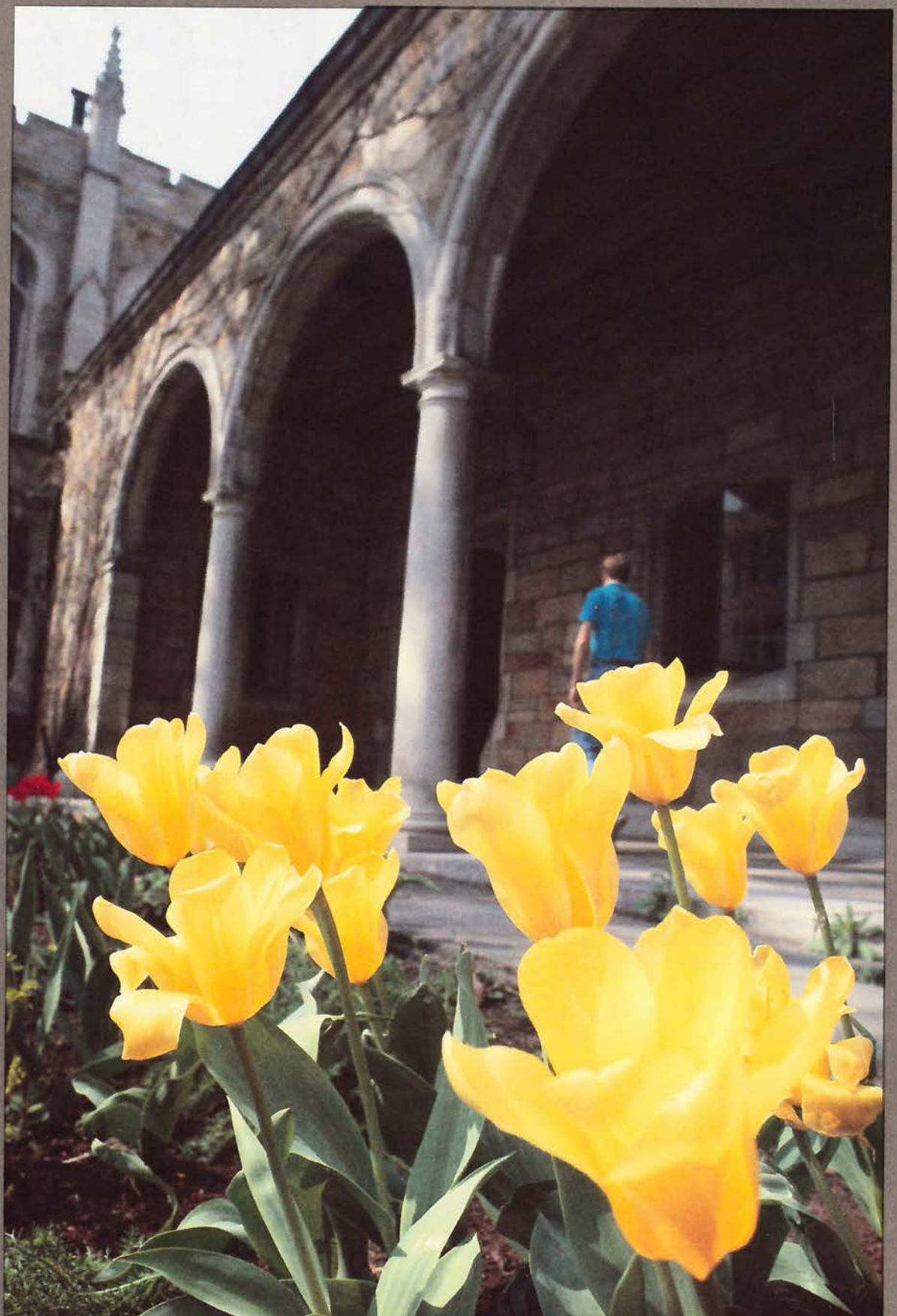
Law Quadrangle Notes

THE UNIVERSITY OF MICHIGAN LAW SCHOOL VOLUME 31, NUMBER 3, SPRING, 1987



Law Quadrangle Notes

THE UNIVERSITY OF MICHIGAN LAW SCHOOL VOLUME 31, NUMBER 3, SPRING, 1987

ARTICLES

DEPARTMENTS

Law Quadrangle Notes (USPS 893-460) is issued by the University of Michigan Law School. Second-class postage paid at Ann Arbor, Michigan. Office of publication: *Law Quadrangle Notes*, Law School, The University of Michigan, Ann Arbor, Michigan 48109-1215. Published quarterly, three substantive issues are available for general distribution; the fourth issue, the annual report, is sent only to alumni.

POSTMASTER, SEND FORM 3579 TO: Editor, *Law Quadrangle Notes*, Law School, The University of Michigan, Ann Arbor, Michigan 48109-1215.

Publications Chairman: Professor Yale Kamisar, U-M Law School, **Editor:** Bonnie Brereton, U-M Law School; **Graphic Designer:** Margot Campos, U-M Office of Development and Marketing Communication; **Production Editor:** Carol Hellman, U-M Office of Development and Marketing Communication.

Bollinger to be new dean

As the present issue of *LQN* was going to press, James J. Duderstadt, U-M provost and vice-president for academic affairs, announced that at the June meeting of the regents he would recommend the appointment of Lee C. Bollinger as dean of the Law School.

A member of the U-M law faculty since 1973, Bollinger has published and lectured widely on freedom of speech and press. His best-known work, *The Tolerant Society: Freedom of Speech and Extremist Speech in America*, was published last year by the Oxford University Press (under the Clarendon imprint). The book presents "a novel and imaginative perspective on the role of freedom of speech in our society" *(N.Y. Times Book Review)*; "an original and plausible theory [that] is a truly impressive achievement" *(Chicago Law Review)*.

In a letter to the Law School community, Provost Duderstadt observed that he and U-M President Harold T. Shapiro "were particularly impressed by Bollinger's outstanding reputation and his capacity to provide exceptionally strong leadership. He clearly has very high standards and enormous strength of character, as well as the vision and perceptiveness that we believe will make him a superb dean."

Student perspectives

Nine seniors sum up the high points of the past three years

LQN recently talked with nine members of the Class of '87 about their backgrounds, their interests, and their law school experiences. As the following profiles indicate, this year's seniors have lived the past three years in quite diverse ways.

Michele Lee

Seeking a "socially useful" field of endeavor

When Michele Lee came to law school from the University of Pennsylvania with a B.A. in comparative literature, she was looking for a field of study that would be "socially useful." As she recalls, "although I didn't have a good sense of what lawyers did, I knew that a lot of people in positions of power had law degrees. I think I also had dreams of 'changing the world,' and I felt that a law degree would get me started."

After three years of law school, two years on the Family Law Project, and a summer in Nicaragua, Lee would still like to eliminate the inequities in our society, but she has revised her ideas of how to go about it. "Changes have to come from the people who need them," she says, "otherwise they won't last."

Lee's trip to Nicaragua last summer was part of a program that combined language study with volunteer work and the opportunity to live with a Nicaraguan family. To finance the trip, she had worked as a law clerk since her second year in law school. "The experience personalized for me just how blind the American government is to the needs of the people who they claim are supposed to benefit from its intervention," she states. "Almost everyone in the town of Esteli, where we stayed, had someone in their family die in the fight against Somoza and against the U.S.-backed Contras."

Michele Lee

What particularly impressed Lee was "how the Nicaraguans have been able to organize themselves and make changes in their lives, despite the fact that they lack the wealth that we have in this country." She said, "I'd like to be able to work in the United States to help people organize their communities to make the changes they want and need."

Lee, the daughter of a Korean physician, immigrated to this country at the age of six with her family. "Asian-Americans have not really gotten involved in politics," she says. "If you want to effect change, you have to be heard through the political arena."

Though her long-range plans are not yet clear, Lee will be returning to Korea next year where she will work for the International Human Rights Law Group on three projects. The first is to help monitor the elections in South Korea, which are to take place some time before March, 1988. The second is a project to study the independence of the judiciary. The third will provide support for South Korean defense attorneys who are working on human rights related cases.

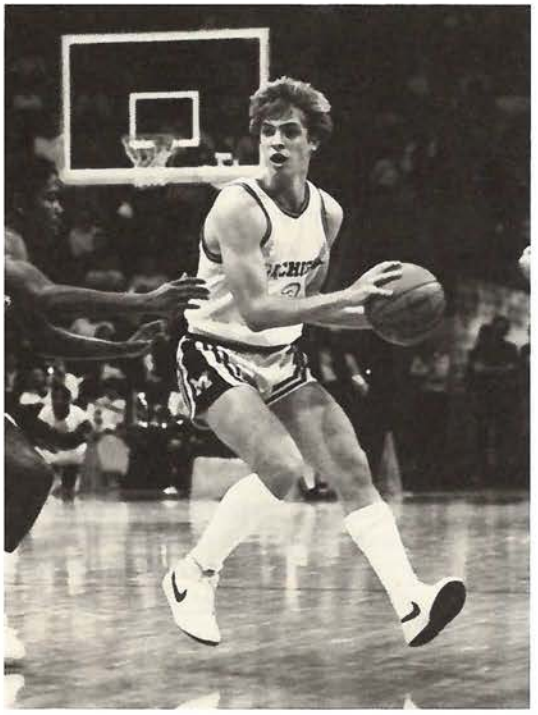
Dan Pelekoudas

Being pushed to his potential

What do U-M basketball coach Bill Frieder and the Michigan law faculty have in common? "That's a tough one," says Dan Pelekoudas, former Wolverine Academic All-American. "I guess I'd have to say they both push you to reach your potential."

Big-Ten basketball was good preparation for law school, Pelekoudas feels. "Playing in front of 15,000 hostile people who are just going *crazy* trying to make everything you do go *wrong* helps you adapt to the pressures of the first year," he said. "Not that that's what the law professors are trying to do," he added quickly.

The Downers Grove, Illinois native seems to thrive on pressure. An economics and history major, he was able to graduate with honors (including Phi Beta Kappa) despite the demands and distractions of six months of practice, frequent road trips, and a 30-game



Dan Pelekoudas

season. "I seem to do better when I'm really busy and I don't have any time to waste," he stated.

Pelekoudas managed to remain involved with the team during his first year of law school by working as a graduate assistant for Coach Frieder. "A lot of what I did that year involved recruiting," he explained. "I'd meet with potential players and their parents and give them my perspective of what it was like to play for Michigan." The former co-captain also spent some time observing the team from the bench and passing along his observations to the coaching staff.

The following year, Pelekoudas remained a graduate assistant and also found the time to work as a radio color commentator for U-M basketball games. "Aside from the travel time, it didn't interfere much with my classes," he said. "I was already pretty familiar with the other teams, so it didn't involve a lot of preparation time. And the experience taught me to think on my feet right from the first minute I was on the air. I had never had any communications courses or even an opportunity to practice with my partner before our first game. We just went to the Georgia Tech game and I found myself talking into a microphone."

Although Pelekoudas is looking forward to his job with Gibson, Dunn & Crutcher in Newport Beach, California, he says he'll miss Ann Arbor, a place he's grown fond of after being here for seven years. "There's a part of me that doesn't want to leave. It's a nice little city that really grows on you," he says.

"And I've really enjoyed law school. I've been impressed with the quality of the law professors as well as the students at Michigan. I've made friendships that I feel will last a lifetime," he said. Then he added with a laugh, "For the past two years I've even roomed with guys from Michigan State. That shows you how broad-minded people become here!"

Becky Ginsburg

Becky Ginsburg

A passage to India

Though Rebecca Ginsburg came to law school right after completing her B.A., she had already had considerable experience working directly with individuals in need of help. During her undergraduate years at Loyola Marymount University in Los Angeles, Ginsburg had counseled and supervised calls on a suicide hotline. She describes her feelings when someone called for help as "a mixture of anxiety and compassion." She explains, "While I felt a lot of empathy for the person on the line, I was aware of my own limitations. The most I could do was to try to tap into that person."

Ginsburg had also spent a month in India, working as a volunteer at two shelters run by Mother Theresa's Missionaries of Charity. "India had always intrigued me," she explained. "I decided to go there the summer after my junior year at college. While I was in Calcutta and Bombay, I volunteered to work at the shelters, where I cared for destitute women who were dying. I was amazed at how much comfort you can give those who need it, even when you don't speak the same language."

After these first-hand experiences, Ginsburg considered going

on for an advanced degree in psychology or social work, but decided that a J.D. would put her in "a better position to make systemic change." She explains, "I thought that a legal education would provide me with an overview of 'the system' and give me the necessary tools to change it."

When Ginsburg came to Ann Arbor, she continued her volunteer work, serving as a crisis hotline counselor for teenagers at Ozone House and working in the same capacity for victims of domestic violence at the Assault Crisis Center. She also worked with the Law School's Family Law Project, representing battered women in legal proceedings and later supervising other students' cases. "The work I did with the Family Law Project complemented what I was doing with the Assault Crisis Center," she says, "because I was able to provide information to women about their legal rights."

Perhaps her most meaningful experience, however, occurred last summer when she went to India on a Bates Fellowship to study human rights groups working for social justice. Her project, she explains, "originally was to observe and participate in village mediation, but it soon expanded into a general study of human rights activity in southern India. I was introduced and spoke to individuals and various legal organizations and community groups.

"Coming to India as a member of the legal profession — rather than as a tourist, or even an anthropologist — put me in a unique position," Ginsburg states. "It implied that I had some respect for the Indian legal system. And, because I was an outsider, I had the opportunity to speak to a whole range of people, from an ex-governor of a state to untouchables. And it was also interesting coming as a Black American. Wherever I went, people would assume initially that I was an Indian from some other part of India."

Ginsburg plans to return to India this fall. Her long-term plans include graduate study in developmental politics and a job with an international organization.

Chuck Forrest

Chuck Forrest

Traveling to the Near East via "Jeopardy"

Chuck Forrest has had two unique experiences in the past two years, though not necessarily because of being in law school. The first was his success on the "Jeopardy" TV game show, where he became the all-time leading money winner, earning a total of $172,000. The second was going to Syria to supervise the excavation of an archaeological site 4,000 years old.

Forrest admits to having been an avid fan of the original Jeopardy show in the 60s ("I must have been about five then," he recalls). The show died in 1978 and was resurrected a few years ago in its present souped-up, high-tech format. Forrest's appearance as a contestant came on a whim. "When I was a first-year student," he explained, "I was watching it one night with some friends in the Lawyers Club, when the local Detroit station announced that there would be a tryout in a few weeks. A few of us thought it would be fun, so we went down." Forrest made it through the written test and the tryout, and was invited to go out to California to compete several weeks later. On that round of competition, Forrest earned $72,000, making him eligible for the "Tournament of Champions," where he won $100,000 the following year.

Between the two rounds of competition, Forrest took a semester off from law school to work on the archaeological dig in Syria. Known as the Yale Tell Leilan Archaeological Project, it was a site he had worked on several years earlier, while still an undergraduate at Yale. Forrest's job was to supervise a crew of eight to ten workmen excavating the remains of a palace buried within a mound of dirt since its destruction in 1792 B.C.

As fascinating as the project was, Forrest admits that for him it was mostly an outgrowth of his broader interest in the Near East. Before coming to law school, the Grand Blanc, Michigan native earned his B.A. in Near Eastern languages and literature at Yale and spent a year as a Fulbright scholar studying Arabic at the University of Damascus. "The Near East is an intriguing area — there's so much to learn about. The culture is so different from western culture. And studying Arabic has been a real challenge."

Forrest is spending this summer clerking with the Cairo office of Baker & McKenzie. After graduation (he expects to complete both the J.D. and an M.A. in Islamic studies in December), he hopes to return to the Near East either with a law firm or the foreign service.

Summing up the high points in his life so far he said, "Law school is something I always knew I'd do. Jeopardy was fun, but really no more than a good way to make some money. But the Near East is an area you can spend a whole lifetime learning about."

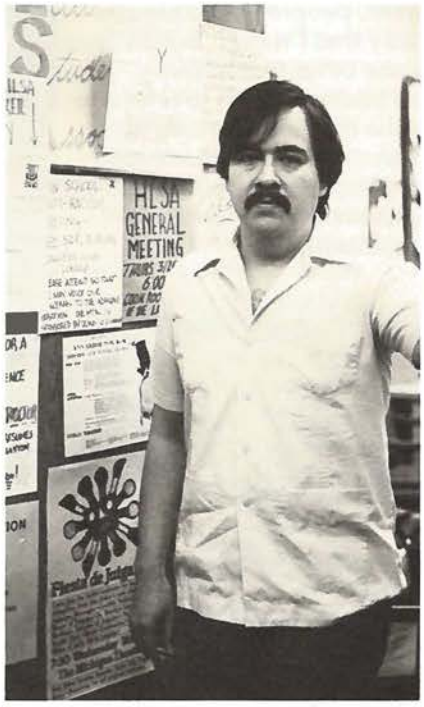
Miguel Angel Rodriguez

Maintaining the struggle for equal rights

"I don't care how much money I make," says Miguel Angel Rodriguez. "I want to do something where I'll be happy and where I can continue to do the things that are important to me." For Miguel (he prefers to be called by his first name), that means working with Latinos in Chicago. It was there that he grew up, taught school, and worked as a political activist before coming to law school. And it was at the Chicago campus of the University of Illinois, a school where most of the students worked part- or full-time, that Miguel earned his A.B. in education.

