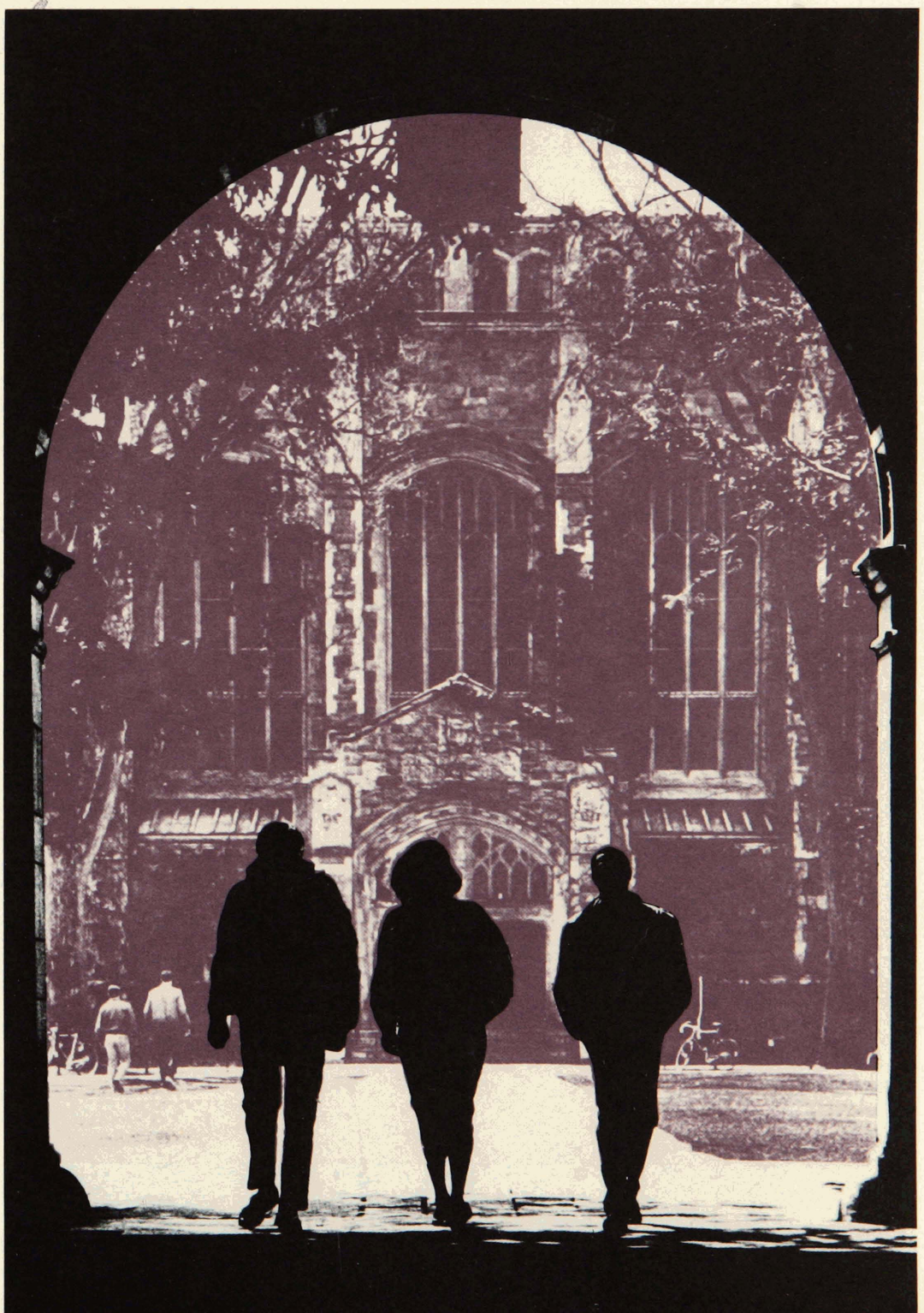
THE UNIVERSITY OF MICHIGAN LAW SCHOOL VOL 33, NO 3, SPRING, 1989

# LAW QUADRANGLE

NOTES





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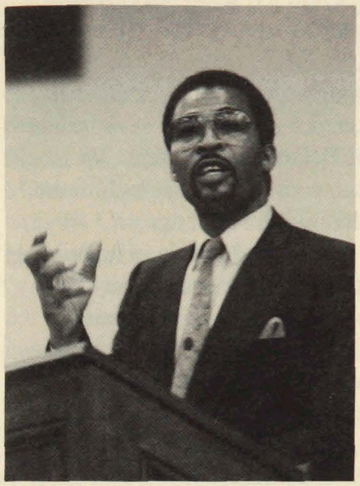

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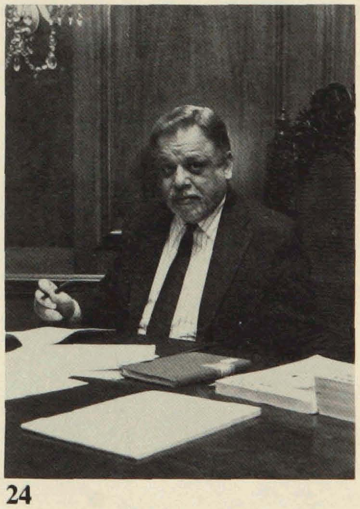

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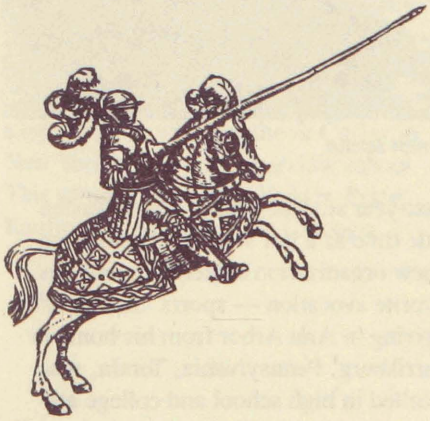

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# Forging ahead

*Extra-curricular activities keep students at the fore of changing legal issues*

Extracurricular activities in law school? Despite the rigorous demands commonly associated with law school, Michigan boasts nearly three dozen activities, in many cases founded and fostered by students committed to pioneering work in legal, technological, and social thought.

The present issue of *LQN* focuses on nine students who have worked either to establish new organizations or to revitalize those already in existence.

## Carol Krueger-Brophy

*Health Law Society*

*Carol Krueger-Brophy*

The Health Law Society was formed last year by a group of students from Professor Sallyanne Payton's health law class. Carol Krueger-Brophy, who received her J.D. this May, provided the impetus for the group's formation. Krueger-Brophy herself worked as a physical therapist for five years before entering law school. She also conducted research on stroke and cancer, and lectured on neurological treatment and geriatric rehabilition at Oakland and Wayne State Universities.

Health Law Society's membership includes students from the medical, public health, nursing, and graduate schools, in addition to law students. The members' interests, Krueger-Brophy explains, are as diverse, reflecting the fact that "health law" is not one narrow legal specialty. Rather, numerous legal and policy issues may be included under the label. These include medical malpractice, reproductive rights, access to health care, hospital and physician reimbursement, scientific research and technological advances, the problems of the aging, and AIDS.

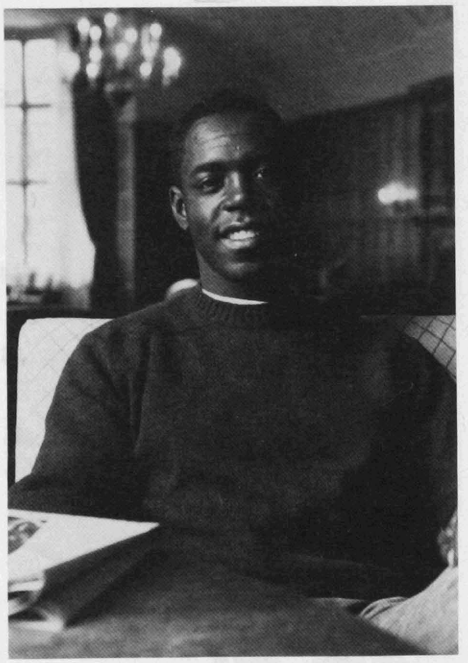
"Problems associated with the uninsured, the increasing number of elderly Americans, and AIDS patients will strain the health care system," declared Krueger-Brophy. "Lawyers, doctors, nurses, and health policy makers will be called upon to alleviate those strains. The Health Law Society hopes to make students aware of these issues now."

Last fall, the society instituted an AIDS awareness lecture series. In January, it co-sponsored an event with the school of public health featuring Australian jurist Michael Kirby. Kirby is internationally known for his work on AIDS, including his contributions to the International Conference on AIDS last year in Stockholm and his membership in the World Health Organization. The society plans to continue the series into the next academic year.

For her leadership role in organizing the Health Law Society, Krueger-Brophy received a University Achievement Award, one of only eight selected from more than 100 nominations.

## Ernest Torain

*Sports Law Society*



*Ernest Torain*

First-year student Ernest Torain wasted little time as a law student in setting up a new organization centered around his favorite avocation — sports. Shortly after arriving in Ann Arbor from his home in Harrisburg, Pennsylvania, Torain, who excelled in high school and college athletics, founded the Sports Law Society.

The group's initial goal was to bring to campus members of the legal profession involved with the sports industry.

Sports Law Society's first scheduled event, held in April, was a panel discussion entitled "Sports on Trial: NCAA Regulations and their Enforcement." Featured were Dan Beebe, a representative of the NCAA enforcement office, and Michael Slive and Dan Murray, attorneys with the Chicago firm of Coffield, Ungaretti, Harris & Slavin.

The three-member panel focused on the interaction between NCAA member institutions, the organization's enforcement apparatus, and outside counsel in ensuring that member schools comply with NCAA regulations. Beebe outlined how the NCAA processes a typical infractions case, while Slive and Murray described the role of outside counsel in compliance work generally, as well as in an NCAA investigation. The speakers also discussed the non-adversarial character of NCAA proceedings, the advantages of such an approach for a self-governing body, and its implications for a specialized area of sports law practice.

In addition to scheduling more frequent events, the group plans to publish a newsletter twice each semester beginning this fall. Meetings are open to all and are held bi-weekly.

Torain is a graduate of Dartmouth College, where he earned all-Ivy honors in football as a senior. An avid sports fan, Torain, however, is not limiting his career options to sports law. "It's still a very small field," he said, "and I'm equally interested in labor and arbitration." He has already had a taste of corporate and real estate law, working for a year as a legal assistant with Haythe & Curley in New York before coming to law school. This summer he is with Vedder, Price, Kaufman & Kammholz in Chicago.

## Martha Umphrey

*Women Law Students Association*

*Martha Umphrey*

The Women Law Students Association is currently involved in the grandest project WLSA has undertaken since its inception in 1967: hosting the 21st National Conference on Women and the Law to be held in Detroit, on March 22-25, 1990. This conference, which draws 1500 to 2000 people annually, is a forum that gives voice to women generally silenced and marginalized in or by the legal system. Workshops attempt to develop an awareness of and sensitivity to race, class, disability, and culture as well as international and human rights issues. The conference's primary goal is to educate and empower women to use, improve, and challenge the legal system.

WLSA governing board member Martha Umphrey explained that the past year was devoted to designing and raising funds for the conference, reaching out into other communities so as to make not only the actual event, but the planning process itself, as rich and multifarious as possible. "A contingent of ten members attended last year's conference in Austin, Texas, to present WLSA's bid, and traveled again this year, to Oakland, California, as part of the planning process. The Law School has committed a tremendous amount of support to this project, which WLSA conceives as a national event that will showcase and benefit both the Law School and the University as a whole."

Other WLSA activities, according to Umphrey, include a series of brown bag lunches with student, faculty, and local attorneys; participation in searches for new women faculty; and sponsoring guest speakers. A recent lecturer was Karen Berger Morello, author of *The Invisible Bar: The Woman Lawyer in America, 1638 to the Present.*

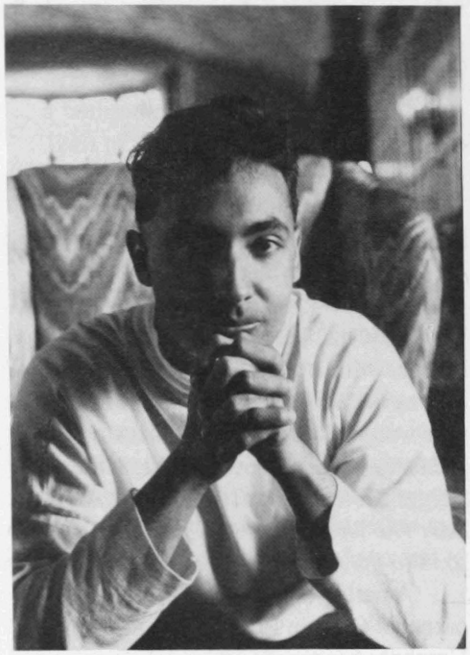
A native of Bad Axe, Michigan who earned a B.A. in English at the U-M, Umphrey has taught an introductory course in the Women's Studies Program at the U-M. She plans to earn a Ph.D. in history or American culture concurrently with her J.D. and to teach at the university level.

## Cesar Alvarez

*Hispanic Law Students Association*

Cesar Alvarez, chair of the Hispanic Law Students Association and forthright proponent of minority issues, admits that he became acquainted with his Latino roots only recently. Despite his Spanish, Cuban, and Puerto Rican heritage, Alvarez, who grew up in the Bronx amidst families of Italian and Irish descent, did not speak Spanish until he began studying it in high school. "And the only ethnic food we had was spaghetti and some Chinese food," he recalls with a laugh.

Then, as a junior at Williams College (where he majored in Spanish and art history), Alvarez had the opportunity to study in Spain for a year. "It was the best year of my life," he says unequivocally. An avid theater and film-goer, Alvarez ultimately hopes to own a production



*Cesar Alvarez*

company that addresses Latino issues in a responsible manner. Alvarez's immediate goal after graduation, however, is to work in family law, a decision that was reinforced by his participation in the Child Advocacy Law Clinic, where he will serve an Interdisciplinary Fellowship next year. "In family law," he states, "it's not all reduced to words on paper. You can't separate the legal aspects of the case from the emotional aspects."

Alvarez's ability to deal with emotionally charged issues was demonstrated this year shortly after he assumed the HLSA chair. A controversy arose involving the Law School's invitation to FBI Director William Sessions to speak at Senior Day ceremonies.

HLSA and several other Law School groups opposed the invitation because a federal district court had found that the FBI had discriminated against people of color and in particular against Latino and Latina agents. According to Alvarez, "the invitation, coming as it did on the heels of the Law School's ban against FBI recruitment on campus, called into question the School's commitment to that ban and what it stands for."

Although HLSA members initially wanted the Law School to rescind the invitation to Sessions, "we knew that wasn't going to happen and that we'd have to compromise," said Alvarez.

In the end, the Hispanic students were pleased that Antonia Hernandez, president and general counsel of the Mexican-American Legal Defense and Education Fund (MALDEF) was added to the program. (Hernandez presented an opening address and then introduced Sessions.) However, in order to express their displeasure at the past actions of the FBI, a group of HLSA students, supported by some from other organizations, staged a peaceful protest at the ceremony. (A more complete coverage of Senior Day will appear in the fall issue).

## Carolin Chenoweth

*Intellectual Property Students Association*

One of the newest Law School organizations, the Intellectual Property Students Association (IPSA) aims to make the U-M a "hot spot" in one of the hottest legal fields today. IPSA's membership includes people with technical backgrounds who are seeking careers in patent law as well as those with non-technical backgrounds who are seeking to enter the entertainment business through law.

Founder and President Carolin Chenoweth explains that members are interested in trademark, patent, copyright, computer, entertainment, antitrust, corporate, international, and trade issues. IPSA has already established a chapter of the Volunteer Lawyers for the Arts in Ann Arbor to assist local musicians, artists, and authors on a clinic basis.

IPSA's long range plans include organizing existing regional and national intellectual property student groups and soon-to-be-created groups into a national IPSA. Another plan is to create a journal or yearbook of intellectual property law.

The activities of the group in the fall semester included speeches by Judge Helen Nies of the Federal Circuit and attorney George Bozy of Neuman, Williams, Anderson, and Olson on crystal polypropylene patents. Last semester's speakers included Betty Harandon of General Motors, on managing U.S. technology in Japan; Kevin Gilmartin of the U-M Office of Major Events, on entertainment law from the organizer's point of view; and Merril Johnson, a Florida sole practitioner, on the international litigation of patents.

Chenoweth, who received a B.S. in biochemistry from Michigan State University, attributes part of her motivation in entering law school to "science burnout." Her long-range goals include having a part in shaping the new technology by adapting the values of scientific research and academic freedom to commercial and capitalistic markets.

*Carolin Chenoweth*

## May Liang

*Asian American Law Students Association*

*May Liang*

The Asian American Law Students Association (AALSA) was founded in 1985 with two primary objectives: to form a peer support and networking group for Asian Americans in the Law School and to heighten awareness of Asian American issues in the Law School community.

This year, explains May Liang, who served as co-chair along with Sybil Leung, AALSA has taken an active role in coalition building with other Law School groups such as HLSA and BLSA. "We're a relatively small group, so it's important to have solidarity," said Liang. "But," she emphasized, "we consider each issue that comes up individually, rather than just rubber-stamping the proposals of the other groups." AALSA has also emphasized to the Law School administration the importance of promoting and maintaining diversity within the School.

AALSA's profile was heightened this year by the group's sponsorship of two prominent Asian American speakers. David Henry Hwang, a critically acclaimed playwright, spoke about concerns and issues facing Asian Americans in the arts. Fred Korematsu, plaintiff in *Korematsu v. U.S.* and an important symbol of the place occupied by Asian Americans in American history and society, spoke on the internment of Japanese Americans during World War II. (See Events.)

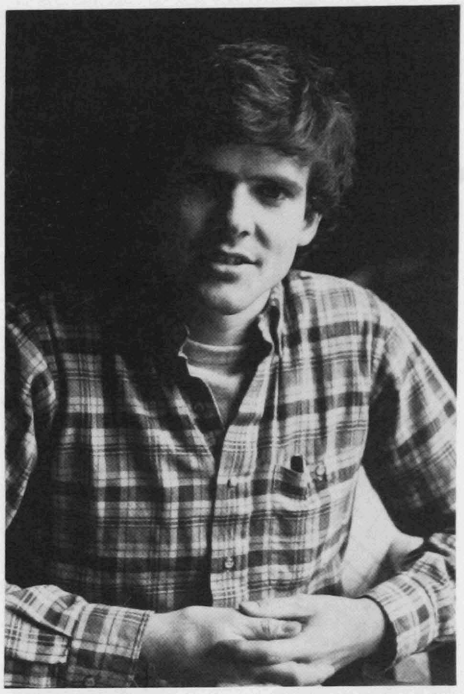
Liang, a native of Manhattan, Kansas, earned both a B.S. in electrical engineering and a B.A. in political science at Stanford. Explaining her dual undergraduate degree, she said, "I started out planning to be an engineer, and had a lot of fun working as one for a few years, but I was afraid my options would be limited in that field. I also wanted an opportunity to see things from a broader perspective. After deciding to go to law school, I thought I'd better have a B.A. to show that I could write."

Liang hopes to be able to use both her scientific and her legal training as she begins her career with Ware and Freidenrich in Palo Alto, California, where she will work in the areas of technology licensing and copyright.

## John Tower

*International Law Society*

The International Law Society (ILS) has had a productive year, reports outgoing president John D. Tower, a Cornell University graduate who earned his J.D. this spring. Recent ILS events under Tower's tenure have included a six-speaker conference on Central American peace (cosponsored with the Hispanic Law Students Association and the National Lawyers Guild), a faculty panel discussion on the use of force in the Persian Gulf, and a three-speaker discussion on the legal status of Israel's occupied territories. Lectures by visiting legal scholars and Michigan professors have concerned human rights, law of the sea, the ABM Treaty reinterpretation dispute, EEC law, the Philippines' new constitution, prospects for peace in the Middle East, and the legal status of national liberation movements.



*John Tower*

ILS also sponsors career-oriented discussions with visiting practitioners, looking into opportunities to practice international trade, corporate, and foreign law. One standout discussion this fall, Tower notes, was with Alan Krezcko, a State Department deputy legal advisor (and Law School graduate), who spoke both about his career and about career opportunities in international law with the federal government.

A native of Suffield, Connecticut, Tower has had a strong interest in international relations and national security issues dating back to his undergraduate studies. He has served as an intern in Washington, D.C. with the Committee for National Security, and the Arms Control Association (an affiliate of the Carnegie Endowment for International Peace). He recently returned to Washington to begin his professional career as an attorney with the General Accounting Office.

## Danielle Carr

*Law School Student Senate*

*Danielle Carr*

As LSSS president for 1988-89, Danielle Carr focused on streamlining LSSS administrative procedures, particularly with respect to the financing and accountability of interest groups and LSSS committees. These changes have allowed the Senate to devote more attention to unifying the student body.

Carr praised the LSSS committees, which cover a broad range of activities from social gatherings to faculty hiring, for doing an excellent job this year. The committees, she explained, "were basically inactive last year, so this year's Senate made a concerted effort to give them support and guidance. The committee chairs had lots of energy, good ideas, and enough commitment to see their projects through to completion." A notable example, says Carr, was Placement Committee's work in helping to establish a new Law School loan forgiveness program.

The Senate itself organized a graduate school canned food drive which gave the Law School an opportunity to work with five other graduate schools. In addition, LSSS put together the first-ever faculty auction last winter to raise money for student groups, which was a great success.

The Senate's work this year was recognized by the University when it received a Student Achievement Award this spring. This is the highest honor given by the University to groups for outstanding contributions to the University community.

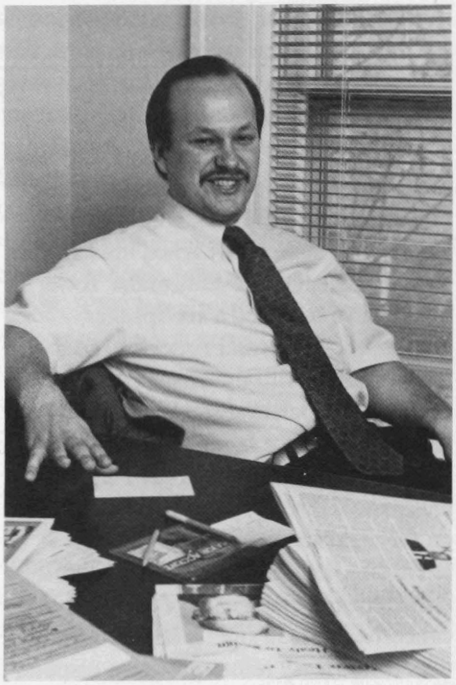
"My real hope," said Carr as her term neared its end, "is that the improvements we've managed, with good people and hard work, will carry over into the next years."

Born, raised and educated in Iowa, Carr has found the Law School community one of Michigan's most positive elements. "I was able to meet a broad spectrum of people — a nice and challenging change."

Carr began working in Chicago after graduation, at the law firm of Keck, Mahin & Cate.

## Paul Czarnota

*The Res Gestae*



The Res Gestae. At first glance it seems like an unusual name for a Law School newspaper. In Latin, the term translates into "things done." In the legal sense, the term applies to spoken words that are so closely connected to an occurrence that the words are considered part of the actual occurrence.

For second-year law student Paul Czarnota, editor-in-chief of the Res Gestae (RG), both meanings are appropriate to the paper's content and animating force. While conceding that the RG, under past editorial guidance, has consciously sought to foster an irreverent and casually counter-cultural attitude, he insists that serious and responsible journalism will be the benchmarks of his administration.

