is concerned. There can certainly be a lively dispute about "ruthless competition," its virtues and its vices, but the truth is that competition as such can be in the service of what human beings hold most dear.

Joseph Vining is a graduate of Yale University and Harvard Law School and holds a degree in history from Cambridge University. He practiced in Washington, D.C., and served with the Department of Justice and with the President's Commission on Law Enforcement and the Administration of



Justice. In 1983 he was a Senior Fellow of the National Endowment for the Humanities and in 1997 a Rockefeller Foundation Bellagio Fellow, and is a member

of the American Academy of Arts and Sciences. Professor Vining has lectured and written in the fields of legal philosophy, administrative law, corporate law, comparative law, and criminal law, and he is the author of *Legal Identity* (1978), a book on the nature of the person recognized and constituted by law; *The Authoritative and the Authoritarian* (1986, 1988), on the nature of the person speaking for law and the relation between institutional structure and the real presence of authority; and *From Newton's Sleep* (1995, 1997), on the legal form of thought and its general implications. He began his academic career at Michigan in 1969 and is now the Harry Burns Hutchins Professor of Law.

Hospital

- Business Services
- Accounting Offices
- Cashier
- ← General X-Ray/Radiology (A)
- ← Orthopaedic Surgery (C)
- ← Blood Drawing (H)
- ← General Surgery (F)
- ← Neurosurgery
Pediatric Otolaryngology (G)
- ← Cardiac/Thoracic Surgery (B)
- ← Urology (E)
- ← Vascular Surgery (D)

Markets as Social Actors

By Peter J. Hammer

The following essay is excerpted from "Arrow's Analysis of Social Institutions: Entering the Marketplace with Giving Hands?" and appears with permission of the publisher. The article appears in the special issue of the *Journal of Health Politics, Policy and Law* (October 2001) that uses Kenneth J. Arrow's groundbreaking article "Uncertainty and the Welfare Economics of Medical Care" (53 *The American Economic Review* 941-973 [December 1963]) — published two years before passage of Medicare and Medicaid — as the springboard for examining economic, market, institutional, and other changes in U.S. healthcare over the past 40 years. Arrow's article "transformed the nascent discipline of health economics into a serious and respected field of economic inquiry," explains Assistant Professor of Law Peter J. Hammer, '89, who co-edited the collection with Deborah Haas-Wilson of Smith College and William M. Sage of Columbia University Law School as part of their research as winners of Robert Wood Johnson Foundation Investigators Awards in Health Policy.

They explain:

"For medicine, 1963 was a time of hope and optimism, though most of the profession's accomplishments still lay in the future. Most physicians were in solo practice, and many still made

house calls. Medical science had made tremendous strides in antiseptic surgery, antibiotics for the treatment of infections, and vaccines for the prevention of diseases such as polio, but few specific therapies for important diseases yet existed. The delivery of professional services was undoubtedly a market transaction, but medical charity was also common, by necessity if not by design. Private health coverage was not yet widespread, and although national health insurance came periodically into political debate, the government still played little direct role in the purchase of medical services. Aggregate national spending on healthcare amounted to roughly 5 percent of the gross domestic product, a substantial but hardly a daunting sum.

"Some 40 years later, healthcare occupies a far more central role in the national economy. Today, it is common to speak of a 'medical care industry' comprising large physician organizations and hospital networks and of using 'competitive forces' to discipline healthcare spending. But even as economics and competition have gained ascendance, we are wrestling with many of the same questions that Arrow attempted to address: What is the proper role of markets in delivering healthcare services?"

Can we base our healthcare system exclusively on private competition? What place should be reserved for government or for social mechanisms such as professionalism, nonprofit status, or trust? Do these 'non-market institutions' help markets overcome uncertainty, or do they replace markets that have failed because of informational asymmetry? How does one define the proper boundary between market and non-market institutions?"

By Peter J. Hammer

Frame 10: "Entering the Marketplace with Giving Hands"

You go to the marketplace barefoot, unadorned
Smearing with mud, covered with dust, smiling.

Using no supernatural power
You bring the withered trees to bloom.

The Ox-Herding Pictures

(trans. In Levering and Stryk 2000)

The apparent inconsistency between "giving hands" and behavior normally expected in the marketplace is suggestive of the tensions underlying Arrow's effort to establish an economic role for social institutions. At times, Arrow's analysis appears to be equal parts economics and mysticism:

- "I propose here the view that, when the market fails to achieve an optimum state, society will, to some extent at least, recognize the gap, and non-market social institutions will arise attempting to bridge it."
- "I am arguing here that in some circumstances other social institutions will step into the optimality gap, and that the medical-care industry, with its variety of special institutions, some ancient, some modern, exemplifies this tendency."