Public interest work has long been one of Miguel's primary concerns. Back in 1974, he dropped out of the University of Iowa to join a Chicago support group which was organizing boycotts and picket lines for the United Farm Workers. Later, he spent several years with the UAW, where he worked to ensure minority representation in the union.

Before coming to law school, Miguel taught elementary school



Miguel Rodriguez

for two years in a predominantly Mexican-American neighborhood on Chicago's South Side. "Though parents placed high value on learning, they had little formal education and therefore they lacked the middle-class skills to pass on to their kids," he said. Gang activity was so common on the overcrowded school grounds, that he added safety drills to the already existing fire, air raid, and tornado drills, to protect the students and teachers from errant gunfire. "The walls of the buildings were very thin," he explained. "I felt there was a greater chance of being injured or killed by gunfire than by an atomic bomb."

Though Miguel found teaching rewarding, he knew that a law degree would be useful for the goals he'd had since he became politically active. "A lot of the people of my generation were politically committed to social change," he said. "We realized that most of the gains that we made were because of the civil rights movement. So we wanted to go back and contribute to our communities as well as maintain the struggle for political and economic rights."

Both Miguel Rodriguez and his wife, Cynthia, admit that law school has been demanding for their family. With Cynthia working as a consultant with the bilingual resource program with the Wayne School District and Miguel working part-time for the UAW, they have limited time to spend with their sons, Antonio, 10, and Miguel and Luis, 7 year-old twins. Miguel, Sr. has still found time, however, to work with the Hispanic Law Students Alliance in its recruitment efforts. "There aren't enough Latino lawyers," he says, "especially those who are willing to remain in the public interest area."

Fran Hamermesh

On her way toward a career commitment

Several weeks after beginning law school, Fran Hamermesh celebrated her forty-first birthday. That same day, she recalls, a fellow student celebrated his *twenty*-first. Despite the age difference between Hamermesh and most of her classmates, she's enjoyed going to law school with them. "The real differences between us," she says, "lie in the experiences we've had, particularly those of the 60s."

It was during the 60s that Hamermesh was a student at Barnard College, graduating in 1965 and going on to Yale for her M.A. in teaching the following year.

For the next 18 years, while her husband, economist Daniel S.

Fran Hamermesh

Hamermesh, completed his doctorate and commenced his academic career, Fran Hamermesh worked at various jobs in the fields of health and education. They included teaching social science and sex education in the New Haven, Connecticut high schools and developing a teacher training program in sex education for the State of Michigan in East Lansing. More recently, she worked as the coordinator of an extensive research project for the American Cancer Society.

While leafing through a law school bulletin several years ago she came across descriptions of courses in health law. "The legal health issues sounded interesting," she recalls. "It was a combination of that and the fact that I wanted a commitment to a career. I didn't have that because I lacked the credentials to do challenging work that interested me. I also thought the process of law school would be challenging. As it turned out, it's been great, and the courses have been much more interesting than I ever expected they could be."

As the wife of a university professor and mother of two adolescent boys, Hamermesh knew that law school would require certain adjustments on the part of her family. "Probably the hardest thing for them was adjusting to my not always being available when I was home." To ease the burden of commuting from the family home in East Lansing, Hamermesh rented a room near campus where she stayed two or three nights a week. By spending several nights a week in Ann Arbor, Hamermesh was also able to work on the *Journal of Law Reform*, serving as executive note editor during her senior year.

"The experience has brought the boys and their father closer together," she said. "I wouldn't have done it if I'd felt they couldn't handle it." One problem, she admitted, has been trying to keep her grades on a par with those of her sons. David, 17, a freshman at Princeton, and Matthew, 14, a high school freshman in East Lansing, are both straight-A students.

As much as she enjoyed law school, Hamermesh is looking forward to staying in the Lansing area this summer, where she'll begin her career with Loomis, Ewert, Ederer, Parsley, Davis and Gotting.

Michael Huyghue

From the playing field to the bargaining table

"I've always loved athletics and for a long time thought of either coaching or becoming a sports agent," says Mike Huyghue. "There weren't a lot of Black agents around, and agents in general didn't have the best reputations."

Huyghue himself had played varsity football, baseball, and tennis in high school and college, and had taught tennis during his summer vacations. A communications major at Cornell, he was the starting wide receiver for three years, leading the football team in receptions and yards gained, and earning an All-Ivy League Honorable Mention.

When he decided to go to law school, Huyghue considered several schools on the East Coast, as well as a number of schools that specialize in entertainment and sports law. A native of Windsor, Connecticut, Huyghue chose Michigan both for its strength in labor and arbitration and for the opportunity to live in another part of the country. "I knew I had some biases against Michigan," he said. "At Cornell we all kind of patted

Mike Huyghue

ourselves on the back because we all felt the East Coast is where the world begins and ends.

"I really liked it as soon as I got here," he said. "At first I thought that I might be a part-time football coach, and so I talked to Bo Schembechler, who I met through my coach at Cornell, about it. However, I realized that the demands of law school would be too great for that kind of commitment."

Huyghue has found the Law School's strengths in the fields of labor and arbitration to be beneficial to his career goals. "These areas are important in professional sports," he said, "and Professors St. Antoine and Fleming are well-known in the world of pro sports, where they've done arbitration."

Last semester, Huyghue had the opportunity to work an externship for law school credit with the NFL Players Association, in Washington, D.C. "Professor St. Antoine, who sponsored me, was strict about the terms of the externship because it was such an unsual arrangement," he explained. "I worked closely with an attorney at the Players Association, kept a daily journal, and wrote an extensive paper on the subject of mandatory drug testing of professional athletes. From there I was offered a job with Advantage International, which is a sports marketing firm, also in Washington, that provides legal and investment services for 150 of the top athletes in the U.S. and Europe."

In his last semester at the U-M, Huyghue organized a sports law symposium at the Law School that included a panel discussion featuring lawyers representing professional athletes, the NFL Players Association, and the Management Council. "Dean Sue Eklund was very helpful in providing $1500 to run the symposium, which was attended by over 170 people from this law school as well as schools in Detroit."

As of June 1, Huyghue began working as a labor relations counsel for the NFL Management Council. In this position, he represents the owners of the 28 NFL teams in arbitration hearings pertaining to the collective bargaining agreement. "Although my interests are more in the area of working with players, working with management will be a good place to start," he said. "Bargaining, which is done only every five years, comes up this summer, so it will be a great learning experience."

Even with a bright future as a sports attorney looming ahead, Mike Huyghue has not completely given up the role of participant. This spring he competed in the National Law Schools' Softball Tournament in Virginia, where Michigan's team finished runner-up for the second year in a row. The versatile Huyghue also has a repetoire of magic tricks that he can do upon request.

Paul Zisla

Remembering it's a family endeavor

"Studying for exams while your kids watch 'Transformers' on TV in the next room gives you a different perspective on things," observes Paul Zisla. The father of three young children ranging in age from eight years to seven months, Zisla was ten years older than most of his classmates when he began his legal education. In coming to law school, he gave up a career and fringe benefits, as well as the social networks and personal identity he had established as a city planner in Cincinnati. That job had followed four years of experience with the city of Fort Wayne, Indiana, also as a planner.

Zisla feels that the transition has been liberating. "Life is more fluid than people sometimes realize," he says. "Potential employers would always ask why I left my

Paul Zisla and family

job, and often they seemed to think it was a strange thing to do.

"I'm amazed at how focused people are these days. Many of the people of my generation didn't have a clear idea of what they wanted to do right after college." Zisla had majored in sociology at Indiana University. After graduating in 1973, he went on for his M.A., also in sociology, at Northwestern. He ended up as a city planner after working in community development in Bloomington, Indiana.

"The decision to go to law school was a great thing to do at that point in my life. It's not that I was miserable with what I was doing. Cincinnati is a great environment for planning. It's just that in the particular project I was working on (a rail transit feasibility study) I had come to the end of what I could do," he said.

"The neat thing about changing careers was the psychological aspect of jumping off the edge and finding out what's there. There's a certain degree of risk involved, but a law degree from Michigan really increases the chance that things will work out."

The change, Zisla also feels, "amazingly enough, has been good for the family. It's forced us to concentrate on the family as a unit. For people in my situation it's important to remember that law school is a family endeavor. The tendency during the first year is to get totally caught up in law school because it's so all-consuming."

His awareness of the unique problems facing law school families led Zisla to help organize a special orientation session for first-year students with families, as well as several family potluck dinners. "The purpose of the potlucks was just to let people meet the other families. Even though we don't have much time to socialize, it's good to be able to recognize someone passing in the halls and know that we have something in common."

Nancy King

This summer Zisla begins his new career working with the Minneapolis office of O'Conner & Hannon, which has a general business practice as well as a major focus on government relations. Because of his experience in city government, Zisla was interested in working in administrative law, particularly with a firm in the Midwest, where his family ties are.

Zisla had praise for the Law School's Placement Office. "Director Nancy Krieger and her staff run a first-class operation in bringing recruiters here to interview," he said. "They treat students with civility and are very sensitive to the special needs people have."

Nancy King

Deja vu and nostalgia, too

Nancy King has fond memories of coming to the Law Quad as a child when her mother, Ann Arbor attorney Jean King, was a law student. "I remember spinning around in one of the big leather chairs in the Moot Court Room and cutting out valentines," she recalls. "But I was dead set against going to law school myself — you know, when you're young, you never want to be like your parents."

So it was that while attending Oberlin College, Nancy King struck an independent chord by directing her energy into the food cooperative movement. Fluctuating between full- and part-time school and work, she managed a number of stores and bakeries in Oberlin, Ann Arbor, and Minneapolis. What spare time she had she spent clog dancing and playing her grandfather's fiddle at square dances. After seven years, she completed her B.A. and concluded that a law degree would give her many more opportunities than would running a small business.

"I knew that I would enjoy being a lawyer," she explains. "I liked analytical thinking, arguing, writing, and editing." King chose Michigan because it had a nostalgic quality ("I remember that the Law Quad felt like a huge old castle to me when I was seven," she recalls) and because she knew that living in Ann Arbor, where she had friends and relatives would ease the stress of law school.

From the day she began her legal studies King wasted no time gaining practical experience. After serving as a student attorney on the Family Law Project, King had the unique opportunity to serve an internship in the Delta County

Prosecutor's Office in Escanaba, Michigan. There she had full responsibility for bench and jury trials in misdemeanor cases, and for advising police, charging, preliminary examinations, plea negotiations, sentencings and motions in felony and misdemeanor cases.

During her second year in law school, King, along with two other law students, taught a course on women and the law in the Women's Studies Department. Though the three women were technically known as teaching assistants, they had complete responsibility for every aspect of the course. "Classes met twice a week for an hour and a half," King explained. "We each gave two lectures and we arranged for guest lecturers to come in as well. Probably the most demanding part was leading the discussions, where you had to keep 22 people going the whole time," she said. "It's challenging because you have to *learn* so much in order to teach it.

"And that's what I liked about being on *Law Review* — you learn so much more from the other students." King, who was managing editor of the publication for 1986-87, placed a high value on the human relations aspect of her work. "I felt it was important to keep the staff motivated and informed," she said.

Looking ahead, King is attracted to a number of options — litigation, research, and teaching. She'll spend the year after graduation clerking with U.S. District Judge Douglas W. Hillman, who is chief judge in the Western District of Michigan. "I'm excited about the opportunity to watch experienced trial attorneys in action and to observe how a skilled federal trial judge handles cases. It's just what I wanted to be doing at this point in my life." ⊠

Life after retirement — part 2

Five more professors emeriti describe life in the not-so-fast lane

Editor's note: Last year LQN *sent letters to all retired faculty members inquiring into their current activities. In the Winter 1986 (30:2) issue, we published the responses that had been received at that point. Since then, several more of our faculty have responded and two others have achieved emeritus status. Their accounts follow.*

Luke Cooperrider

Luke Cooperrider retired in May, 1983, after more than 30 years with the university. Within the Law School, he earned the respect of his colleagues and students as a man learned in the law, one whose knowledge and understanding were far broader than the particular fields — torts, evidence, and restitution — that were his specialties.

A dedicated teacher, he devoted much of his time during the last years of his career on the faculty to directing and significantly strengthening the School's vitally important Writing and Advocacy Program.

"The first thing my wife and I did, shocking to our friends, was to pull up stakes in Ann Arbor and move to Arizona.

"We have enjoyed the change. I am no great gardener, but I do enjoy watching, tending, and reaping the bounty of several citrus trees, a small garden patch, and a number of other interesting flora. I am no naturalist, but we always enjoy our sightings of coyotes, road-runners, jackrabbits, Gambel's quail, soaring golden eagles, and many other species I am unable to identify. We have spent a lot of time exploring the mountains and deserts, the coastline, and the great cities with which we were not familiar. There have also been occasional probes to more distant destinations, Hawaii, Alaska, Boston, Washington, D.C., the British Isles, and the Mayan ruins in Mexico.

"I am not 'doing law' or teaching. I have, however, continued my participation, as chairman, in the work of the committee that drafts the torts questions for the Multistate Bar Examination. This should surely not be seen as evidence of the existence of a sadistic disposition, though when I mentioned it to a young woman who had recently passed through the examination process and joined the Arizona bar, she seemed rather uncertain how to react.

"One of my pre-emeritus fantasies was that as an emeritus I would have all the time in the world to put my feet up and read all those things that I wanted to read. Well, it turns out that life in retirement, like life in academia, is by no means the quiet, contemplative existence that outsiders expect it

to be. I am getting great pleasure from reading some new things and re-reading some old favorites — right now I am wallowing in War and Peace, *which I had never tackled before — but the time left for that is not as great as I expected it to be.*

"The hours and the days have never flashed by more rapidly. I attribute that to the company with which I have been blessed, my wife of 41 years, Virginia, and all the dear friends who have visited us out here on the frontier."

Robben Fleming

Robben Fleming received the joint titles of president emeritus and professor emeritus in December, 1985. Following ten years of distinguished leadership as president of the university (1968 to 1978), Fleming served as president of the Corporation for Public Broadcasting for four years. He rejoined the university as professor of law in 1982. He is remembered as a leader of national stature and compassion.

"I am largely continuing the same things I have been doing for several years, which is to say:

1. Senior educational consultant to the Annenberg/Corporation for Public Broadcasting series on public television.

2. Senior educational consultant to the Kellogg Foundation for various educational programs.

3. Chairman of the Board of the National Institute for Dispute Resolution, which is interested in alternatives to litigation for the resolution of disputes.

4. Finishing a report for Cornell University on some internal changes in their educational offerings.

5. Making speeches before a wide assortment of audiences about subjects on which I am alleged to be informed.

"Other than that, my days are my own, and Florida is a very nice place to spend the winter!"

George Palmer, who retired in 1978, began his teaching career at the Law School in 1946. His teaching specialties included remedies, restitution, and trusts and estates. Over the years he produced numerous articles marked by meticulous scholarship and impeccable style. His books include *Mistake and Unjust Enrichment* (1962), *Cases on Trusts and Succession* (1968), *Cases on Restitution* (1969), and *The Law of Restitution* (1978).

Palmer is known for deftly cutting through the verbiage of excessively elaborate and often impenetrable legal writing to the solid bedrock of fact beneath.

"For a time I taught after retirement in 1978, including two stints at Michigan, but gave that up in 1981. Until recently I did occasional consulting work, as well as testifying as an expert witness in cases in other jurisdictions (England and Australia), but that too is now in the past.

George Palmer

"I continue to publish biennial supplements to my four-volume work on restitution. This is what I am working on now and will be for some time to come. Two years ago I completed a monograph on the history of the Anglo-American law of restitution, which eventually will be published in the International Encyclopedia of Comparative Law."

Roy Proffitt is the most recent addition to the Law School's list of active emeritus faculty, having retired last fall. A native of Hastings, Nebraska, Proffitt served in the navy during World War II, and held the rank of commander.

Though his academic interests and publications were in the fields of criminal law, criminal procedure, and admiralty law, Proffitt is probably best remembered by most alumni for his work as associate dean. As director of the Law School's development and alumni activities, he continued to maintain close contacts with alumni long after they left the U-M.

"Being 'unemployed' is such a new experience for me that I haven't settled into any pattern, unless you call loafing a pattern. But I've been on the move.

Roy Proffitt

"My wife, Jean, and I first joined a Michigan alumni cruise through New England and Canadian waters between New York City and Montreal. Following that we began a coast-to-coast geography refresher with an automobile excursion through several southeastern states, and then a trip to Coronado, California for the winter months. Our third and final trip for a while will be to drive to Seattle and take off from there by boat, bus, train, and plane through Alaska in midsummer.