In the past, Czarnota explains, "We did not have control over the printing and production of the paper. We had to use University-owned computers and then send our copy over to the Michigan Daily for them to work it over."

Today, however, the RG has a highly integrated and almost fully computerized production schedule that allows far greater flexibility in developing content and a consistent layout format.

"We have always had very talented writers. We have won a couple of awards in this decade, including one as the most outstanding law school newspaper in the Sixth Circuit," said Czarnota.

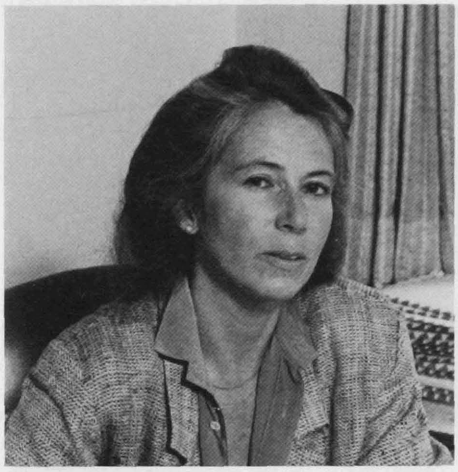
"When I first arrived in 1987, there were five regular staff members and a few part-time contributors. Now the staff has quadrupled and we have many more people capable of producing high quality work," he added.

Czarnota feels that the RG's new location, in the "White House" on State Street adjacent to the faculty parking lot, will enhance the paper's integrity and contribute to its stability as a campus institution.

A native of Warren, Michigan, Czarnota majored in both electrical engineering and history at Wayne State University. He is interested in intellectual property as an area of specialization.

# A major appointment

*Noted legal scholar accepts Law School's offer*



*Catharine A. MacKinnon*

Catharine A. MacKinnon, a noted feminist and legal scholar, has accepted the U-M Law School's offer of a tenured professorship. MacKinnon has conducted groundbreaking legal and social research into issues involving sexual harassment, sexual assault, and pornography. She is currently a member of the Osgoode Hall Law School, York University (Ontario, Canada) faculty and a visiting professor at Yale Law School.

"This appointment carries enormous importance for the U-M Law School as well as for the legal profession in general," said Dean Lee Bollinger. "As the foremost scholar and teacher of feminist legal theory, Professor MacKinnon will incalculably enrich the teaching and scholarly program of the Law School."

In articles, books, and court briefs, MacKinnon has argued that sexual harassment is sexual discrimination, that pornography is sexual harassment, and that both are prohibited under the Civil Rights Act. With Andrea Dworkin, she has drafted and campaigned for local laws that define pornography as a violation of women's civil rights. MacKinnon has also been a consultant, expert witness, or co-counsel in eight American and Canadian court cases involving social issues that affect women.

MacKinnon refutes the view, common in virtually all theory and law, that gender is a matter of sameness and difference, arguing instead that the reality of gender difference is a system of social hierarchy imposed by force upon women.

"I think a lot of people initially feel threatened by her ideas," said Dean Bollinger. "But as you look at what she's written, the force of her scholarship and the quality of her mind become more and more apparent."

Professor Joseph Weiler, head of the Law School appointments committee that voted to offer MacKinnon the position, commented, "I cannot think of pornography, having read MacKinnon, the way I thought of it before. To the extent that feminist jurisprudence is becoming part of the legal culture, she is undeniably the leading figure. I consider her a major scholar, a major social theorist. And we know she's a political activist, we know she's an engaged scholar, and we're glad of that."

MacKinnon is the author of some 20 articles on feminist issues and four books, including the forthcoming *Toward a Feminist Theory of the State.* She received both her doctoral degree in political science and her law degree from Yale University, and has taught at the Yale Law School, the University of Chicago, Stanford University, and the University of Southern California, among others.

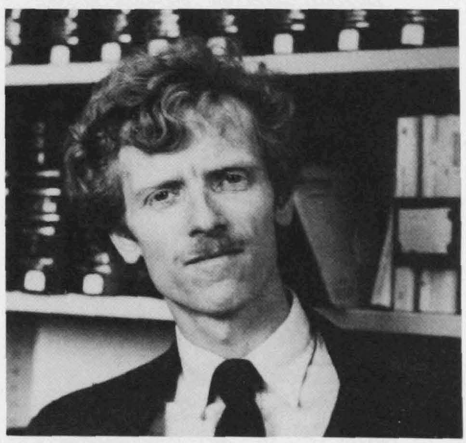
"My work has at times been regarded as a liability, based on its content rather than its quality," said MacKinnon. Regarding the offer from Michigan, she said, "It was kind of like being called to the priesthood. I have the sense that I will have the freedom to pursue my work [at Michigan]. I understand it as an expression of the seriousness with which they take the kind of work I do, and their willingness to recognize other models of scholarship than the traditional one."

MacKinnon will begin teaching at the Law School in the 1990-91 academic year, subject to formal approval by the U-M Regents.

# Ross returns to private practice

Dennis E. Ross, J.D. '78, an assistant professor at the Law School, recently announced the end of his leave of absence to return to private practice as a partner in the New York office of the law firm Davis, Polk & Wardwell.

Ross's announcement marks the completion of a full circle in his impressive career. Ross began his academic career at the Law School in 1982, teach-



*Dennis E. Ross*

ing federal corporation and income taxation, corporate finance, and business planning. Since 1985, he has served first as deputy, then as head, tax legislative counsel for the Department of Treasury. Before announcing his return to private practice, Ross had been elevated to deputy assistant treasury secretary for tax policy.

Dean Lee C. Bollinger was one of many at the Law School who praised Ross and regretted his departure. Bollinger offered this consoling thought, "Like Gerry Rosberg, Dennis Ross will always be a member of this faculty."

Professor Douglas A. Kahn expressed deep disappointment that Ross decided not to return to the law faculty. "Over a 25-year period of teaching at Michigan," he noted, "I have had many excellent students, but, even among that group, there are a dozen or so that stand out as the best. Dennis Ross is one of those. Taking into account his private practice, teaching, and public service, I would say that Dennis Ross was uniquely qualified to contribute to tax scholarship and to the education and professional training of our students. Indeed, I would say he is irreplaceable."

# Then and now

*Surveying the Class of '89: the second time around*

They come to Michigan from the top of their undergraduate classes, with the highest LSAT scores and the strongest recommendations. Objective data about Michigan Law School students is readily available. But what about subjective information? To find out something about their background experiences, hopes, fears, and dreams, *LQN* conducted a survey of first-year students two years ago. The questions elicited demographic information as well as subjective data on matters such as political affiliations, career goals, reasons for entering law school, and perceptions about world problems. The results of that survey were published in an article in *LQN* 31.2 (Winter, 1987).

Curious about what effect the law school experience might have had on the students, last February we administered a slightly abridged version of that same questionnaire to the same group of students — the Class of '89 — in the final months of their third year of law school. The results of that survey — and some comparisons with the results of the first survey — follow.

The 1987 survey was administered in the classroom with the cooperation of several faculty members teaching large sections. In this way we were able to reach 348 students — 91 percent of the first-year class.

The 1989 survey, however, was distributed (along with an explanatory letter) to students through their pendaflexes. As a result, the response rate was considerably smaller — 147 out of 335 students, or nearly 44 percent. More significant is the fact that the sample in the second survey was self-selected (rather than random or scientific). Consequently, its findings should be read with caution and comparisons between the two surveys can be made only with an awareness of these differences in mind.

Both surveys asked the students to name the most significant experience they had had. In the early survey, 19 percent replied that it was travel or living abroad, while 15 percent mentioned study; 8 percent, work; and an equal number mentioned public service. In the later study 18 percent identified law school experiences as their most significant, followed by work, travel, personal relationships, and personal growth.

Both surveys asked the students to identify the woman and man they most admire. The responses to this question in the 1987 and the 1989 survey followed a similar pattern. The answer most frequently given was a parent, spouse, or other close relative. Apart from these choices, the answers varied greatly with only Martin Luther King, Jr., Mother Theresa, and Margaret Thatcher being named more than once.

On the question of political affiliation, both surveys asked the students to rank themselves as liberal or conservative on a scale from 1 to 7 (with 1 being the most liberal). In the 1987 survey, 21 percent of male and 20 percent of female respondents ranked themselves as "4" or middle-of-the road. Of the total female respondents, however, 62 percent ranked themselves as liberal (between 1 and 3), compared to 47 percent of the males. By contrast, only 18 percent of the female students ranked themselves as conservative (from 5 to 7), while 32 percent of the males put themselves in this category.

The pattern in the 1989 survey was somewhat similar. Nearly 19 percent of the female respondents identified themselves as middle-of-the road compared to almost 16 percent of the males. Of the total number of female respondents, 60 percent gave themselves a liberal rating compared to 47 percent of the males. On the other hand, only 18 percent of the female students ranked themselves as conservative compared to 40 percent of the males.

A related question concerned the students' perceptions of whether their political leanings had changed during their years at law school. Nearly 50 percent of the total number of respondents stated that their views had stayed the same; 18 percent felt they had become more conservative; and 32 percent replied that they had become more liberal.

Another question asked students to identify the most serious problems facing the world today. Answers here reflected a nationwide trend toward increased concern over the environment and decreased fear of nuclear war. In the 1987 survey, poverty (just over 21 percent) and the threat of nuclear war (20 percent) ranked highest among the students' concerns, followed by prejudice and selfishness (6 percent), illiteracy (4 percent), and environmental problems (just under 3 percent). Students responding to the 1989 survey, on the other hand, most frequently expressed concern over the environment (39 percent), followed by prejudice and selfishness (31 percent), and poverty (30 percent), while the threat of nuclear war was seen as the most serious problem by only 15 percent of the respondents.

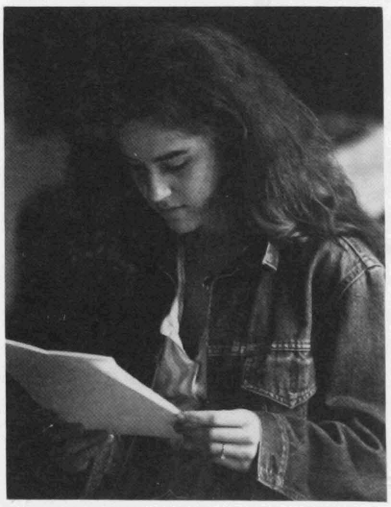
Looking ahead, both surveys asked the students two questions about their goals. Regarding their primary goal in the next ten years, 25 percent of the students responding to the 1987 survey either replied that they didn't know or left the space blank. In the later survey, by comparison, most students gave several replies, the most frequent being family related, followed by happiness, working for the social good, and financial success.

Regarding long term career plans, in the 1987 survey 23 percent said they had no idea; 20 percent indicated they preferred a large law firm practice; 17.2 percent preferred a career in politics and government; and relatively small numbers of students (generally under 4 percent) expressed an interest in working in a small firm, as a solo practitioner, as a prosecutor, house counsel, or in public interest posts. In the later survey 18 percent had no idea of long term career plans; nearly 19 percent preferred working with a large firm; and an equal number looked forward to a career in government or politics.

The 1989 survey also included several new questions eliciting information on the law school experience. One such question concerned extracurricular activities in law school. An overwhelming 92 percent of the respondents indicated they had participated in at least one activity, with the vast majority listing several activities. (This high level of activity may suggest that those who chose to participate in the survey were, in fact, the most active students of the third-year class.)

The 1989 survey also asked students to identify the best parts and the worst of law school. Most of the students gave multiple answers, all of which were tabulated. Nearly half (47 percent) of the replies stated that the best parts were the people they had met and the friends they had made. Another 20 percent indicated it was the sense of accomplishment they felt in earning the J.D. Eighteen percent cited interesting classes as the best part of law school, and an equal number mentioned extracurricular activities. Nearly eleven percent mentioned clinical courses.

Regarding the worst parts of law school, 35 percent of the respondents listed feelings of anxiety and insecurity related to the first year. Twenty percent mentioned difficulties with individuals. Surprisingly, only about seven percent mentioned the Socratic method as the worst part of law school and a slightly higher number stated it to be pressure from too much work.



# A lasting tribute

*Audio tape heralds McCree Professorship*

*A collegiate professorship is being established to honor the late Wade H. McCree, Jr.*

An innovative taped program featuring the interviews of numerous distinguished guests heralds a lasting tribute to Wade H. McCree, Jr., the late Lewis M. Simes Professor of Law. The audio-cassette, in a radio program format, presents an inspiring look at the life and distinguished career of McCree, a highly respected federal judge who was probably best known as Solicitor General of the United States under the Carter administration. The tape signals the beginning of the Law School Fund's effort to raise the funds necessary to establish a collegiate professorship in McCree's name. The chair will be the first named after a minority faculty member at the Law School and the University.

Mary Talen, coordinator of this project at the Law School Fund, said the radio program format was chosen because of the power of the spoken word in capturing the essence of McCree's profound impact upon his colleagues and students.

Talen found participants in the project eager to share their memories of McCree and enthusiastic about contributing to the taped interviews. Given the speakers' evocative memories, the documentary format, according to Talen, was perceived as an especially fitting manner in which to honor McCree.

One of the contributors, Dean Lee C. Bollinger, stated, "The process of writing letters has become so stylized, so formal, it is very difficult to convey the real sense of emotion and personality that often lies behind efforts like this. My hope is the tape will provide a rich sense of how important this endowed professorship is to the School, something that an official letter could not do."

The program features interviews with many individuals whose personal and professional lives were touched by McCree. Several faculty members describe McCree's contribution to the Law School. Dean Bollinger, Professor and former Dean Terrance Sandalow, and Professor David Chambers recount their memories of McCree's academic career. Members of the judiciary contributing to the program include the Hon. Pierce Lively and the Hon. John Peck, both of whom sat with McCree on the United States Court of Appeals for the Sixth Circuit, and the Hon. Horace Gilmore of the United States District Court for the Eastern District of Michigan. Other distinguished contributors include former United States Attorney General Griffin Bell, the late Governor of Michigan G. Mennen ("Soapy") Williams, Michigan Supreme Court Justice Dennis Archer, Lansing attorney and former research assistant Jonathan Zorach, former student James Portnoy now practicing law in Washington, D. C., Detroit lawyer Otis Smith, Lawrence Wallace, and Wayne State University Vice President Arthur Johnson.

More intimate insights are provided by Professor McCree's spouse, Dores McCree, and son, Wade H. McCree, a Detroit lawyer. Through previously taped interviews, McCree's own thoughts and words grace the program.

As for highlights of the interviews, Talen says, "Stay tuned." Many interesting and inspiring anecdotes have been collected during the course of the project. "It has been a tremendously enjoyable experience" for all, she concludes.

Since the number of tapes produced is necessarily limited, individuals seeking more information or interested in making a donation should contact: Mary Talen, University of Michigan Law School Fund, 721 S. State Street, Ann Arbor, Michigan 48104-3071. Telephone (313) 763-7970.

# A pioneering process

*Kauper uses ADR to settle dispute*

*Thomas E. Kauper*

A major antitrust dispute involving fees charged at more than 4,500 bank-teller machines in the Southwest was resolved last year through an Alternative Dispute Resolution (ADR) process conducted by Law School Professor Thomas E. Kauper. The dispute, procedure, and outcome were described in an article in the October 1988 issue of *Alternatives to the High Cost of Litigation* (vol. 6, no. 10), published by the Center for Public Resources in New York.

The case, as outlined in the article, involved the legality under the Sherman Act and Texas antitrust law of various teller-machine fee schedules set by Financial Interchange Inc. (FII), a nonprofit electronic funds transfer network joint venture of 1,800 financial institutions in Texas and surrounding states. Those 1,800 institutions own 4,520 automated teller machines (ATMs), and have collectively issued 7.2 million machine access cards, all identified by the "PULSE" service mark.

First Texas Savings Association, one of the member banks, threatened to file an antitrust suit against FII. First Texas charged that the joint venture's establishment of fees to be paid between members constituted illegal price fixing. FII claimed that the fee system was legal under the antitrust laws because it was necessary to an efficient transfer of funds.

To avoid the high cost of litigation and to facilitate a speedy resolution, the parties set to work on an ADR agreement. First, it was necessary to find a suitable neutral arbitrator whose decision would carry great weight. Professor Kauper, who from 1972 to 1976 had served as assistant attorney general for the U.S. Department of Justice Antitrust Division, was selected from a short list offered by FII lawyers.

The five-day hearing, held in Houston, was termed by Robert M. Cohan, one of the lawyers on the case, of the Dallas firm of Cohan, Simson, Cowlishaw, Aranza & Wulff, "the most exciting proceeding I've ever been involved in. It combined the best aspects of a trial, and an appellate argument, and a law school class . . . I can't say enough about how good this procedure was."

Kauper examined both the witnesses and the attorneys, as, by agreement, most of the evidence had already been submitted in writing through documents, affidavits and depositions. The numerous witnesses included the chief fact witnesses, economists, and computer specialists, who testified in tandem: corresponding witnesses from each side would testify at the same time. Kauper, using a professorial technique, asked that the witnesses answer the same question, debate a particular issue, or respond to the position of the other witness.

The participants found themselves comfortable with the classroom techniques. "In court, you have technical witnesses who testify to exactly opposite conclusions that are never reconciled . . . It's frustrating, because then no one can make any sense of the conflicting testimony," said James P. Groton of Sutherland, Asbill & Brennan's Atlanta office, an ADR specialist. Here, uncertainties and opposing viewpoints could be challenged and resolved immediately.

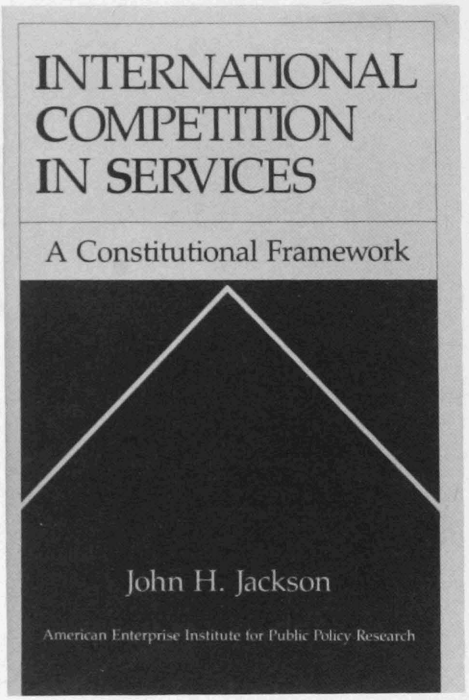
Kauper issued his order on the case less than two weeks after the hearing. The fixed-fee system, he found, if continued, would violate federal and state antitrust laws, and he ordered FII to change the fixed-fee system to a flexible system.

Both the lawyers involved and the arbitrator found the process "pioneering" and "unique" and Kauper's performance, the lawyers agreed, was "extraordinary."

The First Texas-Pulse arbitration received the 1988 Significant Achievement Award "for excellence and innovation in alternative dispute resolution" from the Center for Public Resources.

# Competition or cooperation?

*Jackson's book advocates international agreements on services trade*




The major industrial nations need to develop an international agreement in services trade before individual governments adopt protectionist measures that are likely to become "hardened and difficult to dismantle," contends Professor John H. Jackson. Writing in his new book, *International Competition in Services: A Constitutional Framework,* (American Enterprise Institute for Public Policy Research, 1988), Jackson advocates agreements that are "broad and nonthreatening enough to allow for the gradual evolution of rules, and layered, to allow for various levels of participation."

The Hessel E. Yntema Professor of Law and a leading authority on the General Agreement on Tariffs and Trade (GATT), Jackson also serves as U-M associate vice president for academic affairs.

"The need for international coordination and cooperation in services trade across borders has become apparent," Jackson says. "Although a troubled and evolving legal framework — GATT — exists for trade in goods, little of such framework exists for services, except in certain sectors. Yet services make up both a greater percentage of the gross national product of major industrial countries than production of goods and a significant percentage of world trade."

For example, in 1983, according to one source, services constituted 71 percent of the gross national product in the United States, 62 percent in France, 59 percent in the Federal Republic of Germany, 65 percent in Japan, and 57 percent in the United Kingdom.

Services comprise a broad range of economic activities including banking, telecommunications, stockbrokerage, law, and engineering which are "difficult to define, much less regulate," Jackson argues. "They often involve no tangible property and it is sometimes difficult to decide when service activity crosses a border.

"Any attempt to develop sweeping rules, such as a national treaty obligation, that applies to all services, regardless of sector, could be impractical or even dangerous," he adds. "Different sectors have different degrees of importance to national security or to other sovereign goals and rely on substantially different business structures."

As a result, instead of modeling a trade agreement on GATT, the international community should concentrate on developing a layered constitutional structure that would contribute to the evolution of more detailed trade rules.

*John H. Jackson*

"It should provide a framework for gathering information and carrying out detailed studies to facilitate rule making. It should establish a legal structure to reinforce the predictability of rules. While encouraging broad participation, it should allow subgroups of like-minded nations to forge ahead with obligations that not all members will yet accept," Jackson says.

Participation in the top layer of Jackson's proposed agreement, which he calls the "umbrella agreement," would entail relatively modest obligations and agreement to institutional provisions concerning voting procedure, dispute resolution, and commitment to shared principles, goals, or objectives. The umbrella agreement would be complemented by more specific service sector agreements of codes.

"Not all members of the umbrella agreement would need to join any particular agreement, but those that did so would gain advantages over countries that did not accept the sector agreements," Jackson argues in his book.

The United States is a strong promoter of an international service trade agreement because it has a very strong and competitive services sector that stands to gain if it can compete in the world market, Jackson notes. American exporters of services, especially in the areas of financial services, insurance, architecture, engineering, and construction, would benefit.

In the absence of an agreement, American consumers also might be hurt by higher prices for things like insurance and brokerage services and by fewer choices among products, Jackson says.

Additional benefits of an international agreement would include ensuring the transfer of technology across boundaries and savings resulting from economies of scale, he notes.

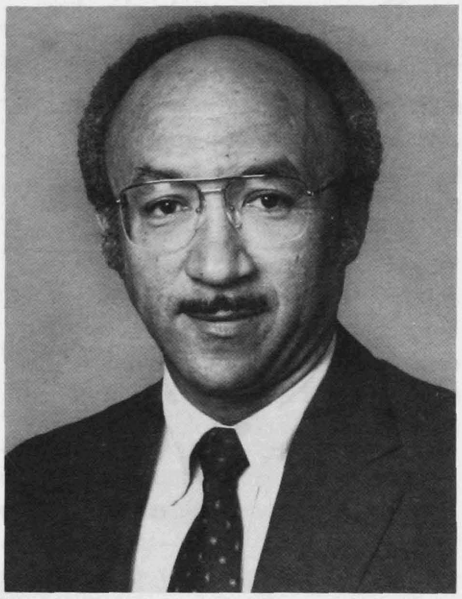
The prospect for a basic "umbrella agreement" being reached among 24 or so countries within the next five years is "very, very good," Jackson says. He adds that such an agreement should include at least a core of developing nations.

"If you include only industrialized nations, you risk having it be written off by the rest of the world," he says. "Moreover, the potential for expanding services trade in developing countries is great, especially in Brazil, South Korea, and Mexico." Finally, he argues, "developing countries like Singapore and India are major providers of services like banking and software. They have a significant interest in international rule and discipline."

*Peter Seidman*
*News and Information Services*

# An insider's view

## *Judge Edwards teaches course on federal courts*



*Judge Harry T. Edwards*

Judge Harry T. Edwards, J.D. '65, who serves on the U.S. Court of Appeals for the D.C. Circuit, commuted to the Law School each week last fall to teach a course on "The Federal Courts and the Appellate Process." Among the topics covered in the class were evidence, federal jurisdiction, administrative law, civil procedure, and constitutional analysis.