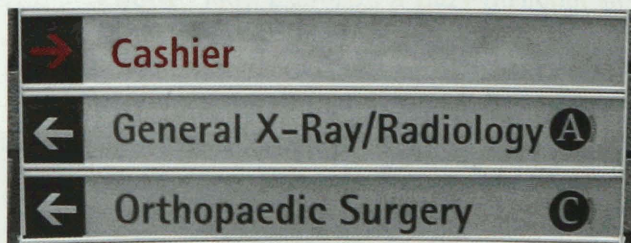
In *The Ox-Herding Pictures*, a 12th century series of 10 images and poems that illustrate the Buddhist path to enlightenment, the seeker is able to enter the marketplace with giving hands in the tenth and final frame of the story only after a long and arduous journey. The seeker must first search for, capture, tame, and train the ox, where the ox and ox-herding are Buddhist metaphors for gaining control over one's own mind.

One should expect unvarnished social institutions to be at least as stubborn as the untrained ox. Social institutions may well be able to serve Arrow's ultimate economic role, but such giving hands cannot be taken for granted. Such an outcome is more likely to be the result of a process of careful planning and constant struggle. Moreover, in taming the ox, the ox-herder is also changed, raising questions about the

effects that Arrow's efforts to rationalize a role for social institutions may have on our understanding of economics itself.

If one acknowledges that in various ways markets are also social institutions, yet another level of complexity must be layered onto the discussion. Economists may respond that of course markets are institutions and of course such institutions are embedded in a deeper social context, but that such embeddedness is sufficiently entrenched to treat the existence of markets and their boundaries as exogenous for purposes of economic analysis. In many settings, like certain commodities markets, this may be a sufficient reply. In healthcare, however, the role and scope of markets as a means of resource allocation is contestable. The role of markets as opposed to current backlash against managed care illustrates the continued contestability of markets in healthcare.

Conceding the social dimensions of markets does not make all aspects of markets or non-market institutions equally contestable. Oliver E. Williamson ("The New Institutional Economics: Taking Stock, Looking Ahead," 38 *Journal of Economic Literature* 595-613 [September 2000]) presents a useful schematic suggesting different levels of embeddedness of markets and institutions. Norms, traditions, and informal institutions are the most embedded, proceeding next to the formal rules governing the institutional environment (property law, government bureaucracies), to



governance issues determining the play of the game (rules of contract and cooperation), and finally to practices controlling the specific allocation of resources. Within this framework, not all aspects of market and non-market institutions pass directly through the political process. Indeed, the political process itself operates against the backdrop of informal institutions, norms, and customs. Accordingly, analysis of issues such as the role and function of trust in the physician-patient relationship might well proceed quite differently from an analysis of issues such as licensing laws.

Implications for policy analysis. Appreciating the fact that markets are themselves contingent social institutions leads to a number of related insights. Rather than being taken as immutable units, the composition of markets is subject to negotiation and change. Moreover, the lines separating market and non-market institutions are often endogenously determined. Appreciating this endogeneity leads to concerns over possible forms of strategic behavior. Actors meet one

another both in the marketplace and in the political arena. Consequently, sources of political power and economic power are interrelated. This provides an alternative explanation for the perceived rigidity of certain institutions. Rigidity may not simply be an artifact of the transaction costs of change and the misalignment of incentives; it may also be in the political and economic self-interest of constituents who are benefited by such rigidity because it forestalls developments they view as disadvantageous.

Adding a political dimension to the economic analysis provides interesting possibilities as well as complications. Markets are not the only means of aggregating individual preferences and making allocative decisions. Arrow himself acknowledges a legitimate role for government in the face of market failures. Some healthcare problems may be more amenable to political rather than economic decision making. At a minimum, the option of utilizing the political process in lieu of markets provides an additional point of reference for conducting comparative institutional analyses. The decision-making heuristics identified in the discussion of welfare economics are largely applicable to policy-making in this realm as well. One should still be concerned about defining the domain of legitimate justifications for displacing markets with non-market institutions, constructing a functional screen for identifying conduct that is in the public interest, maintaining a sensitivity to notions of dynamic efficiency and the adaptability of non-market institutions, and, finally, hedging against the possible overbreadth of non-market interventions. The primary differences are that in this setting the underlying metric of welfare economics is itself contestable and up for grabs, and an appreciation of the endogeneity of the line between markets and non-market institutions heightens the need to be concerned about strategic behavior. Social institutions can be used not only as a means of filling the optimality gap, they can also serve as fortresses from which even the socially productive evolution of markets can be forestalled, if such evolution is contrary to the interests of those controlling prevailing institutional structures.