"Between trips I'm an active volunteer for the Law School Fund and the Campaign for Michigan, and I participate in the activities of the U-M Alumni Association. I'm also enjoying having more time to read, walk, work around the house, play golf, and visit my friends and neighbors."

Russell Smith

Russell Smith held the Edson R. Sunderland Chair when he retired in 1972. He began his teaching career at the U-M in 1937 and served as associate dean and co-director of the Institute for Labor and Industrial Relations from 1957 to 1962. During his career at Michigan, Smith was active in local city government, investigated labor issues of importance to the state, and served on commissions and boards of the federal government dealing with mediation and labor law.

"Together with Evelyn (my wife of twelve years since the death of my first wife), I'm helping Naples, Florida with its new Ritz Carlton Hotel become one of the country's fastest growing areas. We spend about half the year here and the other half in North Carolina, near Brevard, which is near Asheville. I continue to do some arbitration work, mostly grievance injury cases with the National Football League, and I will say that football is indeed a rough sport. We attempt a little golf, although more or less futilely. We are in relatively good health." ◙

Scrutinizing the weapons sweeps

Myrna Baskin (right) and Laura Thomas, who graduated in May, found themselves in the limelight this spring as the result of an extensive analysis they co-authored on a subject of great interest recently: weapons sweeps in the Detroit public schools. ("School Metal Detector Searches and the Fourth Amendment: an Empirical Study, University of Michigan Journal of Law Reform, *19:4, 1037-1106). The women were interviewed on several TV and radio talk shows in Detroit and Ann Arbor, where they explained why they felt the sweeps, as originally conducted, were not only probably unconstitutional, but ineffective as well.*

Court evaluation update

Kamisar no longer bullish about the future of the Warren Court's landmark criminal procedure cases

Courtesy of the Ann Arbor News

Yale Kamisar

Five years ago, when he wrote the chapter on criminal justice for a collection of essays on the Burger Court (*The Burger Court: The Counter-Revolution that Wasn't*, Vincent Blasi ed., Yale University Press), Professor Yale Kamisar concluded that Warren Court supporters had reason to be encouraged. Although the Burger Court had at first treated its predecessor's landmark criminal-procedure decisions unkindly, the new Court in its more recent decisions was holding firm on some search-and-seizure issues and even advancing on others. Moreover, its performance concerning confessions was an especially pleasant surprise. As Kamisar saw it then, a significantly less police-oriented Court had emerged starting in 1977, about the time Justice John Paul Stevens was appointed to the Court.

Recently, however, Kamisar was a good deal less optimistic about the future of the Warren Court's landmark criminal procedure cases. In the chapter on criminal justice for another collection of essays on the Burger Court (see next page), he wrote:

"No sooner had I written my rather cheery 1982 report (viewed from the perspective of a Warren Court supporter), than a third Burger Court began to take shape.... In the main, this third Burger Court — the one operating when Chief Justice Burger stepped down — picked up where the first had left off in the mid-1970s.

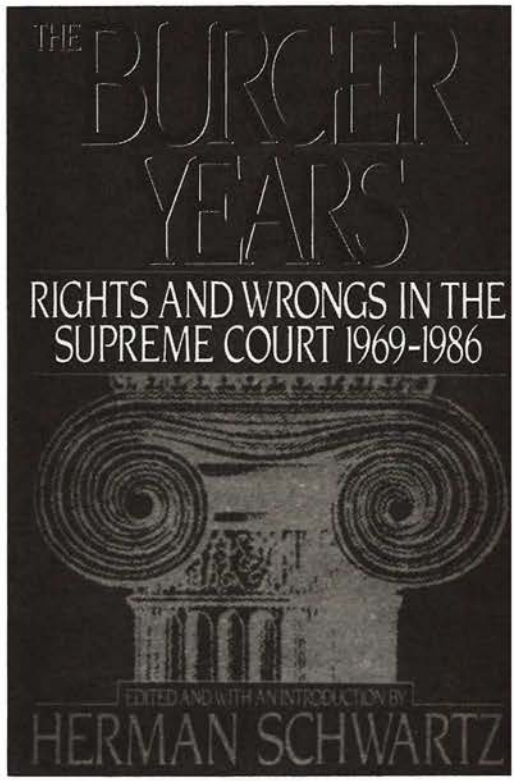
"For example, perhaps because the Court had become convinced that more law-enforcement tools were needed to combat drug traffic, during the 1982-83 term the government gained complete or partial victory in all nine search-and-seizure cases decided that term (all involving drugs). As Professor Wayne LaFave, the nation's leading authority on the law of search and seizure, observed, more significant than the government's impressive won-lost record was 'the tenor and style of these decisions. It is almost as if a majority of the Court was hell-bent to seize any available opportunity to define more expansively the constitutional authority of law enforcement officials.' The following term, in *United States v. Leon* (1984), after having hinted for a decade that it would do so, the Court finally adopted a 'good faith' (actually a 'reasonable mistake') exception to the Fourth Amendment exclusionary rule in its central application: the prosecution's case against the direct victim of a Fourth Amendment violation.

"Nor did *Miranda* fare well during the last phase of the Burger Court's work. In *New York v. Quarles* (1984), in the course of establishing a 'public safety' exception to the *Miranda* warnings — an exception of unknown dimensions that may make the *Miranda* requirements much more difficult to understand — the Court viewed the now-familiar warnings as merely nonconstitutional 'prophylactic rules.' And a year later, in *Oregon v. Elstad*, while admitting into evidence a 'second confession' that had been preceded by an incriminating statement obtained in violation of *Miranda*, the Court distinguished between what might be called *real* constitutional violations and *mere Miranda* violations — sharply contrasting statements that are *actually* 'coerced' or 'compelled' from those that are *only* obtained in violation of *Miranda's* 'procedural safeguards' or 'prophylactic rules.' "

Although Kamisar was somewhat gloomy about the continued vitality of the Warren Court criminal justice cases, he was more confident that *Miranda* would survive, albeit in subdued form, than he was about the future of the Fourth Amendment exclusionary rule. As he saw it, the Burger Court had rendered the exclusionary rule "almost defenseless against congressional efforts to repeal it, most likely by a statute that purports to replace the rule with what we shall be assured is an 'effective' alternative remedy." ◘

An extended excerpt from the essay is found on the following page.

The future of *Miranda* and the Fourth Amendment exclusionary rule



Excerpted from "The 'Police Practice' Phases of the Criminal Process and the Three Phases of the Burger Court," by Yale Kamisar, from The Burger Years: Rights and Wrongs in the Supreme Court 1969-1986 edited by Herman Schwartz. Copyright © 1987 by Nation Enterprises. An Elizabeth Sifton Book. Reprinted by arrangement with Viking Penguin Inc.

The reasoning the Burger Court employed in Fourth Amendment and confession cases outruns the results it reached. If, as the Court repeatedly told us, a mere violation of *Miranda* is not a violation of the Constitution, then the Supreme Court must have gone awry in the *Miranda* case itself when it imposed the new confession doctrine on the states. For if a confession obtained without giving a suspect the *Miranda* warnings does not infringe on the self-incrimination clause *unless it is accompanied by actual coercion*, then why are the state courts not free to admit all confessions not the product of actual coercion? Moreover, if, as the Court told us, any rule that excludes probative and reliable evidence must "pay its way" by deterring official lawlessness and if, as it also told us, the deterrent effect of the exclusionary rule has never been established (to the satisfaction of the Burger Court, at any rate), then why stop with only a modification of the exclusionary rule? Why not abolish the rule altogether?

If law were entirely a syllogism, it would follow that the Rehnquist Court will soon finish off both *Miranda* and the Fourth Amendment exclusionary rule. Nevertheless, I do not think that at the present time (the fall of 1986), a majority of the Court is prepared to overrule *Miranda* or get rid of the exclusionary rule altogether. While Chief Justice Rehnquist, and perhaps Justice Antonin Scalia as well, might welcome such results, those members of the Court who may be called the "swing justices" — Justices White, Harry Blackmun, and Lewis Powell — I think would not. The powerful intellect and considerable persuasiveness of Rehnquist and Scalia may have an important impact on unknown future justices, but not, I think, on such independent-minded and battle-scarred veterans as White, Blackmun, and Powell.

In various Burger Court opinions, these "swing justices" may have gone along with the reasoning that, taken to its logical conclusion, would seem to lead to the demise of *Miranda* and the exclusionary rule, but I doubt very much that they will allow this reasoning to be applied "to the limits of its logic." I think rather that these justices are prepared to "live with" what they would probably call a "pruned" exclusionary rule and a "workable" Fourth Amendment (and what I would call a "battered" exclusionary rule and "shrunken" Fourth Amendment). I believe these pivotal justices are even more willing to put up with the *Miranda* doctrine now that it has been more or less limited to the police station or an equivalent setting and subued in other ways, especially if the Court continues to view *Miranda* (as it did in *Moran v. Burbine* (1986)) as a serious effort to strike a proper balance between the need for police questioning and the importance of protecting a suspect against impermissible compulsion.

The trouble is (from the vantage point of a Warren Court admirer at any rate) that these justices, and, of course, the present Court's staunchest defenders of *Miranda* and the exclusionary rule (Justices Brennan, Marshall, and Stevens) will not be with us forever. And the Burger Court's "deconstitutionalization" of *Miranda* and the Fourth Amendment exclusionary rule will make it relatively easy for new justices to abolish *Miranda*

and/or the exclusionary rule — to carry the Burger Court's characterization of these doctrines to "the limits of its logic." New, yet unnamed justices will feel more comfortable doing so, and it will be more respectable to do so, because the Court has stripped these doctrines of their constitutional bases in recent years. The reasoning of the Burger Court, whatever reservations some justices who concurred in that reasoning may have had about its ultimate reach, has a life of its own.

Now that the Fourth Amendment exclusionary rule rests on an "empirical proposition" rather than on a "principled basis" it is especially vulnerable. The fact that the Burger Court has finally carved out a "good faith" exception to the exclusionary rule in its central application, together with the cost-benefit balancing it has used to reach that result, renders the rule almost defenseless against congressional efforts to repeal it, most likely by a statute that purports to replace the rule with what we shall be assured is an "effective" alternative remedy.

As Justice Brennan recently observed, "[a] doctrine that is explained as if it were an empirical proposition but for which there is only limited empirical support" is "an easy mark for critics." The exclusionary rule has many critics in the Congress and the state legislatures, and these critics will be quick to assert that the legislature has far greater institutional competence to evaluate the "costs" and "benefits" of suppressing reliable physical evidence than do the courts.

If the Court's current way of thinking about the exclusionary rule is not wrong — and I believe that it *is* wrong — then I fear the rule's many critics in the legislature are right. ⊠

Visiting faculty

Four visitors joined us at the Law School for the winter semester.

Robert H. Abrams visited from Wayne State University Law School, where he is interim dean and where he has taught since 1977. Twice a graduate of the U-M (A.B. in philosophy, '69, J.D. '73), Abrams worked as a litigation attorney for a year, before beginning his teaching career at Western New England College School of Law in 1974. He spent the summer of 1980 teaching at the Institute of International and Comparative Law in Oxford.

Professor Abrams's areas of interest include water law, environmental law, civil procedure, federal courts and the federal system, and constitutional law. Co-author (with Joseph Sax) of *Legal Control of Water Resources*, Abrams is now working on a new volume, *Nature, Law and Society* with Zygmunt Plater. This winter he taught Water Law.

Clark Cunningham also visited from Wayne State, where he is an adjunct professor of law. He also works with the law firm of Stark & Gordon in Detroit. Cunningham, who has had a long-standing interest in civil rights litigation, legal services for the poor, and community development, was a VISTA volunteer in Detroit for two years, after graduating from Dartmouth College in 1975. He has worked as executive director and as special projects director of the United Community Housing Coalition in Detroit. Last year he spent three months in India as a visiting fellow with the Indian Law Institute. This winter he taught two sections of Lawyers and Clients.

Janet Findlater, another visitor from Wayne State, has taught at that school since 1976. Findlater did her undergraduate work in Russian civilization at Smith College (A.B. '70) and studied law at the U-M (J.D. '74). For the past year and a half, she has been working on several projects designed to reduce the incidence of violence in the lives of battered women and their children. These include serving as a consultant to the Domestic Violence Prevention and Treatment Board, working with women's shelters throughout the state, and planning legislative strategies for the Coalition to End Legalized Rape in Michigan. Professor Findlater also helped to draft a bill recently enacted by the Michigan legislature that requires police officers in domestic assault cases to provide the victim with information about her legal options and about the availability of shelters and other services. This winter she taught two sections of Criminal Law.

F. Hodge O'Neal, who holds the George A. Madill Professorship at the Washington University School of Law (St. Louis) is an alumnus of Louisiana State University (A.B. '36, J.D. '38). He holds graduate law degrees from Yale (J.S.D. '49) and Harvard (S.J.D. '54). During his career, Professor O'Neal has held a number of honorary chairs, served as dean, and taught at several different law schools, including the University of Mississippi, Duke, Vanderbilt, and Minnesota.

A specialist in close corporations and family companies, O'Neal has also written on corporate drafting and on the problems of minority shareholders. This winter he taught a course on corporations and a seminar in corporate planning and drafting. ⊠

The letters of Holmes and Wu

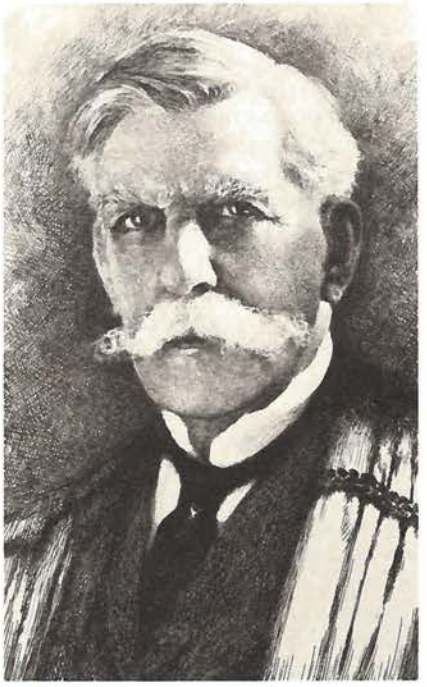
A correspondence bridging two cultures and four generations

In 1920, John C.H. Wu, a 22 year-old Chinese graduate of the Suzhou Comparative Law School of China, came to Ann Arbor to pursue the Doctor of Jurisprudence degree at the U-M. Praised by one of his teachers as a prodigy, Wu did graduate work at the Sorbonne, the University of Berlin, and Harvard Law School after receiving the J.D. at Michigan.

He returned to China to serve as a professor of law, judge and codifier of civil law. Wu later became a prominent diplomat, philosopher, scholar, and authority on international law. The principal author of the Nationalist constitution, Wu served on the Permanent Court of Arbitration at The Hague, and as ambassador from China to the Vatican from 1947 to 1949.

When the Communists came to power in 1949, Wu and his family moved to the U.S., where he assumed the position of professor at Seton Hall Law School. He retired in 1967 and returned to Taiwan, where he died on Feb. 5, 1986.

Even before coming to the United States, Wu was fascinated with Western ideas of law, religion, and philosophy. Born into a prominent family in Ningpo, he came into contact with missionaries and became a Methodist, taking the name of John (his given name was Wu Ching-hsiung) at his baptism. In 1937 he converted to Catholicism. The author of numerous books on law and philosophy in both English and Chinese, Wu, in *Beyond East and West*, fondly recalled his days as a Michigan law student: "My stay in Ann Arbor was among the happiest periods of my life. My teachers . . . took a personal interest in me. They were so cordial and kind to me, and I was so intensely interested in my studies, that I had no time to feel homesick, although it was the first time that I was ever abroad.



Oliver Wendell Holmes

John C.H. Wu as a U-M law student

"There was a certain homelikeness and coziness about Ann Arbor, and a warm sympathy about its people. There were also quite a number of Chinese students there, and a nice Chinese restaurant on the campus. My landlady, one Mrs. Hutchinson, was very kind to me.

"In 1921 I published an article . . . under the title of 'Readings from Ancient Chinese Codes and Other Sources of Chinese Law and Legal Ideas.' As I had so often heard my professors speak of [U.S. Supreme Court] Justice [Oliver Wendell] Holmes in the most laudatory of terms, I sent him a complimentary copy . . . . All that I expected was a polite acknowledgement written by the hand of a secretary."

To Wu's surprise, the 80-year old Holmes was sufficiently impressed with the article to fire back a reply commenting on it. Those letters were the beginning of a correspondence that lasted until Holmes's death 14 years later.

Excerpts from this correspondence follow. The selections were drawn from a private collection of the letters kindly supplied by Dr. Wu's son and daughter-in-law, Vincent and Patricia Wu of East Hanover, New Jersey. To them we acknowledge our deep appreciation for making this article possible.

Paris, France
Nov. 23, 1921

My dear Mr. Justice Holmes:

Last spring I was in Ann Arbor; now I am in Paris.

