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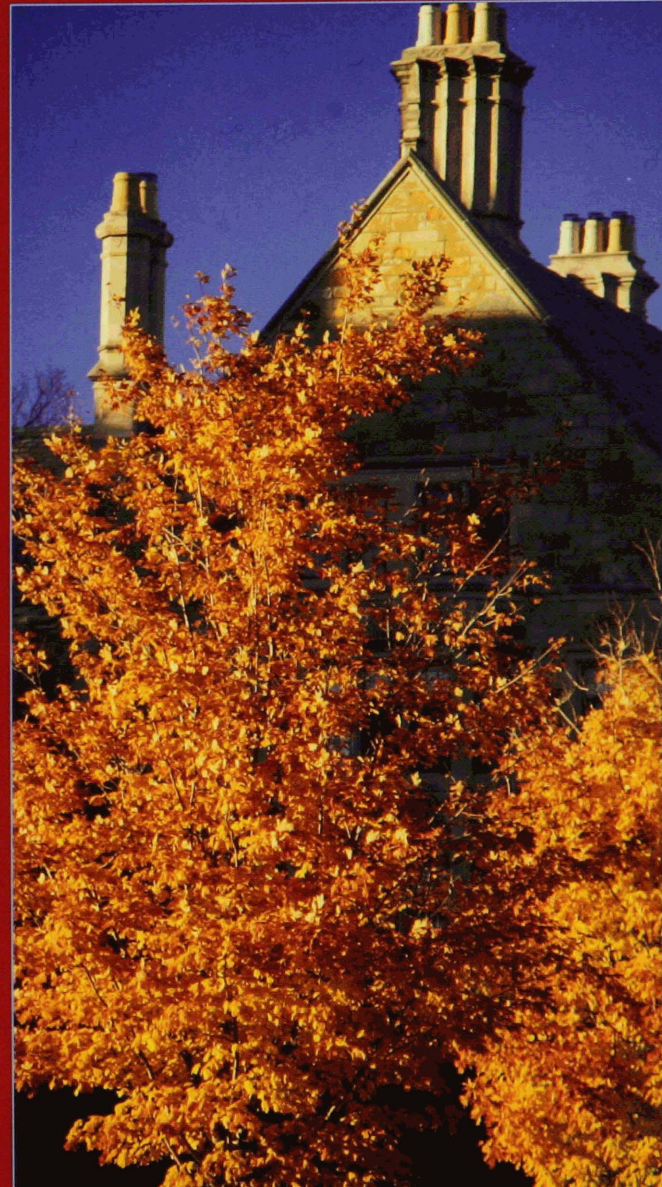
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LAW QUADRANGLE NOTES



Human rights visionary Hersch Lauterpacht

Strangers and brothers: A homily on transracial adoption

'The least of the sentient beings' and the question of reduction, refinement and replacement

The University of Michigan Law School
Volume 46 • Number 2 • Summer 2003

**THE UNIVERSITY OF MICHIGAN
LAW SCHOOL**

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LAW QUADRANGLE NOTES

SUMMER 2003



page 10



page 14

2 DEAN'S MESSAGE

4 A CONVERSATION WITH DEAN
EVAN H. CAMINKER

7 PROFESSOR STEVEN P. CROLEY NAMED
ASSOCIATE DEAN FOR ACADEMIC AFFAIRS

10 BRIEFS

- 'A time to build' — Architect Renzo Piano shares Law School expansion concepts with U-M Regents
- U.S. Supreme Court Justice Scalia to visit Law School as DeRoy Fellow

20 FACULTY

- Law School welcomes new faculty members
- Ellsworth, Scott named distinguished university professors

46 FEATURES

- Building a home for the laws of the world (Part I: Bates, Cook, and Coffey)
- Taking globalization seriously: Michigan breaks new ground by requiring the study of transnational law

58 ALUMNI

- Matthew Meyer, '02: Walk in their shoes
- Through the mirror of life stories

66 ARTICLES

• **Human rights visionary Hersch Lauterpacht**

How did it come about that Hersch Lauterpacht, the Whewell Professor of International Law in Cambridge, achieved the distinction of being considered by the Foreign Office as not quite "sound" on human rights? The story begins at a 1942 meeting of the Grotius Society . . .

— A.W. Brian Simpson

• **Strangers and brothers: A homily on transracial adoption**

The common law speaks to us in parables. Ours is Drummond v. Fulton County Department of Family and Children's Services.

— Carl E. Schneider

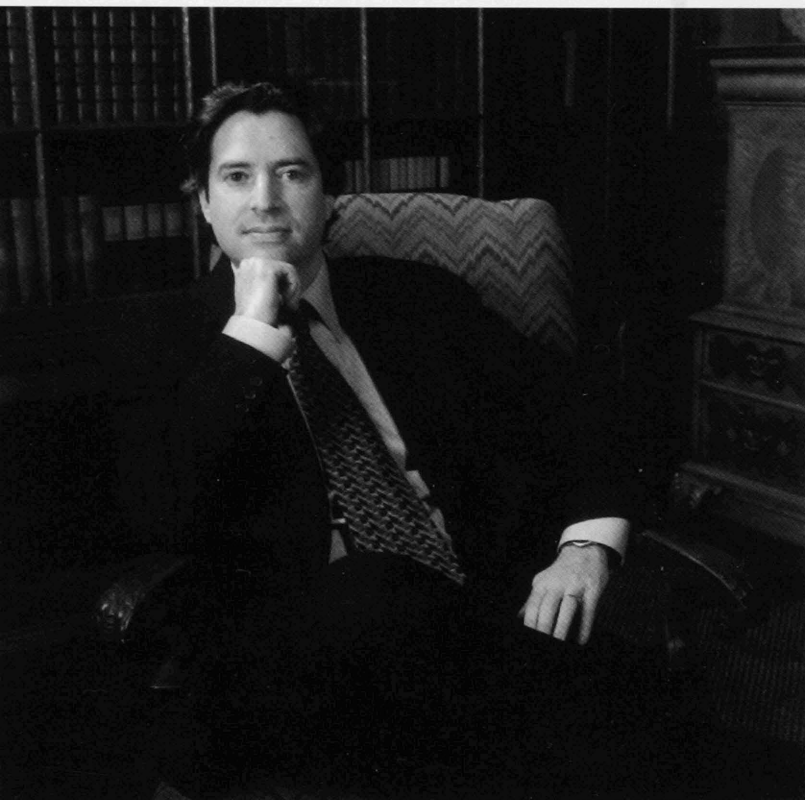
• **The least of the sentient beings and the question of reduction, refinement, and replacement**

The animals involved in experimentation are now overwhelmingly rats and mice, and legal, ethical, and practical accommodation to this fact on the ground presents a host of questions.

— Joseph Vining

MESSAGE

from Dean Caminker



I'm honored to have been chosen to serve the Law School as its 16th dean. I look forward to working with our students, faculty, and alumni around the world to help guide this remarkable educational institution to even greater distinction. I recognize how fortunate I am to lead a school with a student body composed of incredibly bright and interesting individuals who have many open doors and choose to attend Michigan Law School, a faculty consisting of committed teachers and world-class scholars, and a body of alumni who throughout the years have been generous in their support of the dean and the School through wise counsel, volunteered time, and extensive financial support.

My deanship began with a noteworthy event. On my first full day as Dean-designate, the Supreme Court issued its decision in *Grutter v. Bollinger* and upheld the Law School's admissions policy. After six years of uncertainty as the case progressed through the courts, this conclusion naturally evokes a complex array of feelings. They include *satisfaction* that the Court agreed with our longstanding view that our cautious use of race as one part of a holistic and individualized assessment of each applicant's promise is fully consistent with the guiding legal principles laid down 25 years ago in *Bakke*; *regret* that long after *Bakke* societal conditions remain such that some attention to race is still necessary to ensure that aspiring students from all walks of life have access to an outstanding education and the opportunities it provides; *appreciation* for the way in which members of our local

and national communities voiced their divergent opinions on these difficult issues in a respectful and tolerant manner, building bridges and maintaining institutional loyalty despite heartfelt differences in views; and *resolve* to use what we have learned during the litigation to keep improving our admissions process, and to work diligently to address the underlying problems so that consideration of race can drop out of that process. And finally, of course, I feel *relief* that we can now close this chapter in our School's history and turn our attention to new goals of our own choosing.

Two such important goals are to continue to strengthen the faculty, and to expand our majestic array of early 20th-century buildings to serve the educational needs of a 21st-century student body. Through these and other measures we can amplify the strengths that make Michigan the finest public law school in the nation.

We are enormously proud of this stature. During oral argument before the Supreme Court, Justice Scalia (who, I am pleased to share, just accepted my invitation to spend a week here as a DeRoy Fellow in the fall of 2004) casually suggested that we might choose to relinquish our status as an elite public law school (or a "super duper" school, as he put it). I believe, with all due respect, that such a challenge to our identity and aspirations is misguided. It is laudable for the State to choose to build a superb educa-

tional institution serving both the State's citizenry and the country as a whole. And the Law School clearly repays the State's confidence.

We attract the best and brightest and offer them an unsurpassed legal education. Our students serve our State and Nation exceedingly well even during their schooling by, for example, ably representing real clients in our first-rank clinical programs. Our graduates become leaders in courtrooms, boardrooms, judicial chambers, and governmental cabinets both within the State and all across the land. The suggestion that only private schools may maintain standards of excellence high enough to put graduates in leadership roles serving vital interests around the country and world — while we public institutions should curb our ambitions and clip our wings — is ill-considered.

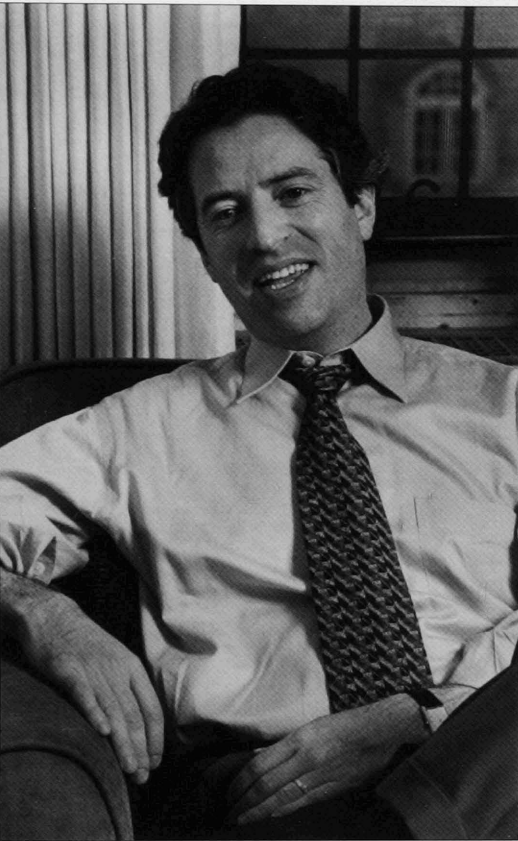
Moreover, this suggestion fails to appreciate what is, or should be, a distinctive mission of public institutions. The steadily declining state contribution to the Law School's operating budget (at best, under 4 percent this upcoming year) means that we cannot easily be defined as a "public" school based on our funding sources. Like our peer private law schools, we rely almost entirely on student tuition and private philanthropy. Rather, a great public law school should be defined not by its

budget but by its goals and accomplishments. One of our goals, indeed expectations, is service to the public. As a faculty we should aspire through both scholarship and varied professional activities to work toward solutions to important societal problems. As an administration we should provide opportunities and financial support for students who seek public service positions (such as judicial clerkships or government fellowships), public interest positions serving underrepresented people or causes (of all ideological stripes), and private positions addressing weighty public policy issues. And most fundamentally, I view it as central to our mission that we encourage our students to develop and maintain a sense of public-spiritedness, and to incorporate a healthy respect for public values into their professional practices and daily lives long after they leave our magnificent halls.

I hope and fully expect that during my stewardship the University of Michigan Law School will flourish in a myriad of ways as a uniquely outstanding and public-minded educational institution.

Evan Caminker

A CONVERSATION WITH DEAN EVAN H. CAMINKER



Evan H. Caminker became dean of the Law School on August 1, replacing Jeffrey S. Lehman, '81. Here, he discusses his thoughts on being dean, the past and future of the Law School, and other subjects.

LQN: As the 16th dean of this highly regarded Law School, you inherit a legacy of excellence. And as a constitutional scholar you appreciate the need for analysis and amendment. How do these factors work together?

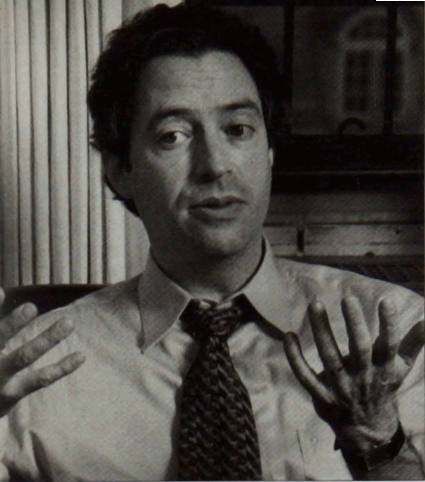
Dean Caminker: We can never be complacent; we must continually challenge ourselves and explore new opportunities for growth. The traditional pillar of the School has always been the faculty, dating back to the mid-19th century when the great public law scholar Thomas Cooley was at the helm. For the past half century, our faculty has been the leading force for interdisciplinary study of the law and legal institutions. At the same time, the School's exceptional clinical programs and pioneering legal practice programs immerse our students in the real-world practice of law. I would like to continue building upon these and other strengths in both theoretical and practical realms. I would also like to deepen our commitment to serving public goals and values, reflecting our responsibility as a great public institution.

LQN: Faculty, administrators, staff, and students all are integral parts of the daily life and success of

the Law School. So are graduates, although sometimes not as obviously. What are your thoughts on the role of graduates in the life of the Law School?

Dean Caminker: The success of our graduates obviously reflects the success of the School, since our *raison d'être* is producing a cadre of well-trained and responsible lawyers, entrepreneurs, and public servants to be leaders in courtrooms and boardrooms across the land. But my hope is that matriculation at Michigan is just the beginning of a lifelong relationship with the School. Some graduates return to teach courses or give informative and inspiring lectures so as to play a direct role in instructing future generations of students. Others advise the School from a distance, sharing their direct knowledge of a changing profession and thus changing educational objectives (such as training in transnational law). But I hope that all of our graduates — even those, and yes there are some, that did not absolutely love law school — continue to view themselves as part of a large extended family. This ongoing relationship provides our current students with an extensive network for making social and professional contacts, and makes it easy to welcome many voices into our family conversations.

LQN: In reference to your previous answer, if we want graduates to retain a sense of involvement in the life of the Law School, do you have some programs, services, communication devices, or other means in mind that may help to accomplish this?



Evan H. Caminker

Evan H. Caminker, the Law School's 16th dean, took office August 1 after approval of his appointment by the University of Michigan Board of Regents. But he is no stranger to the Law School community, as scholar, law professor, practitioner, and, since 2001, associate dean for academic affairs.

A renowned scholar and teacher, Caminker also has extensive experience in higher education administration and legal practice in both the private and public sectors. He writes, teaches, and litigates about issues of American constitutional law. His scholarship and professional activities focus on matters concerning individual rights, federalism, and the nature of judicial decision making.

Caminker's publications have appeared in a variety of prestigious journals, among them the *Michigan Law Review*, *Yale Law Journal*, *Columbia Law Review*, *Stanford Law Review*, *Annals of American Political and Social Science*, and the *Supreme Court Review*. His most recent scholarly research focuses on the nature of voting on multi-member courts.

A winner of the ACLU Distinguished Professor Award for Civil Liberties Education, Caminker has taught in the fields of constitutional law, civil procedure, and federal courts.

Caminker earned his B.A. in political economy and environmental studies, *summa cum laude*, from the University of California at Los Angeles, and his J.D. from the Yale Law School. In law school, he was a senior editor of the *Yale Law Journal* and a Coker Fellow, and won the Benjamin Scharps Prize for Excellence in Legal Writing. As an undergraduate, he earned the Outstanding Senior Award, the Phi Beta Kappa Top Junior at UCLA Award, and two national championship school debate awards.

After earning his law degree, Caminker clerked for Justice William Brennan at the U.S. Supreme Court and for Judge William Norris of the Ninth Circuit. He also has been an active practitioner, first with the Center for Law in the Public Interest in Los Angeles and then with Wilmer, Cutler & Pickering in Washington, D.C. He took a leave from Law School duties from May 2000 to January 2001 to serve with the U.S. Department of Justice as deputy assistant attorney general in the Office of Legal Counsel.

Given his prior experience as an appellate advocate, Caminker was a member of the legal team that briefed the U.S. Supreme Court in the University of Michigan and Law School's recent admissions cases. In addition, he has been involved in two other Supreme Court cases since his arrival at Michigan, and was co-counsel in the California case *Common Cause v. Jones*, a lawsuit challenging the use of punch-card electoral ballots.

As associate dean for academic affairs, Caminker was the chief Law School administrator in the field of academic endeavor. He worked with the research faculty, and also assembled a rich roster of visiting and adjunct faculty. In addition, he has worked extensively in development of plans for expansion of Law School facilities (see story on page 10) and has been a frequent speaker for groups within as well as outside the Law School.

Caminker replaces Dean Jeffrey S. Lehman, '81, who became president of Cornell University.

Dean Caminker: Well, nothing beats returning to Ann Arbor for a fall reunion weekend, complete with tailgate party in the Quad before a thrilling football game, to remind alumni of their wonderful experiences in Ann Arbor. But I'd like to experiment with new ways of using technology to connect our friends around the country and the globe. For example, I'd like to create some Web site discussion opportunities for alumni both to follow the achievements of our students and faculty and to share their thoughts on how we can improve legal education.

LQN: The University of Michigan Law School is one of a small number of top-ranked, you might say elite, public law schools. What in your view is the secret to maintaining the handclasp of the "public" and the "elite" aspects of this Law School? And is there a similar balance that needs to be maintained in the practice, not just the teaching and learning, of law?

Dean Caminker: I don't know that there's any real secret here, as the excellence and public nature of the School go nicely hand in hand. We expect the lawyers we train to serve their clients or causes with great distinction and excellence, and we simultaneously expect them to take seriously the profession's historic obligation to serve the public's interests as well. As members of a great public school, we on the faculty demand the same of ourselves; we strive to promote public

continued on page 6

continued on from page 5

values and serve public needs while maintaining demanding standards of excellence, in the scholarship we produce, the education we provide, and the local and national community services we perform.

LQN: The six-year-long lawsuit over admissions policies that went to the U.S. Supreme Court had been a fact of daily life here at the Law School. Now, with the Supreme Court having ruled that the Law School's admissions policies are legal, fair, and serve compelling interests, what do you see as the impact and legacy of the case?

Dean Caminker: Reasonable persons can reasonably disagree with the principles animating the Law School's current admissions policy. But when the Law School carefully explained the importance of considering race among many factors in admissions today, and described its individualistic and moderate policies, the Supreme Court agreed that our program is legal and appropriate. As Justice O'Connor explained for the Court, "attaining a diverse student body is at the heart of the Law School's proper institutional mission," and "ensuring that public institutions are open and available to all segments of American society, including people of all races and ethnicities, represents a paramount government objective." The Court recognized that the Law School's admissions policy considers race in a limited way, and considers many other aspects of diversity as well for all applicants (including, for example, geography, age, interesting work experience, socio-economic status, life challenges faced, special talents, and alumni relations). This

individualistic and broad-ranging approach to diversity ensures that "each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application." The Court expressed the sentiment, as did we, that affirmative action programs are appropriate and necessary only in a second-best world "in which race unfortunately still matters." While the Court acknowledged a continuing need today for race-conscious admissions in order to enroll academically excellent and racially diverse classes, we share the Court's expectation that such measures will no longer be necessary in the near future.

LQN: When its admissions policies were challenged six years ago, the Law School responded with an articulate — and in the end convincing — message that explained the value of diversity to higher education and beyond. Does this message need to continue to be promulgated. Or does it need to be rephrased as times change?

Dean Caminker: It's important to recall that the Law School's commitment to diversity began a long time ago. The School graduated its first African American student in 1870 (the second African American ever to receive an American university law degree) and its first female student a year later (the first woman in the English-speaking world to receive a university law degree). And from the very beginning, the School always valued nonracial aspects of diversity in the admissions process, striving to ensure that the class contained meaningful numbers of students from varying geographical

backgrounds, and having varying life experiences. Indeed, whether they know it or not, many of our alums were admitted on the basis of diversity factors as well as grades and other "objective" indicia of academic preparedness. My own great-grandfather-in-law, a member of the class of 1901, surely benefited from his Mormon background and Utah residence.

But to be sure, appropriate understandings of "diversity" can evolve over time. I've recently heard graduates from the late '60s and early '70s proudly note that the Law School embraced a high number of Vietnam veterans, whose presence brought valuable — indeed, eye-opening — diversity to the classroom. The Law School's commitment to enrolling some members of underrepresented minority groups began in earnest around the same time, and the precise contours of that commitment have changed over time. This is of course true with other nonracial factors as well; the School's interest in matriculating second-career and Ph.D. students connects with the School's emphasis on interdisciplinary approaches to studying law and legal institutions.

Not surprisingly, during the six-year litigation campaign we've learned a lot about both the values of diversity and the ways in which they can be secured through various approaches to admissions. We will continue to assess our admissions policy with these lessons in mind, so as to produce the best possible student classes through fair and pedagogically sound means.

LQN: You have asked Professor Steven Croley to be your associate dean for academic affairs, a role you

have filled for two years. Have you and he worked on projects together before?

Dean Caminker: We've worked closely together in various capacities, most recently on the Personnel Committee, which is charged with the single most important aspect of faculty governance: renewing and reinvigorating ourselves by adding new colleagues. Steve was also the chair of the Personnel Committee that brought me to Michigan originally, so naturally I'd say he does good work!

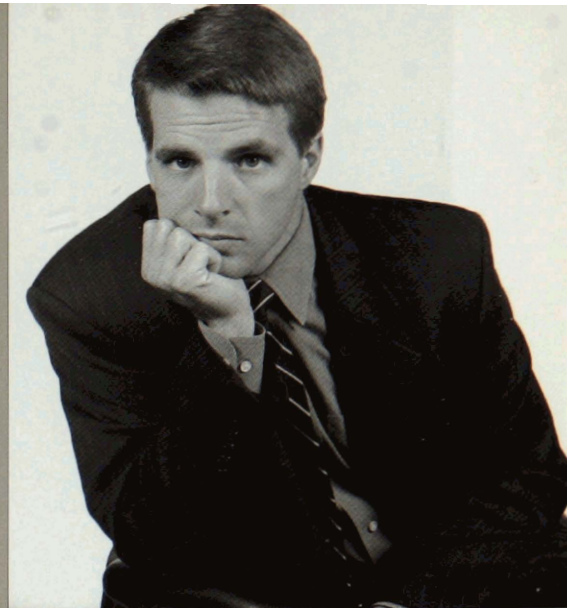
LQN: The hiring and retention of topflight faculty is a continuous part of the dean's work. One approach is to "grow" faculty, to hire young teachers with great promise and then nourish their development. Another approach is to recruit established, well-known teachers, an effort that has its merits but also can be very costly and sometimes is derided as getting into "bidding wars" for faculty. What are your thoughts on this issue?

Dean Caminker: A healthy faculty grows in both ways. The Law School is already blessed with what many describe as the best junior faculty in the nation. Our young scholars possess prodigious individual talents, and they exhibit a wide range of academic and professional interests. The home-grown component of the faculty has always provided a great source of strength and stability.

At the same time, any outstanding educational institution needs constant nourishment from the outside as well. Many of our current faculty members came to Michigan after developing a

continued on page 8

Professor Steven P. Croley named associate dean for academic affairs



Dean Evan H. Caminker has named Professor of Law Steven P. Croley to be associate dean for academic affairs.

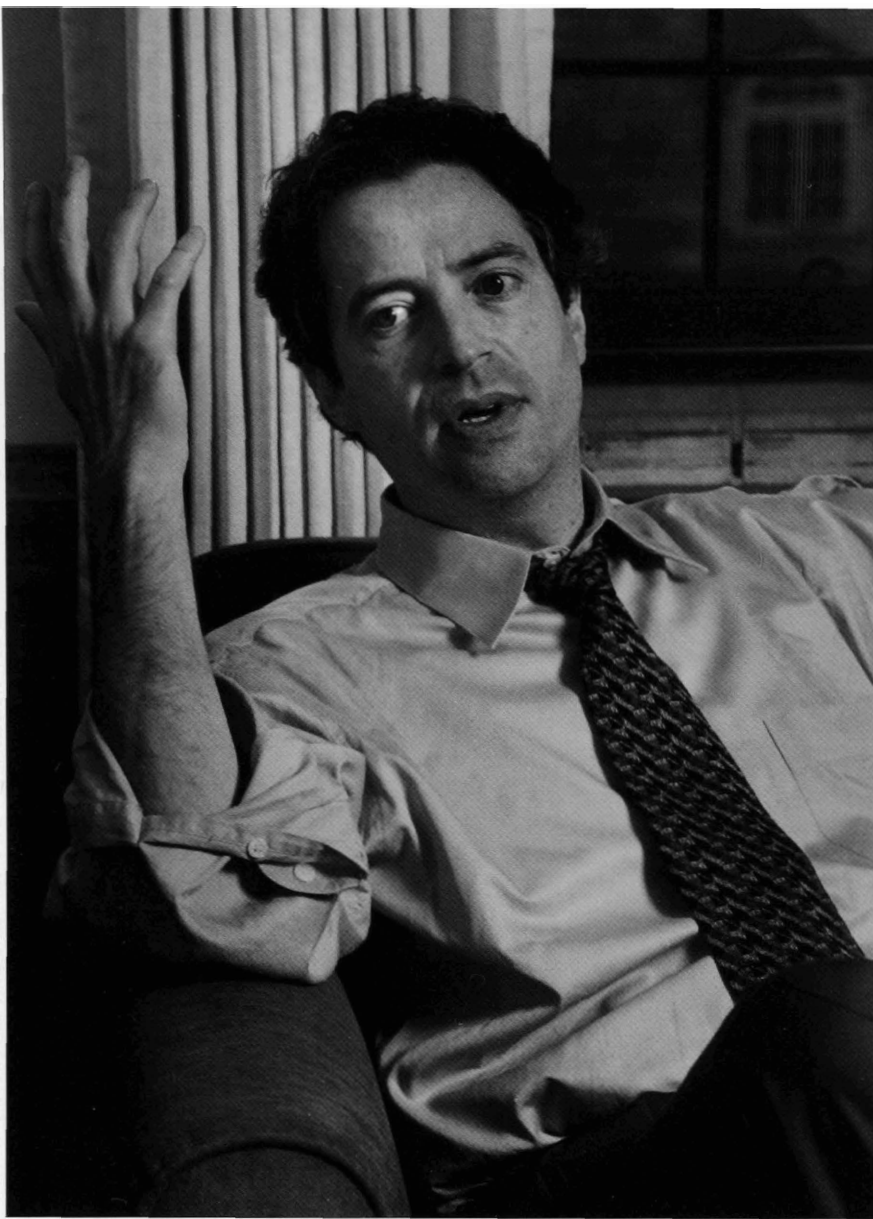
Professor Croley has been a member of the Law School faculty since 1993. He is an award-winning teacher and scholar who has published widely. Within the Law School, Croley has also been a devoted worker in administrative activities. He has served on Law School committees dealing with academic standards, disabilities, awards, research, and personnel matters. He chaired the Personnel Committee in 1998–99, and will chair the Lateral Personnel Committee in 2003–04.

Croley earned his A.B. from the University of Michigan, where he was a James B. Angell Scholar and won the William Jennings Bryan Prize; his J.D. from the Yale Law School, where he was articles editor for the *Yale Law Journal*, a John M. Olin Student Fellow, and won a John M. Olin Prize and the Benjamin Scharps Prize; and his Ph.D. in politics from Princeton University, where he was a University Fellow. Following graduation from law school, he clerked for the Honorable Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit. His primary fields of teaching and research are administrative law and torts, and he teaches seminars on advanced topics relating to these fields. During his tenure at Michigan, Croley has also served as a research consultant and report writer for several state and federal agencies, including the Administrative Conference of the United States.

Earlier this year, Croley was the feature panelist at the American Bar Association's Midyear Meeting for the ABA's Section on Administrative Law & Regulatory Practice. He also was one of four U.S. administrative law specialists asked by the Asia Foundation to assist the Chinese government in drafting legislation governing administrative procedures. In addition, he served as a reviewer for papers submitted for presentation at the 2003 annual meeting of the American Law & Economics Association.

In recent years, Croley has undertaken the representation of individual clients. In his private law practice, he focuses on civil rights, contracts, criminal defense, and torts. He has active cases pending in state and federal courts, including one high-profile case that has been the subject of stories in the local and national news media.

Professor Croley's scholarly writings have appeared in prestigious journals like the *Chicago Law Review*, *Columbia Law Review*, *Yale Journal on Regulation*, *Harvard Law Review*, *Michigan Law Review*, and the *Administrative Law Journal of American University*, among others. His forthcoming work will appear in the *Chicago Law Review*, and he is currently at work on a book on regulation. In addition to his scholarly writing, he has lectured on torts and product liability in Japan, Germany, and Italy.



continued on from page 7

nationally renowned record of scholarship, teaching, and service at another institution. Such lateral hiring allows Michigan to take advantage of proven success stories, and it also brings together persons having prior experiences with different forms of administration, teaching ideas, etc. — yet another important source of diversity within the faculty.

LQN: Fundraising is another continuous part of the dean's work. Annual donations from Law School graduates and supporters finance significant portions of the School's programs. What role is there for private donation in legal education here?

Dean Caminker: My experience is that most of our alumni would be surprised, perhaps shocked, to learn how little of this public school's operating budget comes from state funds (this year, under 4 percent). While tuition provides the largest source of funds, we are highly reliant on our annual giving program to support many of our basic educational programs. While the "dean's discretionary fund" sounds like a pot of money for desirable-but-unnecessary "extras," in truth these monies are used to support basic educational services such as the library, the career guidance office, and our international law center.

The Law School is about to kick off a major capital campaign to enhance our ability to provide a first-class legal education. One sizeable component of this campaign will be funding for a significant building expansion, which we hope will provide a way for many of our alumni to give back to the School in a way that connects them permanently to this most beautiful Quadrangle. So without a doubt, there are great opportunities today for private donations to contribute significantly to the way the Law School provides educational services, now and for many decades to come.

LQN: The need for expanded facilities and the recent announcement of plans to expand and update the Law School's physical plant increase the significance of donors' support. Raising funds for this expansion and dealing with construction will occupy much of your time during the next few years. How do you view this effort?

Dean Caminker: With great enthusiasm, actually. The process of fund-raising

provides an opportunity for me to meet and become friends with many of our alums. I will enjoy reminding them of the signal importance of a top-quality legal education, and sharing with them the many ways in which the School has grown and methods of delivering educational and professional services have changed since the 1930s, when our basic physical plant was established (the only building additions since then have been designed primarily to house books, not people). In other words, I get to showcase the many wonderful things about the School and its central educational mission.

Moreover, we are very excited with the schematic design for the new building addition, as articulated by the Renzo Piano Building Workshop. I'll have the opportunity to share some ingenious plans for treasuring the architectural gem that has long been our home, revitalizing it to meet the evolving needs of a modern legal education while still maintaining its beauty and magnificence.

LQN: Is there an opportunity here for showcasing the spirit of legal education at this Law School as well as its bricks and mortar?

Dean Caminker: Sure. In my view, the two are inseparable. Of course, we are committed to designing a new set of buildings that will do justice to, and in some significant ways enhance, the dignity of the traditional Gothic form. But the building design is fundamentally driven by the spirit of the educational enterprise housed inside. Our faculty and student communities are energetic, enthusiastic, and collegial; and they need meeting and working spaces that can facilitate and further inspire these wonderful traits. For all their beauty and grandeur, the

existing buildings hide narrow and disconnected interiors that tend to dissipate energy and partition the community. The new building is designed, not just to provide desperately needed space within the Quad, but precisely to unleash the collegial spirit of the community that thrives within.

LQN: Your considerable standing as a scholar is solidly buttressed by extensive practice in the private as well as government sectors. This raises two questions:

- **As dean, do you hope also to continue teaching, or to dip into practice periodically?**

Dean Caminker: In the long run, I think continued teaching by a dean is critical both to maintain relations with new generations of students (outside the dean's office), and to maintain a connection to instructional values and approaches. So I hope very much to keep one foot in the classroom, though I will surely have to reduce my normal teaching load significantly and perhaps even take the first year off.

I have had the good fortune of being intensely involved in several important Supreme Court cases since arriving in Michigan, most recently of course the affirmative action cases. I'll obviously have to put such litigation endeavors on hold (assuming, of course, that the School can stay away from the Court as a defendant!). I do hope to supplant my role in this regard by encouraging others to maintain or expand their own *pro bono* legal efforts.

- **As dean, do you have plans for maintaining your own scholarly work?**

Dean Caminker: In the near term, I will try to do some limited writing about equal protection law and the educational process. Not surprisingly, I learned a lot during the litigation, and it would be a shame to miss entirely the opportunity to share my thoughts with others interested in the same issues. But scholarship necessarily will be a limited part of my own activity as dean. I will again live vicariously, doing my utmost to ensure that my colleagues are best positioned to reach their own potential as scholars, and that the fruits of their labor will become part of important national and international debates about the law and legal institutions.

LQN: Finally, you came here from California, where, we must confess, the sun shines more than it does here in Michigan, and the winters are shorter and kinder. What's the University of Michigan Law School got that draws the best and the brightest here?

Dean Caminker: Alas, I have concluded that my days of playing volleyball every Sunday at Manhattan Beach have pretty much come to an end in Ann Arbor. But suntans aside, there is so much to treasure here, both in the broader University community and the cozy yet stimulating surrounding town. And at the end of the day it is the Law School itself, the unsurpassed faculty, the vibrant student body, and the palpable spirit of intellectual challenge nestled in a majestic and inspiring Quadrangle, that will always draw people from the coasts like me into its embrace.

IN DETAIL

- 10 'A time to build' — Architect Renzo Piano shares Law School expansion concepts with U-M Regents
- 10 U.S. Supreme Court Justice Scalia to visit Law School as DeRoy Fellow
- 12 A clinic and a class action
- 14 Learning service first-hand
- 16 Bergstrom Fellows get the 'ecological perspective' on law
- 18 Defending against the ultimate sentence
- 19 What did the Court say, and what does it mean?

U.S. Supreme Court Justice Scalia to visit Law School as DeRoy Fellow

U.S. Supreme Court Justice Antonin Scalia has accepted an invitation to visit the Law School the week of November 15, 2004, as a DeRoy Fellow. Dean Evan H. Caminker, who extended the invitation, said he is pleased that Justice Scalia can come to Ann Arbor and looks forward to spending time with him during his visit.

Justice Scalia was named to the Supreme Court in 1986 by President Reagan after serving on the U.S. Court of Appeals for the District of Columbia. An outspoken conservative jurist, Justice Scalia enjoys visiting and speaking at law schools when his schedule permits. He was a professor of law at the University of Virginia and the University of Chicago, a scholar in residence at the American Enterprise Institute, and a visiting professor of law at Georgetown University and Stanford University.

The DeRoy Fellows program supports visiting faculty through a gift from the Detroit-based DeRoy Testamentary Foundation. Philanthropist Helen DeRoy's other gifts to the Law School have endowed a professorship in her name, supported clinical education, and established an annual award for the best student-written Note for the *Michigan Law Review*.

No detailed schedule for Justice Scalia's visit has yet been determined. Typically, a visiting DeRoy Fellow will present a public program as well as meet with faculty and other members of the Law School community.

'A time to build'

ARCHITECT RENZO PIANO SHARES LAW SCHOOL EXPANSION CONCEPTS WITH U-M REGENTS

Plans are proceeding for expansion and renovation of the Law School's facilities. Earlier this year, Renzo Piano, architect for the project, met with the University of Michigan Board of Regents to acquaint them with his ideas for the project. The meeting was an informational one, with no actions proposed or voted on.

Prior to the meeting, Piano met with Law School officials and representatives of Integrated Design Systems, the Troy, Michigan-based architectural/engineering firm that also is working on the project.