Contemporary policy relevance of market and non-market institutions

Striking the wrong balance between market and non-market institutions can be costly. Few people would defend the totality of healthcare institutions that existed in 1963 as being consistent with Arrow's optimality-gap-filling conjecture. In antitrust parlance, even if some of the non-market institutions served legitimate economic purposes, many aspects of the professional domination of medical services were not necessary to such ends, nor would many traditional non-market restraints constitute the least restrictive means of pursuing such objectives. Developments

since 1963 illustrate some of the dangers of misalignments between markets and non-market institutions interacting over time.

Painting with admittedly broad strokes, the argument is as follows: In the four decades since Arrow's article was written, we have been confronted with studies documenting widespread variations in clinical practices (substantially unrelated to quality of care concerns) and a surprising lack of scientific evidence to justify many routine clinical procedures. The rate of technological innovation, dissemination, and obsolescence in healthcare proceeds at tremendously high levels. Some estimates suggest that technology-driven inflation accounts for a substantial percentage of historic healthcare costs. Studies comparing healthcare expenditures and healthcare outcomes among nations raise serious questions about whether the United States is getting its money's worth for the healthcare dollar. The United States spends far more than most other countries on healthcare, yet

The political process itself operates against the backdrop of informal institutions, norms, and customs. Accordingly, analysis of issues such as the role and function of trust in the physician-patient relationship might well proceed quite differently from an analysis of issues such as licensing laws.

U.S. health outcomes lag behind other countries in terms of a number of important health indicators. Each of these factors should give us reason to pause and seriously consider what forces have brought us to this point.

Discussion needs to move beyond a simple market versus non-market distinction, which is often overly simplistic and ordinarily misleading. Comparative analysis of healthcare systems provides concrete insight into the notion of multiple possible equilibria and competing sets of market-non-market institutions. Highly defensible systems can be constructed using combinations of building blocks from each domain. What is more important (and what arguably has been missing from U.S. health policy) is a commitment to intra-system rationality. A fruitful research agenda would be to explore the ways in which a lack of policy consistency, coupled with misalignments between market and non-market institutions (compounded over time), have contributed to many of the healthcare problems we face today. Some of the most important challenges facing healthcare policymakers involve the need to impose greater rationality on patterns of clinical practice and processes of technological innovation.

— Continued on page 92

Within Arrow's framework, social institutions and professional norms are instrumentally employed to serve specific economic/policy objectives. They are second-best responses to identifiable market failures. A little reflection on the part of policymakers will often reveal that there are other conceivable market-non-market substitutes that could further similar objectives. We are not necessarily stuck with the non-market institutions that we inherit, nor can we take for granted the fact that social institutions that once served appropriate optimality-gap-filling roles will necessarily evolve over time in ways that continue to serve such functions. From the standpoint of policy-making, there is a need for more vigilance in monitoring the role of non-market institutions and for reassessing the boundaries separating market from non-market institutions over time. Social institutions can provide the market giving hands, but without active oversight there is no guarantee that the efficiency-enhancing role of such institutions will be realized. The ox must still be tamed and trained, and the process of herding never really ends.



An assistant professor at the University of Michigan Law School since 1995, **Peter J. Hammer**, '89, specializes in the study of federal antitrust law and the legal issues surrounding changes in the healthcare industry. Prior to entering academia, Professor Hammer was an associate at the Los Angeles office of O'Melveny & Myers, where he maintained an active practice in antitrust, health law, and the presentation of expert economic testimony. Professor Hammer received his undergraduate education at Gonzaga University and completed his professional and graduate education at the University of Michigan, where he received a J.D. and a Ph.D. (economics). Before entering private practice, he served as a judicial clerk to the Hon. Alfred T. Goodwin, former chief judge of the Ninth Circuit U.S. Court of Appeals.

At the University of Michigan Law School, Professor Hammer founded and directs the Law School's Program for Cambodian Law & Development. The program provides an academic forum for the interdisciplinary study of Cambodian legal institutions and the role of law in the development process. The program's Pro Bono Cambodia Project provides supervised research assistance to groups working in Cambodia, preparing in 1997 a comprehensive election law

report and draft national legislation. Professor Hammer has been active in various aspects of law and development, with a particular focus on Cambodia. In 1993, Hammer served on the International Human Rights Law Group's delegation monitoring the UNTAC-sponsored Cambodian elections. From 1993-95, he served as a program advisor to the Cambodian Defenders Project, an initiative designed to train the nation's first public defenders. Since 1996, Professor Hammer has served as a member of the Board of Directors of Legal Aid of Cambodia, a nonprofit, non-governmental organization providing free legal services to Cambodia's poor. From 1997-98, Professor Hammer served as the vice-chair of the International Section of the American Bar Association's Committee on Southeast Asia.

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
1041 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

ANN ARBOR, MI 48109-1215
SEP 10 1980
UNIVERSITY MICROFILMS
SERIALS ACQUISITION