"It was the best class I have ever taken at the Law School," said Kristin Vanden Berg, a third-year law student. "Judge Edwards is a remarkable teacher and is incredibly demanding. His extensive experience on the bench and sharpness of mind allowed him to pose issues in a highly provocative manner.

"The early part of the course was the most demanding because we always had large amounts of reading and we also had to write a brief about a real case that was before the D. C. Circuit," said Vanden Berg. She noted that Edwards was unusually perceptive and constructive in his criticism of the actual brief and the supporting oral arguments.

Vanden Berg's enthusiasm for the course was seconded by others in the class. "I came away with a good sense of the federal appellate standard of review and some of the important administrative and constitutional issues involved," said Ayana Sloan.

Moreover, the students were given an opportunity to critique their fellow students' briefs and oral arguments as an exercise in legal writing and analysis.

"The course was valuable because I was given the opportunity to judge other peoples' oral arguments and briefs," said second-year student David Cerda. "It was interesting to see what it was like from the other side.

"The experience of reading someone else's brief was especially constructive because it helped me clarify the errors in my own work. Judge Edwards is extremely quick to pick up on everything in oral argument. I noticed that he took very few notes, yet his comments were extensive and very insightful. The thing that made him special in this regard was his ability to make forthright and very constructive comments," said Cerda.

"The classroom discussion was very much like oral arguments because he would question you in great depth. You always had to be very well prepared. In a larger class, he might have moved on to another individual. But in this class, he would stay with you and so I found that I was able to appreciate the material in much greater detail."

Judge Edwards, who taught at the Law School from 1970 to 1975 and from 1977 to 1980, will return to Michigan each fall to teach the course.

*Clinton Elliott*

# Easing the burden

*Financial Aid Office broadens loan forgiveness program*

Law students carrying heavy loan burdens may feel that a career in private practice is inevitable. As a consequence, each year fewer and fewer graduates feel they can afford to take jobs they really want in government and public service. Recognizing this problem, the Financial Aid Office last December modified the existing loan forgiveness program, broadening both its eligibility requirements and its coverage. Now, qualified participants who accept less remunerative law-related employment will benefit from earlier loan forgiveness as well as from a higher income ceiling.

"I think it is a tremendous change to have the forgiveness start earlier," remarked Katherine Gottschalk, director of financial aid. Formerly, actual forgiveness of qualified educational debt generally did not take place until the graduate's tenth year in the program. Loan forgiveness now begins in the second year of participation.

Using a flexible formula, the Law School determines what percentage of loan repayments a participant must meet during the first year in the program. During that first year, the Law School makes a loan to the graduate for the remaining amount of the debt. The next year, the graduate receives an outright grant to meet the established need for that year, and one-third of the Law School's first year loan to the graduate is forgiven. As long as eligibility requirements are met, the participant continues to receive semi-annual disbursements under the program until all of the Law School's initial loan is forgiven and no unmet need exists.

The program's second major change involves the income limits for eligibility. To qualify, a graduate must accept law-related work and fall within the applicable adjusted gross income ceiling. The cap is currently set at $32,000 per year for single individuals and $42,000 per year for married couples. The formula allows for an additional $4,000 per year for each child and may be adjusted for inflation. In individual cases, circumstances such as disability, child care leave, additional education, and spouse's debt may all be considered relevant to adjusting the cap. The program is restricted to graduates of 1986 or later.

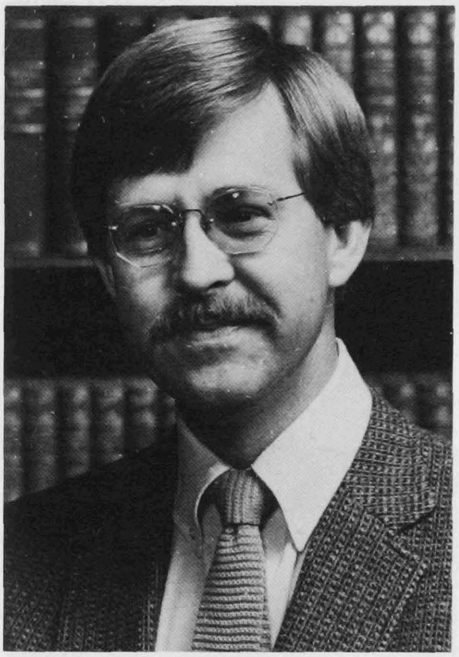
Gottschalk notes there is no "typical" career choice among loan forgiveness beneficiaries and current participants are engaged in private, government, and public sector employment.

For application materials or further information contact: Katherine Gottschalk, Director of Financial Aid, University of Michigan Law School, 310 Hutchins Hall, Ann Arbor, Michigan 48109-1215. Telephone (313) 764-5289.

*Denise Sheehan*

*Financial Aid Director Katherine Gottschalk discusses the new loan forgiveness program with Kermitt Brooks, J.D. '89.*

# Faculty activities



*Donald Duquette*

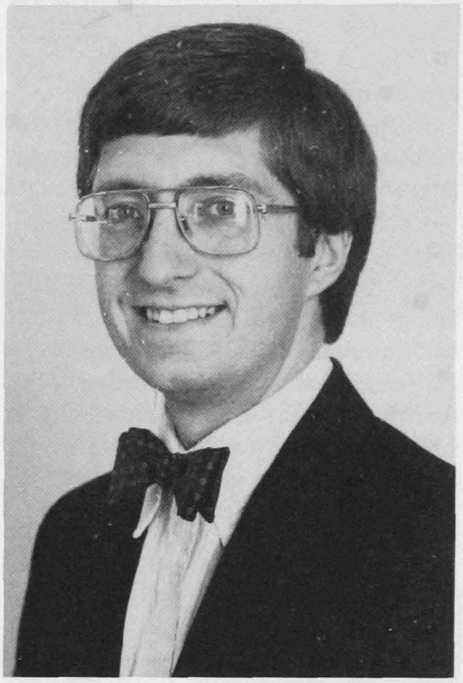
**Donald Duquette,** Director of the Law School's Child Advocacy Law Clinic, was invited to a NATO Advanced Research Workshop on "State Intervention on Behalf of Children and Youth" held in Acquafredda di Maratea, in southern Italy, February 20–24, 1989. The 48 participants in the workshop shared research papers related to the purpose and rationale for state intervention on behalf of children and youth, the form and nature of that intervention, its effectiveness, and unintended consequences.

Duquette's paper, "Independent Representation of Children in Protection Proceedings," summarized current U.S. research on child advocacy. Despite a general conviction in the U.S. that children ought to be independently represented in child protection proceedings, there is little empirical evidence which demonstrates that children are better off because of that advocacy. Nonetheless, in the U.S. the debate centers not on *whether* children should be represented, but on how more children can be *better* represented. Many U.S. jurisdictions are experimenting with lay representation of children through Court Appointed Special Advocates (CASAs). Where lawyers are involved with them, the CASAs have been found effective.

The proper role of the child advocate in protection proceedings, whether that advocate is a lawyer or non-lawyer, is not yet clearly defined and that ambiguity confounds meaningful evaluation, says Duquette.

**Jessica Litman,** a specialist in intellectual property law, presented a workshop last December to the members of the Japanese Copyright Law Society on the American accession to the Berne Convention.

*Jessica Litman*



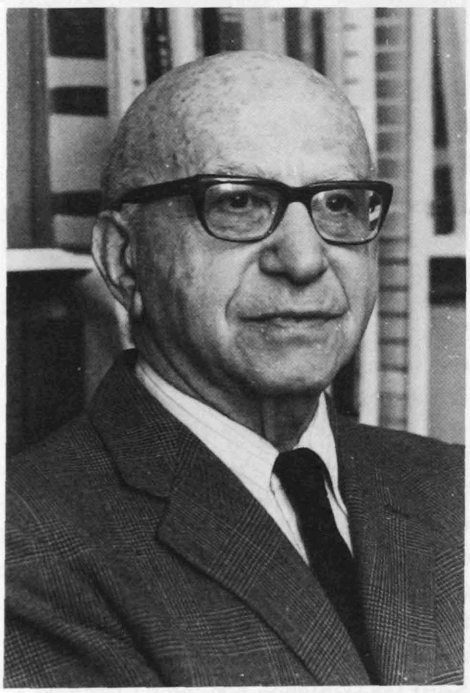
*Jeffrey S. Lehman*

**Jeffrey S. Lehman** is one of five project organizers for a multidisciplinary research and training program entitled "Poverty, the Underclass and Public Policy." The program received support this spring from the U-M Presidential Initiatives Fund.

Project organizers plan to create a National Statistics and Data Center on Poverty, the Underclass and Public Policy, which would be the nation's only multidisciplinary center with this focus. The term "underclass" in this context refers to urban residents living in areas where a constellation of problems is geographically concentrated: low family income, long-term welfare dependency, teen pregnancy, joblessness, single parent families, low educational attainment, and high crime rates. The project's goals are to integrate theoretical behavioral models

from economics, sociology, psychology, and political science; to gather new data; and to test hypotheses. In addition, the participants plan to host conferences and to make research findings accessible to a wide audience, particularly those in government agencies and policy-making positions.

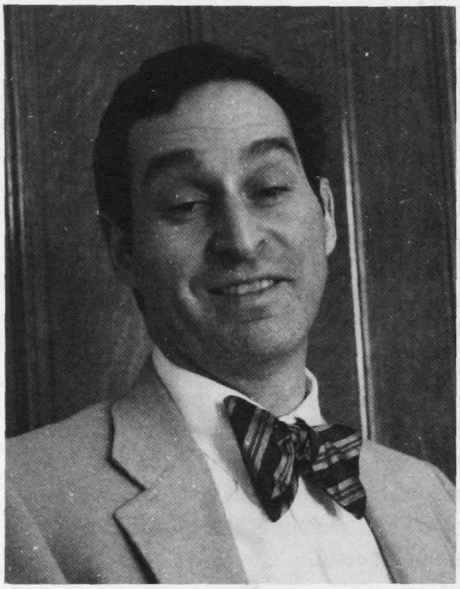
**Eric Stein,** Hessel E. Yntema Professor Emeritus, addressed professional and academic audiences in Madrid, Malaga, and Granada, on a recent lecture tour through Spain. He currently serves as a member of the study group on "Europe, America, and 1992" of the Council on Foreign Relations in New York. Stein chaired a panel on "European Trade 1992: Fortress or Partnership" at the annual meeting of the American Society of International Law in Chicago. His study on the Single European Act of 1986 is in the process of publication in the *International Lawyer.*



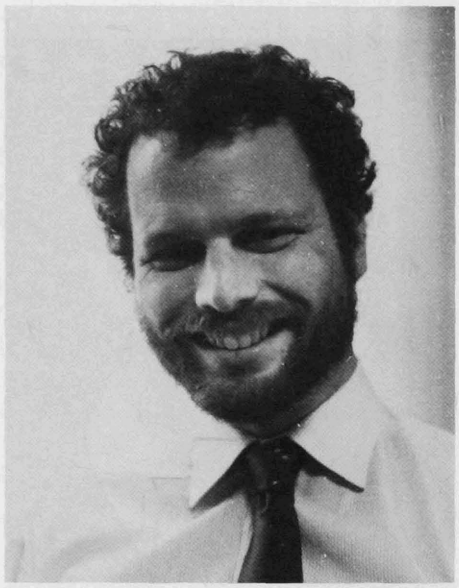
*Eric Stein*

# Visiting Faculty

Five visiting professors taught at the Law School during the winter term.



*Robert H. Abrams*



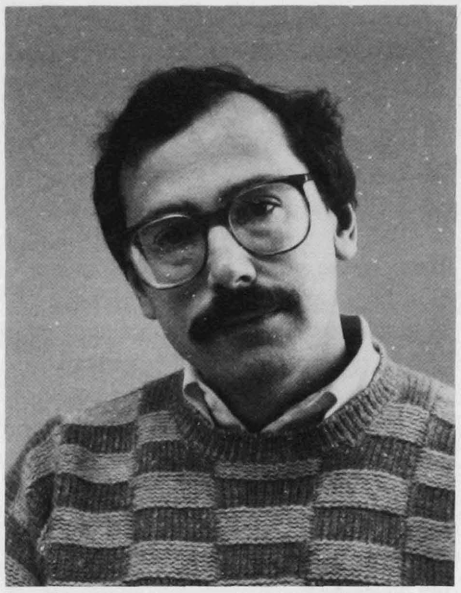
*David Carlson*

**Robert H. Abrams** visited from Wayne State University for the third time. His most recent visit was in the winter of 1987. Abrams studied both philosophy and law at the U-M (A.B. '69, J.D. '73). He has taught at Wayne State University Law School since 1977. Professor Abrams's areas of special interest are water law and environmental law, and he taught a course on water law during his visit. He was co-author with Joseph Sax of *Legal Control of Water Resources* (West Publishing, 1986), and is currently at work on an article entitled "Legal Protection of Forest Ecosystem Biodiversity."

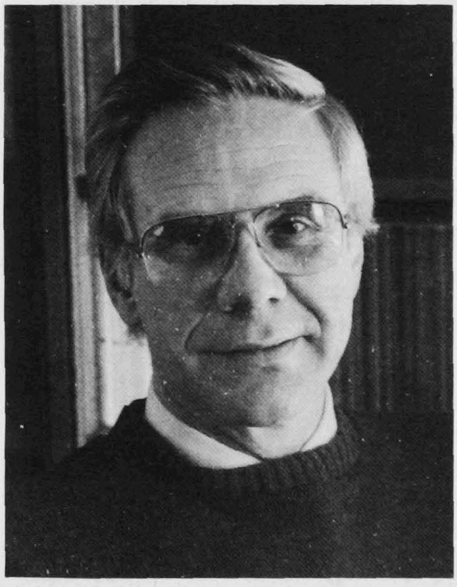
**David Gray Carlson** visited from the Cardozo School of Law. He holds two degrees from the University of California: a B.A. in political science, from U-C Santa Barbara, in 1974; and a J.D. from Hastings College of Law, in 1977. After graduating from law school, he was an associate at Cravath, Swaine & Moore, in New York City. Since 1981, he has been teaching at Cardozo. Professor Carlson taught a course on creditors' rights, and a seminar on critical legal studies during his visit. His wife, Jeanne L. Schroeder, also taught at the Law School during the winter term.

**Richard A. Matasar** visited from the University of Iowa. He earned both his B.A. ('74) and J.D.('77) from the University of Pennsylvania, and clerked for Judge Max Rosenn, U.S. Court of Appeals for the 3rd Circuit, after graduation from law school. For two years, he was an associate with Arnold & Porter, in Washington, D.C. In 1980, he joined the faculty at Iowa. He is currently at work, with R.N. Clinton, on a casebook entitled *Federal Courts: Theory and Practice.*

Professor Matasar's areas of speciality are civil procedure, constitutional litigation, and federal jurisdiction. At Michigan he taught Jurisdiction and Choice of Law and Civil Procedure II.



*Richard A. Matasar*



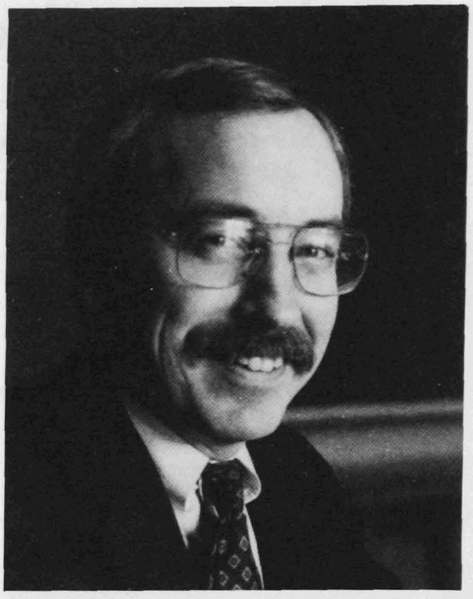
*John L. Peschel*

**John L. Peschel,** a graduate of the Law School ('61), visited from New York University Law School where he is professor and former associate dean. His areas of specialty include trusts and estates, and he taught courses on trusts and estates, and estate and gift tax this past semester. With Edward D. Spurgeon, he is author of *Federal Taxation of Trusts, Grantors and Beneficiaries* (Warren, Forham & Lamont, 1978), and is at work on the second edition. He has written numerous articles in his field, on topics including current estate planning developments and the impact of fiduciary standards on federal taxation of grantor trusts.

**Jeanne L. Schroeder** is a member of the New York law firm of Milgrim, Thomajan & Lee, P.C., and joined the Law School during the winter semester to teach a seminar on security interests in personal property. She is co-author, with David Gray Carlson, of an article on future nonadvance obligations under Article 9 of the U.C.C.

Professor Schroeder is a graduate of Williams College (A.B. '75) and Stanford Law School (J.D. '78). She was an associate with Cravath, Swaine & Moore before joining Milgrim, Thomajan & Lee, P.C.

*Jeanne L. Schroeder*



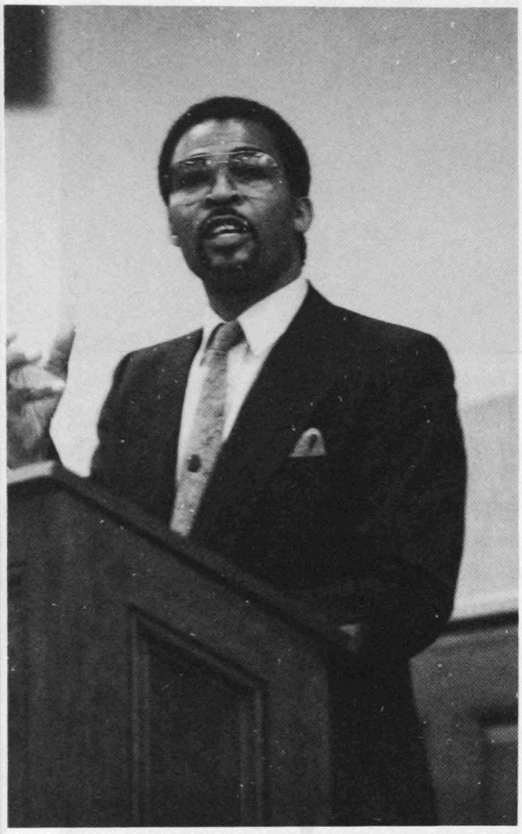
*Charles W. Borgsdorf*

In addition to the above visitors, **Charles W. Borgsdorf,** a former Law School assistant dean from 1973 to 1976, returned as an adjunct lecturer. He is a partner in the Ann Arbor law firm of Hooper, Hathaway, Price, Beuche & Wallace, and an adjunct assistant professor of business law at the U-M Graduate School of Business Administration.

Borgsdorf holds two degrees from the University of Michigan: a B.A. ('65) and a J.D. ('69). He worked in New York City for two years after graduation at the law firm of Shearman & Sterling. Borgsdorf is the annual revision editor for Schmidt & Cavitch, *Michigan Corporation Law with Tax Analysis* (Matthew Bender, New York). He taught a section of the ethics class "Lawyers and Clients."

# A Salute to diversity

*Law School host speakers, mock trial to honor Dr. Martin Luther King, Jr.*



*U-M sociology professor Aldon Morris spoke on the role of law in American society.*

The Law School suspended its usual agenda on January 16th for the first University-wide celebration of Diversity Day in honor of the late Dr. Martin Luther King, Jr. In place of classes, the School scheduled two distinct events: an address by Aldon Morris, assistant professor of sociology at the U-M, on the role of law in American society and a mock trial of the historic case of *Walker v. Birmingham*. Room 100, Hutchins Hall, was filled to capacity for the occasion.

Professor Morris began the afternoon by delivering an address in which he examined the role of law in American society. Morris argued that law normally acted as "a tool developed by those in power to protect and promote arrangements by which the powerful derive power and resources" in society.

Moreover, Morris asserted that law could serve but two functions: the impartial facilitation of progress or the biased obstruction of legitimate social change. He said that prior to the civil rights movement the law had served the latter function.

"State and federal laws often inhibited and even broke the progress of the civil rights movement," said Morris. "The Supreme Court and the southern states were in agreement on the question of racial segregation," he added, citing the landmark 1896 Supreme Court ruling in *Plessy v. Ferguson* as evidence of widespread social and jurisprudential support for the idea of a segregated society.

"There has never been anything such as 'separate but equal' and surely those who made up the Court knew this — racial discrimination was enshrined," said Morris. Furthermore, he maintained that both the executive and legislative branches of the federal government were responsible for the continuation of considerable misery and deprivations against Blacks.

"Between 1891 and 1901, more than 1,000 Blacks were lynched," said Morris. "The Congress was never able to pass any anti-lynching laws. This raises some questions about the fundamental role of law in society."

Contrasting the 1896 *Plessy* decision with the 1954 decision in *Brown v. Board of Education,* Morris said that the former was implemented with "all deliberate speed" because white Americans were in control of the economy, courts, political system, and state houses, while Blacks were dependent upon a racist society for basic justice.

In 1954, following the *Brown* decision, Morris said, implementation of this sweeping decision was significantly impaired because the Court mandated that the same avowedly segregationist forces — i.e. local southern governments — were responsible for implementing the changes.

"It was as if the white judges and white power structure winked at each other about what would happen next," said Morris. He noted that Blacks had to resort to massive and sustained displays of civil disobedience to alter the balance of power and press the moral and social imperatives of their civil rights claims.

Looking ahead, Morris asserted, "We need highly-trained and gifted attorneys who will fight on behalf of poor people because the law itself will protect the interest of powerful groups.

"Why is it that in the courts of the United States of America, a white life is worth more than a Black life?" asked Morris, suggesting that the lower forms of penal retribution in Black-on-Black crime versus Black-on-white crime were socially objectionable and offensive to an enlightened society.

"We need to constructively evaluate the law and make plain and public its biases in favor of the rich, powerful, and dominant," said Morris. "We also need practitioners who will see it as their duty to generate a more just body of laws."

In the mock trial that followed, Professor Theodore St. Antoine represented Walker and Professor Frederick Schauer argued on behalf of the city of Birmingham. A panel of three judges composed of Dean Lee C. Bollinger, who served as chief justice, and Professors Terrance Sandalow and Clark Cunningham presided over the hearing.

*Prof. Theodore St. Antoine represented Walker in the mock trial of* Walker v. Birmingham.

Professor St. Antoine, who spoke first on behalf of the defendants, argued that the central issue raised by the case was whether an *ex parte* city ordinance that restrained the peaceful exercise of First Amendment rights could be valid, and whether an injunction enforcing such an ordinance could have the force of law.

St. Antoine maintained that the injunction was issued in the evening without a shred of evidence that the demonstration in question was potentially violent or injurious to public safety. Moreover, he insisted that the religious significance of the demonstration, which was to take place on the weekend following Good Friday, would be diminished by the arbitrary and unconstitutional enforcement of the injunction.

Citing the procedural history of the case, St. Antoine argued that the lower court demonstrated a prejudicial attitude by declining to consider the constitutional challenge to the injunction and focusing upon whether the injunction was violated by demonstrators who had notice.

Justices Cunningham and Sandalow interrupted St. Antoine's presentation with numerous questions going to the heart of his pleadings.

Professor Schauer, in a colorful and dramatic presentation for the city, argued for the "long tradition of equitable jurisprudence" in the Alabama courts and maintained that the defendants were nothing more than wrongdoers who intentionally violated the law with the goal of being imprisoned for the public statement such a result would make.