Here is the *University Record* report on the meeting with the Regents, which appeared in the Regents Roundup section of the May 19, 2003 issue:

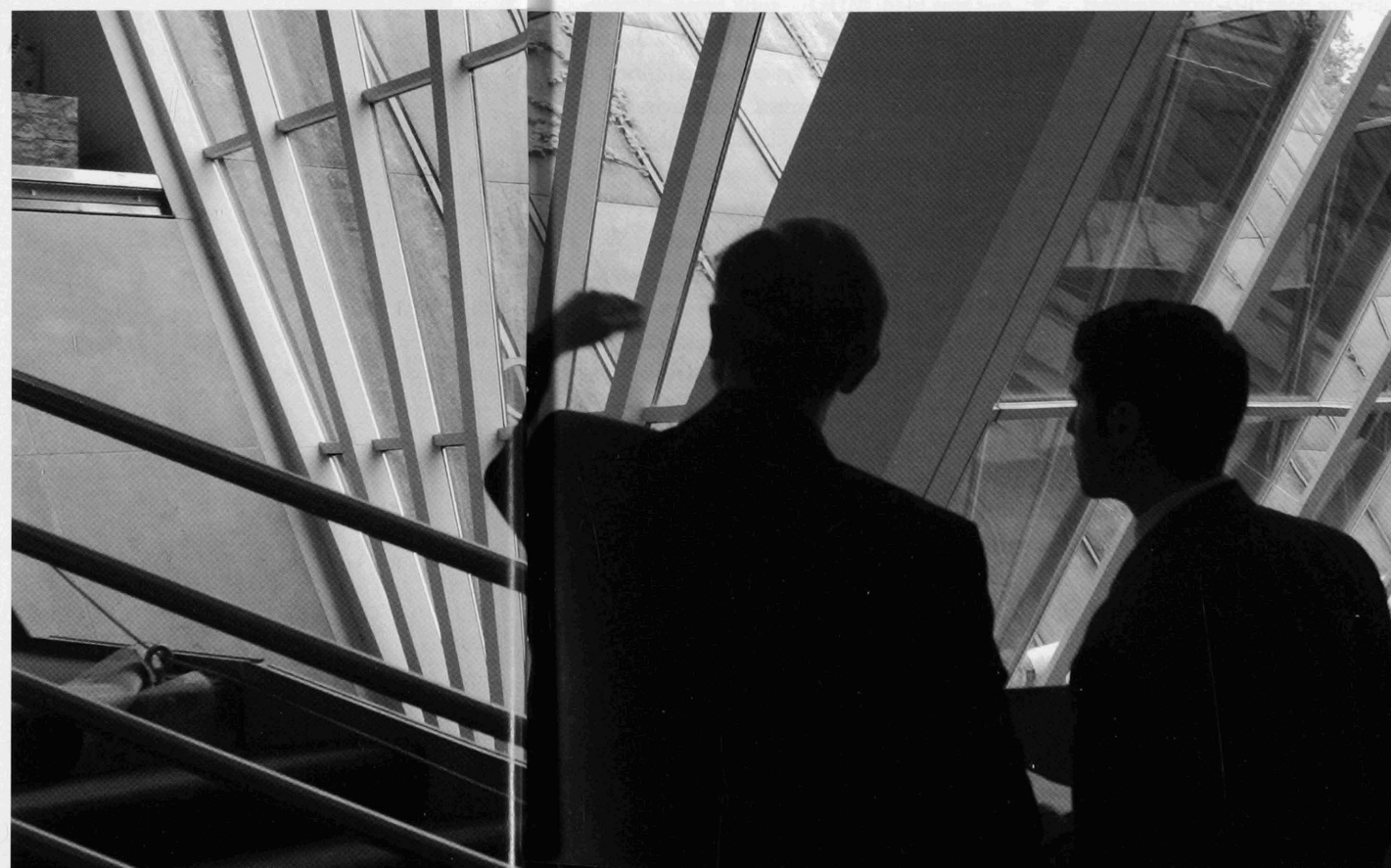
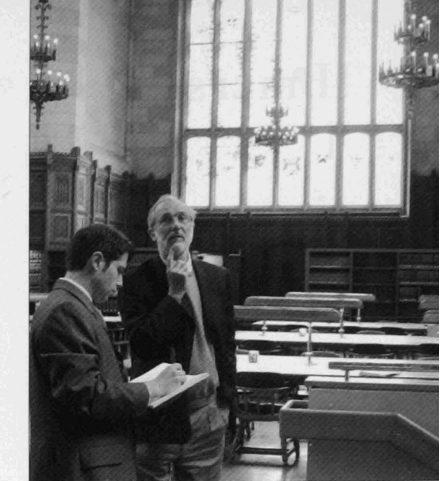
Architect Renzo Piano presented planning concepts for additional classrooms, student support spaces, and faculty offices for the Law School. The conceptual goals identified include adding a building for classrooms and offices at the southeast corner of the current complex to complete the quadrangle, and to reveal the south-side, cathedral view of the William Cook Legal Research Library by removing the "stacks" and building a new student center entrance to the Quad.

The Law School architecture has made the complex an extraordinary landmark on the U-M campus since the late 1920s. Retaining the architectural integrity while providing modern, barrier-free facilities with access to new technology has been important to the planning process, which was led by a Law School Building Committee under the leadership of [then-] Dean Jeffrey S. Lehman ['81].

Provost Paul N. Courant said the conceptual presentation to the Regents was an unusual but important step in the planning process done in advance of any formal action by Regents in order

to recognize Lehman's vision and vital contributions to the programming efforts. "This is how Jeff Lehman has spent his last three to four years and it seemed only right that the handoff of this to the board be done by him at this last meeting before he leaves," Courant said.

[Lehman became president of Cornell University on July 1.]



Left and above, architect Renzo Piano and associate Jeremy Boon examine current Law School facilities. Above at left, a concept drawing of the proposed student area/entryway on Monroe Street.

A clinic and a class action

In a way, the class action suit that University of Michigan Law School clinical law students filed against the Michigan Department of Corrections (MDOC) early this year began with Jeffrey Muller's plea for help two and one-half years ago.

Muller was an inmate at the state prison at Jackson when he contacted the Law

who have Hepatitis C — and there may be more than 17,000 in Michigan prisons — are entitled to the Medicaid/Medicare level of treatment for this disease.

"It's not a Cadillac we're asking for, it's an Escort" notes Clinical Assistant Professor of Law David Santacroce, who is supervising students on the class action case. The idea behind the suit is that prison inmates are entitled to the same level of treatment as everyone else.

The suit also seeks to have MDOC adopt and use an education system that warns inmates of how they may contract Hepatitis C — through shared needles, tattooing, and other means — what symptoms to look for, and how diet and exercise can improve outlook in the face of the disease.

Students began to understand the epidemic proportions of Hepatitis C within the prison system as they were working on the case of Muller, who had been convicted of driving the getaway vehicle during an armed robbery. Muller, who died earlier this year at age 52, may have contracted Hepatitis C through the blood transfusions he had after being seriously injured in an explosion as a child, or through intravenous drug use in early adulthood.

By the time his pleas came to the Law School clinics, however, his disease was destroying his liver. "I'm going to die unless I get a liver transplant," he explained.

MDOC had been blocking Muller's evaluation for a transplant. And, to be sure, his request was coming in the midst of debate over prisoners' entitlement to such treatment.

Muller had been seeking evaluation for a transplant for some time, and the Corrections Department took him to the U-M Medical Center for transplant evaluation. But he was returned to prison before his evaluation was completed.

Students took Muller's case and filed suit on his behalf in May 2001. After the suit was filed, MDOC took him back to complete his evaluation for transplant, and in mid-November 2001 transplant officials notified the Corrections Department that Muller was a good candidate for a liver transplant when an organ became available. But only about 10 days later MDOC reported that Muller's urine sample showed he had used marijuana, and this positive result immediately removed Muller from the lineup for a transplant.

"I tended to think it was all over at this point," Santacroce recalled. "But the students didn't take no for an answer." They set to work and found that the original sample could be retrieved from the Texas laboratory that analyzed it. Then they made the complicated arrangements necessary to get a blood sample from Muller and ensure protection against tampering and sent both the blood and urine samples to a laboratory in Windsor, Ontario, for DNA analysis.



David Santacroce

School's clinical program seeking help. He was suffering from cirrhosis of the liver, a result of his Hepatitis C, and trying desperately to get the liver transplant that was the only way to save his life. The class action case that students filed last January, with the American Civil Liberties Union as co-counsel, claims that inmates



In February, 2002, the results came back: “Conclusive” DNA analysis shows that the blood and urine samples are from different people. “This wasn’t even close,” according to Santacroce, and MDOC did not challenge the results. Transplant officials immediately returned Muller to the list of people eligible for a liver transplant.

Santacroce and his students also began to add a new charge against the Corrections Department — that Muller’s guards falsified the urine sample in an effort to harm him — but MDOC ended the move by freeing Muller on parole. After 18 years in prison, he walked out in November 2002 and returned to Grand Rapids and his family to await a liver for his transplant. He began planning to return to college to study psychology.

“We dropped the case” when Muller got his freedom, Santacroce said. But Muller waited in vain for a liver. He died last March at age 52.

Meanwhile, Muller’s case had been raising the curtain on the widespread incidence and lack of treatment for Hepatitis C within Michigan’s and many of the country’s prisons. “Students were poking around the Hepatitis C issue,” and discovered that 15–35 percent of prison inmates are infected. Some never show symptoms, but many will sicken and die. With 50,000 inmates in Michigan prisons, “there could be as many as 17,500 plain-

tiffs” in the class action suit that the Law School clinic students have filed.

The case is the second of its kind in the United States, Santacroce reported. A similar case was filed in Oregon shortly before Michigan’s. “Jeffrey Muller is the tip of the iceberg,” according to Santacroce. “There’s a wave of people behind him.”

Santacroce expects the class action suit will gain momentum during this 2003–2004 academic year, and new rounds of students will work on it.

The educational value of such cases is incalculable, according to Santacroce. Students who worked on Muller’s case and now the class action suit get a good sense of what it is like to work within a large law firm on a complicated case, he explained. For example:

- Students have learned to network — the ACLU of Michigan is co-counsel in the class action.
- Students have identified, recruited, and worked with medical and other experts. They worked with medical experts to develop a treatment protocol for Hepatitis C. When the federal Centers for Disease Control announced its own protocol later, the new plan closely paralleled what the law students already had developed.

- Students also worked with public health and other experts to develop the education plan that they are proposing.
- Students had to find good, appropriate, and willing clients for the class action, and had to ensure that the clients’ potential administrative remedies were exhausted.

“It’s good for students to learn to network and affiliate with other groups,” explained Santacroce. “Students are learning that the law can be a tool for change, that it’s not all about winning. With this Hepatitis C case, there’s been discussion about it. And we’ve seen some improvement — MDOC now calls its [treatment] protocol out of date. We’ve generated press coverage, and people are more aware of Hepatitis C.”

“This case is not about prisons,” he concluded. “Ninety-five to 98 percent of people in jail get out. They’re on the street. This is a societal problem.”

Learning service first-hand

Service is an integral part of the legal profession, and in that spirit each incoming class — including summer starters like these — devotes a day of its orientation programming to work in service projects at community agencies.

For this year's summer starters, this meant a day during their orientation in late May working at Dawn Farm, a long-term residential drug and alcohol rehabilitation facility south of Ann Arbor, or at the Safehouse Domestic Violence Project in Ann Arbor, a 65-bed facility for battered women and their children.

You can see from these photos that there's satisfaction — yes, even just plain fun and enjoyment — in the gardening, cleaning, painting, and other work that fills Service Day. In these photos from Dawn Farm, moving clockwise from the lower right:

- Alayne Speltz of Dawn Farm and Sharon Renier, a Law School staff member who volunteered as a leader for Service Day, introduce law students to the facility, its programs, and their work for the day. During the midday lunch break, Ann Rouff of Southeastern Michigan Legal Services addressed the students.
- Students plant flowers and vegetables at the facility, a former farm.
- Summer starter Gregory Heath reflects the hard work and satisfaction of the day.



At Safe House, which provides counseling and legal advocacy for domestic violence victims as well as a secure residential site, volunteers sorted welcome basket items, cleaned the kitchen, and worked on garden and landscape areas. At the lunch break, they heard a talk by Joy Miller, a legal advocate at Safe House.

Service Day participants gathered at the Law School for breakfast and busing to their work sites. They returned to the Law School in late afternoon for a barbecue dinner on the Law Quad. Dinner speaker was Assistant Dean for Public Service Rob Precht, who discussed the values of service and outlined the association of the University of Michigan and some of its students with the birth of the Peace Corps.



BERGSTROM FELLOWS GET THE 'ECOLOGICAL PERSPECTIVE' ON LAW

“You’re looking at the individual,” Sacha M. Coupet was explaining to the future child advocacy workers who had come from many parts of the country to take this special pre-summer internship training.

“But not just the individual. You’re looking at the individual in every sphere in which they exist.” Coupet’s “Gene-O-Grams” on the flipchart board drove home her point: Circles representing people and places that shaped her client’s life were labeled with words like “family,” “criminal justice [system],” “school,” “organizations,” “faith [church],” and other identifications that helped to illustrate and outline the players in the script of this person’s life.

It’s an “ecological perspective,” Coupet explained. Much more than simply a legal perspective, although the law and what it can and should do is a critical player.

Coupet’s audience was the 25 child advocacy trainees who made up this year’s class of Bergstrom Fellows. Eleven of the fellows were University of Michigan Law School students; the others came from schools in many states. They had come to Ann Arbor for four days of intensive training supported by a gift from the Bergstrom Foundation, and afterward

would scatter to many parts of the country for summer internships with child advocacy agencies.

Held at the Law School each year on the three days leading into Memorial Day weekend, the training includes lectures, small group discussions, strategizing for and handling of a case exercise, and courtroom role playing. Speakers for different parts of the sessions included Coupet; Clinical Professor of Law Donald N. Duquette, director of the Law School’s Child Advocacy Clinic; Carol J. Boyd, director of the U-M’s Substance Abuse Research Center; child psychologist Pamela Ludolph; and Washtenaw County Family Court Judge Nancy C. Francis, ’74.

In a way, Coupet’s role as teacher in these sessions was a closing of the circle: She had been a Bergstrom Fellow in 1998 during the summer between her first and second years at the University of Pennsylvania Law School.

Coupet earned her B.A. from Washington University, and received her Ph.D. in clinical psychology from the University of Michigan. She clerked for the Hon. Joseph A. Greenaway Jr. of the U.S. District Court for the District of New Jersey, and for the Hon. Theodore

A. McKee of the U.S. Court of Appeals for the Third Circuit. She joined the U-M Law School faculty as an assistant clinical professor of law last fall.

“I’ve always seen law as a helping profession,” explains Coupet, who grew up in New Jersey near New York City and early on considered becoming a physician. “Law and psychology both are helping professions, and they go hand in hand. It’s hard for me to separate my legal analysis from my therapeutic analysis.”

For example, she explained, initial examination and interviewing of a client “feels like a mental health assessment — one that includes legal dimensions and taking into account how any legal placement will affect the child.”

The academic, theoretical framework that best reflects this interdisciplinary approach is called “therapeutic jurisprudence,” a phrase coined by researchers David B. Wexler and Bruce J. Winick in the early 1990s. Winick defines therapeutic jurisprudence this way:

“Therapeutic jurisprudence is the study of law’s healing potential. An interdisciplinary approach to legal scholarship that has a law reform agenda, therapeutic jurisprudence seeks to assess the law and

how it is applied and to affect legal change designed to increase the former and diminish the latter. It is a mental health approach to law that uses the tools of the behavioral sciences to assess law’s therapeutic impact, and when consistent with other important legal values, to reshape law and legal processes in ways that can improve the psychological functioning and emotional well-being of those affected.”

In other words, Coupet explained, you ask yourself “What *should* happen?”

University of Michigan Law School students among this year’s Bergstrom Fellows, and their summer placements, included: Deborah Atlas (Lawyers for Children Inc., New York); Andrew Bauer (Legal-Aid Society, Bronx, New York); Lynne Berndt (Child Advocacy Law Clinic, Ann Arbor); Meg Davis (Michigan Association for Children with Emotional Disorders, Southfield, Michigan); Laurel Dumont (The Partnership for the Homeless, New York); Robbin Pott Gonzales (Child Advocacy Law Clinic, Ann Arbor); Elizabeth Husa (Children’s Law Center, Charlotte, North Carolina); Sarah McDonald (Lawyers for Children Inc., New York); Daniel Rubin (Student Advocacy Center of Michigan,

Ann Arbor); Ronika Sumlin (Kids Voice, Pittsburgh, Pennsylvania); and Elizabeth Wei (Child Advocacy Law Clinic, Ann Arbor).

Many things — the legal system, religious faith, school, parents, and others — must be weighed in resolving a child advocacy case, Clinical Assistant Professor of Law Sacha M. Coupet explains during training for the Bergstrom Fellows at the Law School earlier this year.



Law School students among this year’s Bergstrom Fellows: (Front row) Robbin Pott Gonzales; Laurel H. Dumont; Sarah McDonald; Elizabeth Husa; and Andrew Baur. (Second row) Assistant Clinical Professor of Law Sacha M. Coupet (fellowship program instructor); Meg Davis; Deborah Atlas; and Lynn Berndt. (Third row) Liz Wei; Dan Rubin; and Ronika Sumlin. Standing at back is Clinical Professor of Law Donald N. Duquette, director of the training.



DEFENDING AGAINST THE ULTIMATE SENTENCE

BERGSTROM FELLOWS



Tony Moss, demonstrating a closing sentencing argument in a capital case, explains to the jury members that his client's life is in their hands. Moss' demonstration was part of the Clarence Darrow Death Penalty Defense College held at the Law School in May.

As he concludes his demonstration of a closing argument for the sentencing phase of a capital case, instructor Tony Moss adds up the seconds, minutes, and hours of his client's life and explains to the jury that a vote for execution would annihilate his client's life for the heinous actions he took during less than 1/110,000 of his life to that point.

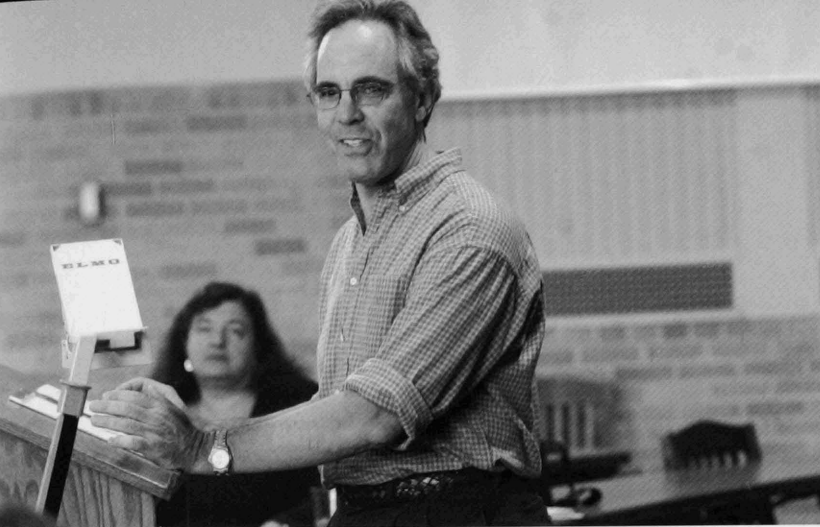
Finally, my client's life passes "from my hand to yours," Moss tells the jury. "And remember, this is a life that is fragile. Please, please, handle it with care."

Moss' session is the last in the six-day Clarence Darrow Death Penalty Defense College. College founder/director Andrea Lyon follows him and ends this year's college with this story:

No "reasonable doubt case," this one. Two drug-addicted young men in their 20s commit a double homicide during a robbery. Lyon, representing one of the defendants, asks, "What are you going to do with your life. You know, you're going to get life or a long, long time."

"You know, Ms. Lyon," her client answers, "I'd really like to learn to read." Lyon locates a tutor, and by the time of his trial, her client can read at a second grade level. He is sentenced to 80 years in an Illinois prison.

He works in the prison kitchen, earns a couple of dollars a day, and keeps in touch with his lawyer. "He writes," Lyon says. "Or, rather, he prints." And with his earnings, "he supports two children in Africa. No one should be measured by only the worst thing he has done in his life."



Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law, explains some of the ethical considerations that tie an attorney to his client in a capital case. In the background is Andrea Lyon, founder/director of the Clarence Darrow Death Penalty Defense College. Lyon is an associate clinical professor of law at DePaul College of Law in Chicago.

Don't leave the facts of your client's life, and, perhaps, his wrongdoing, hanging alone in the courtroom air. Use them instead as the building blocks of your client's life, his childhood, relationships, education or lack of schooling, all the parts of one person's life that also may be some parts of everyone's life. That's how you make your client a real person to the jury members who will decide his fate.

That's Kevin Randolph's advice to attorneys in capital crimes cases, advice he delivered as well as demonstrated at the Clarence Darrow Death Penalty Defense College, held at the Law School in May.

Randolph practices mostly criminal law in Connecticut and is a member of the Connecticut Special Public Defender Committee. He was one of many faculty members who drew on professional expertise and first-hand experience in their presentations.

The annual college, founded and directed by Andrea Lyon, an associate clinical professor at DePaul College of Law in Chicago, is sponsored by the U-M Law School, DePaul, the American Bar Association, National Association of Criminal Defense Lawyers, and Office of the State Appellate Defender of Illinois.

Named for the famous civil rights and capital crimes attorney Clarence Darrow, who attended the University of Michigan Law School, the annual program brings together capital defense attorneys from across the nation for six days of intense discussion, training, strategizing, and mutual support.

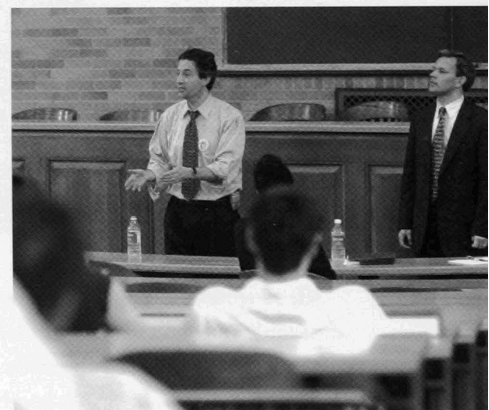
Participants spent the mornings in closed and private small group discussions, often going over actual cases. In the afternoons, they attended sessions on topics ranging from "Brainstorming the Case" and a demonstration of jury selection to "Creative Motions Practice," "Capital Case Negotiations," "Investigating and Presenting Mitigation Evidence," and "How Juries Perceive Mitigation Evidence."

There also were demonstrations of opening and closing arguments conducted by Miami, Florida-based practitioner Tony Moss. A faculty member for the college since it began in 2001, Moss received the college's first Clarence Darrow Award this year for his dedication to the program. Lyon, who also directs the DePaul Center for Justice in Capital Cases and formerly taught at U-M Law school, presented the award to Moss.

Among other speakers for the college were: Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law at the University of Michigan Law School, who discussed aspects of the ethical ties that link attorneys to their clients; Kelly Gleason, deputy counsel in the Capital Division of the Tennessee District Public Defenders Conference, who spoke on representing clients with mental or emotional difficulties; San Diego solo practitioner John Lanahan; and clinical psychologist I. Bruce Frumkin, director of Miami-based Forensic and Clinical Psychology Associates P.A., which also has offices in Chicago and Philadelphia.

What did the Court say, and what does it mean?

Then-Dean-Designate Evan H. Caminker, left, and Jonathan R. Alger, assistant general counsel for the University and an adjunct faculty member at the Law School, outline the U.S. Supreme Court's 5-4 decision upholding the Law School's admission policies and their goal of ensuring diversity. Caminker and Alger, with Assistant Dean for Students Charlotte Johnson, '88, discussed the Court's decision in a program for the Law School community presented the day after the Court announced its decision on June 23.



IN DETAIL

- 20 *Law School welcomes new faculty members*
- 23 *Ellsworth, Scott named distinguished university professors*
- 25 *Faculty members receive named professorships*
- 26 *Kahn, visitors team for 'reality' tax course*
- 28 *Nippon Life Professor Mark D. West named to two directorships*
- 30 *Dalhousie gives Simpson honorary Doctor of Laws*
- 31 *Activities*
- 34 *Visiting, adjunct faculty*

LAW SCHOOL WELCOMES NEW FACULTY MEMBERS

*L*aw School graduates carry with them precious memories of their associations with faculty members. Rightly so. The University of Michigan Law School is renowned for the quality of its teachers, and students reap the benefit of these professors' experiences, insights, and research.

Teaching is the heart of the Law School, and learning its reward. From classroom lectures and Socratically rigorous discussions to seminars, symposia, and informal chats, the Law School is a place where professors and students are members of a team dedicated to training exceptional new lawyers and expanding the bounds of legal knowledge and theory.

This year, the Law School welcomes seven new members to its faculty community:

Laura N. Beny
Assistant Professor of Law

Laura Beny won the Harvard Prize and National Science Foundation fellowships during her work toward her Ph.D. in economics at Harvard University, earned her J.D. at Harvard Law School, her

M.A. in economics at Harvard University, and her B.A., with distinction, in economics at Stanford University.

At Harvard Law School, she won the John M. Olin Prize for Outstanding Paper

in Law and Economics and was a John M. Olin Fellow in Law and Economics from 1997 to 2001. At Stanford, her paper “Market-Based Approaches to African Wildlife Conservation” won the John G. Sobieski Award for the outstanding senior thesis.

Beny helped an internationally renowned labor economist at Harvard University analyze the impact of labor market reforms in the People’s Republic of China for the Cambridge, Massachusetts-based National Bureau of Economic Research, and during 2000–2001 assisted economists at the bureau in assembling a database of companies providing stock option compensation to nonexecutive employees.

A member of the New York Bar, Beny practiced law at Debevoise & Plimpton in New York City from 2001 to 2003. She is a member of the American Law and Economics Association, and her research and teaching interests include health law, nonprofit corporations, empirical research



methods, law and economics, and torts. She begins teaching here this fall.

Beny’s paper “A Comparative Empirical Investigation of Agency and Market Theories of Insider Trading,” presented at the John M. Olin Center for Law, Economics and Business at Harvard Law School, now is being prepared for publication, and a version of her paper “Legal and Economic Implications of Slavery and Slave Redemption in the Sudan,” first presented at the African Studies Association Annual Meeting in Philadelphia and subsequently published in *Al Taya* newsletter, will appear in the book *Perspectives on Genocide in the Sudan*, which Beny is co-editing with Professor Sondra Hale of UCLA and Professor Lako Tongun of Pitzer College.

Diane Eisenberg
Clinical Assistant Professor of Law

Clinical Assistant Professor Diane Eisenberg holds a J.D. from Harvard Law School. Most recently, she taught at the Law School as an adjunct professor, teaching Professional Responsibility and Ethics, and Law and Literature.



Prior to coming to the Law School, she served as an attorney for the Judicial Council of California, the body that establishes and implements policy for the California State judicial system. She also has practiced with two San Francisco law firms that specialize in intellectual property, antitrust, and complex civil litigation.

Before attending law school, Eisenberg earned an M.A. in English and American Literature from Princeton University and taught literature and writing courses at Princeton and at Haverford College. She also earned a B.A. from the State University of New York at Stony Brook.

Eisenberg is teaching in the Legal Practice Program.

Jill R. Horwitz
Assistant Professor of Law

Jill R. Horwitz holds a B.A. from Northwestern University, and an M.P.P., J.D., *magna cum laude*, and Ph.D. in health policy from Harvard University. Horwitz was an editor for the *Harvard Journal on Legislation*.

Following law school, she served as a law clerk for Judge Norman Stahl of the U.S. Court of Appeals for the First



Circuit. While in graduate school, Horwitz held graduate fellowships in the Harvard Center for Ethics and the Professions and the Hauser Center for NonProfit Organizations. She has been a post-doctoral fellow at the National Bureau of Economic Research, public affairs director for the Planned Parenthood Association of San Mateo County, and a teaching fellow in history at Phillips Academy. She is a member of the bar of the Commonwealth of Massachusetts.

Horwitz’s research and teaching interests include health law, nonprofit corporations, empirical research methods, law and economics, and torts.

Winner of the 2003 AcademyHealth Dissertation Award, she is co-author (with M. Fremont-Smith) of *The Power of the Legislature: Insurer Conversions and Charitable Funds* (2002). Her co-authored chapter (with D.M. Cutler) "Converting Hospitals from Not-for-Profit to For-profit Status: Why and What Effects?" appears in *The Changing Hospital Industry* (2000), and she prepared the working paper "State Oversight of Hospital Conversions: Preserving Trust or Protecting Health?" (2002) for the Hauser Center for Nonprofit Organizations.

**Edward A. Parson
Professor of Law**

Professor Ted Parson, who joins the Law School this fall, holds a joint appointment with the U-M's School of Natural Resources and Environment. His interests include environmental policy, particu-



larly its international dimensions; the political economy of regulation; the role of science and technology in public issues; and the analysis of negotiations, collective decisions, and conflicts.

Parson's recent research examines scientific and technical assessment in international policymaking; the policy implications of carbon-cycle management; the design of international market-based policy instruments; and development of policy exercises, simulation-gaming, and related novel methods for assessment and policy analysis. His recent articles have appeared in *Science*, *Climatic Change*, *Policy Sciences*, *Issues in Science and Technology*, the *Annual Review of Energy and the Environment*, and *Scientific American*. He served as leader

of the "Environmental Trends" Project for the Government of Canada and as editor of the resulting book, *Governing the Environment: Persistent Challenges, Uncertain Innovations* (2001). His most recent book, *Protecting the Ozone Layer: Science and Strategy* was published this year.

Parson has worked for the International Institute for Applied Systems Analysis, the U.S. Congress' Office of Technology Assessment, the Privy Council Office of Canada, and the White House Office of Science and Technology Policy. He served on the NAS Committee on Human Dimensions of Global Change and on the U.S. National Assessment of Impacts of Climate Change. He holds degrees in physics from the University of Toronto, in management science from the University of British Columbia, and a Ph.D. in public policy from Harvard. He also has been a professional classical cellist and an organizer of grass-roots environmental groups.

**John A.E. Pottow
Assistant Professor of Law**

John A. E. Pottow earned his J.D., *magna cum laude*, at Harvard Law School, where he also served as treasurer and a member of the Board of Trustees of the *Harvard Law Review*. While a law student, Pottow worked with Professor Arthur R. Miller on the supplement to Wright, Miller, and Cooper's monumental *Federal Practice & Procedure* and helped to revise a



volume of the treatise. He earned his psychology degree, *summa cum laude* and Phi Beta Kappa, at Harvard College, where he also won numerous scholarships and prizes,

including the Thomas Hoopes Prize for Undergraduate Research. He also was president and jazz program host on WHRB-FM, student conductor of the Harvard University Band, and a member of the Hasty Pudding Theatricals group and the crew team.

Pottow clerked for judges in two countries: the Rt. Hon. Beverley McLachlin of the Supreme Court of Canada and the Hon. Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. He practiced first with Hill & Barlow in Boston and later with Weil, Gotshal, and Manges LLP in New York, concentrating on bankruptcy and restructuring issues. Additionally, he has undertaken a variety of *pro bono* cases, including winning asylum for an Afghan national seeking gender-based relief from the Taliban regime.

Pottow also has been project director of the National Consumer Bankruptcy Project, which is studying some 2,000 bankruptcy filings and developing a database to analyze court records. A frequent author for *Criminal Law Quarterly*, he begins teaching at the Law School this fall.

**Thomas G. Rozinski
Clinical Assistant Professor of Law**

Thomas G. Rozinski received his B.A., *summa cum laude*, from Yale University in economics and political science, an A.M. in government from Harvard University, and a J.D., *cum laude*, from Harvard Law School.

Rozinski has practiced law with two large firms in New York: as an associate at Kaye Scholer; and as a partner at Anderson Kill & Olick. He led a coalition of *amici curiae* that convinced the Wisconsin Supreme Court to overturn 20 years of adverse precedent and find environmental



damage coverage for policyholders in *Just v. Land Reclamation, Ltd.*, 456 N.W.2d 570 (Wis. 1990).

Rozinski then worked for seven years in New York City government, serving as general counsel to

two large agencies and as senior counsel in the City's Law Department. During 2001 he was acting commissioner of the Department of Homeless Services, directing the operations of the largest city shelter program in the country.

He has taught political theory and American government at Harvard University, Touro College, and Baruch College. He is also a serious competitive bridge player and a Silver Life Master in the American Contract Bridge League. Rozinski joins the U-M Law School faculty this fall as a clinical assistant professor teaching in the Legal Practice Program.

**Beth H. Wilensky
Clinical Assistant Professor**

Beth H. Wilensky joins the faculty as a clinical assistant professor teaching in the Legal Practice Program. She formerly was an associate in the Litigation Section of Akin Gump Strauss Hauer & Feld LLP

in Washington, D.C., where she represented clients in commercial litigation in federal and state courts and federal agencies, with an emphasis on appellate and administrative law matters.

She is a member of the Illinois and District of Columbia bars.



As a teaching fellow at Harvard College, she taught a course on legal, sociological, psychological, and anthropological perspectives on childhood. She was awarded a Harvard University Certificate of Distinction in Teaching for the work. Wilenski also received a Kellogg Foundation fellowship to design and implement needs assessment of the state foster care system for the Kansas Children's Service League in Topeka.

She received her J.D., *cum laude*, from Harvard Law School, where she was articles editor for the *Harvard Journal on Legislation*. Her law school thesis was titled "Institutional Litigation and the Child Welfare Reform Movement: Twenty Years, and Still No Place to Call Home."

Wilenski earned her B.A., *magna cum laude*, in sociology with honors from the University of Pennsylvania. Her minor field of study was psychology. At Pennsylvania, she received a Ford Foundation research grant, was a member of the select Benjamin Franklin Scholar Honors Program and Mortar Board, and was on the Dean's List. She also chaired the Committee on Judicial Reform and taught creative writing at Community School. Her undergraduate thesis was titled "The Relationship Between Alienation and Aggression in an Urban Middle School Population."

**Ellsworth, Scott
named distinguished
university professors**

Two members of the Law School faculty have been named to the prestigious list of distinguished university professors, an honor that recognizes them "for exceptional achievement and reputation in their appointive fields of scholarly interest and for their superior teaching skills."

Regents action naming Professor Phoebe C. Ellsworth the Frank Murphy Distinguished University Professor of Law and Psychology and Rebecca J. Scott the Charles Gibson Distinguished Professor of History increases the Law School's roster of distinguished university professors to four: Yale Kamisar is the Clarence Darrow Distinguished University Professor of Law and Richard O. Lempert, '68, is the Eric Stein Distinguished University Professor of Sociology and Law.

The University's Board of Regents created the Distinguished University Professorships in 1947. Appointment to one of the professorships is one of the most coveted honors the University confers on a faculty member. Each appointee can name his/her professorship in honor of an eminent individual in the scholar's same general field of interest.

Ellsworth's professorship is named for Frank Murphy, '14, whose rich public service included serving as mayor of Detroit, Governor General/High Commissioner of the Philippines, Governor of Michigan, U.S. Attorney General, and Associate Justice of the U.S. Supreme Court. Murphy died in 1949.

continued on page 24

continued on from page 23

Scott's professorship is named for Charles Gibson, a distinguished U-M historian who was the Irving A. Leonard Distinguished University Professor of History from 1978 until his retirement. Gibson was an eminent historian of colonial Latin America who wrote six books and monographs, seven edited publications, and more than 50 scholarly articles. He was president of the American Historical Association, was elected to the American Academy of Arts and Sciences, and was the University's Henry Russel Lecturer in 1976–77.



Phoebe Ellsworth

Ellsworth, who also has an appointment in the College of Literature, Science and the Arts, formerly was the Kirkland and Ellis Professor of Law and the Robert B. Zajonc

Professor of Psychology. She "is known for her lasting contributions to the fields of law and psychology, and her work in social psychology (in particular, the emotions) and in psychology and the law (especially with respect to juries) has been doubly pathbreaking," according to the recommendation for appointment that the U-M Board of Regents approved in July.

Writing on her behalf, Provost Paul N. Courant and Vice Provost for Academic Affairs Earl Lewis told the Regents "the research problems that she takes up are important and complex and tend to generate follow-up scholarship by others. A pioneer in her work at the intersection of law and psychology, Ellsworth bridged the chasm between social and cultural psychology and legal studies with

her early work, convincing scholars on both sides that psychological theory and nonclinical psychological research offered important insights to legal policymakers for designing legal rules and institutions aimed at regulating human behavior and for understanding the processes and practices of the law itself."

Courant and Lewis also praised Ellsworth as "an exceptional teacher as well as scholar" and as "a superb inspiration to her students as a model of critical intelligence." Among her colleagues, they said, "she is a remarkable intellectual presence, someone whose judgment is valued and sought after, and someone whose intellectual rigor is treasured."

Ellsworth came to the University of Michigan as a professor of law and psychology in 1987. She earned her A.B., *summa cum laude*, in social relations from Radcliffe College and her Ph.D. in social psychology from Stanford University. She taught at Yale University and was a member of the faculty of Stanford University before coming to Michigan.

Scott, one of the nation's foremost Latin American historians and an internationally recognized scholar of post-eman-cipation societies, earned her A.B., *summa cum laude*, in social studies from Harvard University, her M.Phil. in economic history from the London School of Economics, and her Ph.D. in history from Princeton University. She joined the U-M faculty in 1980 as an assistant professor of history, was named the Frederick Huetwell Professor of History in 1995, and in 2002 also was named professor of law.

In 1990, she was awarded a John D. and Catherine T. MacArthur Prize Fellowship (often call the "genius award"), and from 1994 to 1997 she held an Arthur F. Thurnau Professorship in recognition of her teaching. She also has been a senior fellow in the Michigan Society of Fellows,

received an Edman Fellowship in support of her research activities, and in 2002 was elected a fellow of the American Academy of Arts and Sciences.