Now, let me tell you what has brought me to this continent. When I was in Michigan, I studied international law and comparative law. The professors being satisfied with my work recommended me to a fellowship offered by the Carnegie Endowment for International Peace. The fellowship left me free in choosing the institution in which I was to study; and I chose the University of Paris. So that the fact I am in Paris is the result of my own free choice: this reminds me once more of Your Honor's doctrine that there is no determinism with human affairs, and that "mankind yet may take its own destiny consciously and intelligently in hand." I shall get the best out of Paris; I shall read and write as much as I can; I shall observe and think as profoundly as possible. As a Chinese I have a country to save, I have a people to enlighten, I have a race to uplift, I have a civilization to modernize ....

One of the principal causes of the stagnation of the Chinese civilization is a wrong conception which regards continuity with the past as a sacred duty, and which ignores the fact that the divine right of the past is no less baseless than the divine right of kings....

Enclosed please find a photograph of mine. I was born in the closing year of the last century, or, to be a little fantastic, in the year when Your Honor delivered the address, "Law and Science and Science in Law," which I now read with such an immense joy. Our ages are widely separate, but what has Eternity to do with years and centuries. Our birth-places are far removed, but what has Universality to do with oceans and continents? I desire Your Honor's friendship, because Providence has made us kindred spirits; Your Honor being an old man endowed with a child's heart, and I being a boy provided with an old man's mind.

Your obedient and
respectful servant,
John Wu

April 1, 1923

My dear Mr. Wu,

You speak of going deeply into the philosophy of Hegel. Hegel impresses me as other Germans have done, as having had real and profound insights which remain, and as having thought it necessary to make a system which I think as dead as other systems generally in a hundred years. The summer before last I reread the translation of his logic. When I first read it the only proposition that remained to me was that he could not persuade me that a syllogism could wag its tail. In other words, his attempted transition from logic to life I think a humbug.... But after you have steeped yourself in him, I fear that you will think that I have been flippant and superficial. I love the enthusiasm that you feel — including that for me. It will grow less, I fear, as you grow older, but I trust that enough will remain to be a pleasant memory to you when I am no longer above ground....

Sincerely yours,
O.W. Holmes

Berlin
April 23, 1923

Dear Mr. Justice Holmes,

I am already preparing to embark upon the second part of my essay upon your juristic philosophy, namely, the Problem of Life. Like Montesquieu, you are both a man of science and a man of the world.

Do you say that my enthusiasm for you will grow less as I grow older? No, Sir.... My attitude toward you is that of "understanding wonder." That is to say, I understand you almost wholly, including even your "flippancy and superficiality," and yet I cannot help wondering. Such an enthusiasm is grounded upon solid reasons, and can never fade away. Furthermore, I am no longer young: I have passed my 24th birthday last month.

Your loving and
admiring servant,
John C.H. Wu

May 14, 1923

My dear Mr. Wu,

You make me chuckle when you say that you are no longer young, that you have turned 24. A man is, or may be, young to after 60, and not old before 80. But since last summer, although I feel much the same eagerness as ever, I have taken a step.... I walk slowly and use an elevator to get to my library...when two years ago... I went upstairs two steps at a time and at a run. However, it is true that in one sense a man is no longer young at 24. He has reached an age when his opinions are entitled to respect, when, in a general way, he is anybody's equal, when, at least, no one is entitled to bully him....

Probably you will find, as I do, that ideas are not difficult, that the trouble is in the words in which they are expressed. Every group, and even almost every individual when he has acquired a definite mode of thought, gets a more or less special terminology which it

takes time for an outsider to live into. Having to listen to arguments, now about the railroad business, now about a patent, now about an admiralty case, . . . a thousand times I have thought that I was hopelessly stupid and, as many times, have found that when I got hold of the language, there was no such thing as a difficult case. There are plenty of cases about which one doubts, and may doubt forever, as the premises for reasoning are not exact, but all the cases, when you have walked up and seized the lion's skin, come uncovered and show the old donkey of a question of law, like all the rest.

Sincerely yours,
O.W. Holmes

June 2, 1923

Dear Mr. Justice Holmes:

I am at present quite dejected in spirit. My application for a further renewal of the Carnegie Fellowship in International Law has failed, apparently because of my excessive interest in philosophy. But one's interest is inborn, and cannot be cured by any medicine, not even by the fear of losing a scholarship.

Your admiring
servant,
John C.H. Wu

June 16, 1923

My dear Mr. Wu,

I am sorry at your disappointment about the Carnegie Fellowship, but it may turn out a blessing. The test of an ideal, or rather of an idealist, is the power to hold it and get one's inward inspiration from it under difficulties. When one is comfortable and well off, it is easy to talk high talk. I remember just before the Battle of Antietam thinking, and perhaps saying to a brother officer, that it would be easy, after a comfortable breakfast, to come down the steps of one's house pulling on one's gloves and smoking a cigar, to get onto a horse and charge a battery up Beacon Street, while the ladies wave their handkerchiefs from a balcony. But the reality was to pass a night on the ground in the rain with your bowels out of order and then, after no particular breakfast, to wade a stream and attack the enemy. That is life. I hope that your interest in philosophy — and philosophy, wisely understood, is the greatest interest there is — will not lead you too far from the concrete. My notion of the philosophic movement is simply to see the universal in the particular, which is, perhaps, a commonplace, but is the best of commonplaces if you realize that *every* particular is as good as any other to illustrate it, subject only to the qualification that some can see it in one, some in another matter more readily, according to their faculties. . . .

Sincerely yours,
O.W. Holmes

August 15, 1923

Dear Mr. Justice Holmes,

Some days ago a thought came to my mind. I was so bold as to think that I should advise you to write an autobiography, as Goethe, Mill and other poets and thinkers have done. The appearance of a great soul upon the world stage imposes upon the posterity the task of explaining him. The external events of a life are easily ascertainable, such as whether you fought and were wounded in the Civil War, how many cases you have written, etc. But the development of one's internal nature defied the searchings of any critic or biographer. . . . Could you not take a year's leave from the bench for the sake of this enterprise?

Your unworthy
but most admiring
servant,
John C. H. Wu

September 20, 1923

My dear Mr. Wu,

Your letter moves me by its generous enthusiasm . . . .

I should like to keep on until more definitely aware of the gradual decline of my powers. And that is the answer to your suggestion of an autobiography. So long as I am capable of my best, I want to put it into my work. A man's spiritual history is best told in what he does in his chosen line. Life having thrown me into the law, I must try to put my feelings of the infinite into that, to exhibit the detail with such hint of a vista as I can, to show it in the great line of the universal. This sounds a little pompous, but it truly expresses my desire and the way I felt when called on perhaps to construe some temporary statutes, so that untying little knots never seems drudgery.

Just after sending my last letter to you, a further thought occurred to me with regard to the forms of thought. Whatever the value of the notion of forms, the only use of the forms is to present their contents, just as the only use of a pint pot is to present the beer (or whatever lawful liquid it may contain), and infinite meditation upon the pot will never give you the beer. . . .

Sincerely yours,
O.W. Holmes

[redacted]

Cambridge, Mass.
April 5, 1924

My beloved Justice,

I shall return to the land of my birth by the middle of June.... China is on the eve of a tremendous Revolution, not political, but intellectual and spiritual. A Renaissance! This century is going to witness a rebirth of this oldest nation of the world, a child born of the wedlock between East and West. I shall play my part in that glorious movement, and you may be sure that the seed you have sown will bring forth rich harvest in a distant land.

Yours eternally,
John C.H. Wu

May 5, 1926

My dear Mr. Wu,

[Responding to a letter in which Wu asks about his beliefs in eternal life.] I believe that we are in the universe, not it in us, that we are part of an unimaginable, which I will call a whole in order to name it, that our personality is a cosmic ganglion, that just as when certain rays meet and cross there is white light at the meeting point . . . so, when certain other streams of energy cross, the meeting point can frame a syllogism or wag its tail. I never forget that the cosmos has the power to produce consciousness, intelligence, ideals, out of a like course of its energy, but I see no reason to assume that these ultimates for me are cosmic ultimates. I frame no predicates about the cosmos. I suspect that all my ultimates have the mark of the finite upon them, but as they are the best I know I give them practical respect, love, etc...it makes me enormously happy when I am encouraged to believe that I have done something of what I should have liked to, but in the subterranean misgivings I think... that it does not matter much....

Ever sincerely yours,
O.W. Holmes

[redacted]

Nanking, China
May 19, 1928

My beloved Justice,

Many things have happened since I last wrote. I resigned from the Shanghai Provisional Court; and just at the moment when I began to fear that the Cosmic Energy had forsaken me came an appointment from the Ministry of Justice. I was appointed codifier of the civil law with the exception of family law and succession. Lo! the most beautiful of my dreams was fulfilled! I shall devote a whole year to this great task. I shall begin by investigating the *droit coutimier* of China; I shall also make an intensive comparative study of Anglo-American and Continental civil law.

Your ever affectionate friend,
John C.H. Wu

November 2, 1928

My dear Wu,

I am now the oldest judge who has ever remained sitting on our Bench.... This is a perfectly external trifle and yet in a small way it pleases me, as externals do, although the only thing that gives one real happiness is when one whose judgment one respects says the few words that are the laurel crown....

I fall back on the thought that no one can direct the life of another man, at least if it is a life worth living. Each has to work out his own way and, if it is a good one, he probably will have to suffer a good deal in the process. If I were to sum up what I have learned to think, I should say: faith in effort — before you see the goal or can put articulately the question to be asked.

Affectionately yours,
O.W. Holmes

Beverly Farms
July 1, 1929

My dear Wu,

You may have heard before this of the death of my wife, which not only takes away a half of my life, but gives me notice. She was of the same age as I, and at the age of 88 the end is due. I may work on for a year or two, but I cannot hope to add much to what I have done. I am too skeptical to think that it matters much, but too conscious of the mystery of the universe to say that it or anything else does not. I bow my head, I think serenely, and say as I told someone the other day, O Cosmos, Now lettest thou thy ganglion dissolve in peace.

Yours always,
O.W. Holmes

March 12, 1930

My dear Wu,

The two volumes of *National Fine Arts Exhibition 1929* have come and delighted me...Such delicacy of feeling — such power of drawing, such poetry, coupled with things I don't understand. And in a few examples evidences of Western influence — whether for good I do not know. I thank you very much but fear that your kindness has made you extravagant.

Affectionately yours,
O.W. Holmes

[redacted]

Harvard Law School
March 15, 1930

Beloved Friend,

Your comment on the fine arts, like all your comments, is brief but to the point! You see poetry in the painting? That is exactly what Su Tung-P'o, one of the greatest art critics of the Sung period, said of Wang Wei, the poet-painter of the T'ang Period. "In the poems of Wang Wei," said Su, "there is painting; and in his paintings there is poetry." This has become one of the most famous sayings, because of its keen insight... You have diplomatically hinted at your misgiving as to whether the Western influence on Chinese art is a good one. I can undiplomatically assert that it is positively bad; it vulgarizes and disconcerts. But I think that it is probably a necessary stage to pass through, and that if Chinese artists have enough vitality in them, they will be able to survive and transfigure the hard realism of modern painting.

Another thing which might interest you is that Chinese scholars have always practiced calligraphy as a fine art. In this again you are at bottom a Chinese! For there is art in your handwriting — you simply paint....

Ever affectionately yours,
John C.H. Wu

March 14, 1932

My dear Wu,

Thank you for your letter. I have been wondering about you and whether things were going well. I can't give you an adequate answer because writing has become difficult to me. I have no other reason than 91 years. Perhaps you know that shortly before my last birthday I resigned my seat on the bench. I am well, but don't want any work to do at present. My secretary reads to me some philosophy and economics, but more modern stories. With a daily drive and long hours in bed, calls made upon me and some necessary letters, I find my hands full. Frankfurter was quoted the other day for a suggestion that I might write a book about the law. I can think of a first sentence, but after that I should like to study, and I doubt if I shall study any more.

Affectionately yours,
O.W. Holmes

[redacted]

Shanghai, China
April 2, 1933

Beloved Friend,

One great lesson among others I have learned from your life is never to desire to get great quick. You have all but emancipated me from the lure of fame, contemporary or posthumous. The only stimulus is the instinctive urge to create a beautiful and harmonious life. I shall start from the awful awareness of the nullity of life, and on this blank canvas I shall try to paint a picture that should suit my taste.

Affectionately yours,
John C.H. Wu

Major books in English by John Wu

During his lifetime, John C.H. Wu published well over 200 books and articles in Chinese and English. Some of his major books in English are listed below.

Essays and Judicial Studies **(1928)**

Legal Systems of Old & New China **(1930)**

The Art of Law & Other Essays **(1936)**

Essays in Jurisprudence & Legal Philosophy **(1938)**

Lao-Tzu's Tao & Its Virtue **(1940)**

China's Constitution **(1945)**

The Organic Law of the Republic of China **(1945)**

Beyond East & West **(1951)**

Fountain of Justice **(1955)**

Justice Holmes: A New Estimate **(1957)**

Cases & Materials on Jurisprudence **(1958)**

Chinese Humanism & Christian Spirituality **(1965)**

Sun Yat-sen: The Man & His Ideas **(1971)**

Four Seasons of Tang Poetry **(1972)**

Robert Hirshon, J.D. '73

Maine state bar president, community leader, father

by Ann Munch

We read about and probably know the modern phenomenon, the woman who combines a demanding professional career with bringing up children and providing a home. How about her male counterpart, the man who puts together a career, civic commitment, and intense family involvement?

Such a person is Robert E. Hirshon, J.D. '73, shareholder in the Portland, Maine firm of Drummond, Woodsum, Plimpton and MacMahon, president of the Maine State Bar Association, little league coach, and member of the zoning board of appeals in Cape Elizabeth, where he resides.

This is not a new phenomenon. Attorneys traditionally have held leadership posts in their communities. What may be unusual in this instance is the conscious partnership Bob Hirshon and his wife, Robie, have formed that enables each of them to pursue separate careers and at the same time unites them in raising their children.

Robie Hirshon, who recently earned her masters degree in social work, is now director of employee assistance at Portland City Hall while maintaining a private clinical practice. The Hirshons' four children, who range in age from 5 to 13, go to three different schools (to suit their different needs) and have a schedule that includes tennis, dance, piano, cooking, ice skating, violin, and karate lessons, as well as Hebrew school.

The pace has been hectic from the beginning. "In fact," Bob Hirshon explains, "Robie was pregnant [during my] last year in law school, [so our first son,] Todd, was born one week to the day before I took the bar exam. . . That set the tone." He backtracked, "I took my last exam on Tuesday, we said goodbye to friends on Wednesday, packed on Thursday, and drove to Portland on Friday." While Hirshon studied for the bar exam, Robie started interviewing for a job and looking for houses.

How did they manage all that? "It was a decision we made that careers were important to each of us, that having children and raising a family was important to each of us. We made the commitment to each other, as much as to ourselves, that we would do it. That's what you have to do. You have to take stock and really decide what you want before you do it."

A delicate balance

Maine State Bar Association President Robert Hirshon and U.S. District Judge Deanell Reece Tacha exemplify the thousands of Law School graduates who have made commitments not only to their careers, but to their families and to their home town communities as well. We are reprinting their stories because the choices and challenges they face are shared by a large segment of Michigan alumni today.

As an example of ways the Hirshons find to keep their family close, he said, "I still work weekends, but we've tried to create special times out of that. When I go in to the office on Saturday or Sunday mornings, the children take turns coming in with me. They think of it as a special time.

"What I'm trying to say is that there are only 24 hours in a day, yet with careful planning you can get a little bit more out of those 24 hours than you think you can. It really boils down to communicating about it. Husbands and wives have to put their cards on the table."

We asked if Hirshon feels the situation is easier today for women attorneys who want to have children. He replied, "I hope that as more and more women come into the profession, and they will, there will be some recognition that the legal profession has to adapt; that women should not face the pressure of 'should I put off having a child because I want to make partner first.' I don't think important decisions like that should be made because one's concerned about getting on the fast track or the slow track. They both can be accommodated, and it's up to law firms to do the accommodating."

The Hirshons were ahead of the times in their attitude toward the roles of wives and husbands in marriage. "I still do my share of laundry, floors, everything else," he said. "There's no such thing as women's work, men's work in our family. I look back at all the talents that were wasted because of the sexual confinement of history . . . . My daughters have as much talent as my sons, so why shouldn't they have the exact same opportunity?"

Hirshon, who majored in political science at the U-M and who was married just before his senior year, had gone away to college, as he said, "basically to put a sub-

stantial distance between me and the state of Maine. Portland wasn't exactly a vibrant city." Initially, returning to Maine after graduation from law school was not the Hirshons' plan. They looked into various cities. "Detroit then was pre-renaissance," he recalls. "You could go to Detroit on a Saturday morning and the streets would be empty. It was depressing." They considered Boston, but after visiting and experiencing big city commuting, that didn't appeal either.

"The more I thought about it, talked about it, the more I wanted to come back to Portland. That was in 1972, just when things were beginning to happen. The turnaround, I think, came with Model Cities. We had committed city officials, we had the people who were really working, who weren't motivated by self-interest, but by the greater good."