Schauer noted that the petitioners had declined to avail themselves of the appropriate state or federal remedies and that this fact considerably weakened their allegation of discriminatory jurisprudence emanating from the Alabama court.

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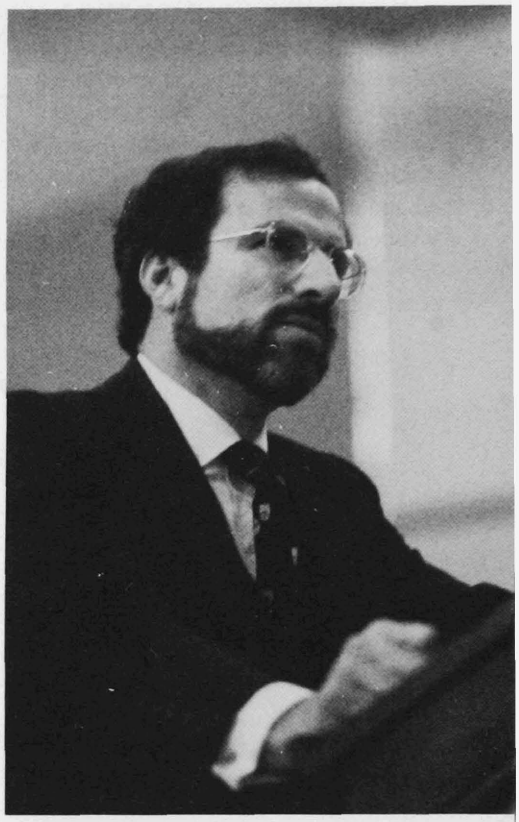
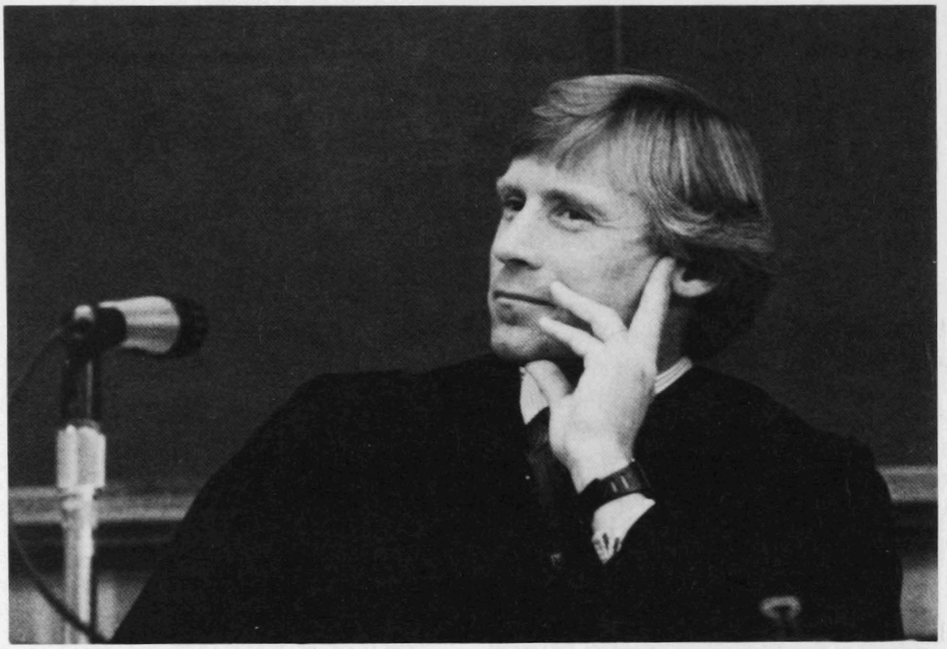


*Prof. Frederick Schauer argued on behalf of the city of Birmingham.*

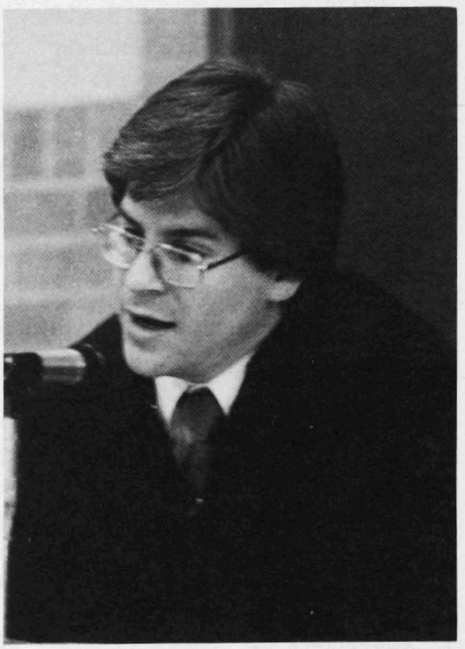
Dean Bollinger, acting in his capacity as chief justice, briefly explained that the Supreme Court ruled in favor of the city. Professor T. Alexander Aleinikoff then delivered the day's closing remarks, speaking of the special significance of the trial and asserting that members of society should view the King holiday not as a time of contented reflection, but as a building block for a more just society.

*Clinton Elliott*

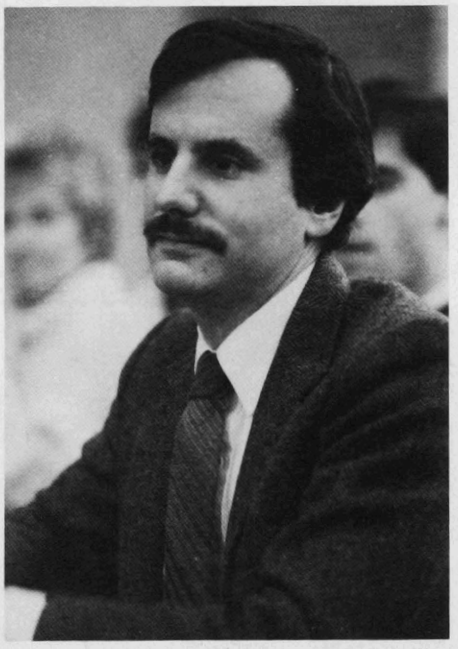


*Dean Lee C. Bollinger presided as chief justice.*

*Prof. Terrance Sandalow served as one of the three judges on the panel.*



*Prof. Clark Cunningham also served on the panel of judges.*



*Prof. T. Alexander Aleinikoff delivered the day's closing remarks.*

# Unfinished business

*Korematsu discusses Japanese-American internment*

Fred Korematsu pleaded his case at the Law School last February 9. But instead of facing the U.S. Supreme Court as he did in 1944 — challenging the forced relocation of 120,000 citizens of Japanese ancestry — Korematsu addressed 400 students, faculty, and fellow survivors of the wartime internment.

In the hysteria of World War II, the federal government banned Japanese immigrants and their U.S.-born children from the West Coast in 1942. Forced to leave homes and businesses, internees were allowed only the possessions they could carry. They were sent inland to live in makeshift camps, fenced in by barbed wire, and guarded by armed soldiers, through 1945.

"The evacuation notice came up, and I was surprised," Korematsu recalled. "I thought they'd exclude American citizens, but it included every Japanese American."

Korematsu, engaged to a Caucasian woman, remained in California, where his family ran a nursery. He changed his name and surgically altered his appearance. In two months, he was arrested, and the FBI pressured his fiancée not to see him again.

"I didn't feel like I was a criminal," Korematsu recalled. "I thought they [the policy-makers] were the ones who were wrong . . . [M]y parents and all my friends were in jail. Even though they were interned, I felt that way, and I think they felt that way too."

*Korematsu v. United States* was argued to the nation's highest court, which upheld the constitutionality of the race-based ban and internment based on national security claims.

"I really felt good about [my case], but lo and behold, I lost," he said. "That was behind me all these years — I knew it was unconstitutional, and I didn't know how to go about [proving] it. I kept it in my mind that eventually I'd like to reopen it if possible."

Forty years later, 50 pro bono attorneys and students revived the case, and a federal district court overturned Korematsu's conviction because new evidence proved the military used fraudulent evidence to obtain the original conviction.

The Supreme Court's constitutionality ruling, however, still stands.

Until the case was reopened in 1984, Korematsu did not talk about the subject, even with his children, and he believes other internees felt that sense of shame. "The majority of the people that were involved in internment, they wanted to express the sorrows and the hurt that they went through, but they didn't want to tell anyone. Now [victims] are a lot more at ease at telling what happened . . . . They've been keeping this inside of them all these years."

The Asian American Law Students Association invited Korematsu, said co-leader May Liang, because "to Asian Americans, he symbolizes our unique position in this country, as citizens and yet perhaps not as complete citizens. He also reminds us that we should stand up and fight for the rights that we have been guaranteed under the law."

Following the film "Unfinished Business," a documentary graphically recounting his story and that of nearly 120,000 fellow Japanese American internees, Korematsu said his current mission is to tell the story to a generation taught little, if anything, about the American tragedy.

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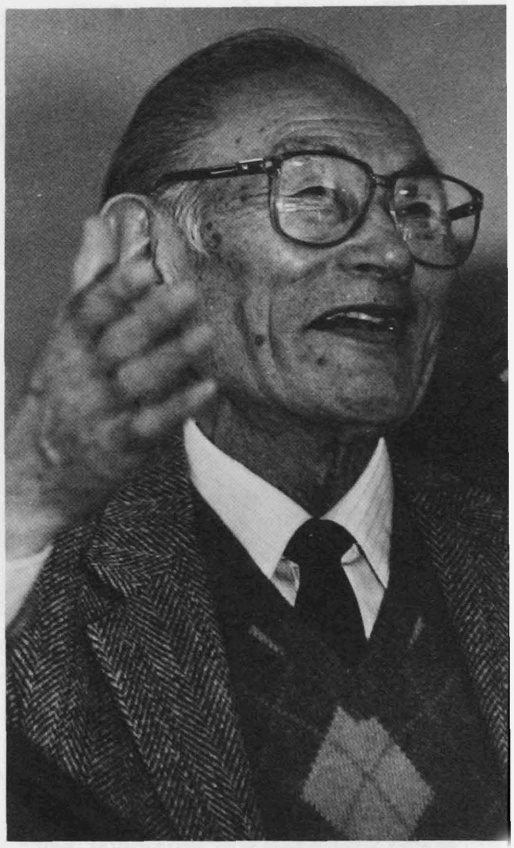


*Fred Korematsu, plaintiff in* Korematsu v. U.S., *discussed the film "Unfinished Business."*

# Exposing stereotypes: East and West

*Award-winning playwright visits Law School*

"It's not only for me, but anything that's wrong in our system should be straightened out . . . so that it will never happen again," he said. " [Race problems] will always be with us. Therefore, we'll always have to be on our toes."

Last year, then-President Ronald Reagan signed into law a redress bill, with an official government apology and monetary reparations for internment survivors. Continued funding of those payments is a concern of former internees and their descendants, determined not to let the event, and its lingering effect, fade from the public memory.

"The [survivors] are dying, and they figure, on average now, 4,000 a year pass away," Korematsu said. "A lot of people aren't getting their money."

At the end of Korematsu's presentation, a former internee in the audience said he, too, felt vindicated. But he reminded the audience that some attitudes have not changed.

The redress bill, he explained, was opposed by many veterans and former POWs who asked why the United States should compensate 'those who bombed Pearl Harbor, who perpetrated the Bataan Death March.'

"America finally came through for me. But I don't want this to happen again," he said. "I am a citizen. You are a citizen. But look what happened to us."

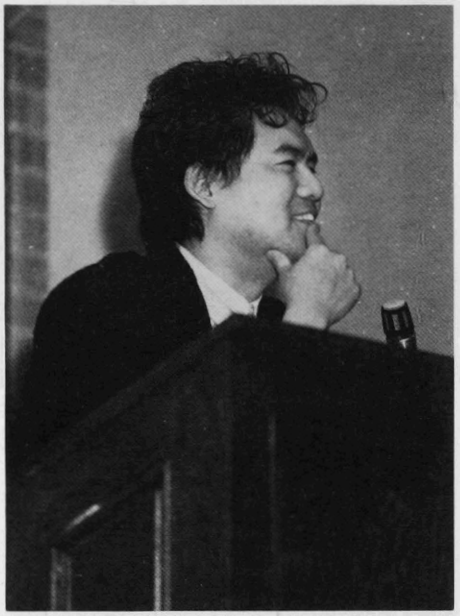
*Laralyn Sasaki*
*& Frank H. Wu*

"It seemed to be an incredible story and yet perfectly explicable. Given the degree of misunderstanding between East and West, and between men and women, it was only a matter of time before a mistake of this magnitude would take place," said David Henry Hwang. The playwright, visiting the Law School, was discussing the real-life spy case that inspired his Tony award-winning *M. Butterfly.* For two decades, a French diplomat had a love affair with a Chinese opera star — who claimed to have mothered his child — but who in fact was a spy and a man.

Hwang's visit was sponsored by the Asian American Law Students Association as part of Asian American Awareness month. Hwang spoke of *M. Butterfly*'s message and his development as a playwright to an audience of law students, Asian American students, and theatre fans.

"What I was trying to do was come up with some sort of theory to explain the commonality between racism, sexism, and imperialism," he said. "I decided they all came out of the same impulse, essentially to dehumanize the other. . . . By degrading others, we often degrade ourselves." During World War II, for example, the United States military tragically underestimated the strength of Japanese air attacks because it assumed their eyes were so small they would be poor pilots, he said.

Born to immigrant parents in San Gabriel, California, Hwang, now 31, began to write when he was twelve. "My grandmother got very sick and we got the idea into our heads that perhaps she was going to pass away," he recalled. "She was the only one who had any recollection in terms of family history, of stories



*"By degrading others, we often degrade ourselves."*

going generations back. If she passed away, who was there left to depend on?"

Hwang spent the summer interviewing his grandmother, recording an oral history of his family's origins. He recalls, "It was not really a novel, but at the age of twelve, you think it is."

He began to write plays as a student at Stanford University, where he majored in English. His first success was *F.O.B.*, for the derogatory phrase "Fresh Off the Boat," which took a lighthearted look at how Chinese immigrants strive to assimilate in the United States. Hwang wrote the play for his college dormitory to perform, but it attracted the attention of the National Playwrights Conference, and was then performed at New York's Public Theatre. That won him off-Broadway's Obie award.

Just out of college, he made his living as a playwright. His later plays included *The Dance and the Railroad,* a children's play about Chinese laborers

who helped build the U.S. railroads. The commercial failure of *Rich Relations,* a play without Asian elements, led Hwang to wonder if he was creating only "Orientalia for intelligentsia." The idea that women and people of color should create their own identities through their art might be a limitation, he felt, meaning that they could write about only their own group.

"It's an assumption in Hollywood particularly, that women write about women, Blacks about Blacks, and white males write about everybody. White males can write about Asians. It takes extra work, extra sensitivity. But it's also true that generally women and minorities have had to fit into a white male society. Therefore, they understand it more easily than the reverse." Hwang explained that an Asian American is more than likely to have white friends, but a white is not likely to have Asian American friends, simply as a matter of demographics.

*M. Butterfly,* however, combined East and West in a way *The New York Times* called "visionary." Within the next year, productions will open in London, Paris, and Tokyo; another will tour the United States. Hwang will make his debut as a movie director, working from his own script. He also is writing for a movie project about Oscar Wilde.

Invited by the Asian American Law Students because his achievements help dispel the stereotype that Asian Americans are proficient only in technical fields, Hwang revealed that he almost became a lawyer. "I'd always thought in the back of my mind, 'if playwrighting doesn't work out, I can go to law school,' " he said. "For my own sake, as well as for the people in the profession, I think it's just as well I never did."

*Laralyn Sasaki*
*& Frank H. Wu*

*"It's an assumption . . . that women write about women, Blacks write about Blacks, . . . and white males write about everybody."*

*"Given the degree of misunderstanding between East and West, and between men and women, it was only a matter of time before a mistake of this magnitude would take place."*

# Meditation on the nature of sport

## *A. Bartlett Giamatti delivers Cook Lectures*

*A. Bartlett Giamatti*

A. Bartlett Giamatti, then president of the National League of Baseball Clubs, distinguished scholar of English and comparative literature, and former president of Yale University, was in Ann Arbor last winter to serve as the 32nd speaker in the Law School's annual William Cook Lectures on American Institutions.

Giamatti, who assumed a five-year contract when he succeeded Peter Ueberroth as commissioner of major league baseball on April lst, gave a series of lectures entitled "Americans and Their Games." Styling his presentation a "tripartite meditation" on the nature of sport and leisure in American society, Giamatti focused on the relationship between the concept of athletic recreation in society and how that idea manifests itself in American daily life.

A gifted orator with an elegant rhetorical style and a witty manner of presentation, Giamatti delivered three lectures fraught with penetrating and compelling insights.

As the days went by, his reputation for eloquence seemed to spread throughout the Law Quad, drawing standing-room-only crowds for each of the three lectures.

"If every day were a holiday, then sport would be as tedious as work," said Giamatti, opening his first address with an epigraph taken from the first part of Shakespeare's Henry IV. "We can learn far more about the conditions and values of a society by contemplating how it chooses to play, to take its leisure, to pursue its retirements, than by examining how it goes about its work," he added.

"Our leisure may be the required alternative to work, but only because work is the required alternative to death," said Giamatti.

"But whatever the virtue we make of this necessity, work, in this life, is at its heart, a negotiation with death. A bargain made daily a thousand different ways until the strength to make that daily deal wanes or the culture presses past one. Then not work, but retirement ensues," said Giamatti, maintaining that leisure is an expression of choice and that the "freedom from cares and obligations and travail is like a religious experience.

"If work is a daily negotiation with death, leisure is the occasional transcendence of death," said Giamatti.

"I will argue that what Americans have created with their obsession with sport is a people's religion. Where there is a state religion, a systematic body of belief mandated or approved by the state, as the law is to Americans, as Confucianism was to the Chinese, as Marxist-Leninism is to the Soviet Union, as Islam is for some Muslim countries — so in states where there is a state religion, you will always have a popular religion. A culture-wide superstition, if you will, extremely widespread, if not completely adhered to," said Giamatti.

"Before the rise of industrialism, before the modern state, games and contests and sports in all cultures retained a mythic or religious or ritualized role or relationship to some transcendent source of values, and since then, these same pursuits, disconnected now from any religious significance, are merely non-utilitarian forms of activity," said Giamatti. "In this view, games and sports are rites that have lost their sacred signification.

"Sports are now merely reflective of all the characteristics of industrial society including the absence of sacred meaning or memory . . . junk food for the spirit, without nourishment, without history, without serious purpose," said Giamatti. "At best in this view, sport is a remnant from an idyllic world, now gone. Mere Maypole dancing without the Maypole."

During his second meditation, Giamatti linked the idea of modern sports to the cities in which they are played. Using a metaphor that emphasized the artificiality and inorganic character of cities as social constructs, he said that cities are an expression of continuity through human will and imagination. They exist precisely because the modern social contract between individuals wants them to exist.

"Cities and sports show a common characteristic — they are both deeply conventional," said Giamatti. "Convention is a social pattern we choose over what would be there in nature. Custom is a habit in which a sufficient number

appear to acquiesce. All culture is convention — putting design and shape into a common environment," he added, noting that sports form a separate and entirely distinctive subculture.

"Sports can have the character of cults. They demand one's total being, one's total assent. When we move into the special world of sport, cult displaces convention," said Giamatti, suggesting that alcohol and other forms of substance abuse can take on special significance when athletic contests depart from society's conventional realm and become akin to cults.

Turning to this issue of equal opportunity, Giamatti lauded major league baseball's important role in fostering greater equality in American society, but chided the sport for failing to deliver on its bright promises.

"Baseball changed America," said Giamatti, explaining the significance of Jackie Robinson's entry into the majors as the first Black ballplayer in 1947. "It was an enormously important event," he added, noting that baseball chose the voluntary path to desegregation before a presidential executive order desegregated the U. S. Army or the Supreme Court issued its 1954 decision in *Brown v. Board of Education* which ended state support for segregated schools and public accommodations.

"Baseball made a tremendous promise and it failed to deliver completely," said Giamatti. "It cheated itself by not fulfilling the very promise that it made," he added, suggesting that the failure was in not providing equal post-playing career opportunities for Blacks and other minorities. "Games, in various ways, are social contracts to live by."

For his third and final meditation, Giamatti was introduced by Michigan Athletic Director and Head Football Coach Bo Schembechler. Gently roasting Giamatti for an intellectual demeanor that borders on the cerebral, Schembechler, nevertheless, expressed enormous admiration for Giamatti's leadership and managerial ability.

"This meditation will test two propositions," said Giamatti. "The first is that baseball, in all its dimensions, best mirrors the condition of freedom for all Americans. The second is that because baseball simulates a condition of freedom, Americans can identify with the game.

"Baseball is part of America's plot. Part of America's mysterious, underlying design, the plot of which we all conspire to live out the plot of the story of our national life," he said. "Our national plot is to be free enough to consent to an order that will enhance and compound as well as constrain our national freedom.

"I suppose, in the abstract, that baseball believes in ordering its energy, its content. It believes that symmetry surrounds meaning, but, even more, symmetry forces meaning. Symmetry is a version of equality, forcing and sharpening competition. Symmetrical demands in a symmetrical setting encourage both passion and precision."

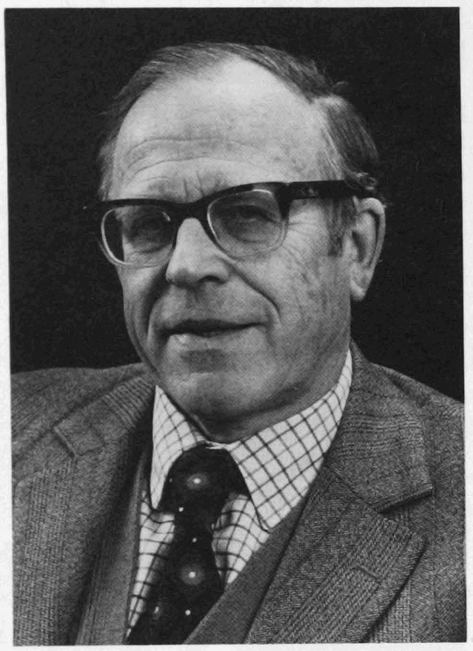
He noted that baseball's physical playing space is a carefully ordered and intentionally proportioned geometric masterpiece that involves "squares containing circles, containing rectangles," where "precision is in counterpoint with passion and order compresses energy."

Giamatti insisted that the metaphor between baseball and society, properly drawn, would be reflected in the concepts of equality that inhere in the sport and the society as well as the elemental tension between the quest for stability and the love of progress so characteristic of Americans and their games.

*Clinton Elliott*

*A. Bartlett Giamatti spoke informally with U-M Athletic Director and Head Football Coach Bo Schembechler and Law School Dean Lee C. Bollinger before the third lecture.*

# Alumni News



*L. Neville Brown*

**L. Neville Brown,** Law '59-'60, has received a host of high honors during the past year. At the Queen's Birthday Honours of June, 1988, Brown was a recipient of an "O.B.E." (Officer of the Order of the British Empire). He was appointed an Officier Dans L'Ordre Des Palmes Academiques for service to French culture by the former French Prime Minister Jacques Chirac. The University of Limoges, France, also conferred upon him a Doctorate Honoris Causa.

Brown has long held the post of professor of comparative law on the faculty of law at the University of Birmingham. He served as president of the Society of Public Teachers of Law in England from 1984 to 1985.