She is the author of *Slave Emancipation in Cuba: The Transition to Free Labor* and co-author of *The Abolition of Slavery and the Aftermath of Emancipation in Brazil* and



Rebecca Scott

Beyond Slavery: Explorations of Race, Labor, and Citizenship in Post-eman-cipation Societies. "Her forthcoming book, *Degrees of Freedom: Louisiana and Cuba after Slavery,*

1862–1907, promises to advance scholarship on race and show how context-specific historical contingency shaped its development and its relation to class formation," according to Provost Courant and Vice Provost Lewis.

Scott also is one of three coordinators of *Espacios, silencios y los sentidos de la libertad*, published in Spanish in Cuba last year and now in its second printing there. A collection of articles by 17 authors, including Scott, the book deals with Cuban political and democratic thought during the period 1878–1912.

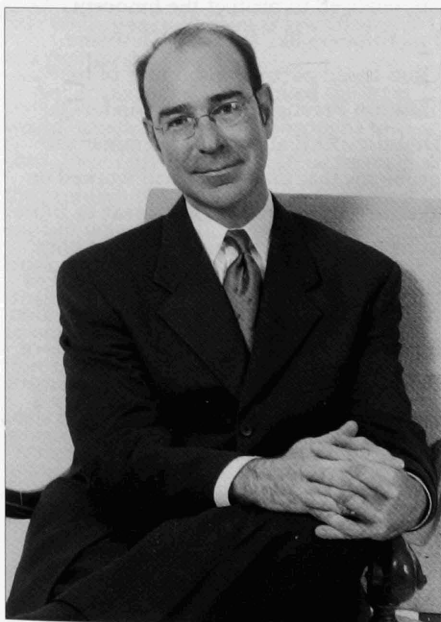
Scott currently is organizing an international research and teaching project, The Law in Slavery and Freedom, that involves scholars from the U-M and other universities in the U.S., Latin America, and Europe. She founded the University's Program in Latin American and Caribbean Studies and directed the program from 1990–93. She chaired the Department of History from 1996–99, served on the Provost's search committee in 1997, and currently is director of Graduate Studies in the history department.

FACULTY MEMBERS RECEIVE NAMED PROFESSORSHIPS

Law School professors James C. Hathaway, Robert L. Howse, and Sallyanne Payton have been appointed to endowed professorships. (In addition, Mark D. West has been named the Nippon Life Professor of Law. See story on page 28.)

Hathaway has been named the James E. and Sarah A. Degan Professor of Law, Howse the Alene and Allan F. Smith Professor of Law, and Payton the William W. Cook Professor of Law. The University's Board of Regents approved the title assignments earlier this year.

• **James C. Hathaway**, a member of the faculty since 1998, directs the Law School's Program in Refugee and Asylum Law and also is a Senior Visiting Research Associate at Oxford University's



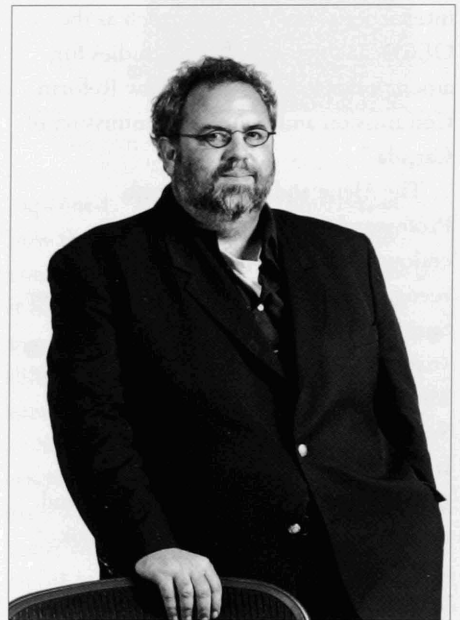
James C. Hathaway

Refugee Studies Center in England. He holds a J.S.D. and LL.M. from Columbia University School of Law and an LL.B., with honors, from Osgoode Hall Law School of York University in Canada.

"Professor Hathaway is a leading authority on international refugee law," according to the recommendation approved by the U-M Board of Regents. "His scholarship is regularly cited by the most senior courts of the common law world, and it constitutes the point of departure for much other work in this field. He is the author of a leading treatise on the definition of refugees, *The Law of Refugee Status* (Butterworths, 1991) and is the editor of the influential *Reconceiving International Refugee Law* (Kluwer, 1997). Professor Hathaway has also provided training on refugee law to academic, nongovernmental, and official audiences in Europe, North America, Asia, and Africa, and is a regular lecturer at both the International Secretariat of Amnesty International and the European Council on Refugees and Exiles."

The James E. and Sarah A. Degan Professorship is supported by an endowment created through the bequest of the late Sarah A. Degan, a longtime Detroit resident.

• **Robert L. Howse**, who joined the faculty in 1999, holds an LL.M. from Harvard Law School, an LL.B., with honors, from the University of Toronto, and a B.A., with high distinction, in philosophy and political science from the University of Toronto.



Robert L. Howse

"Professor Howse is an internationally respected scholar of international trade and related regulatory issues, and he has written on a wide range of topics in international law and legal and political philosophy," according to the recommendation to the Regents. "Professor Howse is the author, co-author, or editor of five books, including *Trade and Transitions; Economic Union, Social Justice, and Constitutional Reform; The Regulation of International Trade; Yugoslavia the Former and Future*; and *The World Trading System*. He also is the co-translator of Alexander Kojève's "Outline for a Phenomenology of Right." He has published many scholarly articles and book chapters on topics as disparate as

continued on page 26

continued on from page 3

NAFTA, whistleblowing, industrial policy, food inspection, income tax harmonization, and ethnic accommodation. Professor Howse is a frequent consultant or adviser to government agencies and international organizations such as the OECD, and has undertaken studies for, among others, the Ontario Law Reform Commission and the Law Commission of Canada.”

The Alene and Allan F. Smith Professorship is supported by an endowment established in 1982 and recognizes the contributions of Professor Smith and his wife during their 35-year association with the University of Michigan. Allan Smith joined the Law School faculty in 1947, served as dean from 1960–65, as U-M vice president for academic affairs from 1965–74, and as interim president in 1979. He took emeritus status in 1982.



Sallyanne Payton

• **Sallyanne Payton** earned her LL.B. at Stanford Law School and her B.A. at Stanford University. After practicing for several years in Washington, D.C., she became staff assistant to the President of the United States in the White House Domestic Council, then became chief counsel for the Urban Mass Transportation Administration in the U.S. Department of Transportation. She joined the Law School faculty in 1976.

“Professor Payton is a leading figure in both academic and professional circles with respect to administrative law and health care law,” reported the recommendation to the Regents. “Most recently she has focused her scholarly and professional efforts on problems concerning regulation of the health care industry and issues concerning welfare policy. She is a fellow in the National Academy of Public Administration and a member of the National Academy of Social Insurance. Last year she served as chair of the Administrative Law Section of the Association of American Law Schools.”

“Professor Payton’s appointment as the William W. Cook Professor of Law is especially fitting because of her lifelong involvement with and study of important governmental institutions, matters of interest to Mr. Cook,” the recommendation added.

The William W. Cook Professorship was established in the Law School this year and is supported by monies derived from funds that Cook, the Law School’s principal donor, gave or left to the School in 1929 and 1930. The generosity of Cook, New York lawyer and an 1882 graduate of the Law School, provided for construction of the buildings that make up the Law School and the Law Quadrangle.

KAHN, VISITORS TEAM FOR ‘REALITY’ TAX COURSE

Douglas A. Kahn, the Paul G. Kauper Professor of Law, had been mulling over the idea of a learn-by-doing tax seminar for some time. He put the idea into action during winter term this year, and reports that he, co-teacher Terrence G. Perris, ’72, visiting teachers, and students found the venture a rousing success.

The seminar, *Tax Planning for Business Transactions*, included nine students. “This was at a high level,” Kahn explained. “They had a lot of work to do. It was intended not to teach them with traditional lecture. It was application run. You learned by working out the problems.”

The in-class problems were real ones, with names and some details, as they say, changed to protect the innocent. Practitioners like Perris, a Cleveland, Ohio-based partner and leader of the Taxation Practice of Squire, Sanders & Dempsey LLP, adapted for seminar use problems that their firms had worked on extensively, sometimes for a year or more.

The original problems were big ones — among them the establishment of Fox News and spinning off a lending operation from Ford Motor Company, “the kinds of things that clients only hire very expensive lawyers to do,” explained Perris, who also teaches regularly at Case Western Reserve University Law School in Cleveland. “It was much like a business law clinic, except that you can’t bring in a Fortune 500 company as the client.”

Other practicing attorneys who adapted cases and analyzed students’ solutions, included:

- J. Phillip Adams, '72, a senior partner with Skadden, Arps, Slate, Meagher & Flom LLP in New York City;
- William Toomajian, '68, a senior partner (tax) with Baker Hostettler in Cleveland; and
- Diane Dossin, assistant tax officer at Ford Motor Co., who was able to participate through the support of Ford Motor Co. General Counsel Dennis Ross, '78.

Second-year law student Erika Anderson, who will be clerking for the recently appointed Tax Court Judge, Mark V. Holmes, next year, said the course showed how complex tax problems can be.

"I learned that to arrive at a good or even optimal solution, not only must tax attorneys consider the tax laws, but they must also consider other legal areas such as corporate, partnership, contract, and property law," she explained. "For example, we worked on one problem where the optimal solution was to have the tax laws treat an entity as a corporation while general business law treated it as a partnership."

Anderson said she also liked the "real world" touch practitioners brought to class. "Not only did they take us through the problem they had prepared and then explain why our solutions may or may not work, but they also told a number of war stories along the way. These added depth to our understanding as to what transaction tax attorneys do on a daily basis."

Practicing attorneys have tight schedules, and it wasn't easy for them to get to the Law School. Sometimes, well, they just couldn't.

The solution was live videoconferencing, via the videoconference-equipped classroom on the first floor of Hutchins Hall. For these sessions, Kahn became the master technician who operated the

push-button console that focused the camera on each speaker as s/he talked to Perris or another guest teacher in his home office.

Perris said the Law School's videoconferencing capability made it possible for him to co-teach with Kahn. He could not come to Ann Arbor from Cleveland each week — in fact, during one drive from Cleveland he had an automobile accident that blocked U.S. 23 south of Ann Arbor. When Tomajian had to cancel a visit on short notice, he solved the problem by teaching via a live, interactive videoconference.

Videoconferencing "is a good marriage of technology with teaching," Perris said. "It's another way the Law School can help to bridge the gap between teaching and practice."

Kahn and Perris divided students into two-person teams. The ninth student, an S.J.D. candidate from Thailand with considerable working experience, floated among the groups as observer. Two teams could work together, but each team had to write its own report on its proposed solution.

Sometimes, students had to come back to the teachers for more information. Like attorneys dealing with clients, it was up to the students to determine what was missing and ask for it. One group, on its own, discovered the private letter that had resolved a case that had been adapted for their class.

"That was mine," Perris said of that case. In fact, he said, students cited the real case as authority for their classroom solution.

"I think the students got their Law School experience enhanced by the fact that there were a lot of different concepts that needed to be applied," Perris



Douglas A. Kahn

explained. "You needed to understand how those concepts worked in all their complexities. . . . This was the context as it happens in the real world. The client may know you're wrestling with these difficult concepts, but he really doesn't care."

Students usually had three weeks to study and solve each of the five problems they were given. Once, their solution came very close to that in the real case. At other times, when attorneys visited to analyze the students' solutions, they found that the future lawyers had explored the same avenue that the firm had investigated before shifting to another tack. In these analysis/wrap-up sessions, attorneys also outlined the actual solutions their law firms had fashioned.

Such transactional courses are beneficial to students, and there are too few of them in the curriculum, Kahn said. "These were really creative solutions. . . . I wanted to give students the idea that the practice of law can be creative, exciting, and intellectually stimulating. They got a sense of how people work together, how people with different expertise work through to a solution."

NIPPON LIFE PROFESSOR MARK D. WEST NAMED TO TWO DIRECTORSHIPS

Mark D. West, director of the Law School's Japanese Legal Studies Program, has enjoyed a very special homecoming after spending 2001–2002 at Kyoto University as a Fulbright Research Scholar. This summer:

- He became a tenured member of the faculty and was named the Nippon Life Professor of Law. The chair is endowed by Nippon Life Insurance Company, Japan's largest life insurer. Nippon Life's president is Masayuki Oku, LL.M. '75. The chair is one of three Japanese-law-related endowed chairs at U.S. law schools; the others are at Columbia and Harvard. "West has already become one of the nation's leading scholars of Japanese law and legal institutions," the dean of the Law School and provost of the University said in recommending West to the U-M Regents for the Nippon Life professorship. They noted that his "sophisticated and research-intensive empirical investigations" and his findings — about topics ranging from karaoke disputes, sumo wrestling, and historical futures exchanges to contemporary corporate law and organized crime — "have illuminated Japanese law, life, and culture in important ways." (Three other faculty members also have been awarded named professorships; see story on page 25. And two faculty members have been named distinguished university professors; see story on page 23.)

- He was named director of the Law School's Center for International and Comparative Law;
- And he was named director of the University of Michigan's Center for Japanese Studies, the oldest interdisciplinary Japanese studies program in the United States. West has been a member of the center's executive committee for three years.

An energetic speaker and highly regarded teacher and scholar, West has raised the profile of the Law School's Japanese law program significantly since he joined the faculty in 1998. His Japanese Law course has proved to be a very popular, groundbreaking step. To ensure that students get Japanese as well as U.S. viewpoints on the issues raised in the class, West co-teaches the course with visiting professors from the University of Tokyo.

West's fluency in Japanese, as well as his teaching, practice, and life experience in Japan, where he has spent more of his adult life than any other location, have honed his expertise.

Perhaps even more significantly, his international work has shown him that regional studies — indeed international and comparative law generally — operate in a context that blurs their borders.

"Legal practice has changed so much," he explains. "In the 1970s, if you wanted to do international law you went into an international law firm [and there were only a couple of these firms]. But

today, any firm of more than a handful of lawyers does international law. In the big firms, that's what they do. It's their bread and butter."

West teaches comparative context in his Enterprise Organization course, but it shows up in other unexpected places as well. For example, West notes that international legal insights have made their way into the casebook that he uses for his U.S. criminal law course. There's a section on cultural defenses, he reports, and one fact pattern that he discusses in class deals with a Japanese woman who wades into the sea with the intention of killing her child and herself. The child dies; she does not. The woman claims that her husband, having committed adultery, has shamed the family.

Murder? The woman claims the practice is accepted in Japan, where she learned legal and social concepts. "Actually, the case is narrow — the court gives her voluntary manslaughter instead of first-degree murder. But the key is that students come to understand that many, many other types of defenses are in fact cultural defenses — they just don't reference a particular national culture," West reports.

"It's all about taking an integrated approach," he says. "Knowing U.S. law no longer is enough, and studying U.S. law in isolation is not the best way to learn U.S. law. Whether teacher or practitioner,



Mark D. West

you've got to have a sense of how U.S. law interacts with other countries' legal systems. How would you expect to serve process in Belgium? What might a Chinese client's expectations of legal professionals be? Are there particular sorts of things that a Japanese company might expect in a joint venture agreement? It's not so important that students understand every nuance of every question in every country, but anticipating these kinds of questions will make them much more effective as lawyers."

West says this philosophy of integration will guide his work as director of the Law School's Center for International and Comparative Law as well as of the University's Center for Japanese Studies.

In the case of the Law School, its reputation as a leader in international law is well warranted and well established. Now he'd like to see that expertise permeate more of Law School life and classes. The Law School's new requirement that every student pass Transnational Law (see story on page 54) in order to graduate is a solid step, but West would like to see international and comparative legal ideas make their way even further into more traditional classes.

"I think what we need to get across to students is that you can't avoid it now, you can't separate yourself into international or domestic law. Ninety-five percent of our grads will do international law.

"What I want to do is to make it clear — we've already started with the

Transnational Law course — you need this. Even if you never leave the country, you will practice international law."

Michigan is well prepared for this next step. Many Law School faculty members have studied and taught at schools abroad. Some have taught in Europe, China, and Africa, and about half of the Law School's faculty members have taught in Japan. Many faculty members already draw on these experiences to incorporate transnational ideas into their core classes and their research.

West's goal as director of the Center for Japanese Studies (CJS) is a similarly integrative one — in the case of CJS his priority is to help the center take on a more University-wide identity.

A tall order, he acknowledges. "The question is how to make the center appeal to all the people without having the center lose its focus. But there's so much to Japanese studies — research into the past, present, and future — that people of many disciplines and preferences can find niches to their interest."

In addition to the Japan focus that CJS faculty share, West continued, they share many tools and methodologies with scholars doing research into other countries, and some of those tools and methodologies are not country-specific. At a recent joint conference on Chinese and Japanese law that he attended, the sharing that went on was impressive, he reported. The initial separation of scholars of the two countries quickly evaporated as they

discovered that they shared many research techniques and other aspects of their work, even though their studies focused on different countries.

For CJS, he said, "we want lots and lots of people to participate in lots of different ways."

West spent the summer in Japan as a visiting researcher at Kyoto University, where in July he also taught a mock criminal law class for the faculty, who are interested in the Socratic method and its potential use in Japanese legal education. Last May, West delivered a paper on debt-related suicide in Japan at Harvard Law School.

West earned his B.A., *magna cum laude*, in international studies from Rhodes College, and his J.D., with multiple honors, from Columbia University School of Law. He clerked for the Hon. Eugene H. Nickerson of the U.S. District Court for the Eastern District of New York, and practiced with Paul, Weiss, Rifkind, Wharton & Garrison in New York and Tokyo. Before joining the Law School faculty in 1998, he was an Abe Fellow at the Graduate School of Law and Politics at the University of Tokyo.

DALHOUSIE GIVES SIMPSON HONORARY DOCTOR OF LAWS



A.W. Brian Simpson

Dalhousie Law School never forgot A.W. Brian Simpson.

He was a young visiting professor at the Halifax, Nova Scotia, school “for an all-too-short period” in the 1960s, and then went on to become one of the world’s leading historians of the common law and a distinguished scholar of human rights law. Since 1987 he’s been a member of the Law School faculty and is the Charles F. and Edith J. Clyne Professor of Law.

Last May, Dalhousie asked him back to deliver the commencement address and to receive an honorary Doctor of Laws degree. The citation accompanying conferral of his honorary degree noted his many accomplishments — like the book he has written on common law and human rights, being a fellow of the American Academy of Arts and Sciences as well as the British Academy, getting an honorary D.Litt. from the University of Ghana, appointment as an Honorary Queen’s Counsel, even becoming an Honorary Deputy District Attorney of Denver City, Colorado — but also fondly recalled his impact as a visiting professor at Dalhousie:

“Even at this early stage of his career, Professor Simpson’s lectures on legal history and jurisprudence were an inspiration to his students, and gained the admiration of the school’s then-small faculty. A student of his at the time stated that ‘Brian Simpson brought with him an academic intellectual approach that had a great impact on the development of many of us at the law school. He was inspiring and exceedingly witty. He spent much time with his students, prodding

us into examining issues from a variety of perspectives.”

The citation went on to cite his impact at Michigan:

“The esteem in which Professor Simpson is held by students is just as much in evidence today at the University of Michigan Law School. His keen good humor, encyclopedic knowledge, and great stories attract large numbers to his classes. Professor Simpson’s popularity also extends far beyond the classroom. He has been known to assist student fundraising causes by auctioning off gourmet dinners — which he cooks himself. Leaders of the Student Funded Fellowships Program recently honored Professor Simpson’s support by establishing the ‘A.W.B. Simpson Award’ and making him its first recipient.”

For his part, Simpson used his commencement address — with a nod to *Star Wars* — to encourage graduates to choose “the good side” over “the dark side.” He explained that people in the legal profession have a duty to ensure that power is not exercised arbitrarily, and noted that Canadian lawyers now have in their Charter of Rights and Freedoms a powerful tool to employ against indiscriminate use of power.

His talk also included historical references, poetry, and examples of his trademark humor. He noted, for example, that Sir Thomas More was the only lawyer he knows of to be granted sainthood.

Simpson also received an honorary degree from Kent University this year.

Activities

Irwin I. Cohn Professor of Law **Reuven S. Avi-Yonah** in June taught a mini-course on comparative Controlled Foreign Corporation regimes at Vienna Economic University and was a panelist for the U.S./Canada International Fiscal Association meeting on dividend integration in Washington, D.C. In May he presented a paper at a Pocantico, New York, conference on financing for development whose sponsors included the International Labor Organization and the Carnegie Foundation. He also attended the New York City meeting of the advisory board of the United Nations *Ad Hoc* Group of Experts on International Tax Cooperation.

Assistant Professor of Law **Michael S. Barr** was active in Japan in May: He presented his paper, "Banking the Poor," at the Institute for Monetary and Economic Studies, Bank of Japan, Tokyo; taught the mini-course International Banking and Finance at the International Center for Comparative Law and Politics, Graduate School of Law and Politics, University of Tokyo Law School; and spoke on "Lawyers in Government: Implications for Legal Education Reform" to the Osaka Bar Association in Osaka.

Then-Associate Dean for Academic Affairs and Professor of Law, now Dean **Evan H. Caminker** spoke on "The Future of Affirmative Action" as part of a panel presentation in May for the Northern District of California Judicial Conference. He spent much of the winter and spring helping to brief the Law School's and University's legal positions in the *Grutter* and *Gratz* affirmative action cases.

Wade H. McCree Jr. Collegiate Professor of Law **David L. Chambers** and

co-authors **Richard O. Lempert**, '68, the Eric Stein Distinguished University Professor of Law and Sociology, and Terry K. Adams, '72, a social science senior research associate at the Law School, have won the 2003 Distinguished Article Award of the Sociology of Law Section of the American Sociological Association for their study of the Law School's minority and white alumni. The study appeared as "Michigan's Minority Grads in Practice: The River Runs Through Law School," in *25 Law & Social Inquiry* 395-505 (2000). A shorter version appeared as "Doing Well and Doing Good: The Careers of Minority and White Graduates of the University of Michigan Law School," at *42.2 Law Quadrangle Notes* 60-71 (1999).

Professor of Law **Sherman J. Clark** spoke and presented a paper recently at a symposium on direct democracy sponsored by the *Journal of Contemporary Legal Issues* at the University of San Diego Law School. During the spring, he also contributed a paper to a symposium on law and culture sponsored by Ave Maria Law School in Ann Arbor.

At the invitation of the court, **Edward H. Cooper**, the Thomas M. Cooley Professor of Law, joined with U-M Business School Professor Dana Muir, '90, to write an *amicus curiae* brief for the Fifth Circuit's *en banc* consideration of a case involving intricate questions of state law preemption by the Employee Retirement Income Security Act and federal court jurisdiction. In June, he delivered the luncheon address that concluded the first Association of American Law Schools conference on civil procedure since 1995.

Professor of Law and newly-appointed Associate Dean for Academic Affairs (see story on page 7) **Steven P. Croley** has been asked by the Asian Foundation to

assist the Chinese government in drafting legislation governing administrative procedures. In May, Croley spoke on sovereign immunity at the Lifers' Association meeting (Clinical Professor **Paul D. Reingold** spoke at the same meeting) at the Gus Harrison Men's Correctional Facility in Adrian, Michigan. Earlier in the year Croley was a panelist at the American Bar Association's midyear meeting for the Section on Administrative Law & Regulatory Practice. Croley also served as a reviewer for papers submitted for presentation at the 2003 annual meeting of the American Law and Economics Association.

Affiliated Overseas Faculty member **Hanoch Dagan** presented his paper "Restitution of Gains from Slave Labor" at a panel on slavery reparations at the Association of American Law Schools annual meeting at Washington, D.C., early this year. Earlier, he presented his paper "The Craft of Property" at the Legal Theory Workshop at the University of Toronto Faculty of Law.

Bruce W. Frier, the Henry King Ransom Professor of Law and former interim chair of the University's Classics Department, has been elected a Resident Member (U.S.-based) of the prestigious American Philosophical Society, the United States' first learned society, founded in 1769. The select American membership totals only about 750. In May, Frier discussed the difficulties of the biographical approach toward Roman jurists in a talk called "Lawyers Without Lives" for the meeting of the American Ancient Historians at the University of New Brunswick in Fredericton. He also has been appointed by the University provost to chair the Task Force on the Campus Climate for Transgender, Bisexual, Lesbian, and Gay (TBLG)

Faculty, Staff and Students; the task force is charged with assessing implementation of earlier measures to improve the social climate for TBLG people, examine policy not previously considered on a University-wide basis, suggest policy guidelines for dealing with non University groups whose policies may conflict with the University's, and recommend long-term oversight mechanisms for TBLG issues at the U-M.

Thomas A. Green, the John Phillip Dawson Collegiate Professor of Law, continues his work as an editor of *Studies in Legal History*, the series sponsored by the American Society for Legal History and published by the University of North Carolina Press. He is in his 17th year with the series; his current co-editor is Professor Daniel Ernst of Georgetown University Law Center. Green also is serving a three-year term on the Delegates' Executive Committee of the American Council of Learned Societies.

Assistant Professor of Law **David M. Hasen** delivered a paper on the political theory of personal endowment taxation at the Critical Tax Conference at the Law School in April.

James C. Hathaway, director of the Law School's Program in Refugee and Asylum Law and recently named the James E. and Sarah A. Degan Professor of Law (see story on page 25), in May taught two courses for Amnesty International in London: a two-day course on international refugee law for 40 country researchers and legal staff, and a one-day advanced course on the refugee rights regime for senior officials of Amnesty International. In April, he: delivered a one-day intensive course on advanced refugee law topics for more than 100 barristers and solicitors for The Law Society in London, England; he also delivered a new two-day course, "The Rights of Refugees Under International Law," at the Refugee Studies Centre in Oxford, England, for an international group of senior lawyers, policymakers, and decision makers.

Robert L. Howse, recently named the Alene and Allan F. Smith Professor of Law (see story on page 25), has been chosen sub-series editor for *Commentaries on WTO Law*, to be printed by Oxford University Press, and served as a semifinals judge for the European Law Students Association WTO Moot Court competition in Geneva. Overseas, he: presented a paper on the India-European Communities dispute on the Generalized System of Preferences at the British Institute of International and Comparative Law, WTO Dispute Settlement Forum in London; discussed Alexandre Kojève's vision of world order and transatlantic relations after 9/11 at the "Whose Europe?" conference at Oxford University; presented a three-day seminar on WTO law at the Jean Monnet Center, Zagreb Law Faculty and Ministry for European Integration, Zagreb, Croatia; served as panelist/commentator for the World Trade Institute/American Society of International Law Conference on Trade and Human Rights in Berne, Switzerland; and was an invited participant for the workshop on new research directions on trade and environment at the International Institute of Sustainable Development in Coppet, Switzerland. In the United States, he: briefed journalism fellows on covering the WTO at the Columbia University Journalism School/Initiative for Policy Dialogue Workshop "Covering Globalization"; presented a work in progress on hermeneutics and treaty law at the globalization workshop at New York University Law School; served as panelist for the agora on Iraq and International Law at the U-M Law School; reviewed international law writing by young scholars at the Yale Stanford Junior Faculty Forum in Palo Alto, California; served as panelist for the biotechnology and trade panel to discuss the trade dispute between the United States and the European Union on genetically modified organisms at the annual meeting of the American Society of International Law in Washington, D.C.;

and advised *pro bono* the Free Burma Coalition and congressional staff on WTO implications of proposed legislation on trade sanctions against Burma.

Hessel E. Yntema Professor of Law Emeritus **John H. Jackson** has been appointed by the director-general of the World Trade Organization (WTO) to a special eight-member Eminent Persons Consultative Board formed to report during the next year on the WTO's systemic and constitutional problems; the board is chaired by British Petroleum Chairman Peter Sutherland, former WTO director-general and a well-known European Union commissioner. In June, Jackson received an honorary doctorate of law from the Law Faculty of the University of Hamburg, one of Europe's preeminent faculties in international law; the faculty awards such an honorary degree only once every five years.

Richard O. Lempert, '68, the Eric Stein Distinguished University Professor of Law and Sociology, and co-authors **David L. Chambers** and Terry K. Adams, '72, have won the 2003 Distinguished Article Award of the Sociology of Law Section of the American Sociological Association for their study of the Law School's minority and white alumni. Chambers is the Wade H. McCree Jr. Collegiate Professor of Law and Adams, '72, is a social science senior research associate at the Law School. Their winning article was "Michigan's Minority Grads in Practice: The River Runs Through Law School," in 25 *Law & Social Inquiry* 395-505 (2000). A shorter version appeared as "Doing Well and Doing Good: The Careers of Minority and White Graduates of the University of Michigan Law School," at 42.2 *Law Quadrangle Notes* 60-71 (1999).

Clinical Professor of Law **Rochelle E. Lento**, who is director of the Law School's Legal Assistance for Urban Communities Clinic, in June served as panelist for the "Community Economic Stimulus — Can Transactional Legal

Services Help the Homeless?” portion of the conference on “Connections & Directions: Sharing Visions for Clinical Law,” in Hamilton, Ontario. In May, she moderated a panel of the 12th annual ABA Forum on Affordable Housing and Community Development Law in Washington, D.C.; served as panelist for the University of Michigan International Program’s symposium on “European & American Experiences with Affordable Housing and Integrated Community Development”; and chaired the committee of the *ABA Journal of Affordable Housing & Community Development Law* to select a student writing competition winner. She also has been an expert witness in a malpractice case involving a nonprofit developer of an affordable senior housing project in West Palm Beach, Florida.

Assistant Professor of Law **Richard A. Primus** taught a course on constitutional law at the University of Tokyo in May and also serves as a member of the Association of American Law Schools Committee on New Law Teachers.

Professor of Law **Adam C. Pritchard** this year participated in: the third annual Joe C. Davis Law and Business Program Conference at Vanderbilt University School of Law; the Advanced Business Law Seminar at Fordham Law School; a University of North Carolina School of Law faculty workshop; the Sloan Interdisciplinary Workshop at Georgetown University Law Center; the Corporate Control Transactions Conference at the University of Pennsylvania School of Law (commentator); and the Federalist Society faculty division conference on “The Criminalization of Corporate Conduct” (panelist).

During the summer Clinical Professor of Law **Nicholas J. Rine** supervised 16 Law School students as volunteer interns at four government agencies and five nongovernmental organizations as part of the Law School’s Program for Cambodian Law and Development. This group of law students may be the largest number of

non Cambodians from a single place in Cambodia working on development of the rule of law, Rine noted. In addition, Rine taught a course at the Faculty of Law in Phnom Penh as part of the new English-language law program.

Clinical Professor of Law **Paul D. Reingold** and his clinic students won an immigration case at the U.S. Court of Appeals for the Sixth Circuit in Cincinnati when the court reversed an immigration judge’s final order of deportation *in absentia* for a native of the Philippines who failed to appear for a hearing. The Court of Appeals said immigration authorities failed to provide clear and convincing evidence that the notice of hearing had been mailed to the last address supplied by the petitioner, who has lived in the United States for more than 20 years. The Appeals Court remanded the case for a new hearing before an immigration judge. Reingold and his clinic students also won a re-sentencing motion for a state prisoner who was serving a life term; she was re-sentenced to 20-40 years, and because good-time credits maxed her out on the new sentence, she was released. During the spring and summer, Reingold also presented talks to life sentence groups at the Ryan Correction Facility in Detroit and (with Professor of Law **Steven P. Croley**) at the Gus Harrison Correction Facility in Adrian, Michigan. In May, he was a panelist for the Association of American Law Schools’ Clinical Law Section national conference in Vancouver, which addressed the ethical, client-counseling, and supervision issues that arise in settlement.

Theodore J. St. Antoine, ’54, the James E. and Sarah A. Degan Professor of Law Emeritus, delivered the 20th anniversary Carl A. Warns Jr. Lecture on Labor and Employment Law in June at the Louis D. Brandeis School of Law, University of Louisville. He spoke on “Labor and Employment Law in Two Transitional Decades.”

Clinical Assistant Professor **David Santacroce** served as a panelist for discussion of “Ethical Issues in Fundraising” at the Association of American Law Schools’ Clinical Legal Education Conference in Vancouver in May.

A.W. Brian Simpson, the Charles F. and Edith J. Clyne Professor of Law, in July spoke on “Adventures in the Public Records” as the opening talk at the meeting of the British Legal History Society in Dublin. In June, he chaired the British Institute of International and Comparative Law’s annual daylong review of the European Court of Human Rights, and in May he took part in a human rights training session on the Isle of Man. He also recently received two honorary degrees. (See story on page 30.)

Eric Stein, ’42, the Hessel E. Yntema Professor of Law Emeritus, participated in the conference “The Constitutional Future of Europe: A Transatlantic Dialogue” in July in Florence, Italy. Among the attendees were five U.S. Supreme Court justices and their European counterparts. The conference was organized by former Law School faculty member J.H.H. Weiler. Activities included a celebration of Stein’s 90th birthday.

Visiting and adjunct faculty

Leonard Niehoff, ’84, of Butzel Long in Ann Arbor, was a speaker for the conference “Media Relations for Government Officials” in Dearborn in May. He discussed the legal side of media relations, including the Freedom of Information and Open Meetings acts, libel, and invasion of privacy.

VISITING AND ADJUNCT FACULTY

Each year, visiting and adjunct faculty deepen the curriculum and academic life of the Law School. They come from a variety of backgrounds and bring to the classroom a wealth of experiences from other academic settings as well as the world of practice. Students and faculty alike welcome these visiting and adjunct faculty members and draw on their expertise. Some of these visitors teach regularly at the Law School, some stay for an entire academic year, some for a semester, and a few visit the Law School for brief, intensive teaching assignments. At deadline time, here is the lineup of visitors and their teaching plans for the 2003–2004 academic year.

Visiting law faculty

Donald K. Anton is director of the Australian Center for Environmental Law and director of environmental law programs at The Australian National University Faculty of Law (ANU), where he teaches international environmental law, international trade and the environment, federalism and the environment, marine and coastal law, comparative environmental law, and environmental law. He is admitted to the bar in four U.S. and Australian jurisdictions and has been practicing and consulting on environmental issues nationally and internationally since

1988. He has taught at the universities of Sydney, Melbourne, and Adelaide, and has been invited to teach at Cornell, Chicago-Kent, and Naples, Italy. He was a research associate in international law at Columbia University in 1992–93.

Before joining ANU, Anton was policy director and a senior attorney with the Environmental Defender's Office (EDO) in Sydney, Australia's largest nonprofit, public interest environmental law firm. While with EDO, Anton regularly testified before Australian federal and state parliaments, managed significant litigation, and helped develop and manage a successful forestry litigation project in Papua New Guinea that helped stop illegal logging in one of the last untouched stands of tropical rainforest.

He is a member of the World Conservation Union's Environmental Law Commission, serves as an international affairs analyst for the Environmental Law Institute in Washington, D.C., and is immediate past-president of the Australian branch of the Environmental Law Alliance Worldwide. His publications include *Politics, Values and Functions: International Law in the 21st Century* (with Charney and O'Connell, 1997), and *Global Environmental Protection* (1996). He most recently is completing *International Environmental Law: Problems and Materials* (with Charney, Sands, Schoenbaum, and Young).

Anton is teaching International Environmental Law during the fall term.

Howard Bromberg is an associate professor of law at Ave Maria School of Law, where he served as the founding director of the three-semester Research, Writing, and Advocacy Program. While on leave from Ave Maria during the past academic year, he served as lecturer on law and associate director of the First Year Lawyering Program at Harvard Law School.

He formerly taught at the University of Michigan Law School, and also has taught

at the University of Chicago and Stanford law schools. His writing focuses on the history of legal education and presidential history.

Bromberg earned his B.A. at Harvard College, his J.D. at Harvard Law School, and his J.S.M. at Stanford Law School. He has served as legislative counsel for a Wisconsin congressman, as an assistant district attorney in the Appeals Bureau of the New York County District Attorney's Office, and as a legal consultant to Thelan Marrin, Johnson & Bridges.

At the U-M Law School, Bromberg is teaching this fall in the Legal Practice Program section for LL.M. candidates.

Vojtech Cepl is a graduate of the Faculty of Law, Charles University in Prague, where he later earned a doctorate. In 1965 he became an assistant at the Department for the Theory of State and Law, Charles University. In 1967–1970 he pursued postgraduate studies in the theory of legal sociology at Oxford University and in comparative legal science at the University of Michigan Law School. In 1971 he became a lecturer of the Department of Civil Law at Charles University. Cepl qualified as a university lecturer in 1989. In 1990 he became the vice-dean for foreign relations and the head of the Department of Civil Law. In 1993 he was appointed a professor of civil law.

After 1989 he took an active part in legislative councils and committees for drafting various laws, the Civil Code, and the Constitution. He is best known by the public for his proposals for the reform of housing policy, but he also has published several scholarly works, principally on the subject of legal philosophy, civil law, and constitutional law.

In 1990–1993 he lectured at many law faculties in Great Britain, Canada, and the United States. He was appointed a visiting professor at the University of San Francisco in spring 1993, at the University of Chicago in fall 1993, and in spring 1996 as a distinguished visiting professor

at Georgetown University in Washington, D.C. Czech Republic President Vaclav Havel appointed him a Justice of the Constitutional Court in 1993.

Cepl is teaching Constitutionalism in Central and Eastern Europe during the fall term.