That was the attitude that led him to the firm of Drummond, Woodsum, Plimpton, and MacMahon. he explains, "I was impressed that the firm seemed to share the same philosophy that I had, not about the practice of law..., but the philosophy that Portland needs committed citizens who are not only good lawyers but who also take an active role in their community."

At the beginning of our interview, Hirshon remarked that when he learned we wanted to do a story about him he tried to think, "... what would be the caption? Maine State Bar Association president? Yes. Civic leader? Possibly. But it hit me, the most important thing in my life is not the bar association presidency, not the civic activities I do, not even my practice, but the fact that I'm a father." ⊠

The above piece is an edited, greatly abridged version of an article that appeared in the *Maine Lawyer's Review*, vol. 4, no. 1, 1986. Reprinted by permission.

Courtesy of the Maine Lawyer's Review

Robert Hirshon and his family outside their Portland, Maine home.

Deanell Reece Tacha, J.D. '71

A federal judge who prefers Kansas to Washington, D.C.

by Lisa Massoth

Deanell Reece Tacha was sprinting to the top in 1972. After graduating from the U-M Law School and traveling to Southeast Asia and Africa as a White House Fellow, she was hired by a Washington, D.C. law firm.

But after one year with the firm, she thanked them for the experience, apologized for leaving, and moved to Concordia, Kansas to practice law.

Well, to practice law and marry the high school basketball coach. Just like a woman, right? Give up her career to follow a man.

But that's not the story here. She *preferred* Kansas to Washington. And after she had practiced law for a year in Concordia, her husband, John Tacha, gave up his job to follow her to Lawrence where she was offered a teaching position with the University of Kansas Law School.

She didn't quit the race when she left Washington. She just changed tracks and continued her breathless pace. Since 1974, she has taught law, served as associate dean of the Kansas Law School, been named vice chancellor at the university, and had four babies.

Then on December 16, 1985, she crossed what she says is the finish line. She was confirmed to the 10th U.S. Circuit Court of Appeals in Denver, which has jurisdiction

over Kansas, Colorado, New Mexico, Oklahoma, Utah, and Wyoming. Judge Tacha (pronounced tah-hah) is one of 17 female judges in the federal court system (out of a total of 168 positions).

"If there's a key to women doing well, it's to choose to do something not only that you like, but that you do well," she said, "because as a woman you will be asked to *prove* it."

Judge Tacha normally spends one week every two months in Denver hearing cases. The rest of her time she works in her Topeka office and begins her mornings as many mothers do — by making breakfast for her family.

"That's part of the guilt complex, the Supermom complex," she said one recent morning, stirring an enormous skillet of scrambled eggs in the kitchen of her seven-bedroom home in Lawrence.

Tacha stays up until one or 1:30 in the morning, reading legal briefs before getting up at 6:30 to make breakfast. At night she and her husband faithfully attend their children's baseball games and dance recitals.

At her Topeka office she has pinned poems and colored pictures from her children next to a schedule of case assignments on a bulletin board.

Such attention to family was on her mind when she was practicing law in Washington. She didn't want to raise her children there. She preferred the traditional life and values of the Midwest.

Tacha, who graduated from the University of Kansas with a degree in American studies in 1968, recalls that her father tried to dissuade her from attending law school. He finally relented, but when he learned that she had been accepted at Harvard, Yale, Stanford, and Michigan, he insisted that she attend Michigan. In those radical times, he thought a public university would be a safer place.

They laugh about it now. Universities were mired in anti-war protests then, and the University of Michigan was at the forefront of the movement.

After her marriage to John Tacha in 1973, the couple stayed one year in Concordia until she was offered the teaching job at the Kansas Law School.

"John was coaching and very happy," she said. "After a great deal of soul searching, we decided I would accept the job and he would leave coaching."

Mr. Tacha, now 45, moved to Lawrence without a job. Shortly after they arrived, he began managing the Bureau of Lectures and Concert Artists, a business that books and sells educational entertainment for schools in a nine-state area. When the owner retired, he bought the business.

Ten years ago, it wasn't easy being the husband of a female law professor. "Once, when I was first on the faculty," Judge Tacha said, "they were going through introductions, and John was introduced as my lovely wife."

Almost before Judge Tacha flew to Denver for her first term in the 10th Circuit, colleagues and former associates were speculating whether she might some day be appointed to a higher court or run for office.

"No thanks," she says. She doesn't want to leave Lawrence, Kansas. And she finds the work of the 10th Circuit especially satisfying, noting that "we decide everything that's appealed to us."

Besides, she said, "I live in my home circuit. . . It's important for judges to be involved in their communities and with people." ⊠

Courtesy of the Kansas City Times

Deanell Reece Tacha and her family at their home in Lawrence, Kansas

The above article is an abridged version of a piece that appeared in *The Kansas City Times*, July 19, 1986. Reprinted by permission.

Good news from abroad

Regents' resolution commends Dr. Cha Liang Chien, distinguished Chinese teacher, diplomat, judge

At a recent meeting of University of Michigan alumni in Taipei, Taiwan, the following citation from the Regents was presented to one of our distinguished alumni, Dr. Cha Liang Chien, by Professor Whitmore Gray of the Law School.

The Regents of The University of Michigan take this opportunity to extend their highest commendation and the best wishes of the university community to Cha Liang Chien, who received his doctoral degree from the Law School in 1931. His distinguished career in teaching, government service, and on the bench has brought honor to the university, and his untiring efforts on behalf of his alma mater have contributed essential support for university programs.

Dr. Cha began his studies at Nankai University in Tientsin, received his LL.B. from Soochow University in Shanghai, and then came to The University of Michigan Law School to continue his studies. He received his J.D. degree in 1930 and his S.J.D. in 1931. He returned to China to become Professor of Law at An Hwei University and National Central University. He was named Professor of Law at National Taiwan University in 1949, and now serves as chairman of the Board of Directors of Tunghai University.

In 1933 he became a judge of the Shanghai Special District Court, beginning a distinguished judicial career which culminated in his appointment as chief justice of the Supreme Court of the Republic of China in 1966.

His career in public service included many years in the Ministry of Justice of the Republic of China, as deputy minister of justice beginning in 1950, and then minister of justice after 1967. He also served as delegate to the General Assembly of the United Nations in 1963 and 1964.

At a time of life when many are enjoying a well-earned retirement, Dr. Cha continues to exert himself on behalf of causes that he believes in. In addition to his service as presidential counselor, he is active in promotion of Sino-American relations as chairman of the Sino-American Culture and Economics Association. Happily for the university, he also continues his efforts on our behalf as president of the Alumni Association of The University of Michigan of the Republic of China.

Dr. Cha has gained the respect and affection of his countrymen and his alma mater. We are proud to present this citation in recognition of an illustrious career. ⊠

Law School Professor Whitmore Gray presented the resolution to Dr. Cha Liang Chien (left) on behalf of the Regents of The University of Michigan.

Alumni news

☐ **Vernon R. Pearson,** J.D. '50, was recently sworn in as chief justice for the Washington State Supreme Court. Born and raised in North Dakota, Chief Justice Pearson earned his B.A. degree from Jamestown (ND) College in 1947, following four years in the navy.

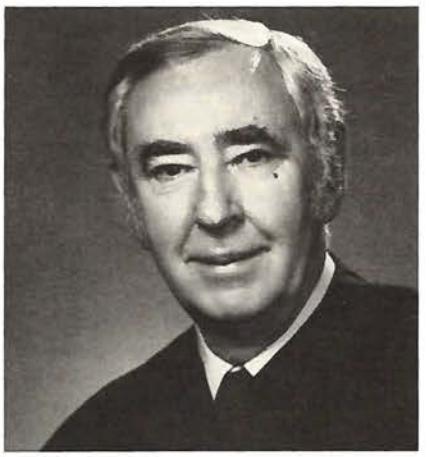
After graduating from the Law School in 1950, Pearson went to the University of Washington to participate in a new course, "legal research and writing." From 1952 to 1969, he practiced law in Tacoma with Davies, Pearson, Anderson and Pearson. (His brother, Claude M. Pearson, J.D. '48, continues to practice under the firm of Davies Pearson P.C.) He was elected to the Washington State Bar Association Board of Governors in 1969. That same year he was appointed by the governor of Washington as one of 12 members of the new Court of Appeals.

Chief Justice Pearson came to the Washington Supreme Court by appointment in January, 1982, and was elected without opposition to a full six-year term, running from January, 1983 to January, 1989.

☐ **Professor Sinai Deutch (LL.M. '75, S.J.D. '76)** was appointed dean of Bar Ilan Law School in Israel, as of October, 1986. He teaches contracts, consumer law, and Jewish law. In 1977 he published a book on unfair contracts, and since then he has published several articles on standard contracts in various law reviews, including an article in the McGill Law Journal entitled, "Controlling Standard Contracts — the Israeli Version," (vol. 30, p. 458).

☐ **Willard J. Stone,** of Pasadena, CA, wrote *LQN* recently to explain how emergency heart surgery last spring forced him to miss the 50th anniversary celebration of the Class of '36. On May 14, the day before he was to leave for the festivities in Ann Arbor, he was admitted into the hospital, where he underwent eight hours of surgery. Subsequent complications have caused him to withdraw from his law firm of Stone & Doyle and from the American College of Probate Counsel. We know that Mr. Stone was missed by his classmates and we extend our best wishes for a steady recovery.

John J. Nellis (right) and his father, the late Elton R. Nellis (photo taken in 1968).



The Hon. Vernon R. Pearson

☐ Still another report from our alumni of a back-to-back 50-year career concerns the Nellis family of southeast Michigan. **Elton R. Nellis,** a member of the Class of 1899, practiced law for 77 years and lived to the age of 100, outliving all of his classmates. His son, **John J. Nellis,** J.D.'31, is still in active practice at the age of 79. He is with the firm of Nellis & Jahr, of Westland, Michigan. ⊠

Class notes

'34 George W. Crockett, Jr., U.S. representative for the 13th District of Michigan, was elected chairman of the House Foreign Affairs Subcommittee on Western Hemisphere Affairs.

'51 Louis R. Reif has been elected chairman of the board of directors and chief executive officer of National Fuel Gas Co., in Buffalo, NY.

'53 J.-G. Castel, professor of international business law and conflict of laws at Osgoode Hall Law School, of York University in Toronto, has been given the honorary title of distinguished research professor by that university.

'54 Roderick K. Daane, former general counsel of The University of Michigan is now of counsel to Miller, Canfield, Paddock and Stone. Daane is located in the firm's Ann Arbor office, where he is in charge of the firm's education law section.

'56 Dennis J. Barron has been named managing partner and chairman of the executive committee of the Cincinnati-based law firm of Frost & Jacobs.

'58 Bernard J. Kennedy has been elected president of the National Fuel Gas Co., in Buffalo, NY.

'60 David N. Hurwitz has been appointed president and chief operating officer of the Goodson Newspaper Group in New York. After 26 years in

the legal profession, Hurwitz left his position as a founding and senior partner of the law firm Gordon Hurwitz Butowsky Weitzen Shalov & Wein, which he helped establish in 1975.

'61 Robert M. Steed has joined Human Resource Services, Inc. The New York-based consulting firm provides a broad range of management consulting services, including senior-level executive search, to law firms and corporate law departments.

'63 J. Thomas McCarthy, professor of law at the University of San Francisco, has authored an 800-page treatise, *The Rights of Publicity and Privacy*, published in January, 1987 by Clark Boardman Co., New York.

'64 Arthur M. Sherwood, a partner in the Buffalo law firm of Phillips, Lytle, Hitchcock, Blaine & Huber, was elected chairperson of the New York State Bar Association's 3,800-member Trusts and Estates Law Section.

'67 William M. Brodhead recently moved to Washington, D.C. to open an office for the firm of Plunkett, Cooney, Rutt, Watters, Stanczyk & Pedersen, P.C.

Charles H. Goodman, senior staff counsel and manager of the environmental law section of Dow Chemical Company's legal department in Midland, MI, has been made an assistant general counsel.

Rea P. Miller, Jr. has been appointed a vice president of Pittsburgh National Bank, an affiliate of PNC Financial Corp.

John H. Stout has been elected a member of the board of directors of Telephone Specialists, Inc., of Minneapolis, MN. A partner in the Minneapolis firm of Fredrikson & Byron, Stout specializes in business planning and finance.

'70 Richard B. West, of Dallas, TX, has been named vice president and Southwest regional counsel for CFI Bankers Service Group, a bank compliance software and consulting company.

'71 Donald F. Tucker was one of three persons who received a distinguished service award from the Oakland County Bar Association in Michigan. The award acknowledged his work with the association's Task Force on Improved Dispute Resolution.

'72 Thomas J. Cresswell, counsel for the Michigan division of Dow U.S.A., has been appointed a senior staff counsel in the company's legal department, in Midland, MI.

Michael L. Hardy was appointed chair of the Environmental Law Committee of the Ohio State Bar Association.

'73 Matthew Myers contributed two chapters in a recent book called *Giant Killers*, edited by Michael Perchich.

'74 Norma Ann Dawson is now an associate with Mathon and Rosensweig in Beverly Hills, CA.

Daniel E. Reidy has become a litigation partner with the new Chicago office of Jones Day Reavis & Pogue.

'75 Robert A. Katcher is now the branch chief of the Office of Associate Chief Counsel-International, of the Internal Revenue Service, in Washington, D.C.

'76 Susan Bandes has been promoted to the rank of associate professor at DePaul College of Law in Chicago. Two of her articles will be published this spring, one on municipal liability, in 72 *Iowa Law Review;* the other, entitled, "Taking Some Rights Too Seriously: The State's Right to a Fair Trial," in *60 Southern California Law Review.*

Charles M. Cobbe has been made a partner in the Dallas, TX law firm of Jackson, Walker, Winstead, Cantwell & Miller.

'77 Charles G. Schott, III has been named deputy assistant secretary of commerce for communications and information and deputy administrator of the National Telecommunications and Information Administration (NTIA). NTIA is the principal executive branch agency responsible for the development and presentation of national communications and information policy.

'79 Harold E. Hamersmith has been made a partner in the Los Angeles law firm of Thelen, Marrin, Johnson & Bridges.

'80 Stanley K. Shapiro has celebrated the first year in his own private practice after spending five years as an associate with Cahill Gordon & Reindel. He has also been appointed co-chair of the Young Lawyers' Committee of the New York County Lawyers' Association. ⊠

Deaths

'22 William C. Palmer

'25 M. Gail Leach, Nov. 20, 1986

'28 Forbes S. Hascall, March 1, 1987, in Camden, AL
Walter L. Mass, Jr.

'29 Oscar C. Sattinger, Dec. 20, 1986
Jerome J. Friedman, 1981

'30 Robert N. Torbet, Oct. 22, 1986, in Toledo, OH
Fred R. Wickham, Dec. 24, 1985

'32 Paul J. Anderson

'33 Robert R. Evans, Dec. 13, 1986, in Flint, MI
Stuart H. Redner, Oct. 6, 1986

'34 Merrill E. Olsen

'35 Harold H. Emmons, Jr., Dec. 23, 1986
W. Vincent Nash, Dec. 5, 1986
Othello D. Thompson, Feb., 1986

'37 Edward J. Donovan, Nov. 17, 1986

'40 Edward S. Biggar

'45 Allan B. Schmier, Jan. 21, 1987

'48 Albert J. Thorburn

'50 K. J. Kavoklis
William L. Spencer

'52 Paul D. Hellenga, Nov. 10, 1985

'53 Stanley T. Lesser, Feb. 2, 1987

'56 Robert Liberman, Aug. 27, 1986
John H. Marble, Feb. 1, 1984

'61 Bernard Zylstra, Mar. 4, 1986

'67 Theodore J. Floro, Oct. 13, 1986
Robert M. Flaherty, Mar. 4, 1987, in San Francisco, CA

'69 David J. Cook, Feb. 2, 1987, in Ann Arbor, MI

'79 Philip R. Schichtel, Dec. 16, 1986

'83 Daniel W. Cronin, Nov. 4, 1986, in Flint, MI ⊠

Timely questions

Campbell issue shifts from drug testing to locker search

An overflow crowd spilled out into the halls from Room 100 nearly two hours before the start of the final round of the 1986-87 Henry M. Campbell Moot Court Competition. Latecomers soon filled an adjacent room where a video monitor had been set up to accommodate them.

This year's competition was particularly exciting because the panel of final round judges included U.S. Supreme Court Justice William J. Brennan, Jr., as well as Judge Deanell Reece Tacha of the U.S. Court of Appeals for the 10th Circuit (a 1971 Law School graduate), and Judge Abner J. Mikva of the U.S. Court of Appeals for the D.C. Circuit. Law School Dean Terrance Sandalow and Professor Theodore J. St. Antoine also sat on the panel.

The issues of this year's case originally centered around the constitutionality of a hypothetical federal regulation that required airline pilots, mechanics, and flight crews to submit to urinalysis. The first round of competition drew 108 students who comprised 55 teams (two students entered individually) in the quarterfinal round).

The very timeliness of the mandatory drug testing issue, however, led to its demise as a moot court subject midway through the competition. Because a similar case is likely to come before the U.S. Supreme Court in the near future, Justice Brennan requested a different issue for the final round.