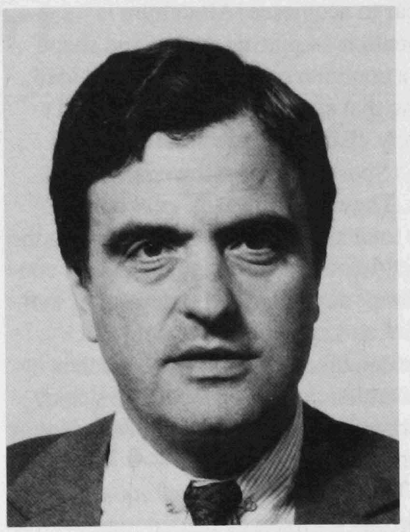
Brown served as a senior research fellow at the Law School in 1960.

**Harold G. Christensen,** J.D. '51, was confirmed by Congress as Deputy Attorney General of the United States on October 4, 1988. He formerly served as chairman of the board of the law firm of Snow, Christensen & Martineau, the Salt Lake City, Utah law firm which he joined in 1953. He has also served as president of the Salt Lake County Bar Association and the Utah State Bar and as Utah State Chairman of the American College of Trial Lawyers.

Christensen has published several articles and has participated in numerous state and federal committees. He was involved in the drafting of Utah's prepaid legal services plan as well as the state's Supreme Court appellate advocacy handbook.

Christensen has received some of the highest honors presented by the Utah State Bar, including its lawyer of the year award in 1984.

*Harold G. Christensen*



*Brian J.P. Fall*

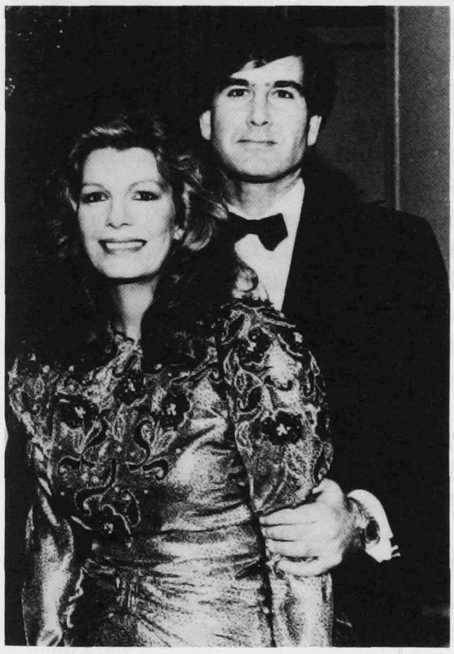
**Brian J. P. Fall,** LL.M. '61, Minister and Deputy Chief of Mission at the British Embassy in Washington, D. C., recently returned to the Ann Arbor area to discuss arms control and NATO affairs. He addressed the Detroit Committee on Foreign Relations and the University of Michigan Arms Control Seminar in February on the topic of "NATO after the INF Treaty."

Since joining the British Diplomatic Service in 1962, Fall has served as principal private secretary to three successive secretaries of state (Lord Carrington, Lord Pym, and Sir Geoffrey Howe). He went with Lord Carrington to NATO in June 1984 to serve as director of the secretary general's private office. Fall held a number of international postings until January, 1988, when he was named minister of the embassy in Washington, D. C.

**Christopher M. Jeffries,** J.D. '74, was married to the Princess Yasmin Aga Khan in New York City on February 4, 1989. The small, private ceremony was followed by a reception for 350 guests at The Plaza Hotel.

Jeffries is vice president of the General Atlantic Realty Corporation, the real estate subsidiary of the General Atlantic Corporation, a privately held investment company. In 1984, Jeffries formed a joint venture partnership with General Atlantic which seeks to identify and develop emerging neighborhoods in the New York area.

The Princess Aga Khan, daughter of the late actress Rita Hayworth and the late Prince Aly Khan, is vice chair and a member of the board of directors of the Alzheimer's Association.



*Christopher M. Jeffries and his spouse, Princess Yasmin Aga Khan*

*Richard Nygaard*

**Richard L. Nygaard,** J.D. '71, was appointed to the U. S. Court of Appeals for the 3rd Circuit in May, 1988 by then President Ronald Reagan. Before his appointment to the federal judiciary, Nygaard served on the Erie County (Pennsylvania) Court of Common Pleas.

Prior to his first judicial appointment, Nygaard had been a partner in the law firm of Orton, Nygaard & Dunlavey in North East, Pennsylvania, where he continues to reside.

Nygaard served as one of 35 national delegates to the international conference on developing free elections which was held in Washington, D.C. in 1982. He has also served on the local level as North East Township solicitor and a member of the Erie County Council.

A third Law School graduate now serves on the Supreme Court of the Republic of the Philippines. Justice **Florenz D. Regalado,** LL.M. '63, was appointed to the Court in August, 1988. He had served as dean of the San Beda College of Law in Manila before his appointment to the high court.

Justice Regalado joins Justice Hugo E. Gutierrez, Jr., LL.M. '65, and Justice Irene R. Cortes, LL.M. '56, S.J.D. '66, whose interview appears in the Spring, 1988 issue of *LQN.*

*Florenz D. Regalado*

# Class Notes

**'30 Stanley S. Gilbert** entered into complete retirement at the age of 82 at the end of 1988. He had practiced law for 58 years, and now resides in South Bend, IN.

**'34 George W. Crockett Jr.** was honored in Washington, D.C. for his contributions to civil rights, on February 1. A congressman from Michigan's 13th District, Crockett is included in the 1989 "Gallery of Greats" oil portrait collection entitled, "Black Attorneys: Counsels for the Cause," which was unveiled at a congressional reception in Washington.

**'37 Edward H. Sherman** was honored by the Colorado Supreme Court "in recognition and appreciation of outstanding services as a lawyer and countless contributions to the administration of justice in Colorado from 1937 to 1988." Sherman served as the first public defender of Denver County from January of 1966 through June of 1969, when he returned to private practice. The Colorado Criminal Defense Bar has established a scholarship in his name, for the most deserving attorney to attend the Trial Practice Institute, a program designed to train trial lawyers.

**'40 Thomas J. Fagan** was inducted into the Northern Michigan University Sports Hall of Fame in ceremonies at Marquette, MI.

**'42 William L. Taft** retired at the end of 1988 after 20 years as a First District Court Judge of Michigan.

**'47 Ernest Getz** of the Detroit, MI office of Dickinson Wright Moon Van Dusen & Freeman has become a consulting partner of the firm.

**'49 Stratton S. Brown** has retired as a partner of the Detroit firm of Miller, Canfield, Paddock and Stone where he had headed the Governmental Law Department.

**'50 Lysle I. Abbott** recently retired from her position as vice president and general counsel for the Credithrift Financial Corporation.

**Robert J. Danhof** of the Michigan Court of Appeals was elected chairman-elect of the Council of Chief Judges of Courts of Appeal in October 1988. He has been on the Michigan Court of Appeals since January 1969, and has been the chief judge since April 1976.

**Ralph F. McCartney** was appointed chief judge of the 2nd Judicial District of Iowa on January 1, 1988.

**'53 Stanley M. Fisher** has been named president-elect of the American Counsel Association.

**'54 Marvin O. Young,** a partner in the St. Louis, MO law firm of Gallop, Johnson & Neuman, recently presented a paper before the Annual Mineral Law Seminar in Lexington, KY on the topic of "Legal Issues for Buyers and Sellers Arising from Buyouts of Coal Supply Contracts."

**'55 John A. Grayson,** a partner in the Indianapolis law firm of Ice Miller Donadio & Ryan, has been named president-elect of the Indiana State Bar Association. He has served as an adjunct instructor in real estate law at the Indiana University School of Business, Indianapolis. He has also been a visiting assistant professor at the I.U. School of Law, Bloomington.

**Alan Z. Lefkowitz,** managing partner of Finkel Lefkowitz Ostrow & Woolridge of Pittsburgh, announced the firm's merger with Tucker Arensberg, P.C. effective November 1, 1988. Mr. Lefkowitz practices corporate and securities law, and will head the corporate department and be a member of the practice management committee.

**'57 David H. Marlin** was appointed a judge for the District of Columbia Contract Appeals Board in August, 1988.

**'59 William A. Cockell, Jr.** visited the U.S.S.R. in April 1988 for an arms control conference in advance of the summit, and again in August, accompanying Secretary of Defense Carlucci in discussions with Soviet military officials. In October he left his position after two years as special assistant to President Reagan for defense policy, and is now vice president of Science Applications International in La Jolla, CA.

**'60 H. David Soet** has been appointed a Circuit Judge for the 17th Judicial Circuit (Kent County) of Michigan by Governor James J. Blanchard effective December 19, 1988. Prior to his appointment, Soet had served for eight years as managing partner of the firm of Pinsky, Smith, Fayette, Soet & Hulswit of Grand Rapids, MI.

**'61 Frederick S. Dean** has been the city attorney of Tucson, AZ since 1977, and was recently reelected as regional vice president of the National Institute of Municipal Law Officers.

**John F. Lymburner** retired in October 1988 after 27 years in law with the U.S. Army. His last position was associate appellate judge with the U.S. Army Court of Military Review in Washington, D.C.

**'63 Norman O. Stockmeyer, Jr.,** professor of law at the Thomas M. Cooley Law School, has been named winner of the "Professional of the Year" award of the Michigan Association of the Professions. The award is in recognition of outstanding contributions to the goals of the association.

**'64 Paul E. Gillmor,** associated with the law firm of Tomb & Hering in Tiffin, Ohio, has been elected to the U.S. Congress from the 5th District of Ohio. He has served in the Ohio Senate for 22 years and is currently senate president and majority leader.

**Richard L. Hoffman** was recently appointed senior vice president of Jiffy Lube International in Houston, TX.

**Stephen M. Wittenberg,** who practices law in Birmingham, MI, was the featured speaker at a series of seminars on environmental law sponsored by the Environmental Law Research Bureau.

**'65 Gary J. Shapira** was selected as president-elect of the Erie County Bar Association in Pennsylvania.

**'67 Anthony A. Derezinski** has become counsel to the firm of Gardner, Carton & Douglas in its Southfield, MI office where he will specialize in health law, litigation, and general business matters. Prior to joining the firm, he served as general counsel and vice president for public affairs for Mercy Health Services, a Farmington Hills, MI company.

**Samuel J. Goodman,** a partner in the law firm of Goodman Ball & Van Bokkelen, of Highland, IN has recently become a fellow of the American Academy of Matrimonial Lawyers. Goodman has also been named an adjunct professor of law at John Marshall Law School in Chicago and is the current president of the Lake County, IN Bar Association.

**'68 Richard M. Sawdey** resigned on November 1, 1988 as vice president and secretary of R. R. Donnelley & Sons Co., to start a law practice. He is now of counsel with Hoogendoorn, Talbot, Davids, Godfrey & Milligan of Chicago.

**'69 Lawrence E. Hard** has been elected president of the Seattle firm of LeSourd & Patten in which he practices environmental and commercial law and is involved in business planning.

**'70 Robert B. Nelson** was named president of the Michigan Electric and Gas Association, a 15-member association of investor-owned utilities.

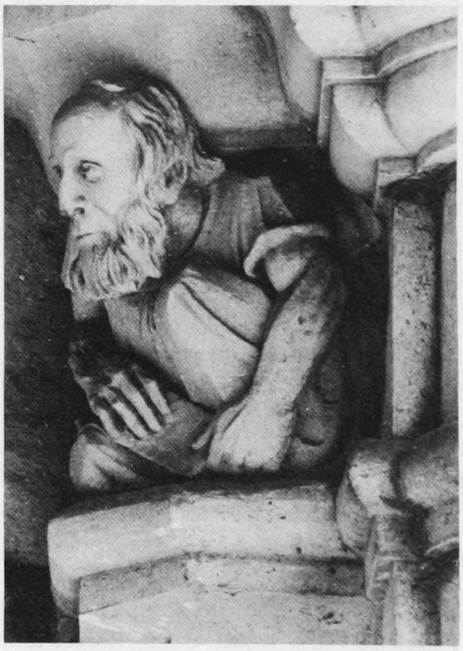
**Victor F. Ptasznik** has joined the Detroit-based law firm of Jaffe, Snider, Raitt & Heuer, P.C., as a partner. Previously, he served as general counsel, vice president of First of America Bank. In his new position, he will have responsibility for all aspects of commercial finance and loan documentation.

**'72 Sally A. Cook** is now associated with Dutton & Overman, P.C. of Indianapolis, IN., practicing business litigation. Previously she worked freelance on a securities class action suit.

**E. Penn Nicholson III** has become a partner in Atlanta's Powell, Goldstein, Frazer & Murphy. Since the merger of his former firm, Dodd, Connell & Hughes, into Powell, Goldstein effective May 1, 1988, he has headed Powell, Goldstein's bankruptcy/reorganization section.

**'74 Lloyd A. Fox** was named executive vice president and general counsel of Specialty Systems, Inc., an asbestos management group of companies in Atlanta, GA.; and chairman and chief executive officer of the Environmental Management Group, Inc., an environmental consulting, training, and analytical organization.

**P. Frederick Pfenninger** is now of counsel to the law firm of Barnes & Thornburg of Indianapolis, IN, and concentrates his practice in the area of creditors' rights, real estate, and commercial litigation. He was formerly associated with the Indianapolis firm of Rubin & Levin.



**Louis P. Rochkind,** a partner in the Detroit-based law firm of Jaffe, Snider, Raitt & Heuer, P.C., has co-authored, with Bankruptcy Judge Steven Rhodes, a book entitled *Michigan Local Bankruptcy Court Rules Annotated 1988,* published by Professional Education System, Inc., of Eau Claire, WI. He has authored several articles and is a frequent speaker on debtor-creditor law, bankruptcy, and corporate reorganization. He is an adjunct professor of law at Wayne State University Law School where he teaches courses on bankruptcy law and corporate reorganization.

**'75 Clayton P. Gillette** has been named the Harry Elwood Warren Scholar in Municipal Law at the Boston University School of Law. His teaching and research has been in the areas of commercial law and local government law. He has consulted on major issues in the areas of torts and municipal finance and has served as a regular columnist for the *Municipal Finance Journal.*

**'76 Stephen L. Burlingame** has been re-elected president of Fraser Trebilcock Davis & Foster, Lansing, MI's oldest law firm. He will continue to practice in the firm's business and corporate law departments.

**Richard L. Epling** recently joined the New York office of Sidley & Austin as a partner specializing in bankruptcy and corporate reorganization matters. His recent article, "Environmental Liens in Bankruptcy," appeared in the November 1988 issue of *Business Lawyer* (Vol. 44).

**John R. Nussbaumer,** assistant professor of law at Thomas M. Cooley Law School, was recently awarded the Stanley E. Beattie Teaching Award for teaching excellence.

**Thomas J. Sharbaugh** joined the firm of Morgan, Lewis & Bockius as a partner in the business and finance section in Philadelphia. Since 1982, he had been a partner with the Philadelphia firm of Saul, Ewing, Remick & Saul. His practice focuses on mergers and acquisitions, leveraged buy-out work, securities, and general corporate matters.

**'78 Timothy Sawyer Knowlton** of Onondaga, MI, has become a partner in the law firm of Miller, Canfield, Paddock and Stone. Knowlton joined the firm's Lansing, MI, office in 1982. His principal practice area is litigation, including environmental law, administrative law, insurance regulation defense, and employment litigation.

**Maurice Portley** has become a partner of Jennings, Strouss & Salmon in Phoenix, AZ. He joined the firm in 1984 after practicing in the US Army Judge Advocate General Corps.

**Mark Jay Richardson** has recently become of counsel to Brownstein, Hyatt, Farber & Madden in Los Angeles.

**'79 Debra Fochtman Minott** has taken the position of secretary and general counsel of IVAC Corporation in San Diego, a wholly owned subsidiary of Eli Lilly and Company.

**Jane E. Garfinkel** has become a partner of the law firm of Smith & Schnacke, in its Cincinnati, OH office, specializing in toxic tort and product liability litigation.

**Elaine J. Mittleman** published an article entitled "Traditional Rules Inapplicable in Age of Law Firm Dissolutions," in the December 19, 1988 issue of *The National Law Journal.* Mittleman, a sole practitioner, is a member of the District of Columbia bar.

**'80 G.A. Finch** has been selected to be featured in the Black History Month exhibit on distinguished African-American Amherst Alumni in the field of law. Finch is on a leave of absence from Chicago Title Insurance Company to serve as a City of Chicago deputy planning commissioner in charge of North and South Loop and State Street redevelopment areas.

**Jerry Genberg** has recently become a member of the firm of Sills Cummis Zuckerman Radin Tischman Epstein & Gross in Newark, NJ.

**Jeffrey M. McHugh** of Bloomfield Hills, MI has become a partner in the Detroit office of Miller, Canfield, Paddock and Stone, where he has worked since 1983. His principal practice area is federal taxation with an emphasis in municipal finance and arbitrage law.

**Diane M. Soubly** of Dearborn, MI has become a partner in the law firm of Miller, Canfield, Paddock and Stone. Her principal practice area is labor and employment litigation. Prior to joining the firm in 1983, she served as law clerk to The Honorable Charles L. Levin of the Michigan Supreme Court.

**Danette Wineberg** has been promoted to vice president, corporate counsel and assistant secretary at Highland Superstores, Inc. Prior to her appointment at Highland in 1986, she was most recently an attorney with Comshare, Inc., of Ann Arbor.

**'81 Paul R. Hoefle** and three partners have recently formed the new law firm of Slattery & Hausman, Ltd., in Milwaukee, WI. Hoefle's practice will be concentrated in the areas of personal injury and commercial litigation. The firm will also handle family and worker's compensation law.

**'82 Michael P. Coakley** of Birmingham, MI has become a partner in the statewide law firm of Miller, Canfield, Paddock and Stone, where he has worked since 1982. His principal practice is in commercial litigation including securities, antitrust, and intellectual property.

**Mark C. Furse, Jeffrey D. Izenman,** and **Patrick J. Lamb** were named as partners in the firm of Katten Muchin & Zavis, Chicago, on December 8, 1988. Furse practices in the area of environmental law, Izenman maintains a corporate practice, and Lamb is a commercial litigator.

**Howard A. Gutman** has established a law office in Springfield, N.J.

**Mary Jo Larson** became a partner in the Detroit law firm of Cross Wrock, P.C. Her areas of practice include employee benefits, tax, and intellectual property law.

**Robb L. Voyles** has become a member of the firm of Baker & Botts, in Dallas, TX.

**'83 Mark T. Boonstra,** an attorney in the Detroit office of the statewide law firm of Miller, Canfield, Paddock and Stone, has been selected as one of the Outstanding Young Men of America for 1988. Selection is based on outstanding personal and professional achievements.

**Johnson Barnes Glenn** has recently become vice president, international capital markets, of Drexel Burnham Lambert Inc.

**Kathryn J. Reid** has joined the legal staff of New England Electric System in Westborough, MA as a senior attorney.

**'84 Reinhard Quick** has become head of the legal department of the European Chemical Industry Federation (CEFIC). This Brussels-based organization represents all fifteen National Chemical Federations of Europe.

**Katherine E. Rakowsky,** along with 17 other attorneys, has started a new Chicago Loop law firm, Grippo & Elden. The firm consists of 18 attorneys formerly with the now-dissolved Isham, Lincoln & Beale. She will continue to specialize in general commercial litigation with a concentration in insurance coverage, civil RICO, and securities.

**Jacob C. Reinbolt** has joined the San Diego firm of Shenas, Shaw & Spievak, where he is engaged in securities and general corporate matters.

**'85 Monica Broderick-Cantwell** has joined the research faculty of the University of Florida College of Law. Since July 1988, she has been directing the international and national studies program at the Center for Governmental Responsibility, a law and public policy research institute.

**David Campbell** has been appointed, effective January 1, 1989, to the Readership in Law, Department of Law, Leeds Polytechnic.

**Darrell J. Graham,** along with **Katherine E. Rakowsky,** '85 (see above), and **Matthew I. Hafter,** '86, and 15 other attorneys, has started a new Chicago Loop law firm, Grippo & Elden. Graham will continue to specialize in commercial litigation with a concentration in antitrust, insurance coverage, and construction. Hafter handles corporate, securities, and insurance matters.

**Laura Kelsey Rhodes** is now working as a staff attorney at Public Citizen's Congress Watch in Washington, D.C., a consumer and environmental advocacy group founded by Ralph Nader.

**'86 Susan Kling** began training in November as a foreign service officer. She will be going overseas in early spring, to work at the United States' London embassy.

**Margaret Seif** is working in corporate/intellectual property at the Boston firm of Bingham Dana & Gould.

**'87 Paul R. Mackay** left New Zealand in October 1988 to work for Slaughter & May in London, England.

**Scott A. Turpel** is among a group of lawyers moving to Los Angeles to help start up Debevoise & Plimpton's new office in that city. Turpel concentrates in corporate and securities law.

**'88 Douglas W. Campbell** has joined the Cincinnati-based law firm of Dinsmore & Shohl, to practice in general business law.

**Gregory A. Kalscheur** is currently clerking for the Hon. Kenneth F. Ripple, U.S. Court of Appeals for the 7th Circuit in South Bend, IN.

**EDITOR'S NOTE:** Due to the overwhelming response, the Class Notes which could not be printed in this issue will appear in the Summer issue of *LQN*.

# Alumni Deaths

'19 **Leo J. Carrigan, Sr.,** November 16, 1988 in Ann Arbor, MI
**Abraham J. Levin,** October 24, 1988

'20 **Arthur P. Bogue,** September 17, 1988 in Pontiac, MI

'26 **William B. Cudlip,** November 12, 1988 in Harbor Springs, MI

'27 **Beahl T. Perrine,** February 5, 1989 in Cedar Rapids, IA
**Frederick J. Schumann,** January 7, 1989 in Grosse Pointe, MI

'29 **Robert M. Kerr,** December 11, 1988 in Portland, OR
**Robert Meginnity,** July 13, 1988
**Elmer E. Thomas,** October 13, 1988 in Short Hills, NJ

'30 **Irving I. Yorysh,** May 31, 1988

'31 **Joseph W. Solomon,** March 8, 1989

'32 **Clare F. Carter,** December 15, 1988 in Novi, MI
**Jack Y. H. Yuen,** September 26, 1988

'34 **Jack I. Levy,** October 27, 1988 in Denver, CO

'35 **William Arthur Babcock,** December 9, 1988

'36 **Leonard L. Kimball,** October 26, 1988
**John B. Martin, Jr.,** February 28, 1989 in Grand Rapids, MI

'38 **Williard J. Banyon,** December 3, 1988
**Lorenzo Tyler Carlisle, Jr.,** December, 1986
**Daniel Hodgman,** December 26, 1988 in Grosse Pointe Woods, MI

'39 **David G. Barnett,** January 10, 1989 in Pontiac, MI
**W. Arthur Batten,** February 20, 1989 in Grosse Pointe, MI

'43 **Pell Hollingshead,** March 12, 1989 in Detroit, MI

'46 **William H. Buchanan, Jr.,** November 6, 1988 in Pittsburgh, PA

'50 **James F. Gordy,** January 1, 1989
**Philip Pratt,** February 7, 1989

'51 **J. Dayton Ford,** November 7, 1988

'55 **David C. Hertler,** October 12, 1988

'59 **James A. Moore,** November 24, 1988

'61 **Ronald M. Dietrich,** October 17, 1988

'76 **Andrew Michael Walkover,** April, 1988

# In memoriam: Judge Philip Pratt

Philip Pratt, Chief Judge of the U.S. District Court for the Eastern District of Michigan, died February 7th, 1989. A '50 graduate of the Law School, Judge Pratt served in the U.S. Army from 1943 to 1946. He began his professional career in 1951, with the Abstract & Title Guaranty Company. He served one year as an assistant prosecuting attorney for Oakland County, Michigan before entering private practice in Pontiac.