Gavin S. Clarkson holds a bachelor's degree and an M.B.A. from Rice University, a doctorate from the Harvard business School in technology and operations management, and is a *cum laude* graduate of the Harvard Law School, where he was managing editor of the *Harvard Journal of Law and Technology* and president of the Native American Law Students Association. In 1991 he joined the faculty of Rice University. He moved to Harvard Business School in 1998, where he was the KPMG Fellow, the John M. Olin Research Fellow in Law, Economics, and Business; the Reginald F. Lewis Fellow for Law Teaching; and held the university-wide fellowship known as the 1665 Harvard University Native American Program Fellowship.

He joins the U-M School of Information faculty this fall with a simultaneous appointment as visiting assistant professor of law. He also is affiliated with U-M's Native American Studies Program. A member of the Choctaw Nation of Oklahoma, Clarkson has consulted and written extensively on tribal sovereignty, tribal governance systems, tribal economic development, and tribal asset management, and is one of the leading experts on the data underlying the American Indian mascot controversy. His research interests include tribal court system development, tribal access to capital markets, and success determinants for tribal entrepreneurship. In other areas, his research interests focus on the convergence of law, technology, and business, especially the multiparty negotiation dynamics surrounding patent pool formation. He has almost two decades of management experience and has successfully launched several firms.

Clarkson's publications have or will be appearing in the *Harvard Journal of Law and Technology*, *Cardozo Journal of International and Comparative Law*, *Michigan Journal of Race and Law*, and the *University of Kansas Law Review*.

At the Law School, he is teaching the seminar Contemporary Issues in American Indian Law during the fall term.

Sharon L. Davies is the John C. Elam/Vorys Sater Designated Professor of Law at the Moritz College of Law, Ohio State University. She holds a B.A. in political science from the University of Massachusetts at Amherst and a J.D. from Columbia University School of Law, where she was a Harlan Fiske Stone scholar and a notes and comments editor of the *Columbia Law Review*. After graduation she worked as an associate attorney for Steptoe and Johnson in Washington, D.C., and for Lord, Day & Lord Barrett Smith in New York City.

Davies served five years as an assistant U.S. attorney in the Criminal Division of the U.S. Attorney's Office for the Southern District of New York. She joined the faculty at Ohio State in 1995, was awarded tenure in 1999, was promoted to full professor in August 2002, and was named the John C. Elam/Vorys Sater Designated Professor of Law last December. She teaches courses in criminal law, criminal procedure (police practices), and evidence.

Her primary research is in the area of criminal law and procedure. Her writings have appeared in a variety of leading journals, among them the *Duke Law Journal*, *Southern California Law Review*, *Columbia Law Review*, and (forthcoming) *Duke University's Law and Contemporary Problems*. Davies also is co-author of the treatise on healthcare fraud *Medicare and Medicaid Fraud and Abuse* (West Group, 2002–2003), now in its third edition.

Davies is teaching Criminal Law and the seminar Advanced Topics in Criminal Justice during the fall term.

Yoseph M. Edrey completed his term as dean of the Faculty of Law at Haifa University in 2003. He earned three degrees at Hebrew University: an LL.B., an LL.M., and a Ph.D. in law. His interests include tax law; tax policy (federal and Israeli); taxation of international activity (federal and Israeli); legal education; the social and economic aspects of Israeli constitutional law; and the Israeli legal system.

Edrey has published numerous articles in Hebrew and English, among them "Interest Deduction: Application of Finance Theory in Supreme Court Cases" (with Y. Margalioth), (*Hebrew*) 32 *Mishpatim (Hebrew University Law Review)* 2002; "Tax Law as Public Law," (*Hebrew*) *Mishpat Umimshal (Haifa Law & Government Law Review)* 1999; and "Who Should Guard the Public's Property and the States' Treasury," M. Shamgar' Book (A Barak, N. Choen, M. Mauntner, eds.) (Jerusalem 2003). He has also written three books and "Cases and Materials," the most recent of which is *The Basic Law: The State's Economy* (*Hebrew*) (Y. Zamir, ed.), for publication summer 2003.

Edrey has taught for 20 years in Israel and the United States. In Israel, he has taught on the Israeli tax system, Israeli legal system, and corporate taxation. In the United States, he has taught on federal tax policy, federal taxation of international activity, federal income tax, and federal corporate taxation. In summer 2000, he served as special consultant to the Knesset for tax reform, and he has served since 1999 as a member of the Public Council for the Israeli Constitution, established by the Israeli Democratic Institute.

Here at the Law School, Edrey is teaching Public Finance I and the Tax Policy Workshop seminar in the fall term and, during the winter term, Public Finance II and Taxation of Individual Income.

Laura S. Fitzgerald began her teaching career in 1993 at the Washington and Lee University School of Law, after

five years of appellate and commercial litigation practice in Washington, D.C., and New York City. She has taught as a visiting professor at the law schools of Duke and Vanderbilt universities. She earned her B.A. in English, *summa cum laude*, from Hollins College in Virginia, and her J.D. from Yale Law School, where she served as a senior editor of the *Yale Law Journal*. After graduating from law school, she clerked for the Hon. Louis Oberdorfer of the U.S. District Court for the District of Columbia.

Fitzgerald's research and teaching interests include federal courts and federal jurisdiction, federal civil procedure, civil rights litigation, and constitutional separation of powers. She currently is researching the U.S. Supreme Court's use and disuse of the Erie doctrine, from Erie itself through Chief Justice William Rehnquist's concurrence in *Bush v. Gore* in 2000.

Her publications have appeared in the *Michigan Law Review*, *Northwestern University Law Review*, *Vanderbilt Law Review*, and *Duke Law Journal*.

Fitzgerald is teaching Federal Courts and Jurisdiction and the Supreme Court during the fall term.

Kim Forde-Mazrui, '93, is professor of law and Barron F. Black Research Professor at the University of Virginia. He earned his B.A. in philosophy, *summa cum laude*, from the University of Michigan in 1990, and his J.D., *magna cum laude*. After serving a year as judicial clerk to the Hon. Cornelia Kennedy, '47, of the U.S. Court of Appeals for the Sixth Circuit, he joined the law firm Sidley & Austin in Washington, D.C., where he practiced for two years.

Forde-Mazrui joined the law faculty of the University of Virginia in 1996. He teaches criminal law and procedure, constitutional law, and race and the law. His research interests include race and criminal procedure, race in the child placement process, affirmative action, and reparations.

His publications have appeared in *Georgetown Law Journal*, *Vanderbilt Law Review*, and *Michigan Law Review*. One of his works in progress, "Taking the Right Seriously: A Conservative Justification for Affirmative Action and Reparations," argues that American society is morally responsible for present effects of past racial discrimination. Other current projects include an examination of police discretion in stopping motorists for investigatory purposes, and the constitutional implications of Arab profiling.

Forde-Mazrui is teaching Criminal Law in the fall term and Introduction to Constitutional Law and the seminar Race and the Law in the winter term.

Karthigasen Govender, LL.M. '88, is a professor in the Department of Public Law at the University of Natal, where he has taught constitutional, administrative, and family law as well as evidence and criminal procedure.

He is a member of the South African Human Rights Commission and is a practicing advocate and chairperson of the South African Film and Publication Board.

Professor Govender is teaching Constitutionalism in South Africa during the winter term. He is co-teaching the course with Daria Roithmayr (see below).

Jill E. Hasday received her B.A. from Yale University in 1994, graduating *summa cum laude* with distinction in history. In 1997, she graduated from Yale Law School, where she was an articles editor of the *Yale Law Journal*. She then clerked for the Hon. Patricia M. Wald of the U.S. Court of Appeals for the D.C. Circuit.

Since 1998, Hasday has taught at the University of Chicago Law School, where she currently is an associate professor of law.

Hasday's teaching and research interests include antidiscrimination law, constitutional law, family law, legal history, and national security law. She is currently working on an article to be called "Mitigation and the Americans with

Disabilities Act." Her recent publications have appeared in *Michigan Law Review*, *Georgetown Law Journal*, *California Law Review*, and *UCLA Law Review*.

Hasday is teaching Family Law and the seminar National Security Law during the fall term and Employment Discrimination and the Women's Legal History seminar during the winter term.

Sherman A. Jackson is associate professor of Islamic studies, Department of Near Eastern Studies at the University of Michigan. His areas of specialization are Islamic law and theology. He earned his B.A., M.A., and Ph.D. at the University of Pennsylvania 1982–1990.

Jackson has taught at Wayne State University, Indiana University, University of Texas at Austin, American University in Cairo, Egypt, and Middlebury College. He has also received numerous fellowships and awards and 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* (E.J. Brill, 1996) and *On the Boundaries of Theological Tolerance in Islam: Abu Hamid al-Ghazal's Faysal al-Tafriqa* (Oxford, 2002), as well as numerous articles on Islamic law, theology and, more recently, Islam in America. He speaks classical Arabic, Egyptian, Levantine, and Saudi Arabian dialects, and has a reading knowledge of French, German, and Persian.

At the Law School, he is teaching Islamic Law during the winter term.

Orit Kamir, LL.M. '95, S.J.D. '96, from the Hebrew University in Jerusalem, 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, and criminal law,

law and film, and feminist jurisprudence at the University of Michigan Law School. Her book *Every Breath You Take: Stalking Narratives and the Law* (University of Michigan Press) offers a cultural analysis of America's antistalking 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. Her next book, in review, develops a feminist theory of law-and-film, examining the social implications of fundamental, underlying values such as honor and dignity.

A feminist legal scholar and activist, Kamir drafted the sexual harassment bill that was adopted by the Israeli Parliament and legislated into law in 1998. Since the legislation of the Sexual Harassment Prevention Law, she has been engaged in presentation and explication of its legal concepts to the Israeli public, academic, legal, and otherwise interested, as well as to international forums of feminist legal scholars and activists.

Kamir received her LL.M. and S.J.D. at the University of Michigan Law School, and 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 adviser to Israeli organizations such as the Israel Women's Network. Her publications, in Hebrew and English, offer cultural analyses of law, and society and culture, often focusing on the construction of gender. Her recent publications are in the new field of law-and-film, offering integrated analyses of two influential discourses and exploring the significant and powerful dialogue between them.

At the Law School, Kamir is teaching Criminal Law and the seminar *Feminist Theory and Jurisprudence* during the winter term.

Vikramaditya S. Khanna holds an S.J.D. from Harvard Law School and joined the Boston University School of Law Faculty in 1998. He has taught as a visitor at Harvard Law School and Northwestern University Law School, and received the John M. Olin Faculty Fellowship for 2002–2003.

His research and teaching interests include corporate law, securities fraud and regulation, corporate and managerial liability, and law and economics.

His writings have appeared in many publications, among them *Harvard Law Review*, *Boston University Law Review*, and *Georgetown Law Journal*. He also has presented papers at Harvard Law School, Columbia University School of Law, the American Law & Economics Association annual meeting, University of Michigan Law School, University of Southern California Law School, University of California at Berkeley Law School (Boalt Hall), the National Bureau of Economic Research, Stanford Law School, and elsewhere.

He is teaching Securities Regulation and the seminar *Current Issues in Corporate Crime* during the fall term.

Scott E. Masten is professor of business economics and public policy at the University of Michigan, where he has been a faculty member since 1984. A leading scholar in the area of transaction cost economics, Masten has had a longstanding interest in law, especially as it relates to issues in economics and organization. He has published extensively on contracting, antitrust, and the organization of the firm. Current research projects include studies of university governance, 19th-century public utility ownership, and the determinants of judicial contract enforcement policies.

In 1998, he was awarded the Louis and Myrtle Moskowitz Research Professorship in Business and Law, and he has also held appointments as John M. Olin Distinguished Visiting Professor of Law

at the University of Virginia Law School and Visiting Research Fellow at Yale Law School. In the Business School, Masten teaches the required M.B.A. applied microeconomics course, an M.B.A. elective on business transactions, and a doctoral seminar on the economics of institutions and organizations. In the Law School, he has taught *Economic Analysis of Law and Contract Design and Interpretation*.

Masten received his Ph.D. in economics from the University of Pennsylvania and his A.B. from Dartmouth College. He is a co-editor of the *Journal of Economics & Management Strategy* and serves on the editorial boards of four other journals.

At the Law School during the winter term he will co-organize the Law and Economics Workshop with Professor of Law Omri Ben-Shahar, director of the John M. Olin Center for Law and Economics.

Alan C. Michaels, associate dean for faculty and professor of law at the Moritz College of Law at Ohio State University, received his A.B. from Harvard University and his J.D. from Columbia Law School. He clerked for Associate Justice Harry A. Blackmun of the U.S. Supreme Court and for Chief Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit.

He spent three years in private practice representing the Major League Baseball Players Association and then served for four years as a prosecutor in New York County before joining Ohio State in 1995. At Ohio State, he regularly teaches courses in criminal law, criminal procedure: adjudication, and white collar crime. He was chosen as the Outstanding Professor by graduating classes in 1999 and 2000.

The results of Michaels' research, primarily in the area of the *mens rea* of crimes and in the adjudicatory portion of criminal procedure, have been published in many journals, among

them *Columbia Law Review*, *Harvard Law Review*, and *Southern California Law Review*. He recently joined Professor Joshua Dressler as a co-author for updates and future editions of *Understanding Criminal Procedure*. Michaels received the 1998–99 Outstanding Scholarly Paper Award from the Association of American Law Schools.

At the U-M Law School, Michaels is teaching Criminal Procedure: Bail to Post Conviction Review, and White Collar Crime during the fall term.

Professor **Lynda J. Oswald**, '85, joined the U-M Business School faculty in 1988. She received her A.B., M.B.A., and J.D. degrees from the University of Michigan. While at the Law School, she served on the editorial board of the *Michigan Law Review*. She clerked for the Hon. Cornelia G. Kennedy, '47, of the U.S. Court of Appeals for the Sixth Circuit, before joining the faculty of the Business School. Oswald has taught at the University of Florida Law School and the U-M Law School. She was a visiting scholar at China University of Political Science and Law in Beijing and at L'viv State University in L'viv, Ukraine.

A research fellow of the William Davidson Institute at the U-M, she has served as a staff editor and special editor of the *American Business Law Journal* and as a special editor of the *Journal of Legal Studies Education*. She is the contributing editor—environmental law of the *Real Estate Law Journal*. She served as co-chair of the Environment and Business Section of the Academy of Legal Studies in Business and co-editor of the *Environment and Business Newsletter* from 1995–2000.

Oswald has received numerous awards for her research, including the Holmes-Cardozo Award for Research Excellence from the *American Business Law Journal*. Her work has been cited by several courts, including the U.S. Supreme Court in its 1998 decision in *United States v. Bestfoods*. Her research focuses on property and environmental law issues, particularly

issues relating to regulatory takings, CERCLA liability, and environmental regulation in transitional economies. She also researches in the area of intellectual property and law.

She is teaching Environmental Law and Real Property at the Law School during the winter term.

Andreas L. Paulus is assistant professor at the Institute for Public International Law at Ludwig-Maximilians University. He studied at the universities of Göttingen, Geneva, Munich, and Harvard. He passed his second juridical state examination in Munich in 1996, and in 2000 he completed his dissertation on “The International Community in Public International Law” (published by C.H. Beck, June 2001).

Paulus served as counsel of the Federal Republic of Germany in *Germany v. United States* (LaGrand case) before the International Court of Justice. He interned at the UN Office of the Legal Counsel and the office of the prosecutor of the international criminal tribunals for the former Yugoslavia and Rwanda. He received scholarships from the German National Merit Foundation and the German Academic Exchange Service.

His publications include various articles on international legal theory and international criminal law, including “The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View” (93 *American Journal of International Law* [1999]), co-authored with U-M Law School Affiliated Overseas Faculty Member Professor Bruno Simma, who is a judge on the European Court of Justice. Paulus was assistant editor of the leading *Commentary on the Charter of the United Nations* and co-editor of the book review section of the *European Journal of International Law*.

Paulus is teaching International Criminal Justice in the fall term and the seminar International Law and Armed Conflict in the winter term.

Daria Roithmayr writes and teaches in the area of critical race theory. Her scholarship and professional activities similarly revolve around issues relating to race and the law. She comes to Michigan as a visiting professor from the University of Illinois, where she has been a faculty member since 1996. Roithmayr received her B.S. from the University of California at Los Angeles, and her J.D., *magna cum laude*, in 1990 from Georgetown University Law Center, where she was a member of Order of the Coif and served as senior notes editor for the *Georgetown Law Journal*. After graduation, she clerked for the Hon. Marvin J. Garbis of the U.S. District Court for the District of Maryland.

Roithmayr twice served as special counsel for Sen. Edward Kennedy on the Senate Judiciary Committee, advising him with regard to issues of race and gender on the nominations of Justices David Souter and Clarence Thomas to the U.S. Supreme Court. She has been in private practice in Washington, D.C., and Phoenix, Arizona, and served as special counsel to the Mississippi Attorney General in litigation of the state's suit against tobacco companies.

Her writings have appeared in *Michigan Law Review*, *Cardozo Law Review*, *California Law Review*, *Virginia Law Review*, and the *Michigan Journal of Race and Law*. She spent the 2001–2002 academic year as a visitor at the University of Pretoria, South Africa, teaching critical race theory and researching and litigating a potential constitutional case on racial inequalities in public school funding.

At the U-M Law School, Roithmayr is teaching Evidence and the seminar Globalization & Latin America during the fall term and Constitutionalism in South Africa (with co-instructor Karthigasen Govender, LL.M. '88, [see above] and Critical Race Theory during the winter term.

Robert H. Sitkoff earned his B.A., with distinction, at the University of Virginia, and his J.D., with high honors, at the University of Chicago Law School. He joined the Northwestern University Law School faculty in the fall of 2000, and teaches courses in contracts, business associations, and estates and trusts, as well as a law and economics colloquium.

Sitkoff's research interests include the law of trusts and estates, business organizations, and corporate governance. He is interested in law and economics generally and fiduciary duties in particular. His present research is focused on the economic structure of the law of trusts.

Before joining the Northwestern law faculty, Sitkoff was a law clerk to Chief Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit. In law school, he was managing editor of the *University of Chicago Law Review*, was selected for the Order of the Coif, and was chosen by the faculty as the 1999 outstanding graduate in law and economics.

Here at the Law School, Sitkoff is teaching Trusts and Estates I and a seminar during the winter term.

Joel B. Slemrod is the Paul W. McCracken Collegiate Professor of Business Economics and Public Policy at the University of Michigan Business School, and Professor of Economics in the Department of Economics. He received an A.B. degree from Princeton University and a Ph.D. in economics from Harvard University. Slemrod joined the economics department at the University of Minnesota in 1979. In 1983–84 he was a National Fellow at the Hoover Institution and in 1984–85 he was the senior staff economist for tax policy at the President's Council of Economic Advisers. He has been at Michigan since 1987, and was chairman of the Business Economics Group from 1991–1992, and since 1995. From 1992–1994, Slemrod held the Jack D. Sparks Whirlpool Corporation Research Professorship in Business Administration.

Slemrod has been a consultant to the U.S. Department of the Treasury, the Canadian Department of Finance, the New Zealand Department of Treasury, the World Bank, and the OECD, and coordinator of the National Bureau of Economic Research Project in International Taxation. In 1993 he was an invited faculty member at the U.S. House Ways and Means Committee Annual Issues Seminar, and has testified before Congress on domestic and international taxation issues. From 1992–1998 he was editor of the *National Tax Journal*, the leading academic journal devoted to the theory and practice of taxation.

He is the author of numerous academic articles and editor of the books *Do Taxes Matter?: The Impact of the Tax Reform Act of 1986*; *Taxation in the Global Economy*; *Why People Pay Taxes: Tax Compliance and Enforcement*; *Studies in International Taxation*; *Tax Progressivity and Income Inequality*; *The Taxation of Multinational Corporations*; *Tax Policy in the Real World: Does Atlas Shrug?*; and *The Economic Consequences of Taxing the Rich*. He is co-author with Jon Bakija of *Taxing Ourselves: A Citizen's Guide to the Great Debate Over Tax Reform*.

He is teaching Public Finance III at the Law School during the winter term.

Adjunct professors

Jonathan R. Alger is assistant general counsel and adjunct faculty member at the University of Michigan. He has coordinated the University's work on the landmark Supreme Court affirmative action/admissions lawsuits and related affirmative action matters, and also provides leadership in the areas of intellectual property, media and information law, and cyberspace legal issues. He teaches higher education law for the Schools of Law and Education. Professor Alger previously served as chief counsel for the American Association of University Professors (AAUP) in Washington, D.C. Prior to his service at AAUP, he worked

as a senior attorney-adviser in the U.S. Department of Education's Office for Civil Rights in Washington, D.C. Alger began his legal career in the Labor and Employment Law Section at the law firm of Morgan, Lewis & Bockius. He has written a variety of articles on higher education law, and given presentations on legal issues in higher education throughout the United States as well as in Canada, Germany, and the West Indies. Alger is a graduate of Swarthmore College and Harvard Law School. He is teaching Higher Education Law during the winter term.

John E. Bos, '64, is a partner at Bernick, Omer & Radner PC in Lansing, Michigan. His areas of practice include estate planning, elder law, and business planning. He has published a series of articles in the *Michigan Probate & Estate Planning Journal* on Medicaid and also has written articles on living wills and durable power of attorney. He served as an adjunct professor of estate planning at Thomas M. Cooley Law School from 1978–80. At the U-M Law School, he is teaching Estate and Gift Tax in the fall term and the Estate Planning seminar in the winter term.

Lorray S. C. Brown is the 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. After law school, Brown clerked for Judge A. Leon Higginbotham Jr. of the U.S. Court of Appeals for the Third Circuit, then joined the Philadelphia office of the American Civil Liberties Union (ACLU) as a Weinberg Fellow. At the ACLU, she assisted with a variety of impact cases and death penalty litigation. She then went to the City of Philadelphia Law Department, where she handled civil child protection cases and was involved in Section 1983 litigation brought by abortion protestors against the city. Later she assumed supervisory responsibility over litigators in that office. In Philadelphia, Brown worked at

Community Legal Services representing individuals and community organizations in complex cases involving public utilities. She also served as the director of litigation at Legal Aid and Defender Association in Detroit. Among her many responsibilities at Legal Aid, Brown supervised and handled the agency's child protection/delinquency appeals. She has several years of law teaching experience, including teaching in the Legal Practice Program at the University of Michigan Law School. She is teaching the clinical course Children's Rights Appellate Practice during the fall term.

Andrew P. Buchsbaum earned his B.A., *magna cum laude*, from Harvard College, his J.D. from the University of California at Berkeley (Boalt Hall) School of Law, and his Master of Laws from Georgetown University Law Center. He is the director of the National Wildlife Federation's Great Lakes Natural Resource Center. Prior to joining NWF, Buchsbaum worked as the program director for the Public Interest Research Group in Michigan. He was senior and coordinating attorney for the Midwest office of the National Environmental Law Center for 13 years before joining the NWF. He is teaching the practice simulation Federal Litigation: Environmental Case Study during the fall term.

Emilio J. Cárdenas, M.C.L. '66, president of the International Bar Association for the period 2003 – 2005, has had an extensive career in national and international legal practice as well as in the banking and diplomatic fields. Currently executive director of HSBC Argentina Holdings S.A., he is a former president of the Association of Argentina Banks and has served as Argentina's ambassador and permanent representative to the United Nations, as president of the UN Security Council and in a number of other prominent UN positions. A scholar of international legal and economic affairs, he has lectured widely and has

taught at the University of Buenos Aires, Catholic University of Argentina, and the University of Illinois. He is a graduate of the University of Buenos Aires Law School and has studied at Princeton University and the University of California at Berkeley. At the U-M Law School, Cárdenas is teaching The UN Security Council and the seminar Terrorism and International Law during the winter term.

Margaret A. Cernak, '89, graduated from the University of Michigan with a B.A. and earned her J.D., *cum laude*. After completing her education, she joined Dykema Gossett in Detroit as a commercial litigation associate and engaged in all aspects of state and federal litigation practice. Prior to joining the Law School Legal Practice Program as a clinical assistant professor in 2000, she served as a research attorney for the firm of Denise L. Mitcham & Associates in Southfield. She is teaching Legal Practice I in the fall semester.

A 1979 graduate of the University of Iowa College of Law, **Mark A. Cody** is a senior attorney with Michigan Protection and Advocacy Service Inc. (MPAS), where he represents clients with disabilities in systemic litigation, primarily in federal court. His practice areas focus on civil rights, healthcare, education, housing, and employment. He is a member of the editorial advisory board of the *Mental and Physical Disability Law Reporter*, a publication of the American Bar Association, and also is an adjunct professor at Thomas M. Cooley Law School in Lansing. Before joining MPAS in 1989, Cody was managing attorney of a legal services office and in private practice. He is teaching a seminar on Disability Law during the fall term.

Now of counsel to Paul, Hastings, Janofsky & Walker in Washington, D.C., **Owen B. "Bo" Cooper** served as the general counsel of the U.S. Immigration and Naturalization Service from 1999–2003, a role in which he supervised

more than 700 attorneys and advised the INS Commissioner, U.S. Attorney General, other executive branch agencies, and the White House on U.S. immigration law. Earlier in his INS career, he specialized in matters involving domestic and international refugee and asylum law. He also has been a litigator in the Justice Department's Civil Division and clerked for the Chief Justice of the High Court of American Samoa. He received his law degree from Tulane University, where he was senior editor of the *Tulane Law Review*, and has taught at Georgetown Law Center and the Washington College of Law at American University. He is teaching Immigration and Nationality during the fall term and then will return to American University as a fellow in the Program on Law and Government and also will maintain his private practice.

Timothy L. Dickinson, '79, a partner in the Washington, D.C., and Ann Arbor offices of Dickinson Landmeier LLP, graduated from the University of Michigan Law School after completing his B.A. in 1975. He also studied at The Hague Academy of International Law in The Netherlands and L'Université d'Aix-Marseille in France, and externed in the Office of the Legal Adviser of the Department of State. Following Law School, he earned his LL.M. as a Jervy Fellow at Columbia University, after which he worked in the Legal Service of the Commission of the European Communities in Brussels. He then returned to Washington, D.C., where he practiced with Gibson, Dunn & Crutcher for the next 15 years. He was the partner-in-charge of Gibson, Dunn & Crutcher's Brussels office from 1990–1992. In 1997, he established Dickinson Landmeier. Dickinson has taught at Georgetown University Law Center and at the Law School. In addition, he serves on the board of the Center for International and Comparative Law. After chairing the American Bar Association Committees

on European Law and Foreign Claims, Dickinson served as the chair of the ABA Section of International Law and Practice in 1997–1998. He now is on the Advisory Board of the International Law Institute and the ABA’s Asia Law Initiative Council and chairs the ABA’s worldwide technical legal assistance activities with the United Nations Development Programme. His practice is devoted primarily to international commercial matters. He is teaching Transnational Law and the seminar International Commercial Transactions during the winter term.

Roderic M. Glogower 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. Glogower is the rabbinic advisor for the B’nai B’rith Hillel Foundation at the University of Michigan, and is a highly regarded teacher of Jewish law and rabbinic texts in Ann Arbor and the Detroit metropolitan area. He is teaching Jewish Law in the fall term.

Saul A. Green, ’72, joined Miller, Canfield, Paddock, and Stone PLC in September 2001 as director of the Minority Business Group. He also coordinates the firm’s anti-racial profiling education and training programs for public law enforcement agencies and retailers and works with the firm’s Litigation and Dispute Resolution Practice Group. Green was nominated United States Attorney for the Eastern District of Michigan by President William J. Clinton, confirmed by the Senate on May 6, 1994, and served until May 1, 2001. As U. S. attorney he was chief federal law enforcement officer for the Eastern District of Michigan. He served as Wayne County Corporation Counsel from 1989–1993, having previously served as chief counsel, United States Department of Housing and Urban Development, Detroit Field Office from 1976–1989, and as an assistant

United States attorney from 1973–1976. Green graduated from the University of Michigan in 1969 with a B.A. in Pre-Legal Studies, and went on to receive his J.D. from the University of Michigan Law School. He is teaching a seminar in Police Administration in the winter term.

Ruth E. Harlow is the legal director of Lambda Legal Defense and Education Fund, the country’s oldest and largest legal organization dedicated to fighting for the rights of lesbians, gay men, bisexuals, the transgendered, and people with HIV and AIDS. She was lead counsel in *Lawrence v. Texas*, heard by the U.S. Supreme Court during its recently concluded term, and has litigated pathbreaking constitutional and civil rights cases for 15 years. Prior to joining Lambda in 1996, she was associate director of the American Civil Liberties Union’s Lesbian and Gay Rights and AIDS Projects. She previously has taught at Rutgers-Newark and Brooklyn law schools. She is a graduate of Stanford University and Yale Law School. She is teaching Sexual Orientation and the Law during the winter term.

Kathleen Q. Hegarty, an associate with Marshal E. Hyman & Associates PC in Troy who specialized in actions before the Immigration Court and Board of Immigration Appeals and the Immigration and Naturalization Service, earned her J.D. and B.A. at the University of Notre Dame. During law school, she participated in the Concannon Program of International Law in London, England, and received a grant from the International Center for Civil and Human Rights; as an undergraduate she was a Notre Dame Scholar, Aileen S. Andrew Scholar, and member of the varsity swimming team. Hegarty has been a clerk with the Immigration Court in Boston and Catholic Legal Immigration Network Inc. in New York City. She is proficient in Spanish and has a knowledge of Russian. She is teaching the U.S. Asylum Workshop in the winter term.

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 as deputy director. Since coming to Michigan, she has practiced elder law with Michigan Protection and Advocacy Service Inc. and the Michigan Poverty Law Project. Her practice has always included individual and impact litigation, legislative and administrative advocacy, and community education efforts. In 1997, Hirschel was named the first Yale Law School Arthur Liman Fellow. She also served as a Reginald Heber Smith Fellow and she has won a number of other awards for her advocacy for the elderly poor. She speaks and writes frequently about elder law and public interest law. She has taught elder law at the Law School since 1998 and previously taught at the University of Pennsylvania from 1991–1997. Hirschel is teaching the seminar Law and the Elderly during the winter term.

LaRue T. Hosmer, who holds the Durr-Fillauer Chair of Business Ethics at the College of Commerce and Business Administration at the University of Alabama, also is an emeritus professor at the University of Michigan Business School. He is a graduate of Harvard College, and holds an M.B.A. and Ph.D. from the Harvard Business School. He taught for 26 years at the U-M Business School, and has had visiting appointments at Stanford, Yale, the Naval Post-graduate School, the University of Virginia, and the University of Alabama. Between earning his M.B.A. (1951) and his doctorate (1971), he founded and managed a company that designed automated machinery for resource recovery at sawmills and pulp mills. He is the author of seven books, and has published articles in

Strategic Management Journal, Academy of Management Review, Business Ethics Quarterly, Journal of Business Ethics, Teaching Business Ethics, Business Horizons, The Transportation Quarterly, and the *National Law Review*. He is teaching a seminar on Corporate Governance and Social Responsibility during the fall term.

As one of the senior trial attorneys at Kirkland & Ellis, **William R. Jentes**, '56, has been engaged for more than 30 years as principal counsel in major antitrust, securities, commercial, toxic tort, and corporate litigation, both domestically and internationally. Jentes did both his undergraduate (A.B.) and law work (J.D.) at the University of Michigan, where he was Phi Beta Kappa, Order of the Coif, and a senior editor of the *Michigan Law Review*. He was also a Fulbright Scholar at the Université de Grenoble. Jentes is a member of the American College of Trial Lawyers and has lectured extensively on litigation before the Corporate Counsel Institute, the Association of General Counsel, and the American, Federal, Illinois, and Chicago bar associations. He is teaching the Complex Litigation seminar during the fall term.

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. He 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. Before joining NWF he practiced environmental and land use law in Oregon as a solo practitioner and as a staff attorney/lobbyist for 1000 Friends of Oregon, a land use watchdog group. He has served as the sole or lead attorney in many public interest environmental cases seeking protection of forests, wetlands, rivers, and other natural resources. He is teaching the Environmental Law Practicum in both the fall and winter terms.

Sally Katzen, '67, served nearly eight years in the Clinton administration as administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), then as deputy assistant to the president for Economic Policy in the White House, and finally as deputy director for management in OMB. In recent years, she has been a visiting professor at several institutions. Before joining the Clinton administration, she was a partner in the Washington, D.C., firm of Wilmer, Cutler & Pickering, specializing in regulatory and legislative matters. She has worked extensively in administrative law, not only in her law practice and government service, but also in her professional activities (chair of the Section on Administrative Law and Regulatory Practice of the American Bar Association, vice chairman of the Administrative Conference of the United States, president of the Federal Communications Bar Association), and teaching (adjunct professor at Georgetown Law Center, lecturer in law at the University of Pennsylvania Law School, visiting lecturer and Washington Scholar in Residence at Smith College). She graduated *magna cum laude* from the U-M Law School, where she was the first woman editor in chief of the *Michigan Law Review*. After graduation she clerked for Judge J. Skelly Wright of the U.S. Court of Appeals for the District of Columbia Circuit. She is teaching Regulatory Process and the seminar Technology Policy in the Information Age during the winter term.

Elizabeth Kinney, '68, has been regional director of the Chicago Regional Office of the National Labor Relations Board (NLRB) for more than 14 years. She joined the NLRB in 1973 as an attorney in the Brooklyn Regional Office. She also has practiced law in Cleveland and helped establish and served on the board of the National Senior Citizens Law Center in Los Angeles. A graduate of Wellesley College, she was a member of the editorial

board for the first *Michigan Journal of Law Reform*. She previously has taught at the Law School and at Northwestern University School of Law. She is teaching the seminar Advanced Problems Before the NLRB during the fall term.

Marvin Krislov, U-M's vice president and general counsel, is responsible for the University's legal affairs, including establishing goals and strategies, serving as senior legal counsel to the Board of Regents and the University administration and its units, and managing the University's relationships with outside counsel. In addition to teaching at the Law School, he teaches a course in the Political Science Department. Krislov received a B.A. degree, *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. in modern history in 1985. He served as editor of the *Yale Law Journal* and earned a doctor of laws degree from Yale Law School in 1988. From 1988–1989 he worked as a law clerk for Judge Marilyn Hall Patel of the U.S. District Court in San Francisco. Prior to coming to the University of Michigan, he was acting solicitor in the U.S. Department of Labor, and deputy solicitor, serving as the primary legal advisor to the Secretary of Labor. He also served as associate counsel in the Office of Counsel to the President, where he handled litigation and policy matters; was a trial attorney for the U.S. Department of Justice's Civil Rights Division, where he prosecuted racial violence and police brutality cases in grand jury investigations and at trials throughout the country; and taught at the National Law Center at George Washington University. Krislov is teaching the seminar Congressional Oversight and the Executive Branch during the winter term.

Joan L. Larsen earned her J.D., *magna cum laude*, at Northwestern University School of Law, where she served as articles editor of the *Northwestern*

University Law Review. At Northwestern, she earned the John Paul Stevens Award for Academic Excellence, the Lowden-Wigmore prize for the best student note published in the *Law Review*, and the Raoul Berger Prize for the best senior research paper. After graduation, she clerked for Judge David B. Sentelle of the U.S. Court of Appeals for the District of Columbia Circuit and for Justice Antonin Scalia of the Supreme Court of the United States. Following her clerkships, she joined Sidley & Austin's Washington, D.C., office, where she was a member of the Constitutional, Criminal, and Civil Litigation Sections. Before coming to Michigan in 1998, she was a visiting assistant professor at Northwestern. She served from January 2002 – May 2003 as deputy assistant attorney general in the Office of Legal Counsel of the U.S. Department of Justice. Larsen's research and teaching interests include: constitutional law, criminal procedure, and comparative constitutionalism, with a particular interest in Latin American legal systems. Here at the U-M Law School, she is teaching Introduction to Constitutional Law during the fall term and Criminal Procedure: Bail to Post-Conviction Review in the winter term.

Margaret A. Leary is director of the Law Library. From 1973 to 1981, she served as assistant director and from 1982 through 1984 as associate director. 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. Leary has worked to build the comprehensive library collection to support current and future research in law and a wide range of disciplines. She has also developed strong services to support faculty research. The Law Library is known for its international law resources, which attract research scholars from around the world. (See Leary's article beginning on page 46.) Leary is teaching Advanced Legal Research in the winter term.

Karl E. Lutz, '75, was formerly a senior partner with Kirkland & Ellis in Chicago. He continues to serve as of counsel at the firm. While at Kirkland, he practiced corporate law, specializing in private equity, venture capital, leveraged buyouts, mergers and acquisitions, debt and equity financings, and board representations. He also served on Kirkland's senior management committee. He has lectured on numerous occasions at graduate law and business schools, and has served as general counsel of a public company. At the Law School, he has taught courses in private equity and entrepreneurial transactions, law firms and legal careers, and professional responsibility. He is teaching Law Firms and Legal Careers, and the Private Equity Practicum I during the fall term and the Private Equity Practicum II during the winter term.

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. Miro is teaching a seminar on The Board of Directors in the fall term.

Roberta J. Morris earned an A.B., *summa cum laude*, 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. She is teaching the seminar Advanced Topics in Patent Law in the fall term and Patent Law in the winter term.