Eager to keep a Supreme Court justice on the final round panel, the six-student moot court board decided to search for a new topic for the final rounds. The new case, they felt, should have some issues in common with drug testing (so that participants would not have to begin their research at square one), would be as interesting as drug testing, and would be ready to unveil at the start of the winter term. The board found a topic that fit the bill: weapons searches in public schools.

The new problem focused on an imaginary California high school. In response to escalating student violence, the local school board implemented a well-publicized plan to rid the school of weapons. The plan included magnetometer searches at the school doors and a thorough search of student lockers. The school's principal explicitly ordered the school officials who were to conduct the locker searches to seize only illegal weapons and not any other contraband discovered in the course of the searches.

In one student's locker, school officials discovered a switchblade knife with a nine-inch long blade. They removed the student from class and suspended him. Subsequently, he was expelled for the remainder of the year for violating a school rule which prohibited the possession of weapons on school grounds.

The student brought suit in the U.S. District Court, seeking damages and an injunction allowing him to return to school. After the court ruled in favor of the school board, the student appealed the case to the U.S. Court of Appeals for the Ninth Circuit, which reversed. The school board filed a petition for certiorari in the U.S.

Courtesy of the Ann Arbor News

U.S. Supreme Court Justice William J. Brennan, Jr. acted as chief justice of the Campbell Court.

Supreme Court. The Court granted the petition, agreeing to hear argument on the following questions:

1) Is a search of students' lockers by school officials a search within the meaning of the Fourth Amendment, given that the school owns the lockers?

2) Should the "hybrid administrative search" doctrine be extended to allow searches in schools without individualized suspicion, at least in the present context?

3) Was the locker search conducted by the school officials reasonable under all the circumstances of this case?

Arguing the final round of the case were four teams which considered the same questions. First place was awarded to the teams of Scott Sinder and Craig Sumber, counsel for the petitioner (second argument) and Judi Lamble and Denise Franklin, counsel for the respondent (second argument). The quarter-final best brief award (which dealt with the drug testing issue) went to the team of Judi Lamble and Denise Franklin, while the semi-final best brief award went to Rick Silverman and Jaye Quadrozzi.

Competitors were enthusiastic about the experience despite the fact that their carefully planned arguments were frequently demolished by the panel's rapid-fire questions.

"The opportunity to argue in front of Justice Brennan and the other distinguished judges added a lot of incentive," Rick Silverman remarked later. "What was more surprising than anything else was that it wasn't quite as frightening as I thought it would be."

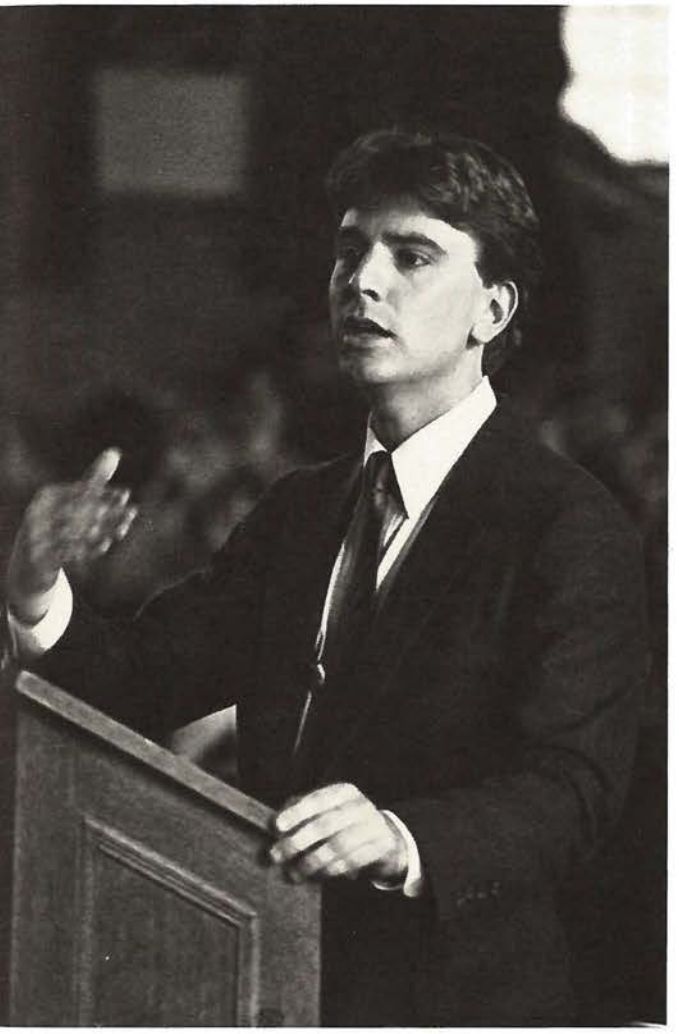
Judi Lamble describes it as "the most thrilling 25 minutes of my life." She goes on, "About a week

Finalists and judges of the 1987 Henry M. Campbell Moot Court Competition

The Court *(front row, seated, left to right): Law School Dean Terrance Sandalow; Hon. Abner J. Mikva, circuit judge, U.S. Court of Appeals (D.C. Circuit); Hon. William J. Brennan, Jr., associate justice, U.S. Supreme Court; Hon. Deanell Reece Tacha, circuit judge, U.S. Court of Appeals (Tenth Circuit); Law School Professor Theodore J. St. Antoine.*

The finalists *(standing, left to right): Andrew McGuiness, of Ann Arbor, Michigan; George Geller, of Ann Arbor, Michigan; Jaye Quadrozzi, of Mt. Clemens, Michigan; Rick Silverman, of Brooklyn, New York; Craig Sumberg, of Walpole, Massachussetts; Scott Sinder, of Akron, Ohio; Denise Franklin, of Huntington Woods, Michigan; Judi Lamble, of Chicago, Illinois.*

◀ *Guest justices on the Campbell panel included (from left) Judge Abner J. Mikva, Supreme Court Justice William J. Brennan, Jr., and Judge Deanell Reece Tacha, who is featured in an article in the Alumni section of this issue of* LQN.



Scott Sinder presented the oral argument for the petitioner for the winning team of Sinder/Sumberg.

Judi Lamble presented the oral argument for the respondent for the winning team of Lamble/Franklin.

Denise Franklin listened intently to her teammate's argument.

before the final competition my partner and I asked ourselves out loud why we wanted to win. We both felt that to do so at a law school of Michigan's caliber would be an extraordinary achievement. I wanted to argue in front of Justice Brennan for the sheer honor of the opportunity. We both wanted an all-woman team to make it to the finals. And we did it for our moms." ⊠

Kronman presents Cooley Lectures

"Politics, Character, and the Profession of Law," was the umbrella title of the most recent series of Thomas M. Cooley Lectures. The lectures were presented by Anthony T. Kronman, the Edward J. Phelps Professor of Law at the Yale Law School.

Professor Kronman has written extensively about many of the central questions of contract law and commercial law. He has also addressed a range of important issues in legal and political philosophy.

In the Cooley Lectures, he defended what he called "some old-fashioned ideas: that politics is an art which can be practiced well or badly; that the statesman — the person who excels at politics — is distinguished as much by his character...as by any expertise or knowhow; and that an education in the law tends to cultivate the qualities of character in which statesmanship consists, a fact that helps to explain why so many of our statesmen have been lawyers."

Anthony T. Kronman

The series was presented over a three-day period under the more specific titles of "New Republicans," "Old Statesmen," and "Good Lawyers." An abridged version of the third lecture will be published in the Fall issue of *Law Quad Notes*.

DeRoy Fellowship sponsors Pescatore

Pierre Pescatore, a highly respected international scholar and jurist, spent a week at the Law School this spring visiting classes and meeting informally with faculty and students. Judge Pescatore recently retired from the European Court of Justice, where he had served with distinction for 18 years. In the 1950s he served as Luxembourg's representative to the U.N., and later as one of the drafters of the Treaty of Rome, which established the European Economic Communities. He has also held the position of professor of law at various universities. His visit was sponsored by the DeRoy Foundation.

Pierre Pescatore

Walter Benn Michaels

Michaels visits as Sunderland Fellow

Walter Benn Michaels, a distinguished literary critic and theorist who has a long-standing interest in legal interpretation, visited the Law School for a week as the winter term Thomas E. Sunderland Faculty Fellow. Michaels is an associate professor of English at the University of California, Berkeley, and the author of numerous articles, including "Is There a Politics of Interpretation?" *(Critical Inquiry)* and a recent book, *The Gold Standard and the Logic of Naturalism*.

During his week in residence, Michaels presented a lecture in Hutchins Hall entitled "Against Theory." He also headed a workshop in the Faculty Room on Ronald Dworkin's recent work, and another on Critical Legal Studies.

The Sunderland Fellowships were established in 1985, and are directed to the support of scholars in a wide range of disciplines other than law.

PERPETUITY REFORM

Under the New Uniform Act

by Lawrence W. Waggoner

The following article is adapted from an article soon to be published in the Cambridge Law Journal.

As this article was going to press, the Uniform Act was enacted in Nevada and South Carolina.

The wait-and-see version of perpetuity reform — adopted a few years ago by the American Law Institute as part of the Restatement (Second) of Property (Donative Transfers) (1983) — gained another champion when, last summer, the National Conference of Commissioners on Uniform State Laws approved a Uniform Statutory Rule Against Perpetuities (Uniform Act or USRAP).

Among a number of unique features of the Uniform Act, the method used to delimit the waiting period deserves special notice. The waiting period is the period of time allotted for the contingencies attached to an otherwise invalid property interest to work out harmlessly. In a step believed to be unprecedented, the waiting period adopted by the Uniform Act is a flat period of 90 years.

The 90-year period represents a reasonable approximation of — a proxy for — the period of time that would, on average, be produced by the traditional method of identifying and tracing a set of actual measuring lives and then tacking on a 21-year period following the death of the survivor. The 90-year period was derived from the assumption that the youngest measuring life, the one likely to live the longest, would usually determine the length of the waiting period, were actual measuring lives to be used. A statistical study, prepared by the reporter as part of the USRAP Drafting Committee's work, suggests that the youngest measuring life, on average, would be about 6 years old. Government statistics indicate that the remaining life expectancy of a 6-year old is between 69 and 70 years. In the interest of arriving at an end number that is a multiple of five, the Uniform Act utilizes 69 years as an appropriate measure of the remaining life expectancy of a 6-year old, which — with the 21-year tack-on period added — yields a waiting period of 90 years.

The traditional assumption, followed in the Restatement (Second) and previous wait-and-see statutes, is that the waiting period must be delimited by reference to measuring lives, so that the waiting period expires 21 years after the death of the last surviving measuring life. Rather than calling into question the necessity or desirability of using measuring lives, the controversy has centered on who the measuring lives should be and how the law should identify them. Two basic methods of identifying measuring lives have been advanced: (i) the *statutory-list method* (used in the Restatement (Second) §1.3, the English Perpetuities & Accumulations Act 1964, §3, and the statutes of a few other common-law jurisdictions) and (ii) the *causal-relationship method* (used in Kentucky Rev. Stat. §381.216 and the statutes of a few other common-law jurisdictions).

Intrinsic to the actual-measuring-lives approach, however, are identification and tracing problems. If the statutory-list method is used, the measuring lives are difficult to describe in statutory language that is both uncomplicated and unambiguous. The statutory language necessary to adopt the causal-relationship

method is not so difficult to draft as it is to apply to actual cases. No matter how the measuring lives are identified, the lives of actual individuals must be traced so as to determine which one is the survivor and when he or she died.

The tracing and identification problems are exacerbated by the fact that it seems to be accepted under both methods that the measuring lives cannot be a static group, assembled once and for always at the beginning. Instead, individuals who were once measuring lives must be dropped from the group on the happening of certain events (such as the individual's divorce, adoption out of the family, or assignment of his or her beneficial interest to another) and, conversely, individuals who were not among the initial group of measuring lives must be allowed to join that group later, if certain events happen (such as marriage, adoption into the family, or receipt of another's beneficial interest by assignment or succession) and if they were living when the interest in question was created. The proxy method eliminates the problems of identifying and tracing a rotating group of measuring lives so intrinsic to the actual-measuring-lives approach. The expiration of a waiting period measured by a flat period of 90 years is easy to determine and unmistakable.

The USRAP Drafting Committee considered possible grounds for resisting the replacement of the actual-measuring-lives approach, despite the gain in administrative simplicity that would result from adopting a flat period of years. One such ground was the idea that the use of actual measuring lives — especially if determined by the causal-relationship method — generates a waiting period that self-adjusts to each situation, somehow extending the dead hand no further than necessary in each case. A flat period of years obviously cannot replicate a self-adjusting function. The concern proved to be unfounded, however: A little inspection revealed that this is not the function performed by the actual-measuring-lives approach. Although that approach produces waiting periods of different lengths from one case to another, the use of actual measuring lives does *not* generate a waiting period that expires at a natural or logical stopping point along the continuum of each disposition, thereby pinpointing the time before which actual vesting ought to be allowed and beyond which it ought not to be permitted. Instead, the actual-measuring-lives approach — whether the measuring lives are determined by statutory list or causal-relationship formula — functions in a rather different way: It generates a period of time that almost always *exceeds* the time of actual vesting in cases in which actual vesting ought to be permitted. The actual-measuring-lives approach, therefore, performs a margin-of-safety function, which is a function that *can* be replicated by the use of a proxy such as the flat 90-year period under the Uniform Act.

The following examples briefly demonstrate the margin-of-safety function of the actual-measuring-lives approach:

> ***Example (1)*** *— Corpus to Grandchildren Contingent on Reaching an Age in Excess of 21.* G died, bequeathing property in trust, income in equal shares to G's children for the life of the survivor, then in equal shares to G's grandchildren, remainder in corpus to G's grandchildren who reach age 30; if none reaches 30, to a specified charity.
>
> ***Example (2)*** *— Corpus to Descendants Contingent on Surviving Last Living Grandchild.* G died, bequeathing property in trust, income in equal shares to G's children for the life of the survivor, then in equal shares to G's grandchildren for the life of the survivor, and on the death of G's last living grandchild, corpus to G's descendants then living, per stirpes; if none, to a specified charity.
>
> In both examples, assume that G's family is typical, with two children, four grandchildren, eight great-grandchildren, and so on. Assume further that one or more of the grandchildren are living at G's death, but that one or more are conceived and born thereafter. All of the grandchildren living at G's death were then under the age of 30.

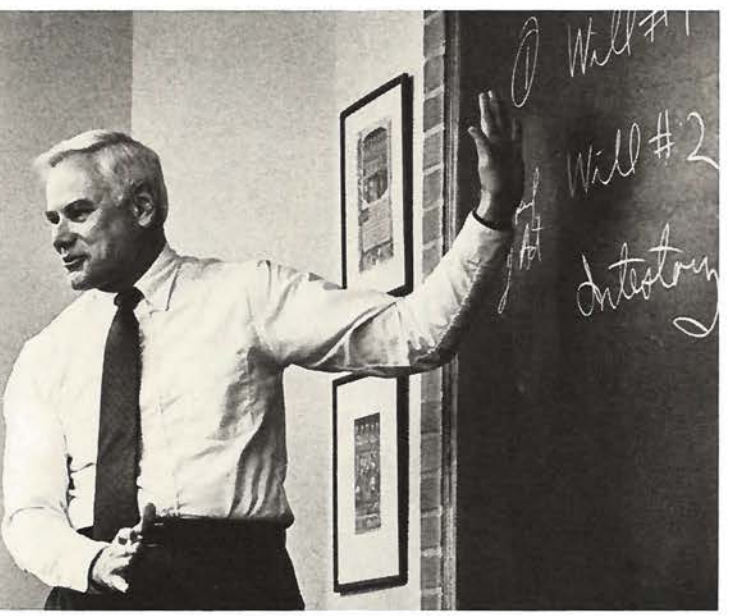
As is typical of cases that violate the common-law Rule Against Perpetuities and to which wait-and-see applies, these dispositions contain two revealing features: (i) they include beneficiaries born *after* the trusts were created, and (ii) in the normal course of events, the final vesting of the interests will coincide with the death of the youngest of these after-born beneficiaries (as in Example (2)) or with some event occurring during the lifetime of that youngest after-born beneficiary (such as reaching a certain age in excess of 21, as in Example (1)).

By tradition, the waiting period is measured by the lives of individuals who must be in being at the *creation* of the interests. In both of the above examples, on the facts given, the youngest measuring life — the one likely to live the longest — is G's youngest grandchild in being at G's death. That grandchild, it should be noted, is undoubtedly the youngest measuring life under either the statutory-list or the causal-relationship method. The key players in these dispositions, however, are the after-born grandchildren, for the youngest of them is likely to live longer than the youngest measuring life. Because the after-born grandchildren are not counted among the measuring lives, the expiration of a waiting period measured in the traditional fashion cannot be thought to *coincide* with the latest point when actual vesting should be allowed — in the above cases, on the death of the last survivor of G's grandchildren, the youngest of whom is after-born. It is the tack-on 21-year part of the waiting period that almost always extends the period sufficiently so that it expires at some arbitrary time *after* that beneficiary's death and thereby validates the dispositions. In Ex-

ample (2), the period of 21 years following the death of the last survivor of the grandchildren who were in being at G's death is normally more than sufficient to cover the death of the last survivor of the grandchildren born after G's death.