Judge Pratt had served on the judiciary since 1963, when he was appointed by then Governor George Romney to the Sixth Judical Circuit for the State of Michigan. Prevailing in two elections, Judge Pratt retained his place on the state bench until 1970, when he was appointed by President Richard Nixon to serve on the U.S. District Court for the Eastern District of Michigan. Pratt eventually became chief judge of the district and held that position until his death.

# Law School to hold breakfast at August ABA annual meeting

Aloha! Will you be attending the American Bar Association's annual meeting in Hawaii? If so, then there's one section meeting that you won't want to miss.

The Law School will be hosting its annual breakfast for alumni, friends, and their guests on Monday, August 7, 1989, from 7:30 to 9:00 a.m. at the Hilton Hawaiian Village.

Dean Lee Bollinger, Assistant Dean Jonathan Lowe, and several other faculty members will be on hand to swap stories and fill you in on current happenings at the School.

The cost of the breakfast is $15.00 per person, including tax and gratuity. Alumni and friends who would like to attend *must pre-register* by sending a check made out to the University of Michigan Law School to:

ABA Alumni Breakfast
Law School Alumni Relations Office
721 South State Street
Ann Arbor, Michigan 48104-3071.

Please return a brief note including your name, address, business telephone number, and the name(s) of your guest(s) along with your check. Registrants will receive a confirmation form and more information about the breakfast in early July.

For more details, contact the Alumni Relations Office at the address above, or call (313) 763-7965.

We hope to see you in Hawaii!

## Are you a 4 or a 9?

Throughout this spring and fall, 12 Law School quinquennial anniversary classes from the twenties through the eighties will return to Ann Arbor for their gala class reunion celebrations. If your year of graduation ends in a four or a nine, you're invited! Check the list below, reserve the dates on your calendar, and watch your mail for more details.

**'29** Emeritus Weekend, June 1–3, 1989

**'34** Emeritus Weekend, June 1–3, 1989

**'39** Emeritus Weekend, June 2–4, 1989
Reunion Chairs: Doug and Helen Reading

**'43-'44-'45** U-M vs. Wisconsin, October 6–8, 1989 Reunion Chair: Harry Pickering

**'49** U-M vs. Wisconsin, October 5–8, 1989 Reunion Chair: Bob Fisher

**'54** U-M vs. Purdue, November 3–5, 1989
Reunion Chair: Larry Bullen

**'59** U-M vs. Indiana, October 27–29, 1989 Reunion Chair: Ron St. Onge

**'64** U-M vs. Purdue, November 3–5, 1989
Reunion Chair: Stephen Wittenberg

**'69** U-M vs. Indiana, October 27–29, 1989 Reunion Chair: Don Shelton

**'74** U-M vs. Wisconsin, October 6–8, 1989 Reunion Chair: Paul McKenney

**'79** U-M vs. Purdue, November 3–5, 1989
Reunion Chair: Don Parshall

**'84** U-M vs. Notre Dame (tickets not available), September 15–17, 1989
Reunion Chair: Jill Martin Eichner

For more information, call the Law School Alumni Relations Office at (313) 763-7965.

# Law & literature

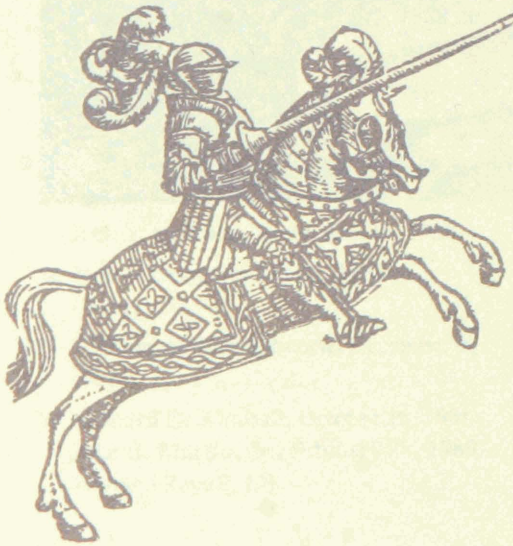
## "No Manifesto"

**by James Boyd White**

*A version of the following article originally appeared in* Mercer Law Review, *Spring, 1988; reprinted by permission.*

In this paper I wish to look at the relation between law and literature from the point of view of the law, and ask: With what hopes and expectations should a lawyer turn to the reading of imaginative literature? To books and articles that purport to connect that literature in some way with the law? In particular, is "law and literature" to be thought of as an academic "field" like law and psychiatry, say, or law and economics? If so, what can it purport to teach us? If not, how is it to be thought of?

To some it may sound odd even to suggest that meaningful connections could be drawn between two such different things as law and literature. "How can literature have anything to say to lawyers," such a one might ask, "when literature is inherently about individual feelings and perceptions, to be tested by the criteria of authenticity and aesthetics, while the law is about the exercise of political power, to be tested by the criteria of rationality and justice?" To reduce the law to its merely literary aspect would seem to erase the dimensions of politics, authority, responsibility, power — the whole sense that the law is about real consequences — and to substitute for it a kind of empty aestheticism, a celebration of style over substance. Is this what those who speak of "law and literature" wish to do?



It is mainly to these familiar and perfectly understandable questions that my remarks here will be addressed, but I will touch on others as well, buried in them as assumptions: What do, or can, we mean by the categories "literature" and "law" themselves, and by the distinction between them? By "power," "political," and "aesthetic?" By "style" and its correlative "substance?"

# I

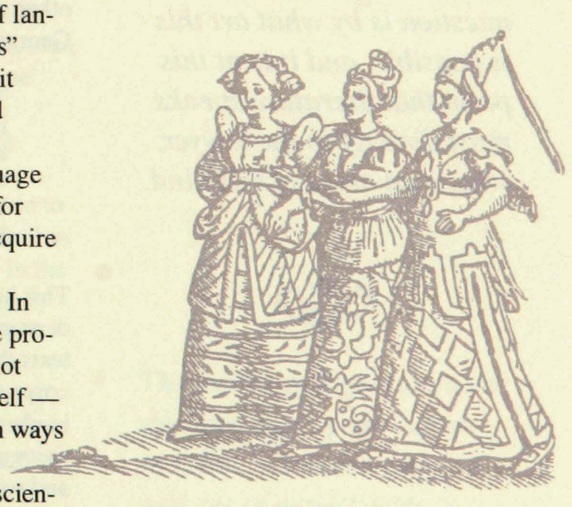
In thinking about what lawyers may hope to learn from another discipline, it is natural for us to speak in terms of what I have elsewhere called "findings" or "methods."* That is, we are accustomed by the conventions of social science to look to another discipline either for the propositions that it establishes about the world (its "findings"), which we can import directly into the law and found arguments upon, or for its techniques of analysis (its "methods"), which again we can import into the law and put to our own use. Obviously, the different social sciences speak to us on different subjects, and offer findings of somewhat different kinds, but as we approach any of them one of our hopes is to learn a set of propositions about the world — about the working of the human psyche, about class formation, about the true incidence of a particular tax, about the rigidity with which social prejudices are held, and so on. Likewise, we hope to learn from these sciences methods of analysis which we can ourselves employ when presented with questions that can be thought about in those terms.

Whatever the merits of these ways of thinking about what the social sciences can offer us — and I shall have something to say about that below — they can obviously be of little value in forming the hopes and expectations that we should bring to imaginative literature, for no one I think turns to literature for propositions of fact upon which new policies can be based or for methods of analysis to be employed by lawyers. It is not that literature has nothing to teach us about the world or about the analysis of texts, but that it teaches in a different way: it expands one's sympathy, it complicates one's sense of one's self and the world, it humiliates the instrumentally calculating forms of reason so dominant in our culture (by demonstrating their dependence on other forms of thought and expression), and the like. It is one of the deepest characteristics of literary texts to throw into question the nature of the language in which they are written; this necessarily throws into question as well the nature of any language in which they might be talked about, or into which they might be translated. This in turn means that these texts are in a deep sense about the inadequacies of the propositional view of language, so dominant in our academic culture, upon which our talk about "findings" necessarily rests. Literature is art, and its form is essential to its meaning. What it teaches is indeed about the world, but it is also about ourselves — our minds and languages — and it is not translatable into propositions of moral or social truth.

Think how differently "learning" is conceived of and talked about in the language of "findings" and in the language of a literary (or legal) education. When I look for the "findings" of the natural or social sciences, I think of myself as seeking to acquire information which will add to my present stock. This information may shift the sufficiency of the information I already have, but I do not expect it to change *me*. In thinking this way I see myself as an observer, for the most part unchanged by the process of observation, making records and reports of what I see. Literary texts do not work this way at all: they offer engagements the point of which is to change the self — to transform one's sense of language, the mind, and the world — and to do this in ways that systematically resist conversion into other forms of discourse.

To say that literature offers us neither "findings" nor "methods" of the social scientific type is not to say it offers us nothing, or that what it offers can be relegated to some trivial side of life, as a kind of entertainment or decor — as if what it offered were about "style" rather than "substance" or "feeling" rather than "thought." It would be pathetic to think that we had nothing to learn from Sophocles or Shakespeare, for example, simply because they did not offer us "findings" or "methods" that we could use in the analysis of legal issues. This would erase the whole value of our high culture both to us as people and to our profession. To say that we have "much to learn from literature" but "only as people, not as lawyers," would imply an equally sorry view of the law and of ourselves, for it suggests that what we do with our minds and feelings all day is a mere technique, unaffected by our deepest understandings, and a technique that calls on no significant aspects of the self. On that view, who would want to become a lawyer?

*In thinking about what lawyers may hope to learn from another discipline, it is natural for us to speak in terms of what I have elsewhere called "findings" or "methods."*



*Intellectual Integration, *Northwestern Law Review* 1 (1987).

But to say this is not to claim that it is easy to talk about what a literary education can offer the lawyer or the law. If we are not to use a language of methods and findings, how are we to speak? If neither law nor literature is to be regarded as a kind of intellectual technology, how are they to be thought of?

## II

These are difficult questions — one could easily devote a lifetime to them — to which we should not expect easy or shorthand answers. Literature teaches through the engagement of one mind with the work of another. What it teaches will emerge not in new propositions but in the life of the learning mind, in the kinds of engagements it offers to others. One cannot hope to make an adequate summary statement of that life, those engagements.

But we do know that what literature teaches will be different for each of us, and that we must accept responsibility for what we make of our educations of this kind, just as we accept responsibility for our other conduct and for our characters more generally. Of people working in this field we should thus expect not uniformity but variety: in voice, style, and direction of thought; in political values; in fundamental concerns. Beyond the shared commitment to engage with literary and legal texts (and with each other) in a wholeminded way, there should be no manifesto of a law and literature movement.

*Literature lives through language, and so must we: the question is by what art this is possible, and it is at this point that literature speaks most directly to the lawyer, who is an artist of this kind.*

For me the main direction of literary teaching is towards incrementally more complete, but never wholly adequate, understandings of other people and other minds, other ways of thinking and being and imagining the world. The classic statement is George Eliot's:

> The greatest benefit we owe to the artist, whether painter, poet, or novelist, is an extension of our sympathies. Appeals founded on generalizations and statistics require a sympathy ready-made, a moral sentiment already in activity; but a picture of life such as a great artist can give, surprises even the trivial and selfish into that attention to what is apart from themselves, which may be called the raw material of moral sentiment.

This kind of understanding leads us in turn toward a literary rather than conceptual understanding of language, and affects our reading not only of "literature" but of all the texts that make up our world. For again and again in our reading of literature we discover at work an understanding of language that recognizes its incompleteness, its inadequacies, its gaps, and its imperfections, and does this largely by the continual recognition of other possibilities. Literature thus puts our language itself into question, and with it the habits of thought and feeling (and the social and political relations reinforced by those habits) that we have theretofore taken as natural. This affects our reading not only of "literature" but of all the texts we confront in life; and the literature from which we can learn, once we begin to learn how, includes the literature we make and read in our ordinary lives.

What I think literature has most to teach, then, is a way of reading, and reading not only "literature" but all kinds of texts and expressions: a way of focusing our attention on the languages we use, on the relations we establish with them, and on the definition of self and other that is enacted in every expression. It teaches a way of reading that becomes a way of writing too. Literature lives through language, and so must we: the question is by what art this is possible, and it is at this point that literature speaks most directly to the lawyer, who is an artist of this kind.

# III

Some talk about "law and literature" proceeds on the assumption that what literature has to offer is a form of high consumption, the sort of pleasure we refer to as "aesthetic," with that word preceded, by implication at least, with a word like "merely." It can have no inherent moral or political significance. Think of the cultivated Nazis reading and enjoying exquisite poetry while simultaneously degrading their culture and destroying human beings in almost unimaginable ways. Perhaps literature may teach us something about "style," regarded as the dressing in which we clothe our thoughts — perhaps, for lawyers, with overtones of flattery or seduction — but surely nothing "substantive."

In my view this position deeply misunderstands reading in general and literature in particular, for the literary texts here marginalized as merely "aesthetic" are I think deeply imbued with political and ethical meanings, meanings we must be prepared to understand and to judge. But these meanings are not coercive — they do not force themselves on every unwilling mind with equal force — and our readings can be perverted or twisted, just as our other activities can. It is no argument against poetry that evil men have sometimes loved what they found there. We are responsible for the ways in which we attune ourselves to what we read, for how we judge it, and for who we become in relation to it.

But the pressure of any literature worthy of the name is always against such abuse. The maker of literature uses the language of his culture to create something new, a new set of experiences or a new place from which that language and the culture itself can be seen afresh and criticized. The effort is to bring the reader to the edge of language, where it can, sometimes, be seen by the mind that uses it in the split second before it dominates the world. In this fundamental sense literature is integrative: insisting upon the incorporation of what a particular language or tradition or set of ideas leaves out, upon unstated or opposing truths. It thus inherently values a multiplicity of voices and the self that can hear them. Multivocality is not merely an aesthetic value but a political one; literature is accordingly antisystematic, antibureaucratic, and antiauthoritarian by nature. In this sense its true "lessons" are very nearly the opposite of what some people hope from it — those who speak as if the "wisdom of the past" will tell us what to do. It is a degradation to reduce the reading of such texts to a form of high consumption.

The view that what literature has to teach us, as people or as lawyers, is reducible to "style" is an empty one too, for what is dismissed as mere "style" is actually central to the intellectual substance of a text. It is here, in the transformations of language, in the establishment of relations with the reader, that everything of value in the text actually happens. To claim that "the lawyer has nothing to learn from literature except with respect to style" would in my view demean all the central terms of that sentence — "lawyer" (and "law"), "literature," "learn," and "style" — and with them our own capacities for thought and life. The real question is, "Who are we in our relations to our languages and to each other?" The answer, the deepest kind of "substance," is to be found only in our "style," in our actual performances.

A related mistake is to claim that the literary view of law fails to see that law is about power. Actually, to learn to read in the way I describe is to expose the root of power, which is linguistic and ideological in nature. Whoever controls our languages has the greatest power of all. Think, for example, of what we think of as state power — the exercise of physical force or violence by the police or the army — the kind of "real power" to which the literary mind is supposed to be blind. This is a physical power, "real power," only because it is a political power; that is, only because people agree to inhabit a particular linguistic universe and to be controlled by it. In some sense, power comes from the muzzle of a gun; but this power is dependent upon another, which lies in the social arrangements by which people organize guns, and themselves with respect to guns. This kind of power is rhetorical, a form of persuasion and acquiescence — it always rests upon texts of one kind of another — and it can be studied as it is exercised, linguistically and culturally.

*To learn to read in the way I describe is to expose the root of power, which is linguistic and ideological in nature. Whoever controls our languages has the greatest power of all.*

*The maker of literature uses the language of his culture to create something new, a new set of experiences or a new place, from which that language and culture itself can be seen afresh and criticized.*

*The central question for us as lawyers is how legal power ought to be exercised: upon what conception of oneself, of the litigants, of one's audience, of the prior texts that bear upon the case, of the culture of argument that is the law.*

In this sense power is everywhere. What is special and important about legal power is that it is a claim to authority; that is, a claim to exercise power that is itself justified by arrangements external to the actor. This is what distinguishes it from violence. This is a distinction that those who look through meaning to the simple act of force cannot perceive or express, yet it is the distinction upon which legitimate government rests. It is the difference between a judge and a thug, between a marshall carrying out an arrest under a warrant and a lynch mob; it is the difference between legal force and mere violence; and it is a difference that lies, at bottom, in the respect that is paid to decisions made by others, or to what I have called arrangments external to the actors themselves. These arrangements are always texts, or treated as texts, and for their authority to be real — rather than merely a brutal authoritarian order — these texts must be both conceived of and read in certain specific ways, in the ways of the law. In this sense the true test of authority is literary in character.

Of course legal texts are not "merely aesthetic" texts, to be read for sheer delight, but neither are literary texts in my view simply that; legal texts involve the exercise of power by one person over another, as poems do not, but the criteria by which we can judge such exercises is in a deep sense literary, for it is in reading of these texts that one may find the meaning of the judicial act, including the act of power, most fully illuminated. The central question for us as lawyers is how legal power ought to be exercised: upon what conception of oneself, of the litigants, of one's audience, of the prior texts that bear upon the case, of the culture of argument that is the law. Real-world answers to such questions cannot be merely theoretical in character but must be performative, actual enactments in the texts; criticism should be particular too, the analysis of the textual and political communities that a particular argument or opinion creates in its performances of language.

But upon what can our criticism be grounded? Not upon a universally shared ontology, certainly not upon a theoretical system, but upon the identities and relations we ourselves create in our written and other conversations with each other. We can try to look to the reality of the world "out there," perhaps using the languages of social science, or common sense — or even literature, in a different mode — to do so. But the reality we see is not uncreated, not language-free, and we are as responsible for what we see and say when we look out to the world as we are when we speak as lawyers and judges. There is no basis external to ourselves and our communities upon which we can rest. The ground of judgment must be created by each of us, and by us collectively, in the way we talk with each other; this talking should itself be criticized in the terms on which we propose to criticize others. In this sense not only our questions, but our answers, should be literary.

## IV

Think back now to the brief account of the social sciences I gave at the beginning of this paper — each generating its findings by its own methods and offering them for our use. These findings and methods are often in conflict with each other, and none can address the central legal question, namely the character of our obligation to judgments made by others. How then can these findings and methods be put to work in the context of the law? This no science can tell us, except in its own terms, recommending its insights, truths, and techniques as superior to all others. None can recognize what lies outside itself; none invites a reader to speak simultaneously its language and some other language, a language that undercuts or qualifies it by exposing its limits, its dead spots, its uncertainties.

This is to suggest that the very language of interdisciplinary work with which I began, and which is so familiar and natural to us — the talk of "findings" and "methods" — is in fact deeply inadequate not only to "law and literature" but to intelligent interdisciplinary work of any kind, which necessarily requires a negotiation of the relation between languages of a kind for which these disciplines have no place. This is not to say that we cannot learn from the "findings" and "methods" of various social sciences, but that this learning is far more difficult than such language suggests.

One way to look at the social sciences is as ways of framing the world. The frame of one can include the other: thus, we have a history of economics, an economics of history, a sociology of psychology, and psychology of sociology, and so on. But how is the process of framing itself to be thought about and spoken of, especially when we recognize the existence of competing and inconsistent frames? This is a problem of language and discourse, or what I call a literary problem; the very process of interdisciplinary work itself thus requires an art fundamentally literary in character, perhaps best described as a kind of translation.

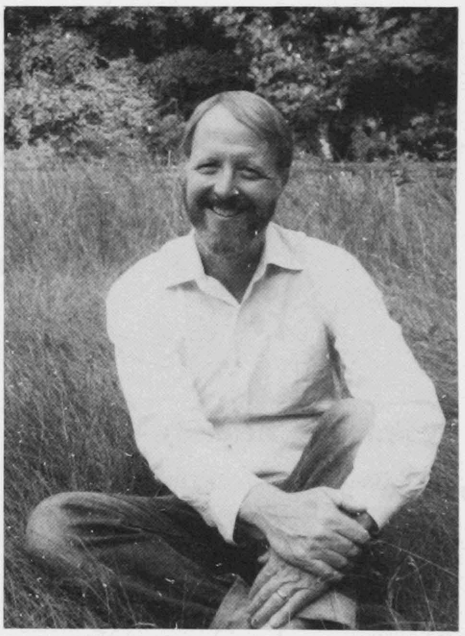
## V

What the habitual reading of literature offers is not a set of propositions or a method leading to a set of results, but the experience of directing one's attention to a plane or dimension of reality that is normally difficult or impossible to focus upon, namely the linguistic and ethical plane, where we remake in our texts both our languages and ourselves. To the literary mind language is not simply transparent — a way of talking about objects or concepts in the world — but is itself a part of the world; it is not an instrument that "I" use in communicating ideas to "you" but a way in which I am, or make myself, in relation to you. The literary text offers its reader not information or ideas but an experience of language, a contact with a living mind, of a sort that will erode forever the confidence with which we are otherwise likely to talk about "information" or "ideas" or "communication." The texts that do this are not only those taught in "literature" courses — some of which are in this sense not literary at all — but all texts that lead us to the point of selfconsciousness about our language and the relations we create in our use of them. It is not so much literary theory, which often operates on nonliterary premises, that will teach us in this active way, but literary practice — the practice of reading and of writing.

When our attention is once drawn to this dimension of life, we come to see that the heart of justice is not the distribution of nonlinguistic items in the world, but ethical and relational: it lies in the attitude, and in the capacity of mind, by which authoritative texts are read and interpreted; in the kind of attention given to opposing claims and to the experiences of opposing parties; in the quality of openness (or closedness) to new formulations, new voices; in the sense that the judicial or legal opinion is an ethical and political, as well as an intellectual, text for which the mind composing it is responsible. Thought of this kind does not by itself tell us how to read a particular case or statute, and in that sense does not dictate results; instead, it keeps us aware of the degree to which results are not dictated but chosen, and of the importance to us of a legal culture that is engaged in the process of educating itself and the public by the sincere and self-critical way it addresses the questions that come before it. Attention of this kind will surely lead us to different results, but not mechanically so; and it will lead us as well to different ways of finding meaning in the results we do reach.

Therefore we cannot expect the "law and literature movement" to tell us how to decide cases or to teach us lessons or to offer us a technology that might supplant the law. We should instead expect, or hope, for variety, for the distinct sounds of a thousand voices, for the perpetual affirmation of the individual mind as it seeks community with others. This kind of work cannot be done bureaucratically, mechanistically, or incrementally. It must be done anew each time.

I began this paper by asking this question, meant to capture the essence of many such questions I have heard: "How can literature have anything to say to lawyers when literature is inherently about the expression of individual feelings and perceptions, to be tested by the criteria of authenticity and aesthetics, while law is about the exercise of political power, to be tested by the criteria of rationality and justice?" I hope the reader can now see something of what I mean when I say that this question misstates everything it touches. Literature and law are both about reason and emotion, politics and aesthetics; they both promise to integrate what the question falsely separates, and to do so by drawing attention to what is at stake whenever one person writes or talks to another.



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# Bankruptcy and the *Constitution*

**by Frank R. Kennedy**

*The following article is excerpted from a chapter in* Blessings of Liberty — The Constitution and the Practice of Law, *published in 1988 by the American Law Institute, American Bar Association Committee on Continuing Professional Education; reprinted by permission.*

Treatises and casebooks on constitutional law do not devote much attention to bankruptcy. This scholarly neglect is reciprocated in treatises and casebooks on bankruptcy, which contain only limited references to constitutional aspects of the subject. The role of bankruptcy law in our national economy and social policy is nevertheless of greater significance than it is in any other country in the world. The constitutional status of bankruptcy legislation and its administration is basic to the influential part it plays in our national life.