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 is the co-author of texts on Michigan corporate law and securities regulation, and is chair of the State Bar Subcommittee on the Revision of the Business Corporation Act. He is teaching Business Planning for Closely Held Corporations in the fall term and Business Planning for Publicly Held Corporations in the winter term.

Valerie R. Newman has been with the State Appellate Defender Office in Detroit since 1993. Professor Newman is a graduate of the University of Michigan with a B.A. and earned her J.D. at Wayne State University Law School. She co-chairs the Criminal Jurisprudence and Practice Committee of the State Bar and was chair of the Defender Systems and Services Committee for several years. Newman is an active member of the Women Lawyers Association of Michigan and a former president of the Wayne Region. She also is an active member of the National Lawyers Guild, a former president of the organization, and past chair of two national conventions. She has argued extensively in state appellate courts and in the federal courts. Newman (with co-teacher Peter Van Hoek, see below), is teaching Criminal Appellate Practice in the fall and the winter terms.

Leonard Niehoff, '84, earned his undergraduate as well as law degrees at the University of Michigan. He practices with the Butzel Long law firm, where he manages the Media Law, Intellectual Property Law, and Higher Education Law practice groups. Niehoff is the author of approximately 100 publications, has served on the editorial boards of several journals, and has been a member of the adjunct faculties of the Wayne State University Law School and the University of Detroit-Mercy Law School, teaching courses in legal ethics and professional responsibility. He is teaching Legal Ethics and Professional Responsibility in the fall and winter terms.

Sreenivasa Rao Pemmaraju (PS Rao) was educated at Andhra University, Waltair, India, and at Yale Law School. He holds a Bachelor of Law and Master of Laws with specialization in international law from Andhra and an LL.M. and J.S.D. from Yale. He worked as a post-doctoral fellow at the Woodrow Wilson International Center for Scholars in Washington, D.C., and the Marine Policy Center of Woods Hole Oceanographic Institution, Woods Hole, Massachusetts. He is the author of *Public Order of the Ocean Resources* (MIT Press, 1975) and contributed articles on the negotiation of the Law of the Sea convention in 1982. (He also participated in the Law of the Sea convention negotiations from 1976–1984, heading the Legal and Treaties Division.) He was India's chief legal adviser on international law matters from 1985–2002. He has been a member of the International Law Commission since 1987 and a Special Rapporteur for Prevention and Liability. He presently is a consultant at the World Intellectual Property Organization in Geneva, Switzerland. He is teaching Law of the Sea in the fall term.

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, where he was vice president of the Harvard Legal Aid Bureau. He served as staff counsel for the American Civil Liberties Union from 1974–1984 and has been general counsel from 1984 to the present. Rosenbaum has taught at Loyola Law School, Harvard Law School, and the University of Southern California Law Center. He began teaching at Michigan in 1993. His areas of expertise include poverty and homelessness legislation, immigrants' rights, workers' rights, civil rights, and First Amendment issues. He is teaching the Public Interest Litigation seminar in the winter term.

Joel H. Samuels, '99, received his J.D., *cum laude*, and was a Clarence

Darrow Scholar at the Law School. While at Michigan, he also earned a master's degree in Russian and East European Studies. 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 was awarded 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 worked as an attorney with Covington & Burling in Washington, D.C., where he was involved in a wide range of international litigation matters, including several international arbitration cases at the International Centre for the Settlement of Investment Disputes (ICSID), litigation in U.S. courts involving the Alien Tort Claims Act, and the *ad hoc* arbitration of the Eritrea-Ethiopia boundary dispute. He has worked at the World Bank in Washington (in the Office of the vice president for Africa) and in Zimbabwe (at the African Capacity Building Foundation) and was a member of the World Bank team that drafted the Initiative for Capacity Building in Africa. He also has been a contributor to several Russian newspapers and magazines and a variety of African publications. He is a member of the board of directors for Career Gear-Washington, a nonprofit organization that provides training and interview-appropriate attire for men on welfare seeking to return to the workforce. Samuels is teaching Civil Procedure and the Semester Study Abroad Paper in the fall term and International Arbitration and Transnational Law in the winter term.

Rebecca Shiemke is an adjunct clinical assistant in the Law School's Clinical Law Program. She received her undergraduate degree from Albion

College and her law degree from Wayne State University in 1984. After clerking for a state circuit judge, Shiemke practiced labor law before becoming involved in advocating on behalf of domestic violence survivors. Since January 1997, she has been the managing attorney of the Family Law Project in Ann Arbor, where she represents domestic violence survivors in family law matters. She also trains and supervises law students who assist survivors in protective order proceedings. Previously, she was the legal services coordinator for the Women's Justice Center in Detroit, where her practice focused on representing domestic violence survivors. She is an active member of the Domestic Violence Committee of State Bar of Michigan, the Pro Bono Project for Domestic Violence Victims Subcommittee of the Open Justice Commission, the Ann Arbor Domestic Violence Coordinating Board, and the Washtenaw County Friend of the Court Liaison Committee. She has been a trainer for the Michigan Poverty Law Program, the Institute for Continuing Legal Education, the Michigan Judicial Institute and the State Bar of Michigan. She is the author of the domestic violence chapter of *Michigan Family Law*, published by the Institute of Continuing Legal Education.

Stephanie Smith is an adjunct clinical assistant with the Legal Assistance for Urban Communities (LAUC) clinic in Detroit. She comes to the Law School from New Jersey, where she had broad experience in real estate law, including working at the Housing and Mortgage Finance Agency in Trenton, where she was a senior underwriter for the Multi-Family Lending Department. She also had her own real estate law firm with offices in Newark and Trenton, where she provided the myriad of legal tasks involved in real estate law. In addition, Smith served as a review attorney with a mortgage company in Newark and taught real property, real estate, and landlord/tenant law as

an associate professor at the New York Paralegal School in New York City. Smith earned a B.A. at Howard University, a J.D. at Rutgers University School of Law, and Certification from the Real Estate Institute at Monmouth University, New Jersey.

Edward R. Stein, '66, specializes in civil litigation at Smith Haughey Rice & Roegge in Ann Arbor. He is a fellow of the American College of Trial Lawyers, a member of the American Board of Trial Advocates, and is listed in *The Best Lawyers in America*. He regularly teaches for the National Institute for Trial Advocacy, and is the recipient of its Distinguished Service Award and Prentice Marshall Faculty Award. He frequently lectures on aspects of trial practice, and most recently has lectured extensively on the use of electronic demonstrative evidence. He is co-author of the National Institute for Trial Advocacy's publication, *PowerPoint for Litigators*. He is teaching the Trial Practice simulation during the winter term.

Beatrice A. Tice 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 and an M.A. (linguistics) from Yale University. She attended Stanford Law School, where she served as senior editor of the *Stanford Law Review*, and earned her J.D. with distinction. After graduation from law school, Tice practiced law for more than eight years as a commercial litigator with several major law firms in southern California. She then left traditional practice and enrolled in the Law Librarianship Program at the University of Washington Information School, where she earned her M.L.I.S. with a Special Certificate in Law Librarianship. She came to the Law Library in 2000, and she has primary responsibility for development of the renowned foreign law collection (see story on page 46) and for bibliographic instruction. Tice authored the chapter on France in the recently published book *Sources of*

State Practice in International Law. She is teaching Researching Transnational Law during the fall term.

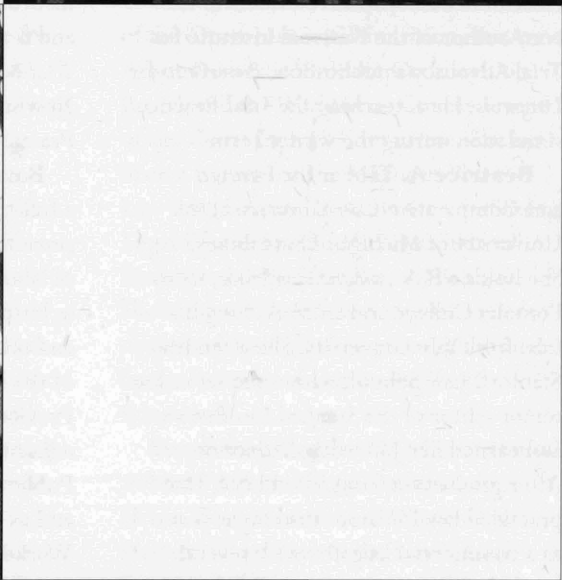
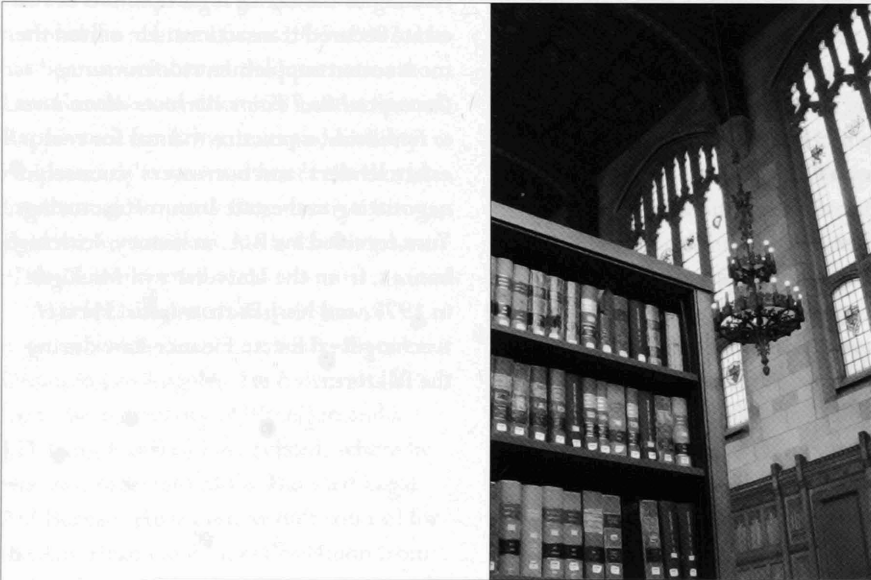
Peter Van Hoek, an assistant defender in the State Appellate Defender Office in Detroit, is a University of Michigan graduate and earned his J.D. at Wayne State University Law School. After law school, he did separate clerkships with the Hon. George Bashara and the Hon. Dorothy C. Riley, both of the Michigan Court of Appeals. He previously has taught at the University of Michigan Law School and Wayne State Law School and practiced with Stark & Gordon PC in Royal Oak, Michigan. He is a member of the board of directors of the Michigan Innocence Project. He has written for *Wayne Law Review* and the Institute for Continuing Legal Education and is a contributing author to the *Defender Trial Book*. He is teaching (with Valerie R. Newman, see above) Criminal Appellate Practice in the fall and the winter terms.

Barry Winograd has maintained a full-time dispute resolution practice since 1988 as an arbitrator and mediator of labor and employment cases, as well as business, securities, personal injury, and other civil disputes. He is a member of the National Academy of Arbitrators. Previously, Winograd served as an administrative law judge for the California Public Employment Relations Board and as an attorney for the United Farm Workers of America. He has written several articles on mediation and arbitration, and has taught labor law and mediation courses for many years at the Boalt Hall School of Law, University of California, Berkeley. Winograd is listed on dispute resolution rosters of neutral provider organizations and federal and state courts. He also serves as a permanent arbitrator on various labor-management contract arbitration panels. He received his B.A. at the University of California, Santa Barbara, and his J.D. and LL.M. from Boalt Hall School of Law,

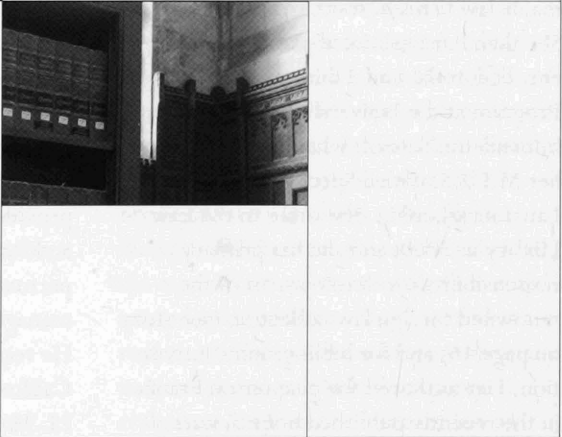
University of California, Berkeley. He is teaching Labor Law and the Labor and Employment Arbitration practice simulation during the winter term.

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Building a home for the laws of the world



By Margaret A. Leary



The following feature is an edited version of "Building a Foreign Law Collection at the University of Michigan Law Library, 1910–1960," © Margaret A. Leary, 2002, which originally appeared at 94 Law Library Journal 395–425 (2002), and appears here with permission of the author. The first part of the article appears here; the conclusion will appear in the next issue of Law Quadrangle Notes.

Building a home for the laws of the world

Part I: Bates, Cook, and Coffey

By Margaret A. Leary

During the first half of the 20th century, books as well as people emigrated from Europe and South America to the United States in huge numbers. The United States was wealthy, politically stable, internationally powerful, and almost completely free of natural disasters such as earthquakes and fire. The libraries of its growing institutions of government and higher education were able not only to purchase in the normal market but also to take advantage of economic and political instability elsewhere.

Academic research libraries in this country acquired deep and rich collections. They usually allowed anyone with a desire to use their material to have access to them, as did American public libraries. This open access flowed from the democratic principles of free basic education and the public's right to know, providing greater public access than libraries elsewhere in the world.

This article, based mostly on Law School and Law Library documents in the University's Bentley Historical Collection, describes the people and processes that built the foreign law collection at the University of Michigan Law Library, now among the best in the world according to faculty, visitors, and scholars who come from many countries to use the Library and say that Michigan's collection of material from their country is better than what is available to them at home.

The history of the development of any particular collection can illustrate the methods used by many libraries. In the case of the University of Michigan Law Library from 1910–1960, techniques included buying whole libraries from individuals, developing lists of *desiderata*, accepting gifts and exchanges, and using dealers abroad. Michigan's experience shows the value of starting early, having a clear understanding of the desired content, and working from a sound strategy.

The Michigan Law Library's development also illustrates the development of the profession of librarianship during the 20th century. For roughly the first half of the century, its librarians were intent upon acquiring, organizing, and cataloging the collection: what we now call technical services work. There is little evidence, however, that by 1960 the librarians at Michigan were conscious of having completed retrospective collection building, or that they realized the extent of the opportunity they had to shift from building to using the collection.

Finally, the story of the development of this one library illustrates how much difference individuals can make even to the largest institutions. Between 1920 and 1960, the vision of Dean Henry Bates, the financial resources of William W. Cook, the architectural genius of Edward Palmer York and Philip Sawyer, and the energy and intelligence of Law Library Director Hobart Coffey combined to create one of the world's most magnificent libraries.

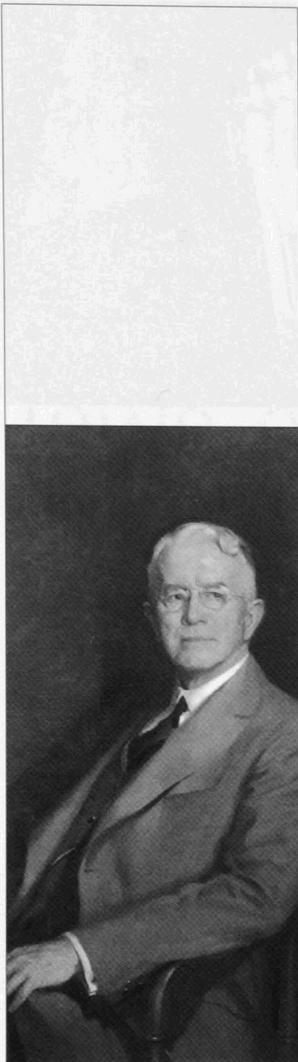
The men who built the Michigan collection: Henry Bates' vision

Why did the University of Michigan Law School develop one of the world's most comprehensive collections of foreign, comparative, and international law materials? Who had the vision to build such a collection, and how was it achieved? The answer starts with the School's dean from 1910–1939, Henry Moore Bates.

In 1910, then-Professor Bates negotiated with the Regents of the University of Michigan for months about the terms under which he would accept the deanship of the Law School. Former Dean Harry Hutchins had just become president of the University. Bates' dream was



Building a home for the laws of the world



Henry Bates

to make Michigan a first-rank, internationally renowned law school, and he wanted to be sure he had transformative power sufficient to do that. He wanted full-time faculty members with an academic, rather than practical, bent. He wanted more, and better qualified, students. He wanted a curriculum that emphasized intellectual effort and that developed capabilities, rather than one that merely passed along superficial information about the law. He wanted a larger, finer physical facility. And he wanted a library that would support research and teaching in all aspects of the law, over all the world, for all historical periods.

Bates eventually obtained from the Regents the authority he needed. Between 1910–1939, his deanship did transform the Law School. Bates appreciated the central role of the library. He had been an officer of the Chicago Law Institute in 1902, during his pre-Michigan life practicing law in Chicago from 1890–1903. He also knew he needed an aggressive, imaginative, far-seeing person to build the Michigan collection. The first two librarians, John Vance and Victor Lane, had done a decent job of building a collection of Michigan material. But Bates saw Lane as too engaged in teaching to be a collection builder. He probably had little faith in the staff's ability to understand his vision if the following account of an event in 1918 is typical. As a visiting professor at Harvard Law School that year, Bates facilitated Michigan's acquisition of Harvard duplicates, but apparently the library staff disappointed him in their treatment of this opportunity.

On June 6, 1918, law library staff member E.B. Steere wrote to Bates at Harvard:

"I am sorry that you feel that our disposal of the Harvard lists was not satisfactory. So far as the year books are concerned we of course have only the 1678–1680 edition — none at all of those offered by Harvard, and it would be a wonderful piece of fortune for us if we could get them all. . . . In the list I sent you we were simply making a modest request because we did not suppose there was any chance of our getting more. We have not learned to do things on a big scale out here."

Bates very nearly did not return to Ann Arbor. Harvard offered him a professorship in April 1917, but in the summer of 1918 he decided to come back to the Michigan Law

School. Over the next three years he and President Hutchins successfully cultivated a donor, William Wilson Cook, who would eventually supply four buildings and an endowment to support faculty research. In 1921, Bates could certainly see the realization of his vision within reach, but had no idea of the frustrations that would intervene before it finally came to fruition more than a decade later.

William W. Cook's fortune

William W. Cook, born in 1858 in Hillsdale, Michigan, earned both bachelor's (1880) and law (1882) degrees at the University of Michigan. He immediately went to practice law in New York City, first in the office of William B. Coudert and later as general counsel for the Commercial Cable and Postal Telegraph Company of John W. Mackay and his son, Clarence Mackay. He retired from active practice in 1920, and for the next 10 years spent a great deal of time and energy in planning and executing gifts totaling \$16 million to his *alma mater*. Cook's gifts included the Martha Cook women's residence hall and, at the Law School, the Lawyers Club residence hall (1925), John P. Cook dormitory (1930), Legal Research Building (1931), and Hutchins Hall (1933). He also provided landscape architecture for the entire block, the Law Quadrangle, which contained the Law School buildings. And he left a trust fund to support faculty research and lectures on American institutions, which by 2000 was worth \$60 million.

The story of William Cook's professional life and his interactions with the University has not been fully told, largely because he was a very private man. Initially, he did not want the world to know he had given the money, and he never wanted his name associated with any of the buildings. Several contemporaneously published works, however, including those issued at the dedication of each of the Law School buildings, describe Cook's role in helping the Law School realize buildings that he never saw. In addition, later studies relying on primary source documents, many found in the Law School archives housed at the Michigan Historical Collections, have done much to recover and preserve this important historical record.

Cook and Bates initially shared mutual respect. In June 1921, Cook wrote to Hutchins that Bates “has ideas, other than brick and mortar and a mob, and I shall help him all I can.” However, by 1925 Cook refused to “have any communication with him, written or oral. . . . He certainly is the limit.” The story of Cook’s relations with Bates, Hutchins, and others is beyond the scope of this article, but the impact of the damaged relationship on the Law Library was real.

Although this rift would cause great frustration and delay, especially from 1925–1929, the prospect of the coming gift put Bates in a position to begin the actions that would help achieve his dreams.

York and Sawyer’s architectural expertise

William 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 townhouse at 14 East 71st Street. He then used them for his first gift to Michigan, the Martha Cook building, and continued to work with them on subsequent Michigan projects and for interior furnishing with the Hayden Company. Ilene H. Forsyth’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.” There never appears to have been any question that York and Sawyer would do all the buildings for which Cook provided the funds.

York and Sawyer met as associates at the preeminent New York City firm of McKim, Mead & 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. In the next few years, they won 11 of 14 competitions, when the usual rate was one in four. After five years they had \$5 million worth of work, more than McKim, Mead & White. But York had to borrow a quarter from Sawyer to pay for lunch, as Sawyer notes in *Edward Palmer York: Personal Reminiscences by his Friend and Partner Philip Sawyer and a Biographic Sketch by Royal Cortissoz* 9 (1951).

The firm developed specializations in college buildings, banks, and hospitals. They 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. Hospitals included 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.

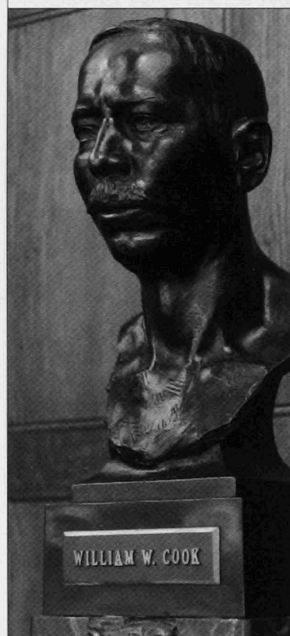
One measure of the extent of York and Sawyer’s work is their 67 entries, as of May 7, 2002, in the *Avery Index to Architectural Periodicals*. A measure of the historical influence of the firm is that entries begin in 1905, and the most recent is for an article in the March 2002 issue of *Architectural Digest* that 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 “thoughtfully directed energy behind” the partnership who nurtured clients and developed the overall strategy for the firm’s future, Sawyer recalled in his *Reminiscences*. 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 continues, 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 [member] who would not allow me to do the thing which seemed to be 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.”



Building a home for the laws of the world



William W. Cook



Hobart Coffey

York was the lead architect on the Michigan project until he died in December 1928. His 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 quality of stone, 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.

By the early 1920s, then, the Law School had Bates' vision, the promise of Cook's money, and the architectural proficiency to create fine buildings. What remained was to create the library collections that could support the teaching and research for the present and long into the future. And by 1924, Bates had found the man he believed could build a great library at Michigan: Hobart Coffey.

Hobart Coffey's background

Hobart Coffey was born in 1896, according to documents researched for this article, "to a family of old American stock . . . my ancestors were Scotch and Irish who emigrated to northern Ohio from Maryland and Virginia around 1800." He was educated in Ohio, earning a B.A. in English from Ohio State in 1918. At Ohio State, he was a student assistant in the library for three years. He taught in several private schools before he went to the Michigan Law School, from which he earned an LL.B. in 1922 and a graduate J.D. in 1924. With the support of a Carnegie fellowship in international law, he studied French in Grenoble from July to November 1924 and then entered the University of Paris, where he passed both oral and written exams in French. He attended the Academy of International Law at The Hague in summer 1925, and in the fall he studied German at Heidelberg and then the University of Berlin. In spring 1926 he went to Munich for the summer, later returning there for another semester in 1928. He concentrated on public and private international law and comparative law. He spoke French and German with some fluency, had some command of Italian, did considerable work in Russian, and had a very good knowledge of Spanish.

Did Coffey set out to become a law librarian? There is nothing in his papers, or those of the

Law School or the Law Library, to suggest that such was his goal. There is no evidence that he attended library school, although Michigan established one in 1926. In 1924, after Bates asked him to become the law librarian, Coffey consulted Michigan Law Professor Edwin Dickinson, who wrote back with thoughtful encouragement. As a result of his service for years on the Library Committee, as well as his interest in international law, Dickinson knew that the library collection required significant improvements. In his reply to Coffey, Dickinson expressed his happiness at Coffey having seen the League of Nations in action and congratulated him on the acceptance of his admiralty article by the *California Law Review* and on the progress he had made in the art of French conversation. He speculated that the job of law librarian would have real attractions "if one loves books, likes to research, has some capacity for efficient administrative organization, and knows how to get others to do the routine effectively. . . . [T]here is a rather exceptional future in the position which Dean Bates has in mind for our School . . . [and] the position will be one of real dignity. It will require that the incumbent acquire an immense amount of information about books, foreign and domestic. It will present some real problems in organization. There will be unusual responsibilities involved in the development of a large research library. . . . The librarian should be in a very substantial sense the master of his own time. The salary will no doubt be better than professors' salaries in most law schools. . . . In addition to the above, I should expect that the job would involve some rather attractive opportunities to travel in search of books, libraries to buy, etc. Personally, I would be much pleased to see you tackle the job."

Coffey accepted the offer and began his career as a librarian in enviable fashion: as assistant law librarian (on leave) in 1925–26, while he studied abroad.

Bates and Coffey collaborate, 1925–28

Bates had kept a firm hand on the library's development from the very start. On October 19, 1910, the faculty approved the appointment of a Library Committee, to consist of the dean, the librarian, and three other faculty members appointed by the dean.

Faculty members of the committee were those who wanted the library to expand and who had the expertise to identify needed material. The Library Committee met in the dean's office.

From 1922–1925, the Library Committee consisted of Bates, Librarian Victor Lane, and Professors Joseph H. Drake, Horace L. Wilgus, Edwin Dickinson, and Edgar Durfee. Drake, who began serving as early as 1914, specialized in Roman law. Wilgus, also serving since 1914, was a teacher of corporations, commercial, and tax law. Dickinson, a specialist in international law, joined the committee in 1919. Durfee, who taught equity, rounded out the subject expertise on the committee. Blythe Stason, who succeeded Bates as dean, joined the faculty in 1924 and served on the Library Committee from 1928–1933, a critical period for the construction of the Legal Research Building.

Committee minutes consist of lists of suggested titles, and by 1922 included some items of international and comparative law, as well as court reports and statutory material from non-U.S. common law jurisdictions — which was what passed for “foreign law” at the time.

Bates, who chaired the committee during his entire deanship, paid attention to more than book selection, especially before Coffey arrived. For example, at a meeting in 1922, he stated that “undoubtedly money could be obtained for catalogers, to make available the foreign material recently acquired.” The search for catalogers would include consulting Harvard, the Library of Congress, and eastern library schools.

However, once Coffey was on board, Bates could delegate. For instance, Bates wrote to Coffey, who was in Paris at the time:

“You are to go on with your investigations in the graduate work in international law and other fields in which we are trying especially to develop our library. . . . [D]evelop your knowledge of French, German, and Spanish. . . . Undoubtedly we will have to do much in South America in the future. The more you can do to establish contacts with book dealers and libraries of Europe, the better.”

Other letters from Bates to Coffey in Geneva and in Berlin illustrate Bates' personal role in, and commitment to, building a foreign, comparative, and international law collection

at Michigan. Coffey spent much of both the 1924–1925 and 1925–1926 academic years in Europe, studying law and languages and buying books. He did the same in the summer of 1928. However, by the fall of that year, he began to lose faith in the School's commitment to building a great library. He and the rest of the faculty were frustrated that a new building for classrooms, faculty offices, and the library was not yet built. The School's students had, since 1924, been living in the sumptuous Lawyers Club dormitory financed by William Cook, but the Law School's benefactor was slow to give more. As Forsyth observes, “[Cook] succeeded in maintaining a surprising amount of control to the very end.” A major element of Cook's control derived from the Law School's desire for the building that would house faculty offices and classrooms. By postponing that building to the end, Cook held the trump card.

Cook's relationship with Dean Bates had soured, particularly during construction of the Lawyers Club in 1924–1925. President Marion Burton, with whom Cook had good relations, died prematurely in 1925, and Clarence Cook Little replaced him. From 1925–1928, Little and Bates were unable to persuade Cook to provide resources for the buildings needed to house the library, faculty offices, and classrooms. Meanwhile, with no immediate prospect of more space, the precious and growing collection of foreign law books, along with gifts from Cook himself, were piled in the halls of the fire-prone Law Building, one-half mile north of the finished Lawyers Club where students resided.

In August 1928, Coffey expressed frustration and concern about a lack of commitment to building a foreign and international collection at an informal meeting of the Library Committee:

“The committee discussed building up a library of comparative law. Some faculty have objected to this, but the committee felt it had always been and still was the wish of Dean Bates. The librarian was of the opinion that we have reached the crossroads in the development of our library and we must decide very shortly exactly what kind of library we hope to build during the next two or three decades and prepare a program embracing these aims. He suggested that in case the faculty decided not to go further with foreign law and international law . . . the services of the present



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librarian might well be dispensed with, since someone else could be secured to do all that was necessary at much less expense. He felt that most of his qualifications would be more or less superfluous in a library which did not go outside the field of American and English law. Dickinson and Stason were both of the opinion that the faculty would continue to pursue the policy which it has pursued during the past five years, namely, building up as rapidly as possible the foreign and international law collections. The librarian pointed out that we should have to do a great deal more than we have done in the past, and that in certain fields we should have to act very quickly. He reported that he had purchased several thousand dollars worth of material on his recent trip to Europe, all done on his own initiative, and he had paid all of his own expenses. This, he said, he had no intention of doing in the future. Stason suggested that a sum should be set aside to provide adequate traveling expenses so that the librarian could visit the various European countries from time to time, and perhaps also the countries in South America.”

In 1928, the Library Committee met monthly, and there is no further record of anyone questioning the School’s commitment to fulfilling Bates’ vision.

Reaffirmation and inspiration: 1929

After the frustrations of 1928, 1929 first brought new hope through Cook’s formal commitment to build a Legal Research Building, and then inspiration as Coffey visited the Harvard Law Library.

Cook reaffirmed his commitment to provide a library building with a formal offer to the Regents on January 11, 1929. The library moved into the new Legal Research Building in 1931. Cook had died in 1930, leaving most of his wealth to the Law School. There was further delay in 1931 when his former wife, claiming their divorce had not been valid, sought her widow’s share. However, by December of that year Regent James O. Murfin announced an agreement, and the terms of the settlement were final by February 1932. The Law School inherited the rest of his fortune. The Cook Trust has supported faculty research ever since.

Inspiration came when Coffey visited the Harvard Law Library from May 20 to July 10, 1929. He recorded his observations in a memo that is both fascinating and amusing, but its significance for collection building lies in Coffey’s articulation of the methods that Michigan would have to use to build a collection even approaching the comprehensiveness of Harvard’s.

- First, Michigan needed to put through book orders with more efficiency and more thorough preorder searching.
- Second, Michigan needed to develop more sources. “Harvard has five sources of material where we have one. Lines are out to all corners of the globe, to publishers, agents, professors, friends of the school, men in public life, etc.” Michigan needed to know about a commission appointed to suggest changes in the constitution of Arkansas or an international conference on the safety of lives at sea. Coffey suggests “a little discrete publicity . . . not to ape the methods of the athletic association nor Yale Law School, of course.”
- Third, Michigan would benefit from a faculty library, with law reviews and court reports. Finally, Coffey investigated how the Marquis de Olivart worked up the collection of international law at Harvard, “probably the best collection of international law in the world.” He found that Olivart used the same method Coffey contemplated, “preparing a comprehensive want list based on works cited in Fauchille, Oppenheim, Hyde, von Liszt, Sanchez, and Ansolotti. With this list as a guide we could spend the next quarter century building up a collection which might even be superior to the Olivart.”

Coffey also learned the value of creating a complete record and controlling the circulation of books. He reported that “no one knows how many hundreds or even thousands of books have been lost, because no inventory can be taken. There is no shelf list by which to take an inventory.”

Thus by fall 1929 the new building was assured, and Coffey knew how to proceed to fill it with foreign, comparative, and international material as well as that from the United States. Over the course of the next 35 years, he would do just that.

Building the collection, 1925–1960

Nearly 30 years later, Coffey himself provided a rough sketch of the origins and development of Michigan's foreign and international law collection:

"Although Harvard began to collect foreign law materials as early as 1841, our Law Library seems to have had few, if any, books dealing with foreign law until about 1897, when part of the Buhl bequest is said to have been used for the purchase of foreign material. The accession records, which began in 1900, reveal that the "foreign material" referred to was the books. . . . Because of the common-law background of most British possessions we should today scarcely regard their legal materials as 'foreign.' No works on German, French, or Italian law appear in our accession records until the first two decades of the 20th century, and there were very few of those. Even as late as 1920 the foreign law collection occupied only a few shelves in the workroom of the order department.

"Between 1920 and 1925 three large foreign libraries were purchased: the Star Hunt collection of Spanish and Mexican law; the Heinrich Lammasch Collection, devoted largely to international law; and the Viollet Collection, which for the most part related to French law and legal history. In 1929 the Library acquired the collection of private international law which formerly belonged to Professor Antoine Pillet of the Faculty of Law of the University of Paris. In 1935 we acquired the library of Professor Francesco Carrera, eminent criminologist, of the University of Pisa. All of these purchases greatly enriched the Library.

"No attempt seems to have been made to acquire an international law section until about 1919, when Edwin de Witt Dickinson was added to the staff of the Law School. Professor Dickinson, whose main interest had been public and private international law, immediately recognized the inadequacy or, in fact, the almost total lack of books and documents in his field. He prepared bibliographies and want lists and was instrumental in helping the Library to acquire many of the important and fundamental source materials in international law and relations. The systematic effort begun in 1919 has been continued through succeeding years and has resulted in the University's having the

most complete collection to be found west of the Atlantic seaboard. It has attracted scholars not only from this country but also from many other parts of the world.

"Professor Joseph Horace Drake, a member of the Law School faculty from 1907–1930, had a lively interest in both Roman and comparative law. In 1923–24, while on a leave of absence in Europe, spent principally in Germany and France, he helped the Library to acquire its first important materials from those countries. In the following three decades great emphasis was placed on the acquisition of the constitutions, codes, laws, and judicial decisions of all-important foreign countries. To find this material and arrange for its purchase, the director of the Library made several trips to the various countries of Europe, including the Soviet Union, two trips to Mexico and Central America, and one to the Caribbean and South America. The foreign law section of the Library is now one of the outstanding collections of the world."

This description is correct so far as it goes, but it says nothing about the critical specific steps in the "systematic effort . . . continued through succeeding years." Just how did Coffey, the faculty, and the library staff identify and acquire the books to create "one of the outstanding collections of the world?" As will be shown in the following sections, Coffey developed the collection using at least five different tools: assistance from the faculty, travel abroad, developing relationships, exchanging and selling duplicates, and receiving gifts.

(End of Part I. Continued in the next issue of Law Quadrangle Notes.)

Margaret A. Leary is director of the Law Library. From 1973 to 1981, she served as assistant director and from 1982 through 1984 as associate director. 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. Leary has worked to build the comprehensive library collection to support current and future research in law and a wide range of disciplines. She has also developed strong services to support faculty research. The Law Library is known for its international law resources, which attract research scholars from around the world.



Margaret A. Leary

TAKING GLOBALIZATION SERIOUSLY:

Michigan breaks new ground by requiring the study of transnational law

The faculty acted on the conviction that a fundamental understanding of how law works in the global context must be part of every lawyer's toolkit.

By Mathias Reimann

The class of '04, graduating this spring, is a unique group: it is the first law school class in the United States which had to take a course on Transnational Law in order to graduate. (The term *Transnational Law* was coined by the late Columbia Law School professor and International Court of Justice Judge Philip Jessup.) From now on, every student obtaining a J.D. at Michigan will have been exposed to the basics of law reaching beyond U.S. borders.

While most law schools offer courses in international and comparative law, often in great numbers, Michigan is the first, and so far the only, major American law school to *require* such a course. This arguably constitutes the most important curricular innovation in several decades. In large part, it was a response to the urging of our alumni to inculcate our graduates with an understanding of the global dimensions of law. It has reaffirmed the Law School's commitment to international and comparative legal studies and confirmed its position as a leader in that field. The requirement of the course has received wide attention and much praise. American Society of International Law President Anne-Marie Slaughter has called the course a "historic step," as have Jeffrey Atik and Anton Soubbout in an article in *International Lawyer*. U.S. Supreme Court Justice Sandra Day O'Connor praised the course in her keynote address to the American Society of International Law's annual meeting last year.

More and more schools are thinking about following Michigan's example.

When the faculty voted to make such a course a prerequisite for graduation, it acted upon the conviction that, in today's legal environment, a fundamental understanding of how law works in the global context is an indispensable element in every lawyer's

professional toolkit. The faculty wanted to convey the message that in light of the rapidly increasing international mobility of people, goods, services, and capital, a basic knowledge of the international dimensions of law is no longer simply an option but has become a necessity, just like a basic knowledge of contract law, property rights, civil and criminal liability, procedure, and our constitutional framework. In contrast to these traditional mandatory subjects, students do not have to take Transnational Law in their first year, but can do so at any time before graduation. So far, however, most students have taken the course in the second semester of their first year. The main purpose of the Transnational Law course is twofold. First, it teaches every student the absolute minimum *every* lawyer should know about law beyond the domestic American orbit. This is important not only in order to become qualified for practice in an age when few areas remain unaffected by international issues, but also in order to become a well-educated lawyer at a time when the United States is more deeply involved than ever in world affairs. Second, the course lays the groundwork on which more advanced international and comparative law courses can build. From now on, teachers of such courses can presume that their students have at least a broad overview of the law's international dimensions. Thus, instructors do not have to go back to the bare basics over and over again but can focus on truly advanced topics.