Thus the actual-measuring-lives approach performs a margin-of-safety function. A proxy for this period performs this function just as well. In fact, in one respect it performs it more reliably because, unlike the actual-measuring-lives approach, the flat 90-year period cannot be cut short by irrelevant events. The supposition that the tack-on 21-year part of the period is usually ample to cover the births, lives, and deaths of the after-born beneficiaries relies on the measuring lives' living out their statistical life expectancies. They are not guaranteed to live that long, however. They might all die prematurely, thus cutting the waiting period short — possibly too short to cover these post-creation events. Plainly, no rational connection exists between the premature deaths of the measuring lives and the time properly allowable, in Example (1), for the youngest *after-born* grandchild to reach 30 or, in Example (2), for the death of that youngest *after-born* grandchild to occur. A flat period eliminates the possibility of a waiting period cut short by irrelevant events.

Another question raised by a 90-year waiting period is whether it authorizes excessive dead-hand control. Any concern that it does must be put in a proper perspective: *First*, the Uniform Act does not authorize an increase in aggregate dead-hand control beyond that which is already possible under the full rigor of the common-law Rule Against Perpetuities by the common practice of utilizing perpetuity saving clauses. In fact, it now seems to be agreed that the waiting period under wait-and-see operates much like a perpetuity saving clause. Dispositions such as those in Examples (1) and (2) are routinely created and are validated by such clauses. No demonstrated harm seems to have befallen society as a result — even though the period of time generated by a perpetuity saving clause can easily exceed 90 years, as can the period of time generated by a waiting period measured by actual measuring lives plus 21 years, whether the causal-relationship or statutory-list method is used. *Second*, the fact that the waiting period under the wait-and-see element of the Uniform Act is 90 years does not mean that vesting in *all* trusts or other property arrangements will be postponed for the full 90 years, or even come close to being postponed for that long. As with a perpetuity saving clause, final vesting in most trusts or other property arrangements will occur far earlier, so that the perpetuity-period component of the clause or its near equivalent, the 90-year waiting period under the Uniform Act, extends unused into the future long after the interests have vested and the trust or other arrangement has been distributed. If excessive dead-hand control is a problem, then, it is not the Uniform Act that is or would be the root cause, but the common-law Rule itself, especially the feature of the common-law Rule that allows the use of perpetuity saving clauses to validate otherwise invalid interests such as those in Examples (1) and (2), above.



Lawrence W. Waggoner, a graduate of The University of Michigan Law School and Oxford University, is the James V. Campbell Professor of Law in the Law School. He served as the reporter for the Uniform Statutory Rule Against Perpetuities.

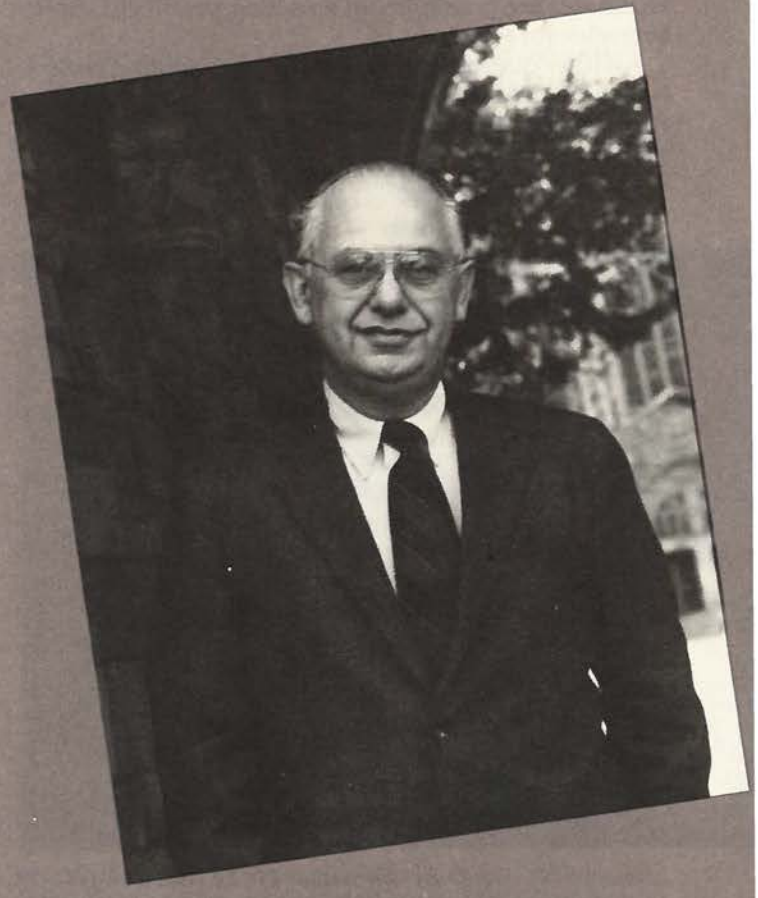
For all of the above reasons, which are elaborated in greater detail in an article on the Uniform Act published in 21 Real Property, Probate & Trust J. 569 (1987), the Drafting Committee of the Uniform Act came to believe that a flat 90-year waiting period is to be preferred over the other approaches: Without authorizing dead-hand control beyond that which is routinely invoked by competent drafting, the 90-year waiting period performs the same margin-of-safety function as the actual-measuring-lives approach, performs it more reliably, and performs it with a remarkable ease in administration, certainty in result, and absence of complexity as compared with the uncertainty and clumsiness of identifying and tracing actual measuring lives.

Adopting a flat period of 90 years rather than using actual measuring lives is an evolutionary step in the refinement of the wait-and-see doctrine. Far from revolutionary, it is well within the tradition of that doctrine. The 90-year period makes wait-and-see simple, fair, and workable. Having been endorsed by the House of Delegates of the American Bar Association, the Board of Regents of the American College of Probate Counsel, and the Board of Governors of the American College of Real Estate Lawyers, the Uniform Act deserves serious consideration for adoption by the various state legislatures. ⊠

The last nine years in retrospect:

An interview with Dean Terrance Sandalow

Terrance Sandalow, dean of the Law School since July 1, 1978, announced late last year that he was stepping down from the post this summer to resume teaching and research. The following interview took place shortly before the end of the winter term.



What do you feel is the greatest strength of the Law School at the present time?

Perhaps its most important strength is its tradition of excellence. Over the last nine years, I've come to appreciate, more than *I* ever had before, the significance of institutional tradition, the ways in which an institution is linked to — or, better yet, draws strength from — its past. Let me give you just one illustration.

Shortly after I became dean, the state of Michigan entered a period of great financial difficulty. Inevitably, appropriations to the University declined markedly. It was a time of considerable risk for the University, and many of us were deeply concerned about whether it could retain its position as one of the world's leading centers of education and research.

One reason the Law School survived that period without damage — and in some ways strengthened — is that our alumni responded to the crisis by increasing their financial support. They did so, I think, because they felt indebted to the School for an outstanding legal education, a debt they could repay only by helping to assure a similar education for succeeding generations. And so the faculty of a generation or two or three generations earlier made an important contribution toward enabling the School to meet the financial exigencies of the recent past.

That's an important, though only one, reason I've come to think of the School's traditions as an important source of its current strength.

How has the Law School changed in the nine years that you've been dean?

Probably the most important change has to do with the composition of the faculty. We've lost approximately one-third of the faculty members who were active when I became dean, mainly by retirement or death, though we've also lost a few to practice, the bench, and to other law schools. Next year, the faculty will be somewhat larger than it was nine years ago and about half will have been hired during that nine-year period.

Among the faculty members we lost were a significant number who were major figures in the history of the School, superb teachers and legal scholars of the first rank. It's a tribute to the underlying strength of the School that, despite these losses, the faculty is as strong now as ever before in its history, perhaps stronger. In part, that's because younger members of the faculty who were regarded as promising a decade ago have become significant scholars. But we've also added a large number of very talented people. About one-third of these were recruited from other faculties; the rest were new to academic life, mainly young people several years out of law school, though two had distinguished professional careers before joining us.

A second important change concerns the intellectual orientation of the faculty. During the past decade, the Law School has established much closer relationships with the rest of the University, continuing — but also strengthening and cementing — a trend that began some years earlier, while Frank Allen was dean. Nearly 20 percent of the faculty now hold joint appointments in other units of the University, almost all in liberal arts departments. The joint appointments are, however, only a formal expression of intellectual relationships that extend much more widely across the faculty.

Closer ties with the rest of the University are a natural outcome of the faculty's efforts to broaden the School's intellectual base. Legal scholars began to develop an interest in other disciplines as they came to appreciate that the techniques and understanding of other disciplines might help to answer many questions that lawyers confront — whether, for example, the death penalty is administered in a racially discriminatory way, or vertical integration threatens competition. Although legal scholars continue to look to other disciplines for such help, they have also come to appreciate that familiarity with other disciplines may have other uses. Other disciplines may, for example, offer new ways of thinking about legal phenomena or suggest questions that might not occur to someone who looks at law only from the inside.

The law faculty's growing interest in other disciplines has coincided with an increased interest in law and legal institutions among scholars in other disciplines. As an example, the law is a vast repository of experience about the problems encountered in interpreting texts. Both the problems and the ways in which the law has dealt with them are of interest to scholars primarily concerned with textual interpretation in other settings.

The way has thus been opened for fruitful exchange between lawyers and specialists in many other fields. The consequence for the Law School has been a greatly enriched curriculum and a significant increase in the range and power of the faculty's scholarship.

What accomplishments do you feel most proud of during your nine years as dean?

Well, I really don't think about the accomplishments in personal terms. It's been my good fortune to serve as dean during a period in which the School has flourished, but the achievements are those of the institution, not of any one person. Many people — the current faculty, staff, and alumni; members of the central administration; and, as I've already said, earlier faculty and administrators — contributed to making the Law School the great institution that it is. I know that sounds pious, but I don't mean it that way. I'm completely prepared to acknowledge that some people — for example, Bill Frye, who served as academic vice-president during most of the time I've been dean — contributed more than many others, and I'd like to think I'm one of those. But one of the things I've learned during the last nine years is just how much any achievement depends on the efforts of many people, often including some whose participation is so far in the background that it's not readily visible.

Which reminds me that, in thinking about the many people who've made important contributions, one ought not to ignore the students. They're not merely consumers of the School's educational product, but important contributors to the quality of its program. It's not just that students learn a great deal from one another. We tend to forget that it takes good students to make good teachers.

Let's phrase that question another way, then. What changes in the Law School over the past decade are you most pleased about?

That's not easy because so many important changes have taken place during that time, but I suppose there are three from which I personally take the greatest pleasure.

One I've already mentioned, i.e., the significant broadening of the faculty's intellectual base and the establishment of closer intellectual relationships with the rest of the University. Historically, law schools were fairly self-contained units, on the whole rather isolated from the intellectual life of the universities of which they were nominally a part. That is surely no longer true at Michigan. The School is leading the way toward a new conception of legal education, one in which professional training does not break sharply with liberal education, but is regarded as continuous with it.

Another important achievement of the past decade is a substantial reduction in class size. We've managed to reduce average class size by 15 to 20 percent. Every first-year student now has at least one small section, generally of no more than 24 students. In fact, approximately half of our classes now have no more than 30 students.

Smaller classes serve a number of purposes. Students prefer them because they have more opportunity to participate in class discussion and because they find the atmosphere less intimidating. Small classes also permit the faculty to experiment with teaching techniques of a kind that are not well suited to large classes and to provide the students with writing experience.

Equally important, though I think less well appreciated, is that class size may affect the kinds of intellectual issues than can fruitfully be taken up in class discussion. Large classes work as well as they have in law schools because of the discipline imposed by the case method. They work much less well when the issues are less well defined than they are in appellate opinions — when, for example, the question is how to design a regulatory scheme or the responsiveness of law to social change. It's for that reason that I've regarded reduction in class size as a high priority. It's closely linked to the changing intellectual content of legal education.

A third important change is that, during the past decade we have, for the first time, achieved the capacity to meet the financial needs of every person admitted to the Law School. The generosity of alumni is partly responsible for our ability to do so, but Sue

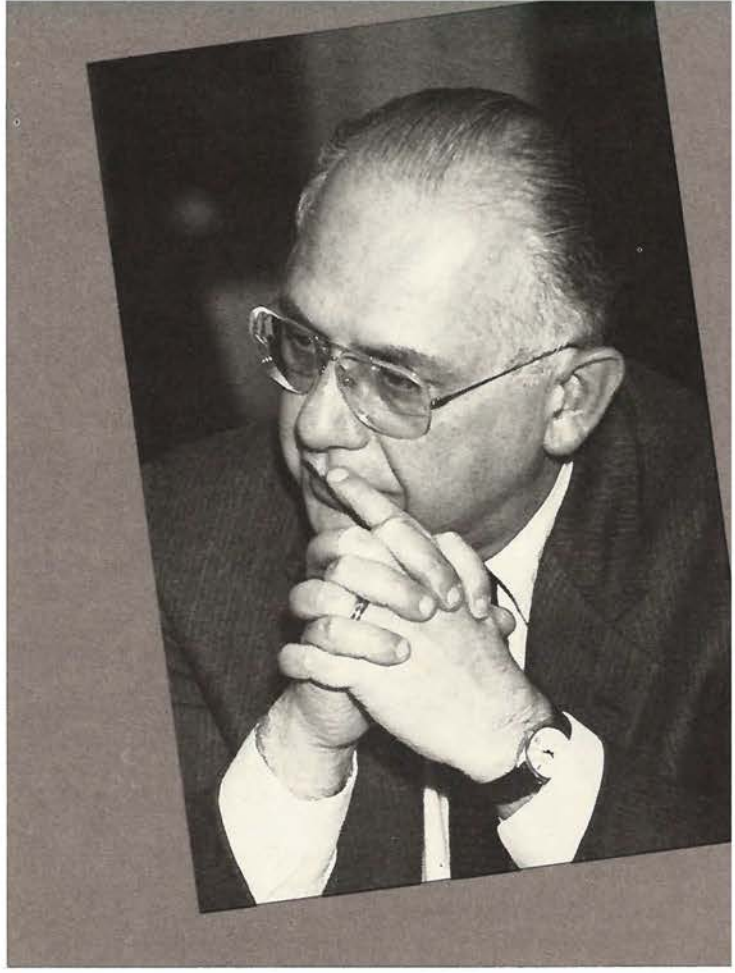
Eklund, who assumed primary responsibility for our financial aid program shortly after I became dean, is entitled to a great deal of the credit. Sue's creative administration of our financial aid funds has enabled us to meet the needs of many more students than would be possible if the program were less imaginatively administered.

Meeting those needs is important because it enables us to attract outstanding students who otherwise would be unable to afford Michigan, but even more because of the social importance of assuring that the best education available is open to individuals without regard to their economic circumstances. It's especially important that Michigan be able to do that. The University's greatest achievement, historically, was in demonstrating that a public university, open to all, could provide an education of the same quality as at one time was provided only by the great private universities. One of the rewards of being dean of this School is the frequency with which one hears from alumni who grew up in families of modest means and who attribute their current success to the opportunities that a legal education at Michigan opened to them.

In the past, open access to the University was maintained by low tuition. The cost of the educational program was borne primarily by legislative appropriations. In recent years, Michigan — as most other public universities — has increasingly been required to rely on tuition to maintain the quality of its educational program. Financial aid programs have thus become increasingly important, as the only means by which we can continue to assure access to the School for all persons, whatever the economic circumstances of their families.

What differences have you observed in the students over the past decade?

As far as I can see, the student body has not changed in any significant way. It has always been an outstanding group of students, and it is today. One hears a lot these days about changing student moods, about how the current generation of students is more career oriented and less idealistic than its recent predecessors. The perception is so widespread that it probably has some foundation, but my own impression is that the point is overstated. The vast majority of students have always, and rightly, been concerned about their future careers, even the supposedly more idealistic generation of the late '60s and early '70s. It's true that somewhat fewer students now are taking positions in the public sector, but I doubt that has much to do with their supposed lack of idealism. What's more important is that there are now fewer jobs available in the public sector and that the salary gap between private practice and the public sector is much greater than it was 10 or 20 years ago. The idealism of today's students may, in fact, be partly responsible for the reduction in the number entering public service. Most students in this and similar law schools are politically more liberal than the current administration and do not regard working for it as a likely vehicle for expressing their ideals.