## Bankruptcy at the Constitutional Convention

The subject of bankruptcy was not considered until late in the Constitutional Convention of 1787 and even then it was not extensively discussed. On August 29, 1787, Charles Pinckney of South Carolina moved to add to the full faith and credit clause a provision "to establish uniform laws upon the subject of bankruptcy" and a provision respecting damages arising on the protest of foreign bills of exchange. Pinckney's proposal came after a discussion on the Convention floor of the question whether a state insolvency act should be treated like a state court judgment. At least one delegate to the Convention had represented clients in litigation presenting the question whether a discharge granted in one state was binding on the courts of another state. On September 1, 1787, three days after Pinckney's motion, John Rutledge of South Carolina recommended that the article on the Legislative Department include "after the power 'to establish a uniform rule of naturalization throughout the United States,' a power 'to establish uniform laws on the subject of bankruptcy'." Two days later, on September 3, 1787, the proposed clause was adopted with "practically no debate." The only negative vote was that of Roger Sherman of Connecticut, who objected to the grant of a power that would permit the punishment of bankruptcy by death as under the early laws of England. Gouverneur Morris of Pennsylvania acknowledged that bankruptcy was "an extensive and delicate subject," but he "saw no danger of abuse by the legislature of the United States." The Report of the Committee on Style and the final draft of the Constitution inserted the bankruptcy clause immediately after the grant of the power to regulate commerce as clause 4 of section 8 of Article I.

In *The Federalist* (No. 42), James Madison declared that "[t]he power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States that the expediency of it seems not likely to be drawn into question." This commentary suggests that a principal consideration in the Convention's ready acceptance of the grant of the bankruptcy power was the concern that creditors might be subjected to diverse and discriminatory state laws and decisions.

## The Meaning and Scope of "Laws on the Subject of Bankruptcies"

For the first 146 years of our history, challenges to the constitutionality of bankruptcy legislation were typically viewed and resolved on the basis of a consideration of the meaning and scope of the bankruptcy clause without reference to possible limitations imposed by other provisions of the Constitution or its amendments. Thus it was argued successfully for the first 50 years that the clause authorized bankruptcy proceedings only against traders commenced by creditors. The New York Constitutional Convention in 1788 proposed an amendment to the federal Constitution to limit the federal bankruptcy power to the enactment of laws applicable to merchants and other traders and to authorize the states to enact laws for the relief of other insolvent debtors. It was not until the Act of 1841 that Congress authorized voluntary as well as involuntary bankruptcy proceedings and that nontraders were made eligible for bankruptcy relief. The constitutionality of the Act of 1841 was given a ringing judicial endorsement by Justice Catron on circuit in *In re Klein*, 14 F. Cas. 716 (C.C.D.Mo. 1843) (No. 7865). The opinion has been much quoted and has exerted a strong influence in assuring hospitable treatment of bankruptcy legislation when challenged as exceeding the bounds of the constitutional grant. Justice Catron's opinion included the following expansive description of the potential scope of the bankruptcy power of Congress:

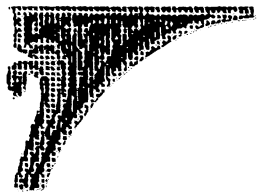
> "I hold [the bankruptcy power] extends to all cases where the law causes to be distributed the property of the debtor among his creditors; this is its least limit. Its greatest is a discharge of the debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject — distribution and discharge — are in the competency and discretion of Congress."

The provision of the Act of 1841 for discharge of voluntary bankrupts was a focus for attacks not only on its constitutionality in the courts but also on its economic and social wisdom in the press and in Congress. The attacks succeeded in bringing about the repeal of the Act in 1843. In consequence the constitutionality of the Act was never addressed by the Supreme Court. Thousands of voluntary bankrupts were nevertheless discharged pursuant to the Act of 1841.

Although arguments against the constitutionality of authorizing discharge of nontraders surfaced in Congress from time to time up to the Civil War whenever bankruptcy legislation was proposed, these arguments posed no obstacle to enactment of liberal provisions for eligibility and discharge of voluntary bankrupts in 1867.

An amendment to the Bankruptcy Act of 1867 made in 1874 provided for a composition that would bind a minority of nonconsenting creditors. The amendment raised and survived challenges on the floor of Congress and ultimately in the courts. In a seminal opinion upholding the constitutionality of the 1874 amendment, District Judge Blatchford declared that

> "[t]he subject of bankruptcies . . . is not, properly, anything less than the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief."



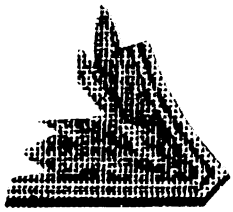
The rationale upholding the constitutionality of the 1874 amendment was invoked six decades later to sustain the validity of reorganization legislation that permitted discharge or adjustment of secured as well as unsecured debt without liquidation or surrender of assets to creditors. Section 77 of the Bankruptcy Act was upheld by a unanimous opinion in *Continental Illinois National Bank & Trust Co. v. Chicago, Rock Island & Pacific Railway Co.*, 294 U.S. 648 (1935), that emphasized the capacity of the bankruptcy clause to meet "new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day. [T]he power of Congress under the bankruptcy clause," said the Court, "is not to be limited by the English or Colonial law in force when the Constitution was adopted . . . ."

The Railroad Reorganization Act of 1973, which supplemented Section 77, was upheld by the Court in 1974 as "another step in the direction of liberalizing the law on the subject of bankruptcies." *Blanchette v. Connecticut Gen. Ins. Corp. (Regional Rail Reorganization Act Cases),* 419 U.S. 102, 153 (1974). The Railroad Reorganization Act created the United States Railway Association, gave it authority to prepare a system for restructuring railroads to be reorganized, provided for the transfer of rail properties to a new corporate entity in return for its securities, and guaranteed all obligations of the United States Railway Association by the United States.

This review of Supreme Court rulings on the permissible scope of the laws on the subject of bankruptcies discloses a strong disinclination to give a strict or rigid reading of the bankruptcy clause. Charles Warren, whose *Bankruptcy in United States History* was published in 1935, was able to make this sweeping survey of the judicial interpretation of the clause:

> "The trail of that Clause is strewn with a host of unsuccessful objections based on constitutional grounds against the enactment of various provisions, all of which are now regarded as perfectly orthodox features of a bankruptcy law. Thus, it was at first contended that, constitutionally, such a law must be confined to the lines of the English statute; next, that it could not discharge prior contracts; next, that a purely voluntary law would be non-uniform and therefore unconstitutional; next, that any voluntary bankruptcy was unconstitutional; that there could be no discharge of debts of any class except traders; next, that a bankruptcy law could not apply to corporations; next, that allowance of State exemptions of property would make a bankruptcy law nonuniform; next, that any composition was unconstitutional; next, that there could be no composition without an adjudication in bankruptcy; next, that there could be no sale of mortgaged property free from the mortgage. All these objections, so hotly and frequently asserted from period to period, were overcome either by public opinion or by the court."

The record of adjudications of constitutionality was soon broken after publication of Warren's *History.* The Supreme Court has since held four, arguably five, bankruptcy laws unconstitutional,[1] yet none has been invalidated on the ground that it falls outside the scope of the "subject of bankruptcies." In view of the acknowledged exercise of the bankruptcy power to authorize bankruptcy relief by and against entities that were not eligible or amenable under English or Colonial laws in or prior to 1787 and in view of the novel forms of relief made available by various bankruptcy acts, the history of the construction of the bankruptcy clause seems to be a paradigmatic illustration of departure from "the original intent of the Constitution." Nonetheless Professor Kurt Nadelmann concluded 30 years ago after a study of the origin of the bankruptcy clause that "[c]ontemporaries of the drafters of the Constitution had no doubts as to the broad reading to be given to the Bankruptcy Clause."



[1] *Louisville Joint State Land Bank v. Radford*, 295 U.S. 555 (1935) (invalidating section 75(s) of the Bankruptcy Act as enacted in 1934); *Ashton v. Cameron County Water Improvement District No. 1*, 298 U.S. 513 (1936) (invalidating Chapter IX of the Bankruptcy Act as enacted in 1934); *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (invalidating 28 U.S.C. section 1471(c) as enacted in 1978); *Railway Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457 (1982) (invalidating the Rock Island Railroad Transition and Employee Assistance Act of 1980). A fifth case that arguably should be included in the list of rulings against constitutionality is *United States v. Security Industrial Bank*, 459 U.S. 70 (1982), construing section 522(f)(2) of the Bankruptcy Reform Act of 1978 not to apply to preenactment security agreements so as to avoid doubts as to the constitutionality of such application.

A recent critic of the decisions of the Supreme Court that have involved the Fifth Amendment as a basis for limiting what Congress can do in the exercise of its bankruptcy power observed that

> ". . . there may have been far more wisdom than is now generally recognized in the concentration of nineteenth century lawyers and judges on specifying the scope of the powers implicit in the constitutional grant to Congress of authority over the subject of bankruptcies. ...[T]he shift of emphasis from the bankruptcy clause to the fifth amendment may be but one manifestation of the abandonment of any serious effort to regard government . . . as having only specific granted powers whose scope is limited by the terms of the explicit or implicit grant. . . ." Rogers, *The Impairment of Secured Creditors' Rights in Reorganization: A Study of the Relationship Between the Fifth Amendment and the Bankruptcy Clause,* 96 Harv. L. Rev. 973, 1031 (1983).

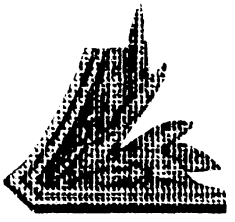
The argument that focus on the scope of the bankruptcy power is preferable to a concern with the limitations on its exercise by the amendments is a plea for according nearly conclusive effect to Congressional enactments on the subject of bankruptcy. When the variety of the provisions enacted by Congress and the frequency and range of attacks on their constitutionality are considered, it must be concluded that the courts have indeed come close to permitting Congress complete freedom in formulating and enacting bankruptcy legislation.

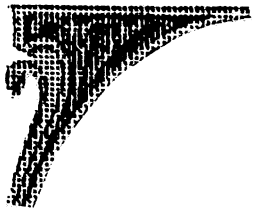
Shortly after the enactment of the Bankruptcy Act of 1898, James Monroe Olmstead lambasted its debtor-oriented provisions, declaring that "the rehabilitation theory was farthest from the minds of the framers of the Constitution." *Bankruptcy a Commercial Regulation,* 15 Harv. L. Rev. 829, 835 (1902). In retrospect, however, scholarly criticism of the legislative and judicial views of the scope of the bankruptcy clause has been desultory.

## The Meaning of Uniform Laws on the Subject of Bankruptcies

James Madison's statement in *The Federalist* quoted earlier regarding the purpose of the bankruptcy clause emphasizes the need for uniformity in the settlement of the financial affairs of debtors in distress. It has never been assumed, however, that the rules governing contracts, torts, property, and other rights and duties of debtors and creditors that underlie the disputes that must be resolved in bankruptcy must be nationally uniform. The contrary assumption would require the enactment of a whole body of substantive federal law at variance with the diverse state laws that govern the affairs of debtors and creditors prior to the onset of bankruptcy. The magnitude of the task of formulating such a comprehensive code, the manifest inconvenience and dislocations that would be entailed by establishing a federal law overriding all inconsistent state law for the purpose of bankruptcy administration, and the serious threat to the functioning of the federal system posed by a proposal for such a federal code all have served to deter any serious move toward a general displacement of state law by federal rules for application in bankruptcy. The rules governing exemptions to be allowed to bankrupts were nevertheless thought to be so integral a part of any bankruptcy law that fears or doubts as to the constitutionality of incorporating state exemptions into bankruptcy legislation deterred Congress from enacting any federal exemption provisions prior to 1867.

When Congress enacted the Bankruptcy Act of 1867, most state legislatures had already provided their domiciliaries a detailed list of exemptions, including a homestead, that could be protected from creditors' levy. Shortly after the end of the Civil War, state constitutions and statutes were extensively amended to enlarge allowable exemptions, and Congress in 1872 amended the Bankruptcy Act of 1867 to authorize the allowance of exemptions in conformity with the 1871 laws of bankrupts' domiciles. Many of the amendments were vulnerable to attack by creditors holding preenactment claims, in that the enlargement of the exemptions arguably impaired the obligations of their contracts in violation of section 10 of Article I. Congress nevertheless declared that the state amendments should be effective for the benefit of bankrupts with respect to prior



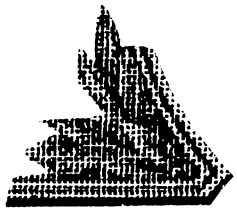


as well as subsequent debts. Chief Justice Waite, sitting as a circuit justice, held that the 1874 amendment rendered the Bankruptcy Act unconstitutional for nonuniformity. *In re Deckert,* 7 Fed. Cas. 334 (No. 3728) (C.C.E.D.Va. 1874). As his opinion pointed out, state laws governed the allowance of exemptions to the bankrupt domiciliaries of some states whereas in other states the federal law made state exemption laws retroactively applicable in bankruptcy although not effective against prior creditors under state law. The result was neither geographic uniformity among the several states nor uniformity within each of the states. Four decades later the Supreme Court held the 1874 amendment to be inoperative on questionable grounds but without adverting to the fact that it imposed a nonuniform rule governing the allowance of exemptions. *Kener v. LaGrange Mills,* 231 U.S. 215, 218 (1913).

In the meantime Congress had enacted the Bankruptcy Act of 1898, which incorporated by reference in section 6 the diverse exemption laws of the domiciliary states of bankrupts. The section was quickly challenged as violative of the constitutional mandate of uniformity in *Hanover National Bank v. Moyses,* 186 U.S. 181 (1902). The Court acknowledged that the Constitution required "geographical" uniformity but said that section 6 was not "incompatible with the rule." The Court then and later regarded conformity of the substantive law applied in a bankruptcy case to the state law applicable in other kinds of cases to be "geographical uniformity" that satisfied the constitutional requirement. Curiously the Court only two years earlier had recognized in *Knowlton v. Moore,* 178 U.S. 41, 106 (1900), that the uniformity required by Article I, section 8, clause 1, with respect to all federal taxes is geographical in the sense that the taxes must be imposed generally without discrimination among the states.

Section 522(b) of the Bankruptcy Reform Act of 1978 raises again the question whether Congress has adhered to the constitutional mandate of uniformity in its provisions regarding the allowance of exemptions. As originally passed by the House in 1978, H.R. 8200 allowed an individual debtor to choose between a catalogue of exemptions provided by section 522(d) and the exemptions provided by nonbankruptcy law including the law of the debtor's domicile in effect on the date of the filing of the petition. The Senate, however, insisted on restricting debtors to the exemptions available under nonbankruptcy law. The differences between the exemption provisions of the bills passed by the two houses were resolved by a last minute compromise that allowed an individual debtor to choose between the exemptions provided by section 522(d) and nonbankruptcy exemptions unless the state of the debtor's domicile specifically withdrew the option to choose the bankruptcy exemptions from its domiciliaries. Thirty-six states have enacted legislation confining their domiciliaries to the exemptions provided by nonbankruptcy law. Whatever content is given the term "geographic uniformity," it appears that the discrimination resulting from the delegation to state legislatures made in section 522(b) cannot be reconciled with the principle declared by Chief Justice Waite in *Deckert.* Although the policy and constitutionality of section 522(b) have been subjected to cogent criticism, the delegation has been sustained by the courts that have considered challenges to its constitutionality.

Another unsuccessful attack on a Congressional exercise of the bankruptcy power for its nonuniformity of application was made in *Blanchette v. Connecticut General Ins. Corps. (The Regional Rail Reorganization Cases),* 419 U.S. 102 (1974). Although the Regional Rail Reorganization Act was restricted in its application to the railroads of a single geographic region, the Court found no constitutional infirmity in view of the fact that all the railroads in the United States then operating under the bankruptcy laws were located in that single region. If the statute had been drafted in terms applicable to railroads in all regions, the operation and effect of the statute would have been unchanged. Nevertheless, Justice Douglas dissented from the ruling on the ground that security holders of railroads in other regions were not subject to the restrictions in a reorganization under section 77 that were imposed by the challenged act on the security holders of the eight railroads involved in the suit.



A nonuniformity attack on a bankruptcy law finally succeeded in *Railway Labor Executives' Ass'n v. Gibbons,* 455 U.S. 457 (1982), decided by a unanimous Court in 1982. The Rock Island Railroad Transition and Employee Assistance Act was a measure relieving employees of the Rock Island Railroad, which was undergoing liquidation pursuant to the provisions of section 77 of the Bankruptcy Act, from some of the adverse consequences of the termination of the railroad's operations. The statute was viewed in Justice Rehnquist's opinion as contravening the purpose of the uniformity requirement of the bankruptcy clause to bar private legislation for particular debtors. Professor William Crosskey in his exhaustive study of the bankruptcy clause's constitutional origins had emphasized that the framers' primary concern was "to make private 'Laws of Bankruptcy' forever impossible." *Politics and the Constitution in the History of the United States* 492 (1953). Justices Marshall and Brennan disapproved the majority's intimation that the uniformity requirement of the bankruptcy clause prohibits legislation addressed to a single debtor's problem. They nevertheless concurred in the judgment invalidating the statute on the ground that Congress had not justified the special treatment of a particular problem of a single debtor. The opinion of the Court has been criticized for its focus on an inferred hostility of the framers toward private legislation rather than on its more manifest purpose to establish a national law as a counteractant against diverse and conflicting state laws governing debtors' and creditors' rights. The Court summarily rejected an argument that the act might be sustained as an exercise of the commerce power, thus suggesting that a uniformity requirement applies to legislation that regulates commerce if it also concerns the subject of bankruptcy.

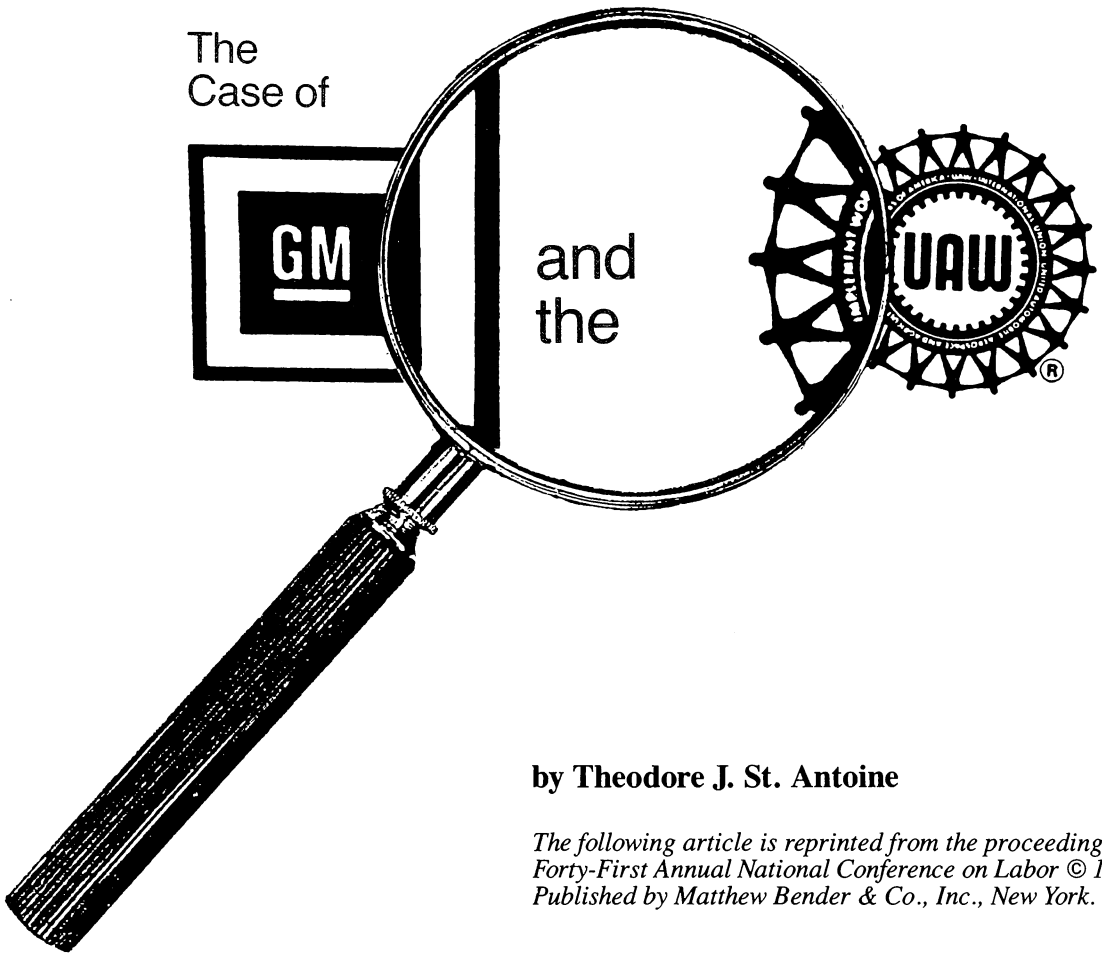
## Conclusion

The Constitution has authorized Congress to establish uniform bankruptcy laws with freedom to choose the means, objectives, and features of the system to be established. The bankruptcy laws enacted as a result are far removed from the bankruptcy laws the framers were familiar with and indeed from the bankruptcy laws to be found anywhere else in the world before or since. While debtor relief, as distinguished from creditor protection, may have been recognized as a permissible but strictly incidental function or objective of bankruptcy legislation in 1787, Congress has made it the prime feature of our bankruptcy laws. Orderly distribution of assets of insolvent debtors — the original and traditional role of bankruptcy — does not actually occur in most cases administered under current bankruptcy laws in this country. Contrary to warnings of critics and opponents of the direction taken by American bankruptcy legislation, our bankruptcy laws have not hampered the development of the American credit economy. Consumer credit is nowhere extended on the scale found in the United States. Coincidentally the bankruptcy laws of the United States are the most extensively used and the most elaborate and sophisticated in the world. Although the *Marathon* case cited in note 1 once threatened to bring the bankruptcy system to a halt, the system survived that and other crises. Bankruptcy administration faces many problems, many of them persistent and serious. The Constitution is not, however, one of the problems.

*Frank R. Kennedy, the Thomas M. Cooley Professor Emeritus at the Law School, is well-known and widely respected for his work on bankruptcy.*

# The legal and economic implications of

# Union-Management Cooperation




**by Theodore J. St. Antoine**

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"'Cooperation' sounds too much like 'cooption.' 'Collaboration' recalls the Nazis in occupied Europe. Words are important in labor relations. A word we like is 'jointness.' Another is 'involvement.'" With comments like those, a top United Automobile Workers official recently pinpointed one of the most significant and controversial developments in contemporary industrial life — the substitution of a new union-management attitude of conciliation and togetherness for the parties' traditional adversarial stance.

In this paper I shall briefly trace the rise of participative management, as the process is often called, using the experience of General Motors and the UAW as my prime example. The phenomenon will then be placed in historical perspective, and contrasting assessments of its desirability and future potential will be discussed. Finally, I shall try to evaluate some of the more important legal and economic implications of "jointness" and employee involvement in management decisionmaking.