In order to accomplish these goals, the coverage of the course is necessarily general. *Transnational Law*, a term introduced by Judge Jessup in his Storrs Lectures at Yale half a century ago, encompasses "all law which regulates actions or events that transcend national frontiers," as Jessup noted in his article "Transnational Law" in 1956. This law comes mainly from three major areas: public interna-

tional law (the law of nations), private international law (conflict of laws), and foreign and comparative law. It includes not only norms which are "international" by their nature, such as treaties or custom, but also domestic rules and principles governing transnational issues, such as U.S. law dealing with foreign litigants or with American business activities abroad.

Obviously, the course cannot treat any of these areas in depth. Its purpose is merely to provide introduction. It maps the terrain and familiarizes the students with those fundamental elements that render international transactions and disputes different from purely domestic ones. Exposure to these fundamentals will not turn the students into international law specialists but it can turn them into lawyers who are conscious of the law's international dimensions and complications.

The specific content of the course has evolved and continues to evolve. Currently, it is divided into four main parts. It begins with a fairly substantial introduction to the major actors, sources, and principles of public and private international law. The second part addresses the fundamentals of international dispute resolution, among states as well as among private parties, including the ground rules of foreign judgment recognition and the principles of international commercial arbitration. Part three then focuses on transnational transactions, especially their negotiation and drafting, proffering specific examples. Finally, the students are briefly exposed to a few special areas in which the Michigan faculty has particular strengths: international human rights, European Union law, and international trade. These areas are introduced by faculty who specialize in them. Here, the students can see how the general principles they have studied apply within a particular context and get a glimpse of some of the upper-level courses

in international law offered by other faculty members.

A special feature of the course is that it is centered on a complex case scenario which is largely derived from a real transaction spawning a cluster of disputes. The case is discussed in the first class in order to lay out the issues. It is then revisited repeatedly throughout the course, serving as practice turf on which students can learn to apply what they have learned in the individual chapters. In this fashion, the scenario provides a common thread running through the whole semester. When students compare how they at first encountered the case with how they see it at the end of the term, they realize how much they have learned.

In the absence of a suitable casebook on the market, the faculty has compiled a set of carefully designed teaching materials. These materials currently consist of four volumes and comprise a total of 600 pages. They are used by all teachers of the course, albeit with individual modifications. This saves time and resources and ensures a fairly uniform coverage. In light of the interest expressed by other law faculties in such a course, there are plans to turn the core materials into a casebook, co-authored by Michigan faculty with different areas of expertise woven into each section of the materials.

The course was first offered on a trial, nonmandatory, basis in the winter of 2001 by professors James C. Hathaway and Mathias Reimann, LL.M. '83. Over 100, mostly first-year students, enrolled, confirming the great student interest the faculty had expected. Since the course became mandatory beginning with the 2001–2002 academic year, one section has been offered in the fall while three or four sections have been taught in the winter semester. The teachers involved have brought a wide range of special expertise to the

The course was first offered on a trial basis in the winter of 2001. More than 100, mostly first-year students, enrolled.

TAKING GLOBALIZATION SERIOUSLY

Teaching across the traditional boundaries of public and private international law is much easier than we had anticipated.

classroom, creating a synergy between various subjects of transnational law. Some sections were actually co-taught by a public and private international law scholar, others by a full-time academic in cooperation with an international practitioner as an adjunct. This has turned out to be a highly valuable learning experience for the instructors themselves.

Five tenured and tenure-track faculty members with diverse specialty interests have taught Transnational Law so far: Professors Reuven Avi-Yonah (international tax law), Michael Barr (financial institutions), James C. Hathaway (refugee and asylum law), Robert Howse (international trade), and Mathias Reimann, LL.M. '83 (international civil litigation). In addition, Timothy Dickinson, '79, an expert in international business transaction, teaches the course as an adjunct professor. Two visitors also have joined the ranks: human rights scholar Karima Bennoune, '94, now on the faculty of Rutgers University Law School, and Joel Samuels, '99, a specialist in public international law and international arbitration.

So far, our experience with the course has been mostly positive. As far as the students are concerned, the majority have responded with praise, both in the classroom and in their course evaluations. There is also reason to believe that the new course requirement has had a positive effect on the Law School's recruitment of students, many of whom express a strong interest in international law on their applications. On the faculty side, the course has intensified the interaction at least among those teaching international and comparative subjects. In particular, contributing to the teaching materials has led those involved to take a greater interest in what others are doing.

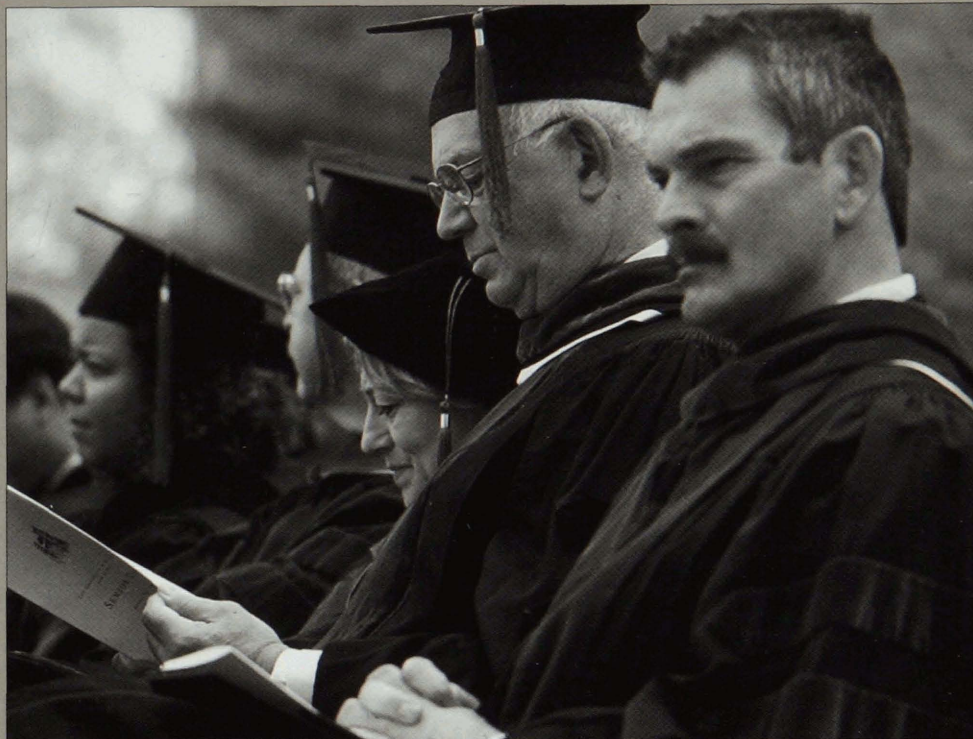
In addition, several fears have turned out to be unfounded. On the didactic level, we have come to realize that teaching across the traditional boundaries of public and private

international law is much easier than we had anticipated. The students have little or no trouble in that regard and simply address the problems put before them with all the tools available. As a logistical matter, it turned out that staffing four or five sections per year does not seem to be a serious problem. A growing number of professors with international and comparative interests are beginning to realize that teaching the course is a great opportunity to learn matters ultimately important for their own work.

Still, challenges and problems remain. Covering such broad material in very little time entails a constant struggle against oversimplification and superficiality. A major problem here is that the course is currently limited to merely two credit hours, a decision made in order to ensure the availability of teaching resources for the course and to make it easier for students to take the course in their first year so that they could build on it in their second and third years. Those who have taught Transnational Law agree with these students that two hours per week are insufficient. This is true not only because there is so much material but also because it is so different from the standard first-year fare that it takes more time to absorb it.

Another concern is the effect of the course on student interest in the traditional upper-class international and comparative law offerings. Ideally, the basic course should whet the student's appetite and thus lead to greater interest in the more specialized areas. Yet, it is also possible that many students will take only one international law course anyway, are satisfied with the required course, and proceed no further. Even in that case, however, at least all of them have learned an indispensable minimum. Working out these and other issues requires more experience, deliberation, and fine-tuning.

In the meantime, the positive effects of introducing Transnational Law as a mandatory course are already beginning to show. Teachers of upper-class courses are seeing a new, more internationally sophisticated generation of Michigan students. Previously, many students had either considered international issues complete mysteries that were best avoided or had at least regarded them as exotic idiosyncrasies that they approached with great trepidation. In contrast, those who have completed Transnational Law tend to see international dimensions as fairly normal challenges that need to be faced and tackled just like any others, albeit with particular circumspection. As Professor Catharine A. MacKinnon put it reporting on her experience in teaching Sex Equality, "Michigan students now handle the international materials in the course with perfect aplomb instead of looking like 175 turned off television sets at the first mention of the International Convention on Civil and Political Rights." This is exactly the way it should be.



Hessel E. Yntema Professor of Law Mathias W. Reimann, LL.M. '83, received his basic legal education in Germany (Referendar, 1978; Assessor, 1981). He is a graduate of and holds a doctorate (Dr. iur. Utr., 1982) from the University of Freiburg Law School, where he taught for several years. Reimann speaks at both national and international conferences on subjects related to international and comparative law. He publishes widely both in the United States and abroad in the areas of comparative law, private international law, and legal history.

Mathias W. Reimann, LL.M., '83, is shown here at far right at the Law School commencement last May. This spring's commencement will be the first to graduate Law School students whose legal studies have included a requirement that they study Transnational Law. Reimann, the Hessel E. Yntema Professor of Law, is one of the architects of the new course. Also shown are Thomas E. Kauper, '60, the Henry M. Butzel Professor of Law; Clinical Professor Grace Tonner, director of the Legal Practice Program; Clinical Professor of Law Donald N. Duquette, director of the Child Advocacy Law Clinic; and Clinical Assistant Professor Sacha M. Coupet.

IN DETAIL

- 58 *Matthew Meyer, '02: Walk in their shoes*
- 58 *Renato Luna Cayetano, LL.M., '66, S.J.D. '72*
- 60 *Dana M. Muir, '90, named Moskowitz Research Professor*
- 60 *The mirror of life stories*
- 61 *Class Notes*
- 65 *In memoriam*

RENATO LUNA CAYETANO, LL.M., '66, S.J.D. '72

Long-time public servant and active attorney Renato Luna Cayetano, LL.M. '66, S.J.D. '72, died in June of cancer. He recently had undergone a liver transplant.

Rene Cayetano, as he was often called, was a well-known figure in public life in the Philippines. At the time of his death, he was one of the 24 members of the Philippine Senate, and, had his health permitted, had been slated to assume the presidency of the senate.

A decade ago, he served as his country's top law enforcement officer, the counterpart of the U.S. Attorney General. He also had hosted a popular law-oriented radio show.

**Matthew Meyer, '02:
Walk in their shoes**

Matthew Meyer, '02, has put on many miles and come a long way since he encountered the streets of the Korogocho shantytown near Nairobi, Kenya. And he keeps going back, 10 years older and more realistic now, 10 years more seasoned and determined that people should not live their futures in such conditions.

Earlier this year the American Institute for Public Service recognized his antidote as worthy of one of its four Jefferson Awards for excellence in public service. Meyer won the Samuel S. Beard Award for the Greatest Public Service by an Individual 35 Years or Under for his work in founding and developing a sandal-making project to provide work and income for impoverished Korogocho residents. (While Meyer was still a law student, a story on his project in Nairobi appeared at 44.3 Law Quadrangle Notes 93-94 [Fall/Winter 2001].)

The other three Jefferson Award winners were: National Security Advisor Condoleezza Rice, who received the U.S. Senator John Heinz Award for Greatest Public Service by an Elected or Appointed Official; AIDs Medical Foundation founder Mathilde Krim, now founding chair and chairman of the board of the American Foundation for AIDS Research, who won the award for the Greatest Public Service Benefiting the Disadvantaged; and Los Angeles schools and homeless activist Anne Douglas, who was awarded the S. Roger Horchow Award for Great Public Service by a Private Citizen.

Meyer, appalled at the conditions he found in Korogocho, established the Akala Project there while he was an undergraduate at Brown University. The project provided jobs by producing footwear from castoff vehicle tires. A few years later the project was re-named the Wikyo Akala Project after Benson Wikyo, who



In 2001, then-law students Matt Meyer, right, and James Mangiafico displayed these sandals from the Wikyo Akala Project in a photo to accompany a story in Law Quadrangle Notes (Fall/Winter 2001, page 93).

had run it initially and died suddenly of an illness that would have been curable had the medicines been available.

Later, when Meyer was a student at the Law School, he established Ecosandals.com, the Internet-based marketing arm of the project that has made it known worldwide. Today the project sells its various models of sandals through an international network of volunteers.

Launching the Ecosandals.com Web site was like a starting gun for the enterprise, Meyer explained in remarks he prepared for the Jefferson Awards presentation ceremonies in Washington, D.C., last June. And fashioning the site offered the kind of respite that all law students seek:

“It was a week of work that we enjoyed, dealing with data structures as a diversion to the Michigan cold and the Law School assignment we should have been working on. We then launched the site to a few friends. Within 72 hours it had been seen by every continent except Antarctica (and I understand there are not many ISPs there). Within a couple months, every television station in Kenya had come to see us. Within six months, we were profiled globally on CNN and our little struggling outfit grew overnight to a 30-person operation.”

But “things are not easy now,” he continued. “Our workforce has decreased, and we are seeking funding to build a business training center. We are looking

for \$100,000 for a project that has survived on sandal sales, never fundraising more than its initial grant of about \$3,000. We are also looking for retail stores to sell our sandals in. If you know of any store, please let me know. Every sale makes a major difference to a resident in Korogocho.”

He continued:

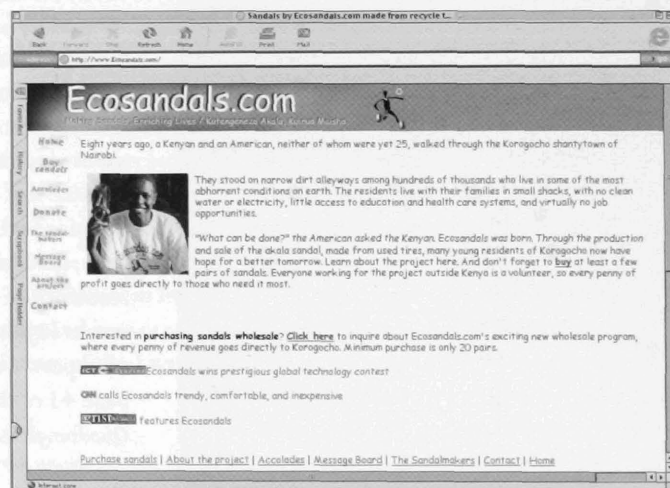
“This past September, when I was last in Kenya, I walked along virtually the same path I walked on 10 years ago when I first was exposed to a shantytown slum. It was disheartening, to be frank. You work your heart out for something for over 10 years. Deep down inside, I have that same youthful naivete, that belief that things really will change.

“But the reality is that things are getting worse, 660 million [impooverished people in the world, more than double the population of the United States] is a number that is increasing, not decreasing. When I see and hear of some of the people in this room, however, of the young boy in Wisconsin who sends hats around the country so cancer patients can live with just a little more dignity, of a young lady in South Dakota doing similar work, a girl in Texas who has gotten her classmates and peers to perform thousands

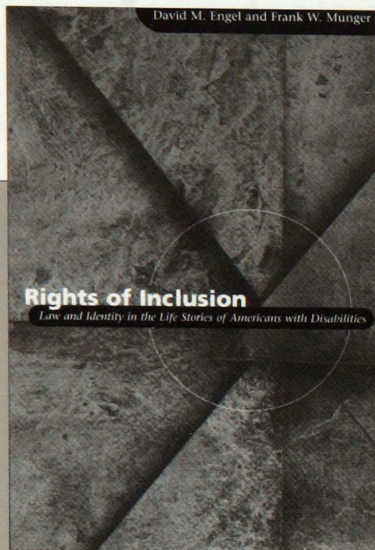
upon thousands of hours of community service, and a high school student in Tennessee who is teaching a community and a nation to read to its infants, they give me hope and inspiration.

“We are of the same generation, and increasingly the burden will fall on our shoulders. I am confident, with the technologies available to us today and the will of such youth, we can begin to make a dent, make some small difference in decreasing the 660 million.

“If we could, then we should. We can, so we must.”



The Ecosandals.com Web site's homepage, above, reflects the growth of the award-winning project.



The mirror of life stories

State University of New York at Buffalo Law Professors David M. Engel, '74, and Frank W. Munger, '68, collected the life stories of 60 interviewees for the findings they report in *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities* (University of Chicago Press, 2003). "This book began with a discussion in Frank Munger's kitchen shortly after passage of the Americans with Disabilities Act (ADA) in 1990," they note in their Preface. "One of us, Engel, was then engaged in a study of the parents of children with disabilities and their often difficult dealings with school district special education committees. The other, Munger, had a long-standing interest in civil rights and the debates that had engaged scholars and activists for two decades. Passage of the ADA, we agreed, presented an extraordinary opportunity to explore from the very outset what rights actually did and how they mattered, or did not matter, to their intended beneficiaries." Engel is co-author of *Law and Community in Three American Towns*, and Munger is editor of *Laboring Below the Line*.

Dana M. Muir, '90, named Moskowitz Research Professor in Business and Law

Dana M. Muir, '90, associate professor of business law in the University of Michigan Business School, has been named the Louis and Myrtle Moskowitz Research Professor in Business and Law for this academic year through August 2004.

The professorship honors a faculty member from the Business School and from the Law School on a rotating basis. In the recent past, Law School faculty members who have been named Moskowitz Professors have included James J. White, '62, and Merritt B. Fox. Business School faculty members who have been Moskowitz Professors include Scott E. Masten (a visiting faculty member at the Law School this year) and Lynda J. Oswald, '85.

Established in 1990 through a pledge from the Republic Bank of New York (now HSBC Bank USA), the professorship honors former Republic Bank Chairman Louis Moskowitz and the memory of his wife Myrtle Moskowitz. The gift also sponsors a periodic conference to probe an issue that reflects the interplay of business and law. The most recent conference, held last winter, focused on the resilience of capitalism in the aftermath of recent highly publicized business scandals. (A report on the conference begins on page 43 of the Spring 2003 issue of *Law Quadrangle Notes*.)

A member of the Business School faculty since 1993, Muir earned her B.A. from the University of Michigan as well as her J.D. She earned her M.B.A. from the University of Detroit. She practiced law with two law firms before joining the University. Since joining the faculty, she has been invited as a visiting law teacher at the University of Iowa and as a congressional fellow to the U.S. Congress. She also has been a visiting professor at the Law School.

Muir's research focuses on employment law and employee benefit issues, and draws heavily on her experience in human resources work. She twice has been a delegate to the White House/Congressional National Summit on Retirement Savings and has served as referee for national proceedings of the Academy of Legal Studies in Business.

The University of Michigan Board of Regents approved Muir's Moskowitz Professorship during the summer upon recommendations from the heads of the Law School and Business School and the provost of the University. "Dana Muir is a dedicated and conscientious researcher whose work has had a major impact, who has received numerous awards, and who is in very high demand at conferences, professional meetings, and legal hearings," the recommendation said.



From left, Robert Z. Feldstein, '63; James P. Kleinberg, '67; Melvin J. Muskovitz, '71.

1953

50TH REUNION

The Class of 1953 reunion was September 5-7

Co-Chairs: William K. Davenport; E. James Gamble; and John Gordon Hayward
Fundraising Chair:

Richard W. Pogue

Fundraising Committee: Joseph L. Hardig Jr.; Dean E. Richardson; and Walter H. Weiner

Committee: William A. Bain Jr.; Robert S. Beach; Martin L. Boyle; John B. Bruff; Thomas Friot Chenot; Harvey R. Dean; Richard M. Donaldson; Paul V. Gadola; Robert S. Gilbert; J. Kirby Hendee; Clarence Lee Hudson; Ernest E. Johnson; William A. Joselyn Sr.; Ward Lee Koehler; Richard P. Matsch; William T. Means; Donald J. Miller; George D. Miller Jr.; Thomas A. Roach; Richard M. Shuster; John S. Slavens; Gordon Harry Smith Jr.; Arthur L. Stashower; Richard C. Stavoe; Warren K. Urbom; and Carl R. Withers

1958

45TH REUNION

The Class of 1958 reunion was September 5-7

Committee: F. Loyal Bemiller; Eugene Hartwig; Ronald L. Dalman Sr.; and Theodore M. Utchen

1963

40TH REUNION

The Class of 1963 reunion was September 5-7

Co-Chairs: John W. Galanis and Herbert Kohn

Committee: Edward M. Dolson; Murray J. Feiwell; Robert L. Harmon; J. William Holland; Ira J. Jaffe; D. Michael Kratchman; Alan I. Rothenberg; Lawrence

K. Snider; Philip Sotiroff; Stefan F. Tucker; Thomas W. Van Dyke; A. Paul Victor; and Lawrence W. Waggoner

Robert Z. Feldstein, president of Robert Z. Feldstein PC and of counsel to the Troy, Michigan, firm of Kemp, Klein, Umphrey, Endelman & May PC, is included in *The Best Lawyers in America, 2003-2004*. He has been included in every edition of the publication since 1991.

1964

Rocque E. Lipford, a business attorney with Miller, Canfield, Paddock and Stone PLC in Detroit, participated last spring in the *Crain's Detroit Business/Deloitte & Touche PowerBreakfast: Series 2*, which gathered eight board members and executive advisors to discuss "The New Rules of the Game: How Boards Should Govern in a Post-Enron Age." Lipford is a member of Miller, Canfield's Automotive Industry and Corporate Compliance groups.

1967

Rochester, New York, lawyer **A. Vincent Buzard**, partner in the statewide law firm of Harris Beach LLP, was re-elected secretary of the 70,000-member New York State Bar Association (NYSBA) during the organization's 126th annual meeting in Manhattan. He has held various leadership positions in the state bar association during the past 20 years; he currently chairs the Special Committees

on Legislative Advocacy and Cameras in the Courtroom. A trial lawyer for more than 30 years, Buzard's practice focuses on complex civil litigation including commercial matters, and representing people who are seriously injured with a particular emphasis on those who have suffered brain injuries. He is a past president and former member of the Board of Directors of the New York State Head Injury Association, and a past recipient of the Adolf J. Rodenbeck Award for his outstanding contribution to the community and the profession.

James P. Kleinberg has been appointed by Gov. Gray Davis to the California Superior Court and is sitting in Santa Clara County. Prior to his appointment, Kleinberg was a litigation partner with Bingham McCutchen LLP, formed in 2002 through the merger of San Francisco-based McCutchen, Doyle, Brown & Enersen with Boston-based Bingham Dana. Kleinberg has been listed for a decade in *The Best Lawyers in America* in the business litigation section and has served as national chair of the Law School Fund.

Robert Lennon and his son, Patrick, have both joined the Kalamazoo office of Miller, Canfield, Paddock and Stone PLC. Robert Lennon is senior counsel and a member of the West Michigan Business Practice Group, concentrating

in business, finance, and real estate matters. Prior to joining Miller, Canfield, he was an attorney with the Kalamazoo office of Miller, Johnson, Snell & Cummiskey PLC. Patrick Lennon recently returned to Kalamazoo after serving as vice president and associate general counsel of WCI Communities Inc., a Florida-based real estate development company.

1968

35TH REUNION

The Class of 1968 reunion was September 5-7

Chair: Edward J. Heiser Jr.

Committee: William F. Bavinger III; Scott B. Crooks; Stephen B. Diamond; Peter C. Flintoft; A. Patrick Giles; Walter W. Kurczewski; and Daniel Van Dyke

1971

Melvin J. Muskovitz, has joined the Ann Arbor office of Dykema Gossett PLLC as a member of the Employment Law Section. He was previously a principal with the Ann Arbor-based firm of Pear Sperling Eggen & Muskovitz PC, where he represented public and private sector clients in employment litigation and traditional employment law matters. Muskovitz has also served as assistant city attorney for the City of Ann Arbor and as a trial attorney for the National Labor Relations Board. In addition, he serves in numerous professional and civic organizations.



From left, John L. Gierak, '76
Kevin M. McCarthy, '79
Howard B. Iwrey, '86
Cynthia Della Torre, '95

1973

30TH REUNION

The Class of 1973 reunion was September 5-7

Co-chairs: Steven F. Greenwald and George D. Ruttinger
Committee: Denis B. Binder; Samuel L. Bufford; Carlyle H. Chapman Jr.; Kathleen McCree Lewis; Quinn W. Martin; Mark F. Mehlman; Lawrence R. Moelmann; Eric A. Oesterle; Jeffrey M. Petrash; Leo H. Phillips Jr.; James Cotter Ruh; Frederick C. Schafrick; and Henk Weinmans

The Michigan law firm of Foster, Swift, Collins & Smith PC has announced the return of **Michael J. Schmedlen** to its Labor and Employment Department as Of Counsel. He had served as the Michigan Supreme Court Commissioner since 1988. Schmedlen began his association with Foster Swift in 1974 and was a shareholder from 1979 to 1988.

1976

Clark Hill PLC Attorneys at Law announced that **John L. Gierak** has joined the firm's Birmingham, Michigan, office. Gierak focuses his practice in the areas of labor and employment law, education law, and litigation. He represents public and private employers in all aspects of labor and employment law, and acts as general counsel to public school districts. Gierak was formerly with Dean & Fulkerson PC in Troy.

Peter R. Spanos has joined Burr & Forman as a partner to head the Atlanta, Georgia, office's Labor and Employment Practice. Spanos has 27 years of national experience in all aspects of labor and employment law, nonprofit, trade association representation, and construction law.

James R. Young has joined O'Melveny & Myers LLP as a partner in the firm's Washington, D.C., office. A former general counsel at Bell Atlantic and formerly Of Counsel at a major law firm's McLean, Virginia, office, he is a member of O'Melveny & Myers' Telecommunications Practice.

1977

James A. Vose has been named vice president of Briggs and Morgan Professional Association in Minneapolis, Minnesota. Briggs was founded in 1882 and has two offices in Minneapolis and St. Paul. The firm focuses on broad-based business practice and commercial litigation.

1978

25TH REUNION

The Class of 1978 reunion will be October 24-26

Chair: Dennis Kearn Egan
Committee: Debra A. Armbruster; John H. Beisner; Arthur R. Block; Barbara Bruno; Elizabeth Ann Campbell; Marcia K. Fujimoto; Jeffrey J. Jones; George Kimball; Donn A. Randall; Gregory La'Monte Reid; Miguel Angel Rodriguez; and S. Thomas Wiener

1979

Howard & Howard Attorneys PC in Kalamazoo, Michigan, has formed an Of Counsel relationship with McCarthy Law Group PLC of Portage, **Kevin M. McCarthy** principal. The McCarthy Law Group will continue as an independent law firm while maintaining a close working relationship with the attorneys and staff of Howard & Howard. McCarthy represents employers in virtually all aspects of labor and employment law and employment-related issues. Prior to starting his own firm this year, McCarthy was a member of Miller, Canfield, Paddock and Stone PLC's Kalamazoo office.

1980

Keefe A. Brooks, director and shareholder in Detroit, Michigan, based Butzel Long PC, has been listed in *The Best Lawyers in America, 2003-2004*. In addition, Brooks is one of the authors of *Civil Procedure Before Trial*, published by the West Group as part of the Michigan Practice Guides series. Co-authors for the book include Michigan Supreme Court Justice Maura Corrigan and Wayne County Circuit Court Judge William Giovan.

1982

John J. McEwan has been named general counsel of The Livesey Company, a real estate development and management

firm in Madison, Wisconsin. He previously was in private practice in Madison.

1983

20TH REUNION

The Class of 1983 reunion will be October 24-26

Co-Chairs: Thomas R. Fox and Patricia Lee Refo
Honorary Co-Chair: Barton R. Peterson
Committee: Walter S. Calhoun; Mark S. Demorest; Claudia Roberts Ellmann; Katherine A. Erwin; Victor P. Filippini Jr.; Stacy Lyn Fox; Michael J. Hainer; Peter A. Jackson; Broderick D. Johnson; Jodie W. King; Thomas R. Lotterman; Erica Anne Munzel; Barton R. Peterson; John C. Petrovski; David A. Rubenstein; H. Mark Stichel; Howard S. Suskin; and Carl A. Valenstein

1984

Lord, Bissell & Brook, Chicago, Illinois, partner **Kathryn Montgomery Moran** has been elected to the Board of Directors at the Steppenwolf Theatre Company. Moran joined Lord, Bissell in 1984, and is a partner in the Labor and Employment Practice handling matters in state and federal courts around the country, the Equal Employment Opportunity Commission, the Illinois Human Rights Commission, and other government agencies.

1985

Charles M. Greenberg of Pittsburgh, Pennsylvania, has become the president and CEO of PlayMaker Sports Advisors

LLC, a wholly owned subsidiary of Pepper Hamilton LLP. Greenberg will continue to be a partner at Pepper Hamilton and build on the firm's sports transactions practice, including representing purchasers of the Pittsburgh Penguins, Florida Panthers, Altoona Curve, and San Antonio Rampage, among others. He is also president and managing partner of the Altoona Curve, the class AA affiliate of the Pittsburgh Pirates.

1986

Howard B. Iwrey has joined the Dykema Gossett Antitrust and Trade Regulation Practice Area of the Litigation Practice Group as a member of the Detroit office. He is a past chairperson of the State Bar of Michigan Antitrust, Franchising, and Trade Regulation Section and has practiced previously with a major Detroit firm and in Washington, D.C. He received his J.D., *cum laude*.

1987

Mark A. Vickstrom has received his Master of Divinity from Princeton Theological Seminary. The three-year graduate degree is the basic professional degree for the ministry.

1988

15TH REUNION

The Class of 1988 reunion will be October 24-26

Committee: Elizabeth M. Barry; Bruce A. Courtade; Michael H. Cramer; Scott W. Fowkes; Douglas A. Graham; Charlotte Hawkins Johnson; Krista D. Kauper; Nicholas J. Stasevich; A. David Strandberg III; Aidan J. Synnott; and Maryelena Zaccardelli

1989

Karen M. Hassevoort has returned to the Kalamazoo office of Miller, Canfield, Paddock and Stone PLC as a senior attorney in the Litigation and Dispute Resolution Group. She first joined Miller, Canfield in 1994 and then left in 1998 to become an attorney and vice president in the Trust and Litigation Practice Group of National City Corporation.

Victor I. King has become general counsel of California State University in Los Angeles. He previously was a partner at Lewis Brisbois Bisgaard & Smith LLP in Los Angeles, where he specialized in business and professional liability litigation.

1991

Reed Smith Crosby Heafey LLP, San Francisco, California, announced the addition of **David Sturgeon-Garcia** as a partner in the Financial Services Litigation Practice. Sturgeon-Garcia specializes in financial services litigation with

a focus on defending lenders and other businesses in class actions and claims of unfair business practices. He has represented clients in claims ranging from false imprisonment, fraud, and unfair business practices to claims under the Truth in Lending Act, Real Estate Settlement Procedures Act, and the Racketeer Influenced and Corrupt Organizations Act.

1992

Michael G. Weisberg, of the Albany, New York, office of the international firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP, was the only attorney chosen by *The Business Review*, New York's capital region business newspaper, for this year's "40 Under Forty" list. The list honors "40 business professionals under the age of 40 whose business accomplishments, achievements, and commitments to the community identify them as people to watch in the business future of the capital."

1993

10TH REUNION

The Class of 1993 reunion will be October 24-26

Co-Chairs: Kimberly S. Alcantara; Oscar L. Alcantara; Colleen Barney; Daniel M. Israel; and Timothy L. Williams
Committee: Jonathan Barney; Bruce R. Byrd; Mark Malven; and Robert A. Mandel

The national law firm of Baker & Hostetler LLP announced that **Otto Beatty III** has been elected to partnership. Located

in the Columbus, Ohio, office, Beatty is a member of the Litigation Group and concentrates his practice in the areas of bankruptcy litigation, creditors' rights, and commercial litigation. A lifelong resident of Columbus, Beatty is recognized as one of the community's emerging business and community leaders.

1994

Brian J. Kelly has been elected partner in Frantz Ward LLP in Cleveland, Ohio. He focuses his practice on representation of management in labor and employment law cases before federal and state courts and administrative agencies. He also advises employers regarding human resources management and litigation prevention.

1995

Cynthia Della Torre of the Troy, Michigan, firm Kemp, Klein, Umphrey, Endelman & May PC was one of two speakers for the daylong seminar "Estate Planning and Probate" on April 25 in Southfield, sponsored by the Institute for Paralegal Education. Della Torre spoke on the fundamentals of will drafting, the basics of living trusts, and understanding basic probate tax procedures. She concentrates her practice in exit planning, business planning and transactions, estate planning, and post-death administration.



From left, Kevin M. Zielke, '95; Christopher J. McCleary, '00; David O'Brien, '00; Catherine T. Dobrowitsky, '01; Bridgette A. Carr, '02.

Dykema Gossett PLLC recently elected **Kevin M. Zielke** as member of the Detroit office. Zielke joined the Litigation Practice Group and concentrates on an array of construction matters ranging from drafting contracts, monitoring projects, and advising construction clients on the litigation of construction disputes in court and before arbitration panels. He is also experienced in complex business disputes and contract matters in a variety of industries including business torts, sales commission disputes, franchise disputes and terminations, real estate litigation, and claims under Michigan's Uniform Commercial Code.

1997

Amy E. Metz has joined Vercruyse Murray & Calzone as an associate practicing in the area of labor and employment law. She is a member of the State Bar of Michigan and the Federal Bar Association.

1998

5TH REUNION

The Class of 1998 reunion will be October 24-26

Committee: Marcia A. Bruggeman; Tung-Ming Chan; David S. Gingold; Erica D. Klein; Robert J. Maguire; James E. Myers Jr.; Mercedes Kelley Tunstall; and Gillian C. Wood

Susan E. Mortensen has joined Weil, Gotshal & Manges LLP as an associate in the Litigation Department of its Miami office. She previously was an associate with Meyer, Hendricks & Bivens PA, a Phoenix-based litigation firm.

2000

Christopher J. McCleary has joined the Ann Arbor office of Miller, Canfield, Paddock and Stone PLC as an associate in its Business and Finance Group, where he represents a broad range of companies, including emerging growth clients in the software, e-commerce, and biotechnology industries. He specializes in advising private companies on corporate and transactional matters including corporate formation, securities-related matters, venture capital financings, and mergers and acquisitions. Prior to joining Miller, Canfield, McCleary was an associate attorney with Wilson Sonsini Goodrich and Rosati, California.

David O'Brien has joined the Ann Arbor office of Miller, Canfield, Paddock and Stone PLC in its Litigation and Dispute Resolution Practice Group. Prior to joining Miller, Canfield, O'Brien was an associate with Goodwin Procter LLP, Boston, Massachusetts.

2001

Catherine T. Dobrowitsky has joined the Detroit office of Miller, Canfield, Paddock and Stone PLC as an associate in its Litigation and Dispute Resolution Practice Group and the Corporate Compliance and Criminal Defense Group. Prior to joining Miller, Canfield, Dobrowitsky served as a law clerk to Judge John Feikens, '41, of the U.S. District Court for the Eastern District of Michigan, Southern Division.

2002

Bridgette A. Carr has joined the Ann Arbor office of Miller, Canfield, Paddock and Stone PLC as an associate in the Health Care Group, focusing primarily on matters pertaining to HIPPA.