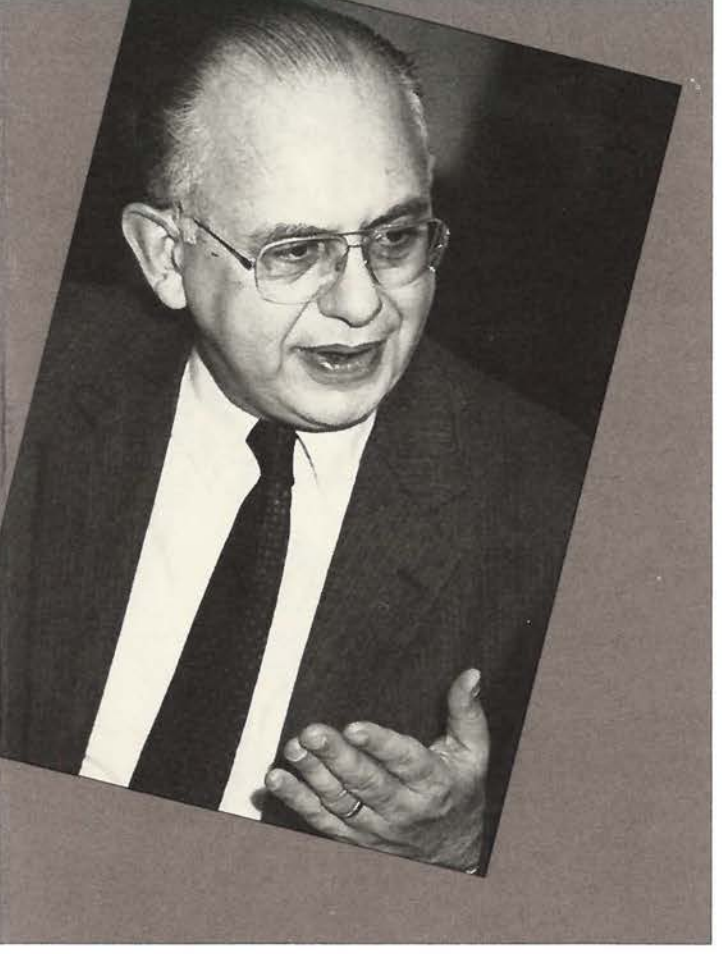
The range of *pro bono* activities in which students engage while in school is at least as great now as at any time since I've been here. Just in the past few years students have taken the initiative in forming an immigration clinic, an unemployment compensation clinic, and Student Funded Fellowships, an organization that each year raises a considerable amount of money — mainly from students — to support summer internships with governmental and "public interest" agencies.

It's true that I come into contact with fewer students than other faculty members do, but those I talk to don't seem to me to be unconcerned about ethical issues or, what especially troubles some of them, the moral significance of a life in the law. Surveys show that today's students are somewhat more conservative than their recent predecessors, but I don't think that ought to be confused with a lack of idealism.

What about the composition of the student body? Has that changed in any significant way?

There's been a continuing increase in the number of women students. The trend really began 15 years ago. By 1978, when I became dean, women made up about 25 percent of the entering class. This year they represented nearly 40 percent of our first-year class.

Alumni who graduated when there were very few women in the School sometimes ask me what effect this has had on the Law School. I tell them that it's had a profound impact. There are many more smart people



around. The entry of women into the profession has significantly increased the number of very able applicants and, thus, the competition for admission and the quality of the student body.

Other than that, I don't think that the presence of women in large numbers has had any significant impact on the School. I don't see the slightest evidence that, as I think some alumni fear, women students are less serious than their male counterparts. The presence of a large number of women probably does heighten the level of interest in so-called "women's issues," but these are, after all, among the most important legal and social issues that the society now confronts and one expects that they would receive a great deal of attention in a law school.

How has the legal profession changed over the past decade?

For the graduates of this School, the most important change has been an acceleration of the trend toward larger and larger law firms. When I was practicing law in Chicago in the early '60s, there were probably no more than two firms that had more than 50 lawyers. Now firms of 200 or more are not uncommon and there are many firms with more than 100 lawyers.

The growth in the number of large firms has increased competition for the graduates of the better law schools, which has led to startling increases in the salaries of young lawyers. These large incomes are nice, especially for someone with loans to repay, but they also entail serious costs. As the firms have increased salaries, they have also increased pressure on lawyers to bill more and more hours. It's not uncommon for lawyers to bill 2000 to 2300 hours a year, which can only be done if several hundred additional hours are spent in the office. A schedule of that kind interferes with an individual's ability to maintain a personal life, to become involved in community activities, to read, and to engage in various other activities that contribute to a satisfying life.

The pressure on young attorneys to specialize early in their careers has also intensified. As a result, law firms risk producing lawyers who are competent technicians but who lack the range of professional experience that good lawyers require. In this respect, the effects of early specialization and of increased pressure to put in very long hours are cumulative. They both work to deny young lawyers the breadth of experience necessary to develop judgment, which has been and ought to remain the chief stock in trade of mature lawyers.

The dramatic rise in starting salaries for our graduates is probably responsible, or at least partly responsible, for another development that I think is worrisome, the increasing concentration of our graduates in large firms located in the largest metropolitan areas. I regard that as worrisome even though I've not the slightest doubt that the lawyers in those firms serve the public interest quite as much as do lawyers in other settings. It's just that I think the nation would be better served if the extraordinary pool of talent represented by the graduates of the major law schools were more dispersed than it now is. Last year, 50 percent of our graduates went to five cities — New York, Chicago, Washington, Detroit, and Los Angeles. Three-quarters went into private practice, mostly with large firms. The public would be better served if they spread out in more directions, some to small and middle-size communities, some to government, and so on.

It's difficult for a young person to choose one of those alternatives when there's such a great disparity in the salaries. In most big cities, the starting salary for a new lawyer is around $50,000-$55,000. In New York, it's even higher. Even the lower figure is twice the starting salary for a government lawyer and a great deal more than firms in smaller cities or "public interest" firms can pay. My point is not to be critical of the large firms, but to point to a situation that I think is troubling. Unfortunately, I've no solutions to offer. Perhaps the problem will correct itself, as some young lawyers fail to achieve partnerships or discover that they don't like life in the big city or in large firms.

What implications do you think these changes will have for legal education?

They're likely to increase the pressure on law schools to provide students with more "practical" experience and more specialized training. I hope that those pressures will be resisted. Our responsibility is to educate students in a liberal tradition, not simply to prepare them for narrow professional tasks. We ought to be concerned with the ways in which a legal educa-

tion can help to enrich the lives of our graduates, but even if we conceive of our mission more narrowly, solely as preparing students for their professional responsibilities, I'm persuaded that we'll serve them and the public best by providing a broad, general education in the law. In fact, trends in practice may make that more important now than ever before.

How has the Law School been affected by changes in the legal profession up to this point?

There's been a proliferation of increasingly specialized courses. I don't think that's due mainly to student demand or pressure from employers. It's a natural consequence of increasing specialization in the profession. Whether or not there's been a litigation explosion, about which experts differ, we've certainly experienced a law explosion during recent decades. The same pressures that have brought more specialization in practice have led faculty members to become increasingly specialized. Maintaining expertise in a field has required law teachers, just as practicing lawyers, to define their fields more and more narrowly.

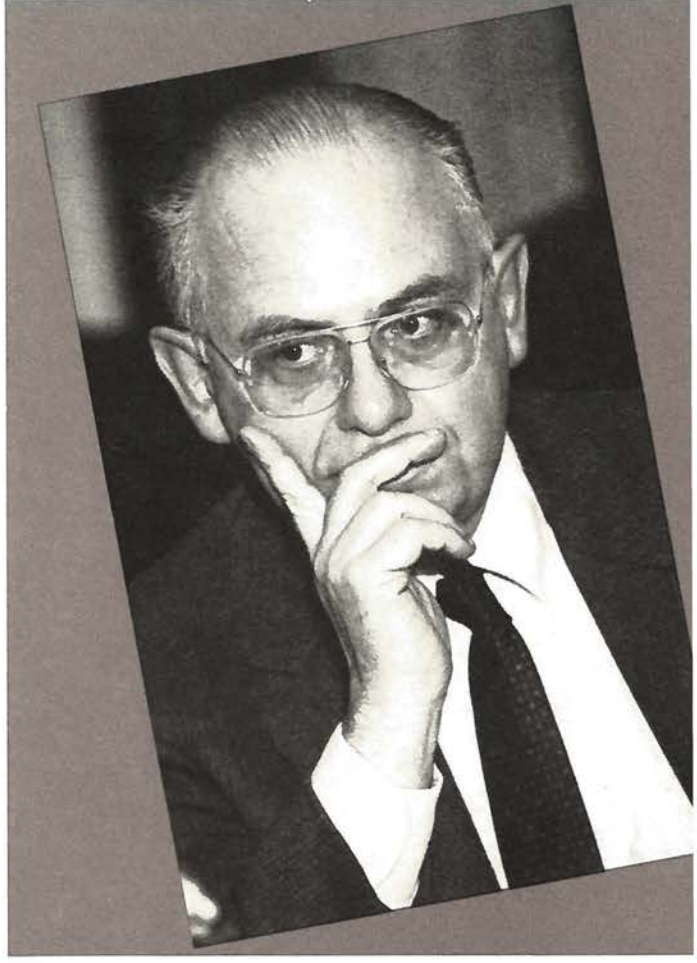
Also, as the number of large firms has grown, there has been a substantial increase in the number of firms that come to the Law School to recruit. Nine hundred potential employers sign up to interview here each year, mostly private firms. Following the on-campus interview, students are invited to the employers' offices for further interviews and, while there, are likely to be lavishly entertained. Since students average about 20 interviews at the School and may visit the offices of five or 10 potential employers at locations across the country, one might say — without risk of exaggeration — that attention to studies in the fall term is less than ideal. This is a serious problem at all the major law schools and a subject of great concern to their faculties, but we've not yet figured out a solution.

What are the main challenges facing the next dean?

Well, in line with what I said earlier, I'd prefer to think of them as challenges facing the School, particularly because those I'd identify are more the responsibility of the faculty than of the dean. In any event, I'd emphasize two, one involving the curriculum and the other relating to faculty appointments. Both, incidentally, seem to me to involve issues facing law schools generally, not just Michigan.

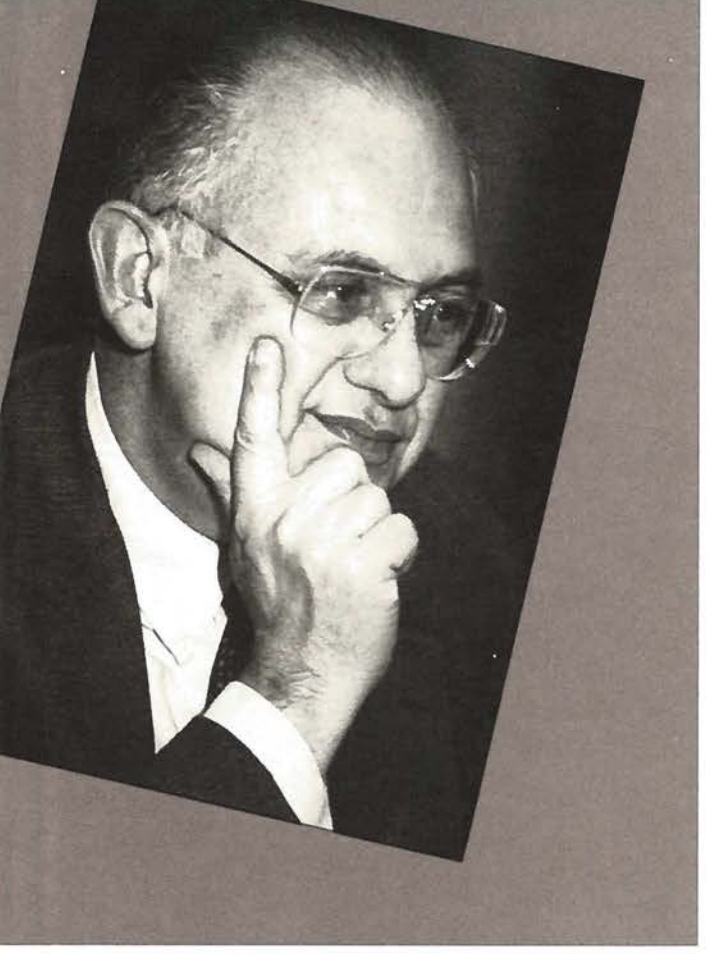
My greatest disappointment as dean is the School's failure to think its way through to significant curricular reform. Of course, quite a bit of curricular change has occurred — the list of required courses has been modified, many new courses have been added, some old courses are taught differently, and so on — but I'd characterize it as tinkering. What's required, I think, is a more fundamental rethinking of the curriculum.

We offer students an extraordinary variety of courses, seminars, and clinical opportunities — well over one hundred each year. I've already mentioned the proliferation of specialized courses. In addition, we've greatly increased the range of offerings that aim at acquainting students with differing ways of looking at law and legal institutions. But what students take



from this remarkably rich smorgasbord is pretty much left to chance. Part of the problem is that the second and third years are entirely elective. Free election among second- and third-year courses may have made sense when nearly all upper-level courses were aimed at developing analytic skills and teaching doctrine through appellate opinions, but it's considerably harder to justify in the face of the greater diversity of intellectual approaches now reflected in the curriculum.

The elective system is only part of the problem, however. The faculty, acting collectively, needs to give more attention to the ways in which course offerings fit together. At present, the way in which each course is taught is left almost entirely to the individual teaching it. That not only makes it difficult to develop a sequence of courses, it sometimes leaves students with some very strange ideas. Let me give you one example. I've had students tell me, in all seriousness, that tort law is rooted in economics, but that contracts rests more on philosophy. These students apparently failed to understand that the happenstance of teacher assignment had affected the approaches taken in the courses they had taken, that they might as easily have examined contracts from an economic perspective and employed philosophy to study torts. I assume the faculty members meant to convey a quite different lesson, that philosophy, economics — and, of course, various other disciplines — are potentially useful in thinking through legal issues in all areas of the law. I don't



think the current *laissez-faire* curriculum, in which every faculty member and every student proceeds in his or her own way, is the best way to convey an understanding of the uses and limits of other disciplines in thinking about legal issues.

There are a number of other objectives at which I think curriculum reform should aim. Hardly any member of the faculty would agree with all of them, and most would probably list objectives that I wouldn't. Of course, they wouldn't agree with one another either. That's why the present curriculum continues despite a good deal of dissatisfaction with it — inertia. In a faculty as strong and diverse as ours, comprehensive curricular reform is almost certainly not feasible, but I'd like to think that progress toward a more coherent curriculum is possible. It ought to be possible for groups of like-minded faculty to devise a number of alternative programs, any one of which would be more coherent than the current program. Over time, these experiments might yield consensus on the appropriate direction for general reform, but even if no consensus emerged, the effort would be worthwhile.

You mentioned two major challenges. What's the other?

The other concerns faculty appointments, particularly tenure policy. Historically, law schools were mainly teaching institutions. With some notable exceptions, faculty members devoted themselves primarily to teaching and to the administration of the school. During the past several decades, law schools have come to expect faculty members to undertake scholarly activity as well. Schools like Michigan seek to attract men and women who are, or are likely to become, leading scholars, individuals who will deepen our understanding of law and legal institutions.

As law schools have increased their scholarly aspirations, the tenure decision has become increasingly important. Our ability to predict whether a young teacher will develop as a scholar is no greater than that of other faculties in the university — or, I suppose, than is the ability of law firms to predict which of the associates they hire will develop in ways that will make them suitable partners. One might expect, therefore, that some percentage of young faculty members would be denied tenure. In general, however, law schools have not developed a tradition, as most other university departments have, of denying tenure to a reasonable fraction of the young teachers they appoint. In recent years, law schools have begun to take the tenure decision more seriously, but because of their lack of experience, the tenure decision produces a good deal more institutional stress in law schools than it does in other departments, which are more accustomed to serious tenure decisions and which have, therefore, developed ways of coping with the process.

It's a fair question whether law schools can ever develop a tradition like that which exists elsewhere in universities. The young people we seek to attract typically have very bright prospects in practice, with incomes far above those they can anticipate as teachers. If a substantial fraction are to be denied tenure, academic life becomes less secure than practice as well as less rewarding financially. That's not an ideal prescription for attracting people into teaching. My own view is that the kind of people we want to attract — men and women who are self-confident and strongly motivated toward an academic life — will accept the risk, but I recognize that other views are possible.

Unless law schools can find a way to deal with the tenure problem, I doubt that they'll be able to achieve their scholarly aspirations. In part, that's because we will, inevitably, make too many mistakes at the time of initial appointment, but that's not the only problem. Reluctance to deny tenure leads faculties to be too conservative in making appointments. We'd be better off, I think, if we were more venturesome, offering opportunities to interesting people who might fail, but who also seem to have great upside potential.

What do you plan to do for the next year?

I'm eagerly looking forward to those activities that led me to academic life in the first place. Next year I'll be on sabbatical, four months in Washington and six months in London. I plan to spend most of my time reading — refueling intellectually — though I hope also to do some writing. I've managed to do some writing while dean, but I've been drawing on intellectual reserves built up in an earlier period. It's time to rebuild those reserves. After that, I look forward to coming back and teaching a year from September. ⊠

Law Quadrangle Notes

The University of Michigan Law School / Ann Arbor, Michigan