IN MEMORIAM

'21	Ding Sai Chen		J. David Owens	2/12/2002
'30	Joel Kell Riley	1/7/2003	Donald A. Tews	3/15/2003
'34	Brainard S. Sabin	2/24/2003	'51 Theodore E. Hoeflinger	4/8/2003
'36	Curtis R. Henderson	4/29/2003	George A. Leonard	8/22/2002
	David Erwin Nims Jr.	2/28/2003	Oliver Glenn White	2/25/2003
'37	Charles W. Allen	2/7/2003	David P. Wood Jr.	1/26/2003
	George E. Clay	9/10/2002	'52 Gordon I. Ginsberg	8/24/2002
	James V. Finkbeiner	4/15/2003	Edmund D. McEachen	5/29/2003
	Frank A. Orban Jr.	4/12/2003	William J. Morriss	1/19/2003
'38	Samuel A. McCray	5/31/2003	'53 Arthur Leo Biggins	4/27/2003
	Edward J. Ruff	2/1/2003	Gene E. Overbeck	5/1/2003
'39	A.H. Aymond	8/30/2002	John S. Ryder	6/8/2003
	Kenneth F. Berry	4/26/2003	John Campbell Thomas	2/21/2003
	Robert L. Burhans	1/16/2002	James W. Wright	2/10/2003
	Benjamin W. Jayne	4/23/2003	'54 Ortha O. Barr Jr.	3/24/2003
	Douglas K. Reading	5/26/2003	John Galien Jr.	4/28/2003
'41	Robert L. Irvin	1/27/2003	'56 Ernest M. Anderson	3/3/2003
	Samuel I. Krugliak	4/6/2003	John R. Potter	1/3/2003
	John Henley Maynard	4/3/2003	'57 Donald F. Doge	4/28/2003
	Sheldon Silverman	3/14/2003	John N. Washburn	3/17/2003
	Richard I. Steiber	3/3/2003	'58 David Pence Huthwaite	12/13/2002
'42	John K. McIntyre	12/18/2002	'59 Philip C. Thorpe	5/24/2002
'46	James M. Sullivan	4/24/2003	'60 Frank S. Pollack	1/17/2003
'38	Jack T. Redwine	6/3/2003	'61 Peter A. Bernard	8/28/2002
'48	Harry Kirk Denler	7/17/2002	'63 Renato L. Delafuente (LL.M.)	10/18/2003
	George H. Gangwere	6/13/2002	James Edward Gauger	2/13/2003
	Merrill N. Johnson	3/3/2003	'65 Eugene W. Lewis III	1/10/2003
	Chester Lloyd Jones	3/3/2003	Benjamin Lombard Jr.	3/27/2003
	James Dorr Kittelton	4/27/2003	'66 Michael W. Grice	2/24/2003
	Charles R. Ross	4/24/2003	Lawrence R. Van Til	3/16/2003
	Robert J. Shaw	4/26/2003	James C. Westin	2/3/2003
	Charles J. Sullivan	2/12/2002	'67 David H. Raitt	2/9/2003
	Warren C. White	3/7/2003	'69 Robert Y. Chulock	2/25/2003
'49	Lewis A. Carroll	2/20/2003	'73 Robert Hill	1/25/2003
	John N. Ehlers	3/20/2003	'75 Roger Alan Rapaport	4/22/2003
	Robert A. Fisher	4/30/2003	James R. Vrataric	1/21/2002
	John W. Gorn	12/13/2003	'80 Thomas E. Clinton	7/7/2002
'50	Paul E. Anderson	2/2/2003	Franklin Nichols III	6/28/2002
	Paul W. Cook	10/21/2002	'82 Christine Marie Anderson	12/23/2002
	Arthur E. Moskoff	5/19/2003		



Human Rights *VISIONARY*

Hersch Lauterpacht

By A. W. Brian Simpson

**Human rights visionary
Hersch Lauterpacht**

How did it come about that Hersch Lauterpacht, then the Whewell Professor of International Law in Cambridge, achieved the distinction of being considered not quite “sound” by the Foreign Office on human rights?

The following essay is based on the Lauterpacht Memorial Lecture that the author delivered last fall at the British Institute of International and Comparative Law. A version of this essay also is forthcoming as “Hersch Lauterpacht and the Invention of the Age of Human Rights” in 119 Vol. 1 Law Quarterly Review (January 2004). Hersch Lauterpacht, who died in 1960, was a Cambridge professor and renowned international law scholar whose ideas influenced worldwide development of notions of human rights.

In May 1954 a replacement had to be found for Sir Arnold McNair, who did not wish to continue on the International Court of Justice. The British Foreign Office got in touch with the Lord Chancellor, the awful Lord Simonds, who took the view that no English judge would take the job since the pension was inadequate.

The Minister of State, Selwyn Lloyd, wrote to him on the subject, pointing out that there were a number of possible candidates among academics — their pension arrangements were no problem. The letter explained that “of these, by far the most eminent is Professor Hersch Lauterpacht, Q.C., of Trinity College Cambridge. He is not British by origin, but he has been naturalized for more than 20 years, and continuously resident in the country upwards of 30. He is very much liked by all who know him, and despite his continental origins, his outlook on legal matters reflects mainly the Anglo-Saxon approach. Owing to his origins, he would not perhaps be what we should regard as entirely sound from our point of view on matters of human rights; that is to say, his bias would be to take perhaps too wide a view on the topic. However, irrespective of the character of the British judge this is a subject which we would always wish to keep away from the court, in any event. Therefore, I doubt whether the point matters.”

How did it come about that Hersch Lauterpacht, then the Whewell Professor of International Law in Cambridge, achieved the distinction of being considered not quite “sound” by the Foreign Office on human rights?

The story begins at a 1942 meeting of the Grotius Society, the only British intellectual institution then existing that brought together academics and practitioners. Lauterpacht addressed the society on December 7, 1942, on “The Law of Nations, the Law of Nature, and the Rights of Man.” He argued that although the conception of the law of nature long predated explicit reference to the existence of natural and inalienable rights, yet in substance theories of natural law had, even in the ancient world, incorporated ideas that were, in the Enlightenment, to find expression in

assertions of individual rights. He concluded his paper by arguing that “if the enthronement of the rights of man is to become a reality, then they must become part of the positive law of nations suitably guaranteed and enforced.”

So far as I am aware, this was the first paper or lecture ever devoted to this subject and delivered in England, either before a learned society or in a university setting. Rare exceptions apart, such as the Catholic Richard O’Sullivan, common [common law system] lawyers of this period had not the slightest interest in theories of natural law, or in the enunciation, for use in domestic law, of catalogues of individual natural rights, much less in their international protection.

One wonders what induced Lauterpacht to choose so unpromising a topic? The clue is the reference to “the enthronement of the rights of man.” This refers to a message that had been given by Winston Churchill to the World Jewish Congress in October 1942, when he had referred to “the enthronement of human rights” as a war aim. It is, I think, pretty obvious that growing knowledge of what was happening to the European Jews underlay his choice of subject. The *Jewish Chronicle* reported the murder of two million Jews on December 11, 1942, and on December 17 Anthony Eden made a statement in the House of Commons, the House rising to stand in silence in response to this. The nation state had signally failed to provide protection; the international community must fill the breach.

Lauterpacht’s legal writings adopt a severely professional style, and his paper, typically, makes no reference to the horrific events that were, at the time, overtaking the European Jews, and indeed his own family back in Poland. Only a niece was to survive the war; his parents, his brother and sister, and all but one of their children — I do not know how many there were — were murdered, and in all probability already had been murdered. When he learned of their fate I do not know, but by April 1946 he must have received some information, since he was involved

in obtaining a visa for his niece to come to England. It is characteristic of Lauterpacht that his first essay on the subject of human rights is of a theoretical rather than a practical nature.

The Grotius Society was not to return to the position of the individual in international law until 1944, when Vladimir R. Idelson read a paper on "The Law of Nations and the Individual." Idelson, a Russian Jew by extraction, was a highly successful King's Counsel in practice at 13 Old Square, Lincoln's Inn. It was Lauterpacht who responded to Idelson's paper, and introduced the subject of the international protection of human rights. Idelson had directed his paper in part to discussion of the hoary old dogma that individuals were merely the objects of international law, not the subjects. Lauterpacht thought perhaps too much attention was devoted to this dogma:

"... if international law were now to provide for the so-called fundamental rights of man by means of an international convention enforceable at the instance of states, I suppose we would say that individuals would be the objects of international law, but I am not sure that would be a very satisfactory achievement. It could not be the final achievement. This must consist in the recognition of the natural rights of man — his right to equality, to freedom of opinion and expression, to personal freedom conceived as the right to government by consent — as an enforceable part of the law of nations."

In response to Idelson's paper, a committee was set up under Lord Porter to consider international law and the rights of the individual. It reported on June 3, 1945, recommending an attempt to proceed along the lines of the International Labor Organization by small stages.

Lauterpacht was not, however, involved in this initiative. Instead, he had been writing his book on the subject and drafting an international bill of rights. By the autumn of 1943 Lauterpacht had largely completed his book, *An International Bill of the Rights of Man*, published by Columbia University Press in 1945 with financial support from the American Jewish Committee. By the time it appeared, the notion that the protection of individual rights was a war aim had become widely accepted. The book included the text of Lauterpacht's bill. During the war, a number of bills of rights had been produced and published, notably by H.G. Wells and Ronald MacKay in 1940, and by a committee of the American Law Institute in February 1944, so Lauterpacht's bill was not the only one offered.

But nobody had ever published an up-to-date study of the subject that not only embodied clear and specific proposals as to the contents of a bill of rights, but also seriously addressed the

question of what was to be done with such a bill of rights once its substance was settled, and faced up to the grave problems that were bound to confront an attempt to establish institutional mechanisms for implementing such a bill. Lauterpacht's book was innovative in that it faced up to problems of implementation and proposed solutions.

The approach Lauterpacht adopted was radically different from that which was to prevail within the Foreign Office, under the dominating influence of the Legal Adviser, Eric Beckett. Beckett had a bee in his bonnet about considering issues in what he thought was the correct order. He took the line that the first issue to be addressed, if any progress was to be made, was the definition of the rights and their limitations. Only when this had been achieved should issues of implementation and enforcement be considered.

Lauterpacht began at the other end; the critical issue was to settle what institutional arrangements could and ought to be established if the international protection of human rights was ever to become a reality. Definition was of secondary importance.

In his book, Lauterpacht argued that the avowed purpose both of the first and second world wars had been, to quote Churchill, "the enthronement of human rights." He explained the adoption of this war aim by the recognition that protection of fundamental rights and democracy was a prerequisite to international peace, a popular if slightly suspect way of linking human rights protection to the primary function of the United Nations organization. He argued for protection in international law, since no system of law, whether international or domestic, was "true to its essential function" unless it protected "the ultimate unit of all law — the individual human being." He argued that adopting an international bill of rights that did not impose international obligations would convey the false impression of progress, and be essentially a step backwards, and would even "come dangerously near a corruption of language."

He then, and this was typical in his work on the subject, spelled out, very pessimistically, the grave difficulties that were likely to impede the attempt, if it were to be pursued, to develop an obligatory international bill of human rights.

Lauterpacht was well aware of the traditional skepticism of English lawyers as to the value of abstract declarations of the rights of man. It would be difficult to overemphasize this skepticism, and worth remembering that half a century later the United Kingdom still did not possess a domestic bill of rights. So for the book he wrote an entirely new chapter, which is entitled "Natural Rights in British Constitutional Law and Legal Theory."

Lauterpacht argued that the reason, historically, why Great Britain was out of line with most other states was the result of the fact there had evolved a tradition of respect for English liberties which, as it were, made declarations of the rights of man seem unnecessary.

There was, he argued, no compelling reason why such a declaration of rights might not be adopted in Great Britain without it forming part of a comprehensive written constitution. He then addressed the problem of protecting such a declaration against parliamentary sovereignty, and the chapter concludes with a Delphic passage that does not really explain how this is to be brought about.

The text of an International Bill of the Rights of Man, together with a commentary upon it, appears in Part II of the book. At this time the United Nations as a political organization had not yet been established, but Lauterpacht assumed it would be. He envisaged that his bill would be adopted by the United Nations as “part of the fundamental constitution of international society and of their own states.” His bill was offered as a legal document, not a political manifesto. So it was intended both to confer definite and enforceable rights and duties in international law between states, and to confer rights in international law on individuals.

It necessarily followed that it had to be enforceable by some form of international procedure, over and above whatever machinery existed in the domestic legal systems of states. Furthermore, its adoption would require a substantial sacrifice of state sovereignty, even though its provisions might conform to practices followed in civilized states already.

Lauterpacht approached the subject as a scholar, indeed as a legal scientist, qualified to work it all out for himself, and impose his views on the international community by the pure force of their own rationality. Far and away the most important part of his book is its treatment of enforcement of an international bill of rights. Lauterpacht’s view on this was based on three principles:

- The first was that normal enforcement must be a matter for domestic law, and so incorporation of his bill into domestic law was to be mandatory.
- The second was that there must be established a permanent international authority, which would be concerned not simply with abuses of rights, but with ongoing supervision and monitoring. This body, he argued, must be neither a political body nor a judicial body; he rejected the idea of international judicial review as both impracticable and politically impossible.
- His third principle was that this authority must possess an ultimate and effective power to enforce the bill. Lauterpacht

was opposed to the idea of a bill of rights whose enforcement would depend upon a right of individual state intervention. His solution was to place the international bill of rights under the guarantee of the United Nations and recognize it as an integral part of the law of nations.

The United Nations was established in 1945, its charter contained numerous references to human rights, and the body that was going to be primarily involved was the Human Rights Commission. The powers of the organs of the United Nations with regard to the protection of human rights were, however, limited by Article 2 (7):

“Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under chapter VII.”

The massive body of papers in the Foreign Office archives on the significance of this provision bears witness to its profound and indeed intentional obscurity. But it certainly did not prevent the United Nations, once up and working, from drafting some form of international bill of rights, and indeed it was always assumed it would do so.

Given the fact that Lauterpacht was the only international lawyer of repute who had devoted serious attention to the idea of an international bill of rights, it might be expected that he would play some direct part in the United Nations negotiations. But this was not to be, and Lauterpacht was thereafter positioned as an outsider.

Nonetheless, Lauterpacht developed, from the summer of 1947 onwards, a powerful attack on the interpretation of the charter that was adopted by the Human Rights Commission, by the Economic and Social Council, and by Eric Beckett and the British Foreign Office, and which came to be accepted by the United States.

In his book, Lauterpacht argued that the avowed purpose both of the first and second world wars had been, to quote Churchill, “the enthronement of human rights.”

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He also attacked the manner in which the Human Rights Commission was proceeding. In particular, the Human Rights Commission had no power to do anything at all about the numerous petitions that were already arriving from individuals and groups who imagined that the United Nations was in the business of actively protecting human rights. This view was adopted by the Economic and Social Council on August 5, 1947: “. . . neither the Commission on Human Rights nor the Commission on Women had any power to take any action in regard to complaints concerning human rights or the status of women.”

So such petitions were merely stored away to collect dust in the archives.

Lauterpacht accepted none of this. His argument, first presented in a course at The Hague in the summer of 1947, was that the provisions in the

concerned — to the Economic and Social Council. There is nothing to prevent it from setting up an effective machinery for that purpose.”

He also strongly criticized the decision that the members of the Human Rights Commission should be governmental representatives. This reproduced his idea that the monitoring body should be neither judicial nor political in character.

And he opposed the Commission plan first to draft a declaration of principles because he believed the adoption of a declaration without some means of enforcement would represent “mere lip service to a cause which was proclaimed as one of the major purposes in which the United Nations were engaged.”

Excluded from direct involvement in the United Nations negotiations, Lauterpacht turned to the International Law Association when it held its first postwar conference in Cambridge in 1946. Among the attendees was Rafael Lemkin, inventor of the concept of genocide, and revulsion at the recent history of Europe was much in the air. Professor Paul de Pradelle read a paper on the possible modification of the United Nations Charter, and the conference adopted resolutions that the Charter should be amended to include “the fundamental and everlasting rights of personality, namely the right to possess a nationality, the right to justice, and the right of expressing fully every opinion.” It also passed a resolution condemning executive detention in peacetime.

The next conference took place in Prague in September 1947, and Lauterpacht used the opportunity to set out his view in a paper delivered on September 2. He received support and the association adopted a number of resolutions calling on the executive committee to set up a committee or committees to study, in relation to human rights, the legal effects of the Charter and of Article 2 (7), the contents and enforcement of an international bill of rights, and the interpretation and enforcement of the human rights provisions of the peace treaties. The Secretary General was to be told that the Association thought the submission of a bill of rights to the General Assembly should be postponed until 1950, and proceeded by objective study. The Association also wished to associate itself with a declaration by the Economic and Social Council of June 21, 1946, that “the purpose of the United Nations with regard to the promotion and observance of human rights, as defined in the Charter . . . can only be fulfilled if provisions are made for the implementation of human rights, and for an international bill of rights.”

In effect, Lauterpacht had hijacked the International Law Association. Two committees were established, one confined to study of the peace treaties. Lauterpacht became the *rapporteur* for

the other committee, a general committee on human rights that had 30 members. Between September 1947 and January 1948 Lauterpacht worked on a report that in effect simply set out his views as stated in his Hague course. The report was formally adopted by the Association at its 43rd conference, in Brussels August 29 – September 4, 1948. But before this, Lauterpacht also submitted his preliminary report to the Commission on Human Rights, and thus became more closely involved in the United Nations negotiations. This is the most trenchant statement of his views on the interpretation and significance of the Charter:

- His report argued that the Commission was wrong in its 1947 resolution that it possessed no competence to take action over petitions. It could take any action short of intervention.
- Commission composition is wrong: “The Commission is unlikely to attain the full stature of moral authority and practical effectiveness unless, in addition to any representatives of governments, it includes private individuals chosen irrespective of their nationality, through a selective process which in itself would provide a guarantee of impartiality.”
- Enforcement is the crucial problem for an international bill of rights. While a mere declaration might be useful “as an expression of deep historical experience and of the moral sense of mankind,” such a declaration without any enforcement mechanisms “would foster the spirit of disillusionment and, among many, of cynicism. The urgent need of mankind is not the recognition and declaration of fundamental human rights but their effective protection by international society.”
- He attacked the Commission’s decision to draft a convention to which states that wished to could accede. This would be useless unless it embodied means of enforcement and was adopted by many countries.

At this point there existed a United Nations draft declaration and a draft covenant. Lauterpacht had no use at all for either, but he did not criticize the texts in detail, basically because he thought the way in which the operation had been conducted was fundamentally misconceived — his idea was that a body of expert international lawyers would undertake the task of studying and drafting, the Commission providing guidance of a political nature. One can only speculate, but I think it is clear that Lauterpacht wanted to be one of the international lawyers engaged in this work. His presentation to the United Nations of his own draft was a way of showing his fitness for the task, and by working as *rapporteur* through and with the support of the International Law Association he could present his views as being supported by at least most of the world’s expert international lawyers. The timing was unfortunate in that his report had not yet been formally

adopted, but that could not be helped, and he must have thought it urgent to persuade the Commission to amend its ways. But from a political point of view all this had, nevertheless, come far too late; there was not the least hope that the Economic and Social Council would engage in some radical transformation of the way in which it and the Human Rights Commission would go about their business, or the assumptions under which the work of drafting the bill of rights would proceed. Had the U.S.A. or the U.K., or even I suppose the U.S.S.R., adopted his views the story might have been different, but none of them did. Conceivably adoption by a number of the lesser powers might have been sufficient. But this did not happen, and the Commission continued as before. His was a voice crying in the wilderness.

In 1948 a new opportunity for Lauterpacht to become directly involved in human rights negotiations began to develop. In May of that year The Hague Congress was convened, an unofficial gathering organized by the European Movement that was pressing for the establishment of a federal Europe. This called for the establishment of a parliamentary assembly, and for the production of a European charter of human rights. Partially in response to the pressure from federalists, the Council of Europe was established in March 1949. The European Movement held another conference in Brussels in 1949. Lauterpacht attended, along with three other lawyers from England, one being the American Arthur Goodhart, and the others David Maxwell-Fyfe, whom Lauterpacht would have known from Nuremberg days, and J. Harcourt Barrington.

“Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

The Hague Congress had established a juridical commission, the Drapier Commission, and in March 1949 it put forward proposals for a Charter of Rights and a European Court of Human Rights. Lauterpacht was certainly involved in the work of the Commission, but did not, so far as I have been able to discover, play a particularly active role; he probably merely acted as a consultant, like a number of other jurists. As with the practical United Nations negotiations, and earlier with the Grotius Society's Porter Committee, he remained essentially an outsider, and perhaps this was by choice. Most of the work was done by Harcourt Barrington, who was paid 100 guineas, which he received, in conformity to English legal tradition, after prolonged delay.

On July 9, 1949, after establishment of the Council of Europe on March 17, 1949, the Brussels proposals were considered at a meeting of the Grotius Society, and Lauterpacht read a paper on "The Proposed European Court of Human Rights." This meeting was attended by Harcourt Barrington, who, referring to the scheme of enforcement, paid tribute to Lauterpacht:

"I would like to take the opportunity of acknowledging our great debt to him, because we did quite shamelessly borrow many ideas from his draft Covenant on the Rights of Man prepared for the International Law Association in 1948."

He further explained that "there is a body of opinion I favor of having the rights described very shortly with a view to building up by judicial decisions as we go along a kind of common law on the subject, and there is another body of opinion which favors a detailed definition of the rights. As far as the draft is concerned, those who favor a short description have prevailed."

Lauterpacht's paper commented on the proposals and repeated his view that "an international court, conceived as the primary or exclusive instrument for the enforcement of human rights, is neither practicable nor desirable." But he was prepared to go along with the Brussels scheme because the center of gravity lay with the Commission: "The jurisdiction of the European Court would thus be in effect of a residual character. It would be invoked only after the means of settlement had failed."

It is clear that the institutional structure that eventually emerged in the European Convention was partially derivative of Lauterpacht's draft Convention. And, whether the Foreign Office liked it or not, there was established both a meddling Commission and a Court of Human Rights. But the capacity of the Commission to meddle, and of the Court to invade state sovereignty, were much reduced by making acceptance of the right of individual petition, and the jurisdiction of the Court, optional. Even so,

to the horror of ministers, colonial civil servants, and Field Marshal and Governor Sir John Harding, the United Kingdom was subjected to serious meddling indeed, including an on-the-spot investigation over the methods used to suppress the EOKA [Greek Cypriot group favoring union with Greece] insurrection in Cyprus in 1955–59.

If we believe the judges in Strasbourg, and I am not suggesting that we do not, human rights violations are taking place in all the Western democracies, as well as in Central and Eastern Europe, not to mention the former Soviet Union, on a daily basis, and this is only partially the result of moving the goal posts by interpreting the Convention as a living instrument. Absolutely nobody thought that this was the situation in the 15 signature states back in 1950, and Lauterpacht was certainly not an exception to the general mood of self-congratulatory optimism. He never imagined that the Strasbourg institutions would become intrusive. One wonders what he would have made of Strasbourg of today, with Secretariat and Court at risk of destruction in part by the living instrument they have developed, and by the huge extension of the coverage of the Convention, as well as by the use of the Convention by individuals who, back in the 1950s and even the 1970s and 1980s, would have simply accepted their lot.

So far as the United Nations negotiations were concerned, Lauterpacht was never to play any direct role in them; he was involved in the International Law Commission between 1951 and 1954 on the law of treaties, and in 1954 he became a judge on the International Court of Justice. He died in May 1960.

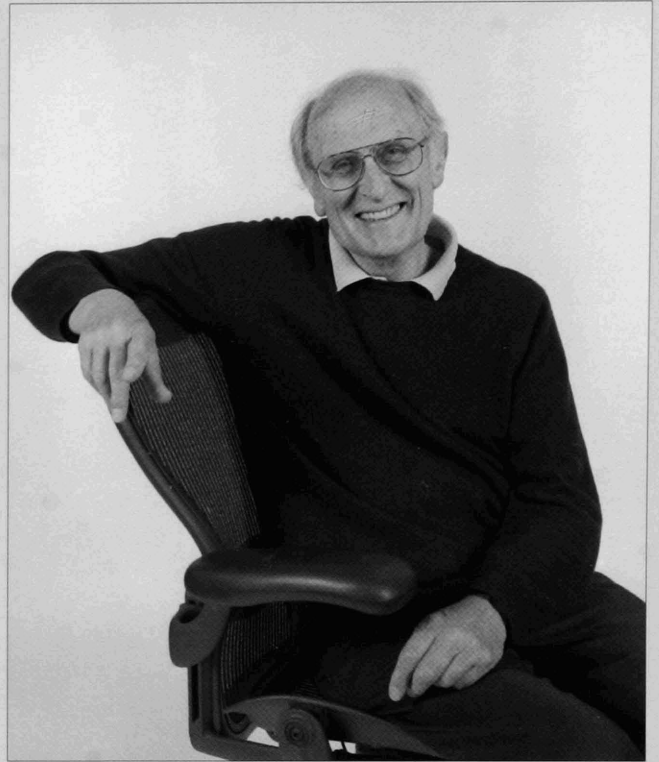
So, at the end of the day, what is one to say about Lauterpacht's role in all this? I feel that Sir Gerald Fitzmaurice got it more or less right in a talk published in the *British Yearbook of International Law* in 1979:

"A few words, first, of a personal nature recalling Sir Hersch Lauterpacht's work on human rights, in the course of which he did so much to turn that subject from something of a largely ideological character — more an aspiration than a reality — into a judicial concept having practical possibilities. It is certain, however, that his preoccupation with it sprang from a different part of his personality from that which made him — by any reckoning — one of the most eminent jurists of our time, and without a peer in the international field. Some of his preoccupation must have derived from his origins in Austrian Poland in the years before World War I."

The basic claim that Lauterpacht's contribution was to establish, by an analysis of options and problems, the practical possibility, given appropriate institutions, of the international

protection of individual human rights is surely right. As he several times said, the core of the problem of human rights was enforcement. He would surely have been pleased that the Strasbourg Court has so often insisted that remedies for the violations of human rights must be practical and effective, not theoretical or illusory. And, as I hope I have shown, he, albeit always an outsider, played a significant part in laying the foundations of the European system that has shown itself capable of achieving this ideal.

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STRANGERS AND BROTHERS:

A HOMILY ON
TRANSRACIAL ADOPTION

BY CARL E. SCHNEIDER

And, behold, a certain lawyer stood up, and tempted him, saying, Master, what shall I do to inherit eternal life? He said unto him, What is written in the law? . . . And he answering said, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy strength, and with all thy mind; and thy neighbour as thyself. And he said unto him, Thou hast answered right: this do, and thou shalt live. But he . . . said unto Jesus, And who is my neighbour?

Luke 10:25-29

This essay originally was delivered as the John FitzRandolph Lecture at Whittier Law School on September 10, 2002.

Introduction: A parable and a history

The common law speaks to us in parables. Ours is *Drummond v. Fulton County Department of Family and Children's Services*. Just before Christmas 1973, a boy named Timmy was born to a white mother and a black father. A month later, his mother was declared unfit, and the Department of Family and Children's Services placed Timmy with white foster parents — Robert and Mildred Drummond. The Drummonds were “excellent” and “loving” parents, and Timmy grew into “an extremely bright, highly verbal, outgoing 15-month baby boy.”

Then the Drummonds asked to adopt Timmy. The Department's reviews of the Drummonds' devotion to Timmy remained enthusiastic, if condescending, but the Department told the Drummonds that Timmy needed a black family. The Drummonds “stated they could let Timothy go to a young, energetic, religious, adoptive couple. They expressed primary concern that he not be moved from their home to another foster home . . . They feel that separation from Timothy will tear their hearts out but that they can do it because it would be best for Timothy in the long run.”

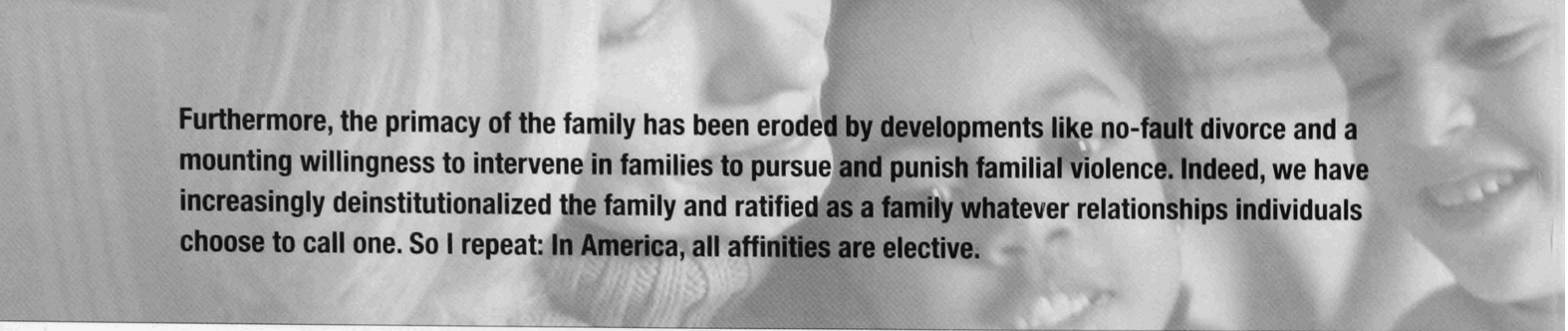
In August 1975, a Department evaluation concluded that the Drummonds had given Timmy “excellent care” and had “accepted a mixed race child and . . . handled the attendant problems well.” In September, a court terminated Timmy's parents' rights and freed him for adoption. The Drummonds said they would “do anything we [the social workers] suggested to go through a series of intensive interviews with black caseworker [sic] to help them understand the black culture and heritage, to read books and other literature in order to educate themselves in the black experience, and to talk with their own black friends at work about their feelings and experiences about being black.” The

social workers acknowledged that “[t]he fact that there presently are no appropriate homes for Timmy, and the fact that he might also experience some rejection by some members of the black community due to his ‘whiteness’ is [sic] also a consideration.” In November 1975, when Timmy was almost two years old, the Department told the Drummonds “that Timmy will be better off adopted by a black couple.”

The Drummonds sued to be allowed to adopt, and after their odyssey through the Georgia and federal courts, the Fifth Circuit *en banc* (on November 28, 1977, when Timmy was almost four) held against the Drummonds, since “the difficulties inherent in interracial adoption” justify the consideration of “race as a relevant factor”

Timmy Drummond is emblematic of no small number of children adoption agencies have thought should be adopted only by a black couple. Historically, agencies generally prevented parents from adopting interracially. But in the late 1950s and early 1960s, the racial climate shifted and minority children's need for homes was pressing. By the middle to late 1960s, “transracial adoption seemed to be the ‘in’ thing for progressive agencies.” However, there was soon a “counterrevolution . . . sparked by the National Association of Black Social Workers,” which vowed to “work to end this particular form of genocide.” “This counterrevolution cut transracial adoption by 39 percent in a single year, just when the movement seemed to be growing rapidly.” The critics of transracial adoption argued that the only legitimate answer to the problem of unplaced black children was to find black parents by, for example, having adoptions of black children handled only by black social workers, subsidizing adoptions of black children by black parents, and recognizing informal adoption by black extended families.

Despite efforts of this kind (Peter Hayes, “Transracial Adoption: Politics and Ideology,” 77 *Child Welfare* 301, 304 [1993]), black children languished in the limbo of foster care. In 1994, Congress passed, and in 1996 it tried to sharpen, the Multiethnic Placement



Furthermore, the primacy of the family has been eroded by developments like no-fault divorce and a mounting willingness to intervene in families to pursue and punish familial violence. Indeed, we have increasingly deinstitutionalized the family and ratified as a family whatever relationships individuals choose to call one. So I repeat: In America, all affinities are elective.

Act (MEPA), which sought to keep searches for black adoptive parents from preventing black children from being adopted at all. MEPA, however, seems to have made it scarcely easier for white parents to adopt black children, evidently because many adoption agencies implacably resist transracial adoptions, the [federal] Health and Human Services regulations that implement MEPA leave the agencies leeway, and enforcement has not been vigorous.

While the evidence about MEPA's success is not encouraging, there is reason to think that another recent federal statute — the Adoption and Safe Families Act (ASFA) — has considerably hastened the adoption of foster care children. That act, among other things, gives states financial incentives to move children out of foster care. In 1999 (the last year for which we have figures), the number of finalized adoptions of children in foster care increased 28 percent. Since half the children available for adoption in foster care are black, and since there is no strong reason to believe the number of black adoptive parents has radically increased, it seems likely that transracial adoptions account for part of the increase.

The conflicting claims

Who were Timmy's parents? He was legally an orphan. Should he have been adopted by his foster parents, the Drummonds? This is classically a question for family law. Primarily, family law resolves disputes among individuals about how their lives in families should be organized. But family law also referees the claims of various collectivities to influence people's intimate lives. These collectivities include families, ethnic and religious groups, and the broader community as it is represented by the government. Tensions among these collectivities are so protean that no stable resolution of them is plausible. Nevertheless, if there is a trend, it is toward favoring the choices of individuals: In America, all affinities are elective. To be sure, family law attributes special status to "the family" by, for example, exalting "family autonomy." But that principle is at heart a generalization about what best promotes the interests of the individuals within the family and a presumption readily abrogated to protect individuals from the power of families or their dominant members. Furthermore, the primacy of the family has been eroded by developments like no-fault divorce and a mounting willingness to intervene in families to pursue and punish familial violence. Indeed, we have increasingly deinstitutionalized the family and ratified as a family whatever relationships individuals choose to call one. So I repeat: In America, all affinities are elective.

Family law has been even more loath to defer to the authority of social groups than to the autonomy of families. Groups may govern

people, but only by their consent. Perhaps the greatest exception is one that almost proves the rule: The Indian Child Welfare Act (ICWA) of 1978 accords tribes authority over the custody of Indian children that Indian parents have tried in vain to evade. In enacting that statute, "Congress was concerned not solely about the interests of Indian children and families, but also about the impact on the tribes themselves of the large numbers of Indian children adopted by non-Indians." But ICWA is special because the group is special — American law attributes to tribes a kind of sovereign authority that, however partial, no other group can boast.

But can family law's skepticism of groups' authority be squared with its avowals of allegiance to pluralism? Yes: A pluralist regime serves individuals by offering them an array of affinities to elect. Thus family law has resisted justifying pluralism on the grounds that it benefits the group itself. Indeed, it has doubted whether it is useful to talk about "groups," as opposed to collections of individuals. And it has feared giving power to groups — as to families — exactly because it fears for the individuals within the group. *Pierce v. Society of Sisters* thought the Constitution "precludes any general power of the State to standardize its children." But is standardization more appealing when enforced by the church instead of the state?

Presiding over the conflicts among individual, family, and group — and representing interests of its own — is the state. But family law supposes that the state should stay its hand, should accommodate individuals' preferences wherever possible, and should intervene principally to protect the welfare of individuals. So what rules should the state employ to govern the dispute over Timmy? How should the claims of individual, family, group, and state be analyzed?

The child's claim

If all affinities are elective, Timmy himself should choose his parents. But he is too young. Ordinarily, parents choose for their children, but the very issue is who Timmy's parents are. Still, many of the reasons we make parents trustees for their children fit the Drummonds — they knew him best, they loved him most.

For such reasons, the Supreme Court has intimated that foster parents like the Drummonds may have a constitutional interest in their relationship with their foster children. But even if Timmy cannot speak for himself and the Drummonds cannot speak for him, a court could consider what he might have said. What — to invoke the classic custody test — were his best interests?

If one truth is universally acknowledged, it is that children need parents, need people wholly committed to them to whom they are wholly committed. Timothy had parents in the Drummonds. Leaving them would be a little Gethsemane.

If one truth is universally acknowledged, it is that children need parents, need people wholly committed to them to whom they are wholly committed. Timothy had parents in the Drummonds. Leaving them would be a little Gethsemane. The Department had no black adoptive parents in view, and the social workers thought it could take years to find them. Even were the Drummonds mediocre parents, they might still be better than no parents at all. But even the Department called them exceptional parents.

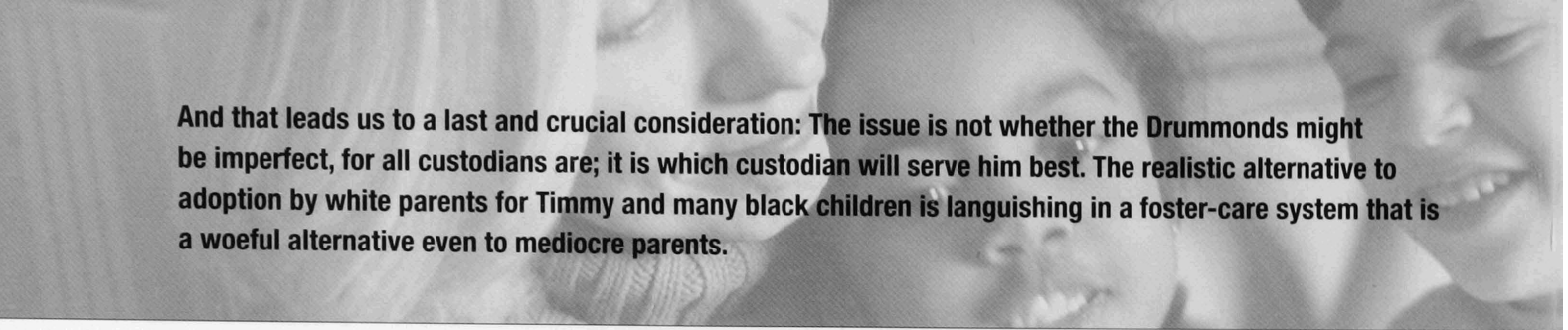
Such persuasive justifications for supposing Timothy would choose the Drummonds could only be rebutted by impressive reasons. The Drummond court essentially accepted two. First, it thought “a child and adoptive parents can best adjust to a normal family relationship if the child is placed with adoptive parents who could have actually parented him.” Second, it deferred to a purported “professional literature” and to “the accumulated experience of unbiased professionals” and their supposed conclusion that white parents might “not be able to cope with the [black] child’s problems.” There was no evidence that either of these problems had troubled Timothy and the Drummonds. But might they do so later? In fact, the literature reaches quite a different conclusion than the court imagined. Studies of transracial adoptions overwhelmingly find that black children adopted by white parents do just as well on all the plausible measures as children adopted by black parents.

Furthermore, the specific injuries transracial adoption is alleged to inflict are not well demonstrated. A more specific statement of those injuries comes from a District of Columbia “Drummond” Petition of R.M.G. R.M.G.’s opinions feared that “the child may not perceive herself as black or develop an identity as a black person” and that “the child may experience a ‘conflict of loyalties’ as she grows older.” Timothy might well be uncertain about his identity. Many children are. Adopted children especially may be. Children of interracial marriages likewise may be specially concerned about their identity. But would Timothy’s identity be any more disturbed by white parents than it already was complicated by the circumstances of his birth and his separation from the Drummonds? And need struggling with his identity injure Timothy? Were that struggle injurious, we would expect to see signs in the empirical research, but we do not. On the contrary, there is evidence that transracially adopted children are generally content with their racial identities. Furthermore, mediating conflicting identities is what most of us do. America’s efflorescing cosmopolitanism grants us the gift of multiple,

flexible identities, and Americans increasingly believe that life’s central moral enterprise is the interminable remodeling project of creating and revising one’s identity by the choices one makes from the givens of one’s past and the possibilities of one’s present. On this view, Timothy’s questions about identity are not a crucifixion; they are questions we all profit by asking.

The R.M.G. opinions also observed that a boy like Timothy might face more social obloquy growing up in a white than a black family. But the Supreme Court’s opinion in *Palmore v. Sidoti* seems to preclude that argument. There the trial court had awarded custody to the white child’s white father because the court thought she would suffer from the community’s reaction to her white mother’s cohabitation with a black man. The Supreme Court acknowledged the risk but had “little difficulty” concluding that “the reality of private biases and the possible injury they might inflict” were constitutionally irrelevant. And, constitutional concerns aside, some courts asked to deny custody to parents with eccentric religious views have wondered whether the hostility those views provoke must harm and might benefit children. “We are not unaware that deviation from the normal often brings ridicule and criticism. We reject, however, the notion that it is necessarily the basis for implanting neuroses. Criticism is the crucible in which character is tested.”

Another of R.M.G.’s arguments against transracial adoption is one a social worker made to the Drummonds — that in a black home Timothy “would be given guidance from people of the black race as to how to protect himself and win difficult situations. It would be much easier for a black parent to give him these skills than would a white parent, as they would be teaching him from their own experience.” Perhaps. But consider the testimony of Kim Forde-Mazrui [University of Virginia law professor Forde-Mazrui, ’93, is a visiting professor at the Law School this academic year], who is the son of a black father and a white mother and the adoptive father of a white child. He criticizes the “coping skills” argument because it falsely “assumes that a person must experience racism first hand . . . to teach a child how to cope with it.” He asks, “Must a parent have worn glasses, been fat, worn braces, or been short in order to help her child who, while on the playground, is called ‘four eyes,’ ‘fatso,’ ‘tinsel teeth,’ or ‘shrimp’?” In addition, Professor Forde-Mazrui thinks black children of white parents may acquire some “coping” advantages, such as a greater ease in dealing with white people.



And that leads us to a last and crucial consideration: The issue is not whether the Drummonds might be imperfect, for all custodians are; it is which custodian will serve him best. The realistic alternative to adoption by white parents for Timmy and many black children is languishing in a foster-care system that is a woeful alternative even to mediocre parents.

All the harms we have canvassed could occur. But they are speculations, speculations about problems likeliest to occur, if they occur at all, years into the future. They are thus the kinds of harm child-custody law has increasingly distrusted. That law now emphasizes the quality of the relationship between the child and would-be custodians. Furthermore, the harms we have canvassed are only a few of the many factors that will affect that relationship, Timmy's happiness as a child, and his worth as a man. Not least, the Drummonds had it right when they told a social worker that "they felt that the most important thing Timmy needed to be secure and happy about himself, was to have parents who truly loved him." And all the evidence unites to proclaim that Timmy's relationship with the Drummonds was exemplary.

And that leads us to a last and crucial consideration: The issue is not whether the Drummonds might be imperfect, for all custodians are; it is which custodian will serve him best. The realistic alternative to adoption by white parents for Timmy and many black children is languishing in a foster-care system that is a woeful alternative even to mediocre parents. And, most ironically, foster parents are likely to be white. For the foreseeable future, then, Timmy's choice is between life as an orphan and life with the only parents he had ever known, the parents who loved him, the parents he loved. Was this a choice?

The ethnic claim

I have just argued that if we heed the principle that all affinities are elective by making for Timmy the choice he would make for himself, we would confide him to the care and comfort of the Drummonds. But did his race have an interest in his being raised by members of that race? The most influential sentence ever written about transracial adoption reviled it as genocide. The National Association of Black Social Workers' (NABSW) accusation rested partly on "the philosophy that we need our own to build a strong nation." The NABSW's president asserted in 1985 that it was protecting "the rights of black children, black families, and the black community. We view the placement of black children in white homes as a hostile act against our community. It is a blatant form of race and cultural genocide."

Generally, groups' interests in their children are recognized by honoring parents' preferences. For example, children ordinarily take the religion their parents assign them — *cujus regio, ejus religio* — and parents ordinarily assign children their own religion. Even *Wisconsin v. Yoder* is not to the contrary. There the Supreme Court found unconstitutional a statute that required Amish children to

attend ninth and tenth grades. The opinion famously celebrates the virtues of the Amish and denounces the statute's menace to their life, their religion, and their community. However, *Yoder's* facts and reasoning are less consoling than its language to any argument that a group has a claim to its children that is independent of their parents' claim. Mr. Yoder was a parent, and the parents and the community were as one. In addition, the Court independently examined whether the children would be injured by their parents' and their community's arguments and concluded that they would not be.

But let us take seriously *Yoder's* rhapsodic language about the Amish community's interests in their children. Are the interests of Timmy's race in his choice of parents then legally cognizable? This question provokes another: What is Timmy's race? If all affinities are elective, only Timmy can say. But here we might imagine two exceptions to the elective-affinities principle. First, if race is a "natural" category, if "science" identifies human characteristics that reliably define "race," we might freely assign children to races. But who today believes this? "Biologists, geneticists, and physical anthropologists, among others, long ago reached a common understanding that race is not a 'scientific concept rooted in discernible biological differences.'"

Second, assigning children to races might be legitimate if races are social categories about whose membership there is a stable consensus. However, there has been no such consensus historically or today. Races have changed unsettlingly over time and remain unsettled. For example, Jews were once considered a race, and "Asian" comprehends many peoples who do not cheerfully group themselves together.

But has not a widely accepted understanding of "black" evolved — the "one-drop" rule which essentially calls "black" anyone with any "black" ancestor, however remote? That rule captures the way many, perhaps most, Americans define "black," but it must also evoke unease, since its Jim Crow origins and Nürnberg parallels are palpable and odious. In any event, should that rule override the elective-affinities principle? While many people who fit the definition embrace it, not all do. Some pass for white. Some people who call themselves Indian or Hispanic have black ancestors. "Many first-generation black immigrants . . . distance themselves from, subscribe to negative stereotypes of, and believe that, as ethnic immigrants, they are accorded a higher status than, black Americans." Perhaps most significantly, interracial marriages are multiplying, although they remain unusual between blacks and whites. These marriages significantly produce children who are

More significantly for our purposes, a growing number of Americans explicitly call themselves biracial and insist on their right to designate themselves that way. They passionately contend that they draw from multiple heritages and are entitled to have all of them acknowledged.

likely — ever more likely — to regard themselves as something other than a member of either race *simpliciter*.

In short, even race can be an elective affinity. As Moran notes, “people readily shift their identities in response to changing policy, such as preferential treatment under affirmative action programs. . . . [F]rom 1950 to 1990, the Native American population in the United States grew over fivefold from 377,000 to 1.96 million.” (Timothy P. Johnson et al., *Dimensions of Self Identification Among Multiracial and Multiethnic Respondents in Survey Interviews*, at www.census.gov/prod/2/gen/96arc/iiiiajohn.pdf, pg. 7.) More significantly for our purposes, a growing number of Americans explicitly call themselves biracial and insist on their right to designate themselves that way. They passionately contend that they draw from multiple heritages and are entitled to have all of them acknowledged. This makes it yet more perilous to assign people to races. It specifically makes it hard to assign Timmy to a race, for, while we have perhaps been assuming he is black, his mother was white and his father was black. Indeed, in the likely course of things, Timmy would have lived only with his mother and thus grown up in a white household.

In sum, it is harder to assign children a race than one might think, and we might well flinch from deciding, for example, the race of the child of a Jewish father and a mother who “is of black, American Indian, and Irish heritage.” But the problem is not just assigning a race to the child; it is also attributing opinions to the race. Who speaks for any race in the way representatives of Amish communities speak for them? Amish communities are homogeneous and structured, and they maintain orthodoxy through disciplined resistance to the pluralizing influence of the world and by splitting into separate communities when divided by doctrinal disputes. In contrast, blacks are an eighth of the American population, geographically dispersed, and socially and culturally heterogeneous.

Most significantly, polls indicate that a substantial majority of black people oppose restrictions on transracial adoption. For example, in 1991 seventy-one percent of black Americans supported transracial adoption. They may, for instance, feel that their race’s interests regarding Timmy would not be best served by severing him from the only parents he ever knew, parents with whom he flourished, and expelling him into a world of strangers.

Let me put the point differently. At a conference I once cited the views on transracial adoption of one black academic. Another black academic angrily insisted that the first was not a “real” black

and that his opinions therefore had to be ignored — even scorned — in favor of her authentic views. Were the government to defer to “the group” in choosing parents for Timmy it would have to decide what position a “genuinely” black person would take. It is hardly clear that races have orthodoxies or that we should want them to. In any event, no court is well situated to ascertain any race’s orthodoxy, and since ascertaining orthodoxy inevitably influences it, we should not want a court to try.

The claims of the community

The task of the community (as it is represented by the government) is twofold: first, to nurture and mediate the claims of the individual, the family, and the group; second, to cherish those claims that promote the kind of society we aspire to. As to the competing claims, I have argued that Timmy would have chosen the Drummonds; that though the Drummonds’ legal position is tenuous, since they began as contractual foster parents, they are truly *in loco parentis* and ache to adopt Timmy; and that government has no place to look for an authoritative statement of how any race’s interests would best be served. On this view, the conflicting claims should be resolved by a decision for the Drummonds.

This leaves us with the second issue: What rule for children like Timmy would best foster the society we want? To answer this question, let us ask another: Why did transracial adoption, which not long ago was blossoming, which seemed to succor the needs of many black children and assuage the wants of many white adults, wither when attacked? Reasons abound. For example, racial matching fits adoption agencies’ longstanding preference for matching of all kinds. And it fits the politics of diametrically opposed groups. The NABSW’s hostility to transracial adoption eerily echoes the Jim Crow of the past and finds untoward allies in the racism of the present. Who said: “These unfortunate girls . . . will have a much better opportunity to take their rightful place in society if they are brought up among their own people”? And who said: “We affirm the inviolable [sic] position of black children in black families where they belong physically, psychologically, and culturally in order that they receive the total sense of themselves and develop a sound projection of their future”?

In addition, a broader cultural development gives resonance to criticisms of transracial adoption. Americans increasingly think people cannot understand each other and thus are doomed to be strangers one to another. Several versions of this view enjoy

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But our mutual incomprehensibility is lethally exaggerated.**

cultural currency. First, many disciplines make opacity plausible. Freud convinced us that people are propelled by unconscious and nonrational drives so primal and painful that people do not perceive and cannot acknowledge them. If people mystify themselves, how can they understand each other? Psychology and sociology have convinced us that people are shaped by biological and social forces whose influence is indirect but inescapable — genes, parental attitudes, child-rearing practices, family status, education, and so on. If we cannot know what has formed our neighbors, we cannot understand them. And people are not just molded from without, they define themselves. This private and dynamic process also makes people inscrutable to each other.

More specifically, it is a triumphant cliché that people who have not shared experiences cannot understand each other. Hence the proliferation of support groups, which unite people with shared experiences narrowly defined, like teenage children of alcoholic parents. Many people who join these groups expect true understanding and communion only from *doppelgängers*. The work of providing intelligent sympathy once performed by generalists — friends, family, or clergy — now requires experts taught by specific experience (yet another example of the division of labor in society).

The sense that men and women can never understand each other, perhaps always lively, has effervesced in recent decades. It has long been folk wisdom — and folk humor — that men and women think and act differently; today it is a leitmotif of best-seller lists: e.g., *Men Are from Mars, Women Are from Venus*. That idea has acquired academic dignity. For example, Carol Gilligan argues that men and women approach moral reasoning differently, and John Townsend contends that evolution has led men and women to seek crucially different things. These differences are magnified by a careless slide from the observation that as groups men and women differ statistically to the assumption that every man differs *tout court* from every woman.

If individuals are mutually incomprehensible, how much more so must be groups. On this view, America comprises cultural groups — particularly ethnic groups — that differ monumentally, whose members are primarily defined by their membership, and whose members thus differ irreconcilably from each other. They think differently, act differently, are different. These differences arise from diverging cultural traditions and varying ways society treats groups. For example, “[t]here is now a virtually unchallenged presumption that, looking at the issue of race, blacks and whites see altogether different realities.” Thus we are often instructed that black and white Americans not only understand

a common language differently, but speak different languages that use different words and different grammar. And thus it was routinely said blacks and whites had had such different encounters with the police that they saw the evidence about O.J. Simpson in hopelessly conflicting ways that could never be reconciled by reasoned argument. On a strong view of these perceptions, groups not only cannot understand each other, but an attempt to do so is an act of aggression, an attempt to arrogate the power to define a group instead of allowing it to define itself.

No one doubts that people differ, that we regularly surprise even ourselves and certainly each other. But our mutual incomprehensibility is lethally exaggerated. Even blacks and whites see many contentious issues similarly. Thus one of the most meticulous studies of its subject insists that, “to an extent which deserves to be appreciated again, black Americans and white Americans share the same culture.” More, “[i]t was emphatically not the case that blacks saw one reality of race, and whites another, with blacks fixing the blame for blacks being worse off on whites and whites pointing the finger at blacks. On the contrary, most cited the same factors, and to approximately the same degree.”

In short, the differences among us are real, but they are not the whole story. Our similarities are numerous and strong enough to make possible a society of mutual concern, a society which recognizes the elements of common humanity that bind and oblige us to each other. That is the kind of society the civil rights movement in its earliest and in some ways most radical incarnation movingly and marvelously invoked. And that I believe is the kind of society the community, acting through the government, should wish to promote in cases like *Drummond*. And that is the kind of society the *Drummond* court, with its fixation on what might separate Timmy from his parents and its indifference to what might unite them, implicitly depreciated and deplorably discouraged.

I opened with the parable of *Drummond*. Recall another parable. We are told that “the Jews ha[d] no dealings with the Samaritans,” that a Jew “went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded him, and departed, leaving him half dead,” that a priest and a Levite “passed by on the other side, . . . [b]ut a certain Samaritan . . . had compassion on him, [a]nd went to him, and bound up his wounds . . .” We are rhetorically asked, “Which now of these three. . . was neighbour unto him that fell among the thieves?”

Conclusion

I have told two stories, both remarkable. The first is the story of transracial adoption. Not long ago, it seemed a modest but well-founded solution to the needs of minority children without parents and the wants of couples without children. The evidence that white parents must fail black children is hardly more than bare assertion, while the evidence that transracially adopted children grow up as happily as other adopted children is substantial. Certainly such children are better off than if left to the mercies of foster care. A majority of black Americans opposes bans of transracial adoption. And those bans (now tacit and even illegal, but apparently still effective) are ever more anachronistic in an era of multiplying interracial marriage. And yet transracial adoption is resisted.

The second remarkable story is Timmy Drummond's. I will tell you what I know of its end. In May 1976, during the litigation and when Timmy was about two and a half, the Department apparently took Timmy from the Drummonds and placed him with a couple of "mixed racial ancestry." This placement seems to have failed, and the last we hear is that Timmy was eventually put in yet another foster home with a "mixed race couple" who thought they wanted to adopt him.

The parable of Robert and Mildred Drummond and their son Timmy is the story of people who needed each other and who came to love each other. They understood each other well enough to live together as happily as is usually given to human beings. The Drummonds and Timmys of this world can be taught to regard themselves as irredeemable strangers. They cannot afford to. More broadly, it need not take the lessons of the last century, or of the last year, to remind us of our need for each other or our capacity for endless enmity. When I open the copy of *Why We Can't Wait* I bought in high school, I find underlined this closing passage from the "Letter from Birmingham Jail" with which I will close today:

"Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear-drenched communities, and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty."



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'THE LEAST OF THE SENTIENT BEINGS'



AND THE
QUESTION OF
REDUCTION,
REFINEMENT, AND
REPLACEMENT

BY JOSEPH VINING

The following essay is based on the keynote address the author delivered at the annual meeting of the Michigan Society for Medical Research last April in Lansing. It appears here with permission of the author, © Joseph Vining.

The subject I was asked to think about with you today is raised by a very large change in the focus of biomedical research. In raw percentage terms, the animals involved in experimentation are now overwhelmingly rats and mice, and, perhaps because they are rats and mice, they are used in large numbers, numbers in thousands and tens of thousands at some institutions.

Legal, ethical, and practical accommodation to this fact on the ground presents a host of questions. There are questions of the cost of care. There are questions of the training of veterinarians, principal investigators, and laboratory personnel. With mice particularly, there are questions about the creation of conditions in an animal that do not yet exist, a future animal, by knocking out a gene and, as we say, “seeing what happens”: new questions, really, that move us away from the traditional focus on the details of how an investigator treats a living animal.

Then there are the central questions of weighing costs and benefits, of justification and the application of the three R’s of reduction, refinement, and replacement, where it is not dogs or primates or marine mammals that are concerned, but rats and mice — for many, the least on the scale of concern for animals. Rats, mice, and birds have of course been recently exempted from the Animal Welfare Act. But that may be viewed as making the questions only that much more difficult, thrown back into the laps of researchers themselves and review boards, veterinarians, laboratory assistants, and university and corporate administrators, who for the moment can expect to have that much less outside guidance or mandate in deciding what to do. And I think it is fair to say that lying behind particular responses to questions and resolutions of issues is a newly pressing, overarching problem, which is how to *think* about rats and mice, not a new problem at all, but newly pressing.

Now I speak of the “least,” and my title is “The Least of the Sentient Beings.” But I am a lawyer, and I know that in this audience and in general view there is something vertebrate and warm-blooded that is beneath rats and mice. My colleague Mark Gallanter at Wisconsin follows the relative popularity of lawyer jokes, and has reported that the most popular lawyer jokes are lab rat jokes, such as, Why have laboratories starting using lawyers instead of rats in experiments? One: There are more of them. Two: The lab assistants don’t get attached to them. And three: There are some things a rat just won’t do.

But that opens the positive things that are said about rats and mice, as sentient beings in the world with us. Jokes aside, some of us may know of cases where a lab rat became a favorite and was adopted as a pet by a member of the lab. Rats are pets in classrooms around the country. I remember my surprise when I was in the waiting room at the vet’s and I picked up a copy of the *Rat and Mouse Gazette*, with its departments and features, the “Medical Corner,” the “Mouse of the Month” (named “Moo”), the articles on upcoming shows and rat and mouse events. You can go to the Web and read memorial testimonials: “Skin was my favorite rat. I adopted Skin in November 1998 right after my 40th birthday — a wonderful birthday present indeed! . . . Skin was a very cuddly rat and loved to nestle in my arms or lay on my lap to be petted. He was also very playful and enjoyed wrestling with my hand.” All this makes me think of the patron saint of Peru, and of the Dominican Order in the southern United States, the 16th century St. Martin de Porres, who doctored and healed slaves, Indians, and Viceroy’s and also established the first animal hospital. He was known for his way with mice, whom he could persuade to disinfest a building on his promise that he would feed them outside, which he did. His picture often has a mouse at his feet or in his hand. Indeed, a very distinguished biopsychologist, Barbara Smuts, came to a class of mine last year to talk about her work with primates and dolphins and the possibility of true mutual relationships between human beings and these animals viewed as whole beings. A student asked whether she thought a human being could have a true relationship with a mouse. She finally answered, Yes, she thought that was possible.

What then to consider, what to look at, what context to be aware of in thinking responsibly about the future of experimentation on these creatures? I would suggest four things to keep an eye on.

- **First** is that developments in experimentation on humans parallel and are connected with developments in experimentation on animals. Animal experimentation is not isolated off and a field of activity unto itself.
- **Second** is that there are developments in the science of animals beyond the biomedical field, in other subdisciplines, that will have an impact. Science advances on more than one front.

'THE LEAST OF THE



SENTIENT BEINGS'

- **Third** is that in the legal treatment of animals there are large movements, general movements, which are not the outcome of tactical battles between animal activists and research institutions, and which may affect, and properly so, the thinking of responsible decision makers in research.
- **Fourth** is that what we might call attitude is a critically important focus in any regulation of experimentation, animal as well as human.

HISTORICAL AND CONTEMPORARY PARALLELS WITH HUMAN EXPERIMENTATION

As to the first, research on humans, it is useful to note the historical work being done now, pointing to an emergence of concern about human experimentation from concern about animal experimentation, rather than the other way around. Comparing human and animal research, people working with animals today frequently say that animals, unlike humans, cannot give or withhold their consent, and that this in a way puts a greater burden on animal researchers.

But official commission reports have increasingly revealed that consent was not much involved in human experimentation either, in the United States, up to and after the Second World War. Even today, the conceptual possibility of free and fully informed consent in human experimentation does not produce a real gulf between human and animal experimentation. A large part of human experimentation still cannot be and is not justified by the consent of the subject — experimentation on children, on the retarded or the mentally ill, in the military, on the very poor. The dilemmas and decisions end up being thought about in much the same way as in animal experimentation, weighing costs, which are deemed “ethical costs,” against hoped-for benefits, and asking at what point utilitarian thinking, justification of means by ends, of suffering by some to prevent suffering by many, comes up against a substantive limit, where there are some things that are just not done.

There is a category of experimental procedures that under the Animal Welfare Act are “unacceptable regardless of anticipated results,” to quote one research institution’s expression of it. The statute itself refers to the use of paralytics without anesthesia. I think we may find that at some point true and exquisite pain or deep distress that remains as part of a stress experiment on a rat

or a mouse after reduction, refinement, and replacement have been thoroughly explored, or genetic manipulation that produces something of the same, may not be ours to inflict deliberately. We can imagine some point where no hopes about the future can justify present reality, and I want to suggest, to those who must decide, that thinking about substantive limits or the limit to cost-benefit analysis is going on in consideration of experiments on children, the mentally ill, and others, and is there to be both drawn on and affected by in thinking about animal experimentation.

THE DEVELOPMENTS IN SCIENCE OUTSIDE THE BIOMEDICAL FIELD

Second, in looking for guidance and context for thinking about the treatment of and the resources devoted to rats and mice, I suggest it will be increasingly important to stay open to and abreast of what is going on in the whole range of scientific research on animals.

I have been surprised, for instance, to see what scientists who work closely with fish, not as a medium of experimentation but as whole beings, say about common attitudes toward fish and their degree and kind of sentience, really questioning our general conception of fish. Oncologists, endocrinologists, and neuroscientists may need to stay abreast of scientific work in fields they might have thought distant from their own in method and even presupposition.

Twenty or thirty years ago cognitive ethology was really just beginning as a field and biopsychology would not have been found in the university phonebook. Today the situation is quite different. One telling recent product, I think, is the federal CHIMP (Chimpanzee Health Improvement, Maintenance, and Protection) Act of 2000, which rejected euthanasia for chimpanzees no longer needed for research and set up a sanctuary for them where no experimentation can be done on them, they cannot be transferred out, and (I quote) none can be “subjected to euthanasia except as in the best interests of the chimpanzee involved.” Congress adopted the majority report of a National Research Council study commission which had noted “the close similarities between chimpanzees and humans,” a conclusion the legislative history pulled out and repeated.

A large part of human experimentation still cannot be and is not justified by the consent of the subject — experimentation on children, on the retarded, the mentally ill, or prisoners, in the military, on the very poor.

Chimpanzees are not rats and mice, but much of scientific work proceeds on the presupposition and even with the motivation of showing that there is no qualitative difference between human beings and the rest of animate nature. Biomedical science is judicious in selecting its systemic similarities between animal and human models. But the default position, which determines the burden of proof, is reflected in Principle #4 of the U.S. Government Principles: “Unless the contrary is established, investigators should consider that procedures that cause pain or distress in human beings may cause pain or distress in other animals.”

Going back to the first point, the parallels in human and animal experimentation and the relevance of one to the other, we should not wonder that careful scientific observation draws animals and human beings together. An unfolding general question is going to be inevitably with us, whether to treat human research subjects more like animals, or to treat animal research subjects more like humans — even animal research subjects we may presently rank lower than the primate, dog, and cat of yesteryear’s research focus.

THE BACKGROUND DEVELOPMENTS IN THE LEGAL LANDSCAPE

The third point, the large and general movements in the legal treatment of animals, I can only mention. It is wise counsel, of course, to stay consciously aware that we are almost never in a position where “no law” applies to animal experimentation. In human experimentation people sometimes say that this or that aspect remains to be regulated, and they forget the background, which is the ordinary law of assault, battery, mayhem, and homicide including reckless and negligent homicide, that applies to what any individual does to any other human being. Similarly, the ordinary criminal laws of animal cruelty, animal fighting, animal neglect, and so forth, now over a century old, are the background to all animal experimentation. Charges have been brought when — we might say even when — the animal is a mouse.

Cruelty to animals has been moving in the recent past from a misdemeanor to a felony, which is significant, and new laws are mandating psychiatric treatment for cruelty to animals. The latter, moving beyond the criminal law, has an obvious wider significance. We live and work within an exemption from what otherwise would apply, an exemption that is not always explicit;

and wherever you find an exemption in the law, it indicates where the burden of justification lies.

But the legal context is wider than these specifics, and it is changes in the background as a whole that I think responsible decision makers throughout the biomedical research community can helpfully take into account. Some of them are what we call common law developments, shifts in the way judges and juries think about cases. Some of them are legislative and build on mainstream study commissions and ongoing law reform drafting at the state and local level.

In tort law — the law of civil recovery for harm that is not criminal or contractual — measures of damages have changed and animals are already beginning to move from their traditional property status to quasi-property and even something *sui generis* in both the United States and Europe.

That trend can also be seen in the law of international trade, where recent World Trade Organization litigation is producing a sense of animals as something other than the ordinary objects of trade and commerce and therefore exempt from a purely economic analysis. Even in the staid law of wills and trusts, law reform commissions as well as common law courts are moving to allow wills to be broken that require the destruction of animals, and to allow animals to be the beneficiaries of trusts where only human beings could be before.

The same is to be seen in the law of divorce, which you might think far afield, but really is not. Disputes over animals can move from being disputes over property to being disputes over custody, and as in custodial arrangements for children, concern for the animal as such enters legal consideration. These disparate developments are mutually reinforcing, in that seeing an animal as an independent being comes to settle more deeply and comfortably in the legal mind, so that a phrase such as that in the CHIMP Act, “the best interests” of the individual animal involved, becomes legally meaningful.

But the most important changes may be constitutional, not giving animals “rights” but changing the way they are perceived and how they are weighed in cost-benefit thinking, and fixing the values associated with them somewhat beyond the vagaries of the legislative process. Europe’s constitution, the Treaty of Rome, was amended six years ago to change the definition of animal from agricultural product or property to “sentient being” — that is the term used — for purposes of interpreting the whole range

'THE LEAST OF THE



SENTIENT BEINGS'

of European law. Just last summer Germany amended its constitution to allow courts to weigh the effect on animals against constitutional rights including freedom of religion and freedom to pursue scientific research. Last fall an agricultural provision was added to the Florida constitution, quite specific, but with a quite general constitutional preamble to it, "Inhumane treatment of animals is a concern of Florida citizens."

These developments cannot fail to have an ultimate effect on the treatment of the least of the sentient beings. Again, some of these developments outside the world of science that are pertinent to the world of science may be taken to be reflections of what science itself has learned about animals.

THE REGULATORY FOCUS ON ATTITUDE

On the fourth matter to which decision makers might be attentive, I can be more definite. On the first three I can only suggest: the relevance here of thinking about human experimentation, which is conceptually divided from thinking about animals only by the questionable notion of free and informed consent; the relevance of scientific work on animals outside the subspecialties of biomedical research; the large developments in the legal conceptualization of animate life that both reflect and mold the conceptualizations of investigators who of course are citizen participants in civic life themselves. But I can be more than suggestive about the importance of attention to what, for want a better word, we call attitude.

There is the matter of attitude toward regulation and the requirements of regulation, such as it will turn out to be where rats and mice are concerned. The just-past Director of the Federal Office of Human Research Protections, Greg Koski, an anesthesiologist from the Harvard Medical School, traveled to a research institution about once a week, saying "It's a great opportunity to get a feel for the *culture* of the institution." Against skeptics who argued that accreditation and self-assessments may merely lead universities to do the "minimum necessary" to keep themselves off the radar screen, Koski argued that they will help research institutions switch, in his words, "from a culture of compliance to one of conscience and responsibility."

It is a strong and moral word, conscience, and it assumes a certain attitude toward the research subject. Indeed, the attitude toward regulatory requirement and oversight is hooked to attitude

toward the research subject, and this is as true in animal research as it is in human research.

I count myself very fortunate to have observed as a nonscientist what I think to be a culture of conscience and responsibility among scientists reviewing each other's work, which is largely, as anywhere, work on rats and mice. But as numbers rise and questions of time, effort, budget, and training become more pressing, a constant awareness of the attitude toward the research subject that is being expressed, accepted, or fostered will act to steady and protect those who have to make hard decisions.

What was it that led to the shutdown a few years ago of the entire program of human experimentation at a great institution like Duke? "The bottom line," as we are fond of saying when trying to be hard-nosed and no-nonsense in getting on with a task, was not that Duke failed to follow this or that procedure or violated this or that rule.

The reason wasn't what they *did*. The reason for the shutdown was the conclusion of the investigation that from top to bottom there was an attitude of uncaringness and indifference. Again in the history of experimentation on human beings, the more that is revealed about what went on in the United States prior to World War II, the more troubling is the comparison with what went on in Germany and was condemned at Nuremberg. German scientists used as a defense American practice as they understood it of experimentation on prisoners and children, and American testimony at Nuremberg refuting them is now widely viewed as perjury.

The best that contemporary historical researchers and commentators can do, the real distinction in historical judgment of "us" and "them," rests now on the ultimate difference in attitude toward the human research subjects used in the United States and those used in Germany.

Of course, standard questions from animal use and care committees that an investigator answers about his or her protocol are designed to bring out, and the questions explicitly say they are designed to bring out, the "ethical cost" of the experiment. The ethical cost of the experiment is flagged and detailed not just so the committee [members] can weigh it for themselves, but so that the investigator will face it and weigh it.

But it is not an ethical cost and will not really be weighed unless it is felt, inside, really, as a true cost. It will not be felt as a true cost if the attitude toward the research subject is not one of

Charges have been brought when — we might say even when — the animal is a mouse.

respect or even sympathy, *some* respect at least, *some* sympathy at least, which one cannot have at all for something viewed as mere tissue or a mobile metabolism.

I realize there is a contention in this, and that someone can say that how he or she views a rat or mouse is not anyone else's business, and that the only question, the bottom line as it were, is what is done or not done. But this is precisely what I would want not just to question but to deny.

Let me illustrate from the regulation of experimentation on children. This is a matter of considerable current comment in and out of courts because of recent insistence that drugs administered to children be tested on children. Current child research regulations draw the traditional distinction between therapeutic research and non-therapeutic research, non-therapeutic meaning that the individual research subject does not receive a benefit from it — the general situation in animal research. For such non-therapeutic research on children, increasing levels of risk, or what we here would call ethical cost, are spelled out — minimal risk, a minor increase over minimal risk, more than a minor increase over minimal risk — and cost-benefit analysis is specified. But subjecting a child to a considerable risk, a “more than minor increase over minimal risk” that has no upper limit, is not ruled out if the general gain is large enough. Instead, there are increasing procedural protections, layers of approval, leading up to decision by the Secretary of Health and Human Services.

We ask in animal research whether there is any substantive limit on what can be done to an animal by chemical or physical intervention or by genetic manipulation to produce a condition, if the hope for human benefit is great enough. The same general question can be asked in research on children: Are there things that you just do not do? In the case of children, when the Secretary [of Health and Human Services] has finished a period of public comment and consultation with a special review board, and looks for substantive guidance in making a decision, you will see that the standard the regulation provides and the finding the secretary must make is this, that the particular research will be conducted “in accordance with sound ethical principles.”

This is the regulatory standard for risky research on a non-consenting human being who receives no benefit from it. If this final test is not to be simply empty, and I don't think it was meant to be empty, the limit it produces is the limit that arises from a live sense of respect and sympathy for the research subject.

Research conducted with any other attitude toward the child, that the child is a physiological mechanism, a mobile metabolism, would not pass this final test.

On the animal side, we might say that there is no such implicit limit, that anything can be done if the human benefit is great enough, any degree or kind of suffering induced in a present creature or a future creature genetically altered. “Ethical” means weighing cost and benefit and nothing more than that.

But consider the three R's, reduction, refinement, and replacement, and whether the requirement of something other than a cold or wholly objectified view of an animal research subject is not really built into them. If there were no acute sense of ethical cost, of tension that cannot be escaped, reduction, refinement, and replacement would make no sense. There would be no real motivation to achieve them.

Consider also that there is something substantive, not just procedural, in the universal requirement that the investigator be a “qualified investigator.” A chemist's attitude or conception of the materials with which he works may not go to his qualifications — he may have a lively and romantic vision of the chemical world or a bleak and sad one, or one that has no affect to it at all. But where the materials being worked with are animals, an investigator's conception of an animal as a living and feeling being may go to his qualifications. This is no new observation; research administrators I know, who are as solicitous for research as any, are sensitive to this connection between attitude and qualifications, and it is implicit I think in standard training programs.

One of the very great pioneers in physiology, Claude Bernard in France, is well known for his attitude toward the living subjects of his experimental work. “Life,” he said, “is nothing but a word that means ignorance,” and he wrote of the ideal physiologist: “He is a man of science, absorbed by the scientific idea which he pursues. He no longer hears the cry of animals, he no longer sees the blood that flows, he sees only his idea and perceives only organisms concealing problems which he intends to solve.” Historically this was just at the beginning of the modern Western controversy over the actual treatment of living things in the pursuit of knowledge and general good, and we can certainly ask, now a century later, whether for all his genius and all the good he did, this great figure would be qualified today to engage in research even on rats and mice.

continued on page 88

'THE LEAST OF THE



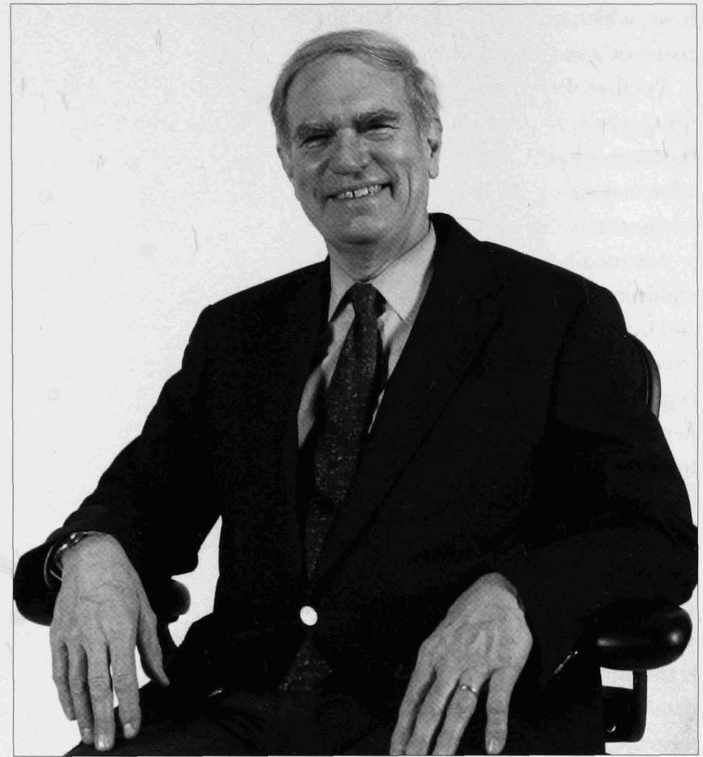
SENTIENT BEINGS'

continued from page 87

I suppose we should end by acknowledging again that the animals that are becoming our principal research subjects are vermin to many or most, other than a saint like St. Martin de Porres or children in classrooms or the relative few who seek out a companion relation with them. Outside the laboratory mice and rats are hunted and poisoned, are inconvenient and threatening.

But we should remember that lovely deer are too, and sea lions or whales that eat fish. Other human beings are competitors or threats also. Human beings are neglected, abused, and indeed sacrificed for the greater good. But that has never changed one's own responsibility for what one does oneself. Rats and mice may live lives of terror and violence outside the laboratory, but that again does not take away one's own responsibility. A field mouse looking up at you in a field, not moving because she is beside her pups, is no less a presence because she may be pounced upon by a fox the moment you move on.

If unprovoked you lifted your boot and crushed the field mouse under foot I think you later might have doubts about your own humanity. These creatures are within the fold of human concern. I know they are now for distinguished and effective scientists, and I hope not just for these creatures' sake that they will continue to be within the fold of concern in the future.



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structure and the real presence of authority; *From Newton's Sleep* (1995, 1997), on the legal form of thought and its general implications; and *The Song Sparrow and the Child: Claims of Science and Humanity* (forthcoming), which looks out from law to the world that makes law possible. Vining began his academic career at Michigan in 1969.