# PARTICIPATIVE MANAGEMENT

During the late 1960s American management became alarmed by signs of growing alienation and militancy on the part of workers. Although this unrest was much exaggerated, it fueled efforts by many companies to enhance the quality of work life (QWL) by increasing employee participation in job-centered decisionmaking. The interest in such programs was intensified during the 1970s by glowing accounts of the capacity of Japanese industry to improve both the quantity and quality of production by fostering an almost filial relationship between employee and employer. By 1980 it was estimated that one-third of the companies in the *Fortune 500* had established programs in participative management. Furthermore, in certain countries, such as Sweden and West Germany, worker participation was mandated by statute.

Numerous studies attest that it is simply smart business to heed the voice of the individual employee and to give him or her a stake in the successful operation of the enterprise. The worker on the production line will spot flaws that have escaped the eye of the keenest industrial engineer. The mere fact of involving employees in the design of production processes will contribute to heightened morale, better attendance, and greater dedication to the job.

Participative management or QWL programs have undoubtedly been used by some companies as a key ingredient in their union-avoidance campaigns. Nevertheless, several major international unions have become engaged in such projects. In addition to UAW activity at GM and Ford, major programs have included the Communications Workers and AT&T, and the Steelworkers and various steel companies. Rather ironically, some experts find that a strong union presence may be essential to ensure the long-term survival and continuing success of QWL undertakings.

## *The GM-UAW Experience*

After the fierce organizing battles and sit-down strikes of the mid-1930s, labor relations between the UAW and GM "matured" to such an extent that some critics accused the two organizations of being "too cozy," to the detriment of the American consumer and sometimes union members as well. Even the long ten-week strike of 1970 has been described as a tactic to bring the membership into line. The intense global competition of the '70s and '80s, however, required GM to rethink its management philosophy, and to strive aggressively for more efficient production techniques.

### QWL Programs

Irving Bluestone, the thoughtful, innovative head of the UAW's GM Department during the 1970s, was a strong believer in greater employee involvement in management. He was thus receptive to the initiation of QWL programs at GM plants, but he and his company counterparts were canny enough not to press for them until local leaders and members were agreeable. The early plans focused rather narrowly on the "quality of work life." By the late '70s the programs in many plants had evolved into a second phase, where they were more closely linked to collective bargaining issues and procedures. In a few localities, such as the Pontiac Fiero auto plant, a third stage was reached in the 1980s, with the parties addressing larger "strategic" questions. All together, GM and the UAW had plans operating in 50 plants by the end of the '70s, and in 90 of 150 bargaining units a half decade or so later.

Today the term "QWL," and perhaps the concept itself to some extent, has fallen into disfavor in certain UAW quarters. Some union officials feel GM has used the process improperly to bypass collective bargaining and communicate directly with employees about such matters as the company's vulnerable financial condition.

GM representatives respond that occasional misunderstandings should not obscure the very substantial achievements of QWL programs. They have produced dramatic turn-arounds in morale and productivity, for example, at such once notoriously troubled plants as Lordstown, Ohio and Tarrytown, New York.

Both parties remain firmly committed to some form of ongoing union-management cooperation. Thus, the 1987 negotiations resulted in a supplementary agreement mandating a joint committee at every GM plant to meet regularly and deal with the dual problem of improving the company's "competitiveness" and reducing "outsourcing," or subcontracting, whenever feasible.

### The Saturn Project

The most striking example of GM-UAW cooperation, the Saturn small-car project, was described in considerable detail in October 1985 by Eugene L. Hartwig, formerly GM's chief labor counsel and at that time a company vice president. Prior to 1984, the company and the union had concluded that the American auto industry's failure to compete effectively in the small-car market would eventually jeopardize its position in the midsize and large-car markets as well. GM and the UAW agreed to pool their resources and launch a joint project to build a fuel-efficient, high quality, low cost small car.

During 1984 seven union-management committees were formed under the umbrella of the GM-UAW Study Center. Their functions paralleled the activities of Saturn's projected business units, which would be responsible for everything from product design and parts manufacturing to subassembly and final assembly. The 99 participants included 35 plant management officials, 42 union representatives and workers, and 22 members drawn from GM and UAW headquarters staff and negotiating teams. Studies of how best to integrate people and technology at all stages of design and production proceeded on a full-time basis. Joint teams logged an estimated two million miles of travel, visiting plants in Sweden, West Germany, and Japan, as well as GM and non-GM plants in the United States. All committee decisions were by consensus, and ultimately the Study Center adopted a unanimous set of recommendations for the new Saturn Corporation.

The Memorandum of Understanding that emerged contemplated that the Saturn workforce would be drawn in large part from GM bargaining unit employees. Management was assured of much greater flexibility in operations through a substantial reduction in the number of separate job classifications, especially among the skilled trades. Hartwig emphasized that the nonadversarial "team concept" would pervade Saturn's organizational structure, stating: "Most of the authority and decision making is expected to be exercised at the work unit level, which is an integrated group of approximately 6-15 members." He added, "Never before has a union been involved to this extent in designing work stations, business and people systems, and in selection of the site where its members will be asked to work and relocate their families."

### 1987 Negotiations — "Inverted" Pattern Bargaining

Many outside observers predicted long, hard negotiations between GM and the UAW in 1987, with an extended strike not unlikely. Job security was the key union demand. Yet the company, its domestic market share shrinking, was intent on greater operational flexibility and productivity. And GM seemed further hampered by its large percentage of inhouse parts manufacturing. While Ford already subcontracted out around 50 percent of its auto components, GM produced approximately 70 percent inhouse. That made any job guarantees much more difficult for GM.

Ford, currently the most profitable of the "Big Three" auto firms, was the UAW's "target" company in 1987. Agreement was quickly reached on a new three-year contract. Then, confounding the experts, the union settled with GM so easily that it did not even have to set a strike deadline. A *New York Times* writer ascribed much of the credit for the unexpectedly smooth bargaining to a 10-day trip to Japan that top GM and UAW negotiators took together earlier in the year. Company and union representatives acknowledge that this joint undertaking enabled persons on both sides to get acquainted in a relaxed, fashion before sitting down across the table from one another.

With tens of thousands of jobs and untold millions of dollars at stake, however, one would suspect that there was also something more substantive involved than just a cordial, trusting relationship among the negotiators — regardless of how helpful the latter might be in paving the way for a settlement. What appears to have been the crucial factor was a deliberate decision by UAW president Owen F. Bieber and other union leaders not to obtain from Ford in the first round of bargaining any contract provisions that could not subsequently be matched in effect by the financially more troubled GM. Ford, for example, could probably have provided an unconditional guarantee of job security. But GM could not, and thus the provisions in both contracts assuring workers there will be no layoffs because of such changes as increased productivity (called "secure employment levels" or SELs at GM) contain an escape clause; layoffs are permissible if there is a decline in sales volume attributable to market conditions. The result was to preserve pattern bargaining in the auto industry, but with the new twist of what I would call an "inverse pattern." That is, the union did not drive the hardest bargain it could with the "target" company and then seek to impose that settlement on the rest of the industry. Instead, in the first round of negotiations, the UAW kept one eye cocked toward the future, trying to assess the capacity of the other firms to meet comparable demands.

As mentioned earlier, an attachment to the 1987 GM-UAW National Agreement established "operational effectiveness" committees at the national and local levels. These are joint union-management bodies that will constantly monitor work quality and efficiency at each location, and reexamine past outsourcing and subcontracting decisions in an effort to identify opportunities for "insourcing" and new work within a plant. A changed attitude evident among GM strategists is that insourcing may frequently constitute a positive advantage, permitting increased control over product quality, timing of deliveries, and so on. For the union, that attitude bodes well for preserving jobs. In addition, the 1987 contract strengthened GM's "jobs bank" program. Workers displaced by outsourcing or productivity will be retained at the same location at full pay and given training or a temporary job assignment.

The emphasis on job security at GM carries with it certain costs. There was grumbling among the rank-and-file when many Ford workers recently received profit-sharing bonuses of several thousand dollars each; GM employees got little or nothing despite a similar profit-sharing formula in their contract. GM's management explained that its employees could obtain such bonuses, too, if the company adopted Ford's "lean and mean" philosophy. Laid-off Ford workers generally remain laid off, and the work force stands at a steady 100,000. By contrast, GM has recalled tens of thousands of employees, hiking its work force to 360,000. "If we cut back to 240,000," says one high-ranking company official, "there could easily be profit-sharing. The unions and the workers have to make a choice. We think our approach is more humane." GM feels that systematic efforts to enlighten employees about the economic realities of such tradeoffs have reduced resentment concerning the lack of bonuses. These efforts have included a special paid educational leave (PEL) program, which so far has enabled 1,000 rank-and-file employees to spend four weeks in Ann Arbor, Cambridge, Washington, and GM headquarters, improving their knowledge of industrial relations, the economy, and the political process.

All these cooperative endeavors have not won universal acclaim. Retired UAW international director Victor Reuther (Walter's brother), brandishing the hallowed family name, tramped the country to denounce "jointness" as a sellout of union members' interests. He was backed by various insurgents and dissenters still active within the organization, some speaking out openly and others expressing reservations more

discreetly. The union's failure to break away from pattern bargaining and secure the most favorable contract possible from Ford was also the subject of criticism.

Supporters of the incumbent UAW administration's policy pointed out that Walter Reuther himself had long sought enlarged employee involvement in management decisionmaking. "You bargain for what you can get at any given time," a prominent union official told me. "Walter couldn't get worker participation, and so he took more money instead. Today there's less money available, which is why we went for employee involvement." Union leaders are convinced employees can contribute to product quality. "Quality means sales," insisted one officer. "Sales mean jobs. It's as simple as that." Over 81 percent of the UAW's members at GM voted to ratify the 1987 agreement. By comparison, the 1982 contract prevailed with only a 52 percent approval. Learning of the membership's 1987 ratification vote, former UAW president Douglas Fraser declared, "The debate [on jointness] is over." But Fraser is an optimist by nature, and his may not have been the last word.

Within the next couple of years, before the current three-year contract is renegotiated, GM industrial relations vice president Alfred S. Warren, Jr. and UAW vice president Donald F. Ephlin, who heads the union's GM department, are both likely to retire. What will happen then? A unique chemistry has plainly operated between these two men, which has been highly conducive to mutual understanding and accommodation. Can the system survive the departure of one or both of its principal architects? Insiders are divided on the question. One view is that the cooperative bond is still fragile, and heavily dependent on the dominating personalities of Ephlin and Warren. Within weeks after the signing of the 1987 GM-UAW contract, the company laid off thousands of employees, invoking the sales-downturn escape clause. Many workers felt betrayed and resentful. Someone less committed than Ephlin might not be able, or wish, to hold the line. Other observers point out, however, that QWL programs and participative management did not begin at GM with Ephlin and Warren but with their predecessors. By now, according to this second analysis, the process has become sufficiently institutionalized to exist independently of any particular individuals.

## *Appraisals*

Scholars have found precedents for today's QWL, participative management, and other "cooperative" programs in such diverse sources as the "scientific management" schemes of Frederick Winslow Turner, the "Scanlon Plan" for providing financial bonuses to all employees when productivity is increased through the efforts of joint worker-management committees, and even the shabby "company unions" of the 1920s and '30s. Some critics have charged that the cooperative or "integrative" model "reflects its heritage," leaving management "in charge but with greater responsiveness to the needs of the lower participants in the enterprise." Especially but not only in nonunion settings, the cooperative approach is seen as a snare and delusion for workers, beguiling them into a false sense of complacency about the commonality of their interests and the interests of their employers. Traditional collective bargaining is regarded as a far superior mechanism for dealing with the genuinely adversarial positions of employers and employees.

A leading advocate of increased union-management cooperation is Stephen I. Schlossberg, the peppery former general counsel of the UAW whom William Brock had the good sense to select as his deputy undersecretary of labor. Schlossberg and others like him believe that joint undertakings can both enhance the dignity of the individual worker and improve the competitiveness of American industry. Schlossberg of course would not espouse employee involvement as an alternative to collective bargaining but rather as an integral part of it. Some others who embrace participatory programs undoubtedly have union avoidance as a prime motive.

An unusually thoughtful and balanced treatment of the cooperation versus adversarialness issue is provided by critical legal theorist Karl Klare. He calls it a "falsely polarized debate." Placing his customary emphasis on "workplace democracy" and "self-realization," Klare maintains that in the contemporary context of burgeoning democratic aspirations amidst grave power imbalances, "democratization requires the

simultaneous elaboration of adversarial and participatory institutional forms." He further recognizes today's need for shared employer-employee responsibility in "devising paths to economic prosperity," adding wryly, "Efficiency is simply too important to be left to management." I would not put it quite that way but I agree with the sentiment. My major qualification is that labor and management cannot be expected to act over time against their perceived self-interest. Almost inevitably, there will be fluctuations in the proportion of cooperation and adversarialness in any relationship, depending on changes in the firm's competitive situation, employment levels, the health of the economy, and other circumstances. That should be neither surprising nor alarming. What is vital is that both sides negotiate with a realistic sense of each other's needs and bargaining flexibility.

## LEGAL AND ECONOMIC IMPLICATIONS

### *Duty to Bargain*

A lesson I would draw from the GM-UAW experience and from the whole participative management movement is that we should seek to realize the full potential of creative bargaining by shedding as much as possible of the straitjacket imposed by *NLRB v. Wooster Div. of Borg-Warner Co.* There the Supreme Court accepted a rigid and unrealistic dichotomy between "mandatory" and "permissive" subjects of bargaining. Mandatory subjects are the statutorily prescribed "wages, hours, and other terms and conditions of employment," about which either party must bargain at the behest of the other. Permissive subjects are all other lawful items, including a broad array of so-called managerial prerogatives or internal union affairs, which are often of intense interest to unions or management, respectively, but about which they cannot demand bargaining if the other party objects. Governmental fiat should not control so basic and individualized a question as the contract issues a particular employer or union deems important enough to back up with a lockout or a strike.

Hypocrisy is encouraged, and candor reduced, by the *Borg-Warner* formula. A savvy party that urgently desires a permissive subject in a contract can usually bring negotiations to an artificial deadlock over a legally sanctioned mandatory topic. Experienced, sophisticated participants in a mature, durable bargaining relationship do not engage in such ploys to evade the law's strained distinctions. If a union like the UAW, during a period of rapid inflation, wishes to discuss pension increases for retired workers, technically a nonmandatory subject, the Big Three auto manufacturers discuss them. A vast portion of the Saturn project undoubtedly involved nonmandatory topics. In those circumstances the law is superfluous. Where legal regulation is needed is for inexperienced or hostile parties and immature, fragile relationships. The time required for bargaining should not be a serious impediment to management's occasional need for swift action. A sampling I made of NLRB cases during the 1970s indicated that negotiations reached a deadlock or "impasse" in a median period of six and one-half weeks. After impasse, of course, an employer may institute its proposed terms unilaterally, without the union's consent.

*Borg-Warner's* mandatory-permissive rubric probably reflects an American consensus that there is some "untouchable" core of entrepreneurial sovereignty (and an analogous area of union autonomy) that is beyond the reach of compulsory collective bargaining. An outright overruling of *Borg-Warner,* either judicially or legislatively, is therefore unlikely. But at least I think it would make for far healthier and more responsible labor relations if the duty to bargain encompassed, as the Kennedy-Johnson Board declared, any employer action that could effect a "significant impairment of job tenure, employment security, or reasonably anticipated work opportunities for those in the bargaining unit." In my judgment that conclusion is adequately supported by the language, legislative history, and policy of the National Labor Relations Act. The Warren Court gave qualified endorsement to the proposition, and, despite retrogression on the part of the Burger Court and the Reagan Board, sound personnel practices alone would argue that the broader scope of bargaining requirement should ultimately prevail.

## *Employer "Domination" or "Support"*

At the time the Wagner Act, the original NLRA, was passed in 1935, a major barrier to effective unionization was the existence of employer-sponsored "company unions." These consisted generally of joint employer-employee shop committees or all-employee representation plans, established by the employer and largely confined to an advisory or consultative role. Later embodiments took on more of the trappings of independent unions, with their own bylaws and elected officers. But most company unions received no dues, had no separate treasuries, and held no general membership meetings. In any event the common denominator was that the employer, subtly or otherwise, pulled the strings. It was these company unions, and to a lesser extent the employer-favored union among competing organizations, that Section 8(a)(2) of the NLRA targeted in making it an unfair labor practice for an employer to "dominate" or "contribute financial or other support" to any "labor organization."

Does Section 8(a)(2) prohibit or limit participative management schemes in either a union or nonunion setting? Professor Thomas Kohler argues powerfully that Section 8(a)(2) represents a carefully considered congressional choice of the adversarial over the cooperative model, and that, at least in the absence of an independent union's consent, the implementation of QWL and similar plans violates the statute. The key in the nonunion situation is the meaning of "labor organization." The NLRA defines it as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

In *NLRB v. Cabot Carbon Co.* the Supreme Court adopted a broad interpretation of "labor organization" to strike down a joint employee-management committee arrangement under Section 8(a)(2). Committees at several plants met periodically to discuss production, working conditions, and employee grievances. Yet they had no formal structure and had never attempted to negotiate a contract with the employer. Nonetheless, the Court found the committees' recommendatory function enough to constitute "dealing with" the employer, and hence there was an employer-established "labor organization" within the meaning of Section 8(a)(2). Going still further, courts of appeals have concluded that employer committees were "dealing with" an employer even though they did no more than discuss or exchange information about covered topics.

More recently, courts of appeals have departed from a strict reading of Section 8(a)(2) on such avowed policy grounds as rejection of a "purely adversarial model of labor relations" and acceptance of a "cooperative arrangement [where it] reflects a choice freely arrived at and where the organization is capable of being a meaningful avenue for the expression of employee wishes." In rationalizing their results, these courts have relied on such technical arguments as the lack of sufficient "interaction" or "active, ongoing association" between an employee committee and the employer to constitute "dealing," and the notion that frequent turnover in committee membership meant the employees were addressing management "on an individual rather than representative basis."

I have considerable sympathy for Kohler's conclusion that "as time has passed, the meaning and basic purposes of the Act have been forgotten by the bodies charged with enforcing and applying its terms." Nevertheless, the passage of time and the transformation of context will almost invariably affect the sensible application of a statute that is now over half a century old. There was a paternalistic, protective attitude exhibited toward the blue-collar workers of our mass production industries in the 1930s that may simply be inappropriate in dealing with the well-educated, often professional or semi-professional employees in today's high-tech industries. Academic commentators like Klare, Kohler, and me may firmly believe that the employees of IBM, Texas Instruments, Cummins Engine Company, and myriad offices and department stores are misguided in failing to appreciate the psychological and financial benefits of organization. But if these workers perversely (and freely) persist in a contrary opinion, and even couple that with a desire for less formal mechanisms for input to or cooperation with their employers, I cannot say Section 8(a)(2) is so inflexible that it could not

accommodate them. Naturally, the exact role of the employer in the establishment of an employee involvement plan, as well as its timing (just prior to a representation election?), could be crucial in any legal determination.

## *"Managerial" Employees*

A potential final irony concerning participative management plans is provided by the Supreme Court's *Yeshiva* decision. Faculty members who participated effectively in academic governance by jointly determining admissions standards and curricular matters and by making recommendations that were generally followed concerning appointments and promotions were held to be "managerial" employees and thus excluded from the protections of the NLRA. Without thinking the issue through, the Supreme Court has seemingly placed itself squarely in the camp of the adversarialists: Keep the enemy at a distance, or surrender your collective bargaining rights.

The inescapable logic is that the more any workers become involved in management decisionmaking, especially at the strategic level (as in Saturn), the more they risk their status as rank-and-file employees whose concerted activities are immune from employer reprisal. Fortunately, there are some early indications that the Labor Board will try not to extend *Yeshiva* so as to deter cooperative programs in blue-collar industries. At their best, these programs can contribute significantly to industrial peace, one of the NLRA policy objectives most consistently espoused by the Supreme Court. One would hope that common sense will ultimately prevail in this area, although *Yeshiva* itself must give a person pause.

## *Product Quality and Productivity*

QWL and other participative management programs, according to one of the most intensive scholarly studies, have had a "problematic history." Some have withered on the vine and others have failed completely, even after initial successes. Yet there have been stirring tales of accomplishment in both union and nonunion situations. GM's Tarrytown assembly plant went from a facility with low morale and low production to a prize specimen with reduced absenteeism and grievances and improved worker attitudes, and was selected as a site for one of the company's newest models. A problem-solving group technique originally employed there in the layout redesign of two trim departments blossomed into a $1.6 million training program. At a Buick plant in Flint, a joint union-management committee decided upon the use of semi-autonomous work teams to handle production following the conversion of a foundry to the manufacture of transmission parts. Teams became largely responsible for job assignments, quality control, individual members' eligibility for pay increases, and even discipline. Sadly, what may have been one of the most ambitious projects of all, the involvement of employees in "strategic" decisionmaking at the Pontiac Fiero plant, with extensive access by them to performance and financial data, has had a disappointing denouement. GM recently announced the discontinuance of the once-popular Fiero sportscar.

The semi-autonomous work team format has also been used in the nonunion plants of TRW, Inc. and Cummins Engine Company. The nonunion system functions much like that at the Buick plant in Flint, except of course that the basic operating rules are promulgated unilaterally by management. Low employee turnover has been one of the positive characteristics of plants with such work teams. Significantly, a survey revealed that 72 percent of partially unionized firms encouraged the establishment of some form of employee participation plan in their new nonunion facilities.

Whatever may be the union-avoidance motivation for promoting employee involvement, case studies indicate that properly developed QWL programs in both union and nonunion plants can enhance efficiency and product quality, can indeed produce "sizable improvements in organizational performance and the quality of working life." But the authors of one of the most comprehensive studies of contemporary industrial relations add these provocative comments:

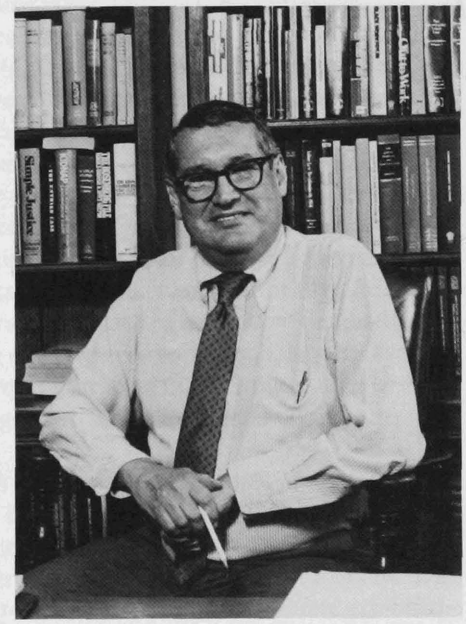
"If linkage to strategic decisionmaking is essential for workplace participation to be successful in the long run, a strong union presence and active support for the process are also essential. Nonunion firms or those with weak unions are unlikely to develop or sustain this full form of worker participation."

## CONCLUSION

The *Borg-Warner* mandatory-permissive dichotomy, especially as elaborated by the Burger Court and the Reagan Board, creates artificial distinctions regarding bargaining subjects which impair the fullest capacity of collective negotiations to resolve industrial disputes and heighten the quality of work life. Unions should at least be entitled to bargain about management decisions that adversely affect job security or employment opportunities. At the same time, the NLRA should be interpreted (or amended if necessary) to permit new modes of cooperative employer-employee relationships, in either union or nonunion settings, as long as workers choose them freely and without any kind of employer coercion.

The evidence of various case studies indicates that employee involvement in management decisionmaking, if properly structured, is beneficial for all concerned. It enhances workers' morale and sense of personal fulfillment, and it improves the quality of their working lives. Employers achieve increased productivity, higher quality output, and hence greater competitiveness in the global market. Still another beneficiary of participative management is the American consumer. Our labor laws should facilitate and not impede such a salutary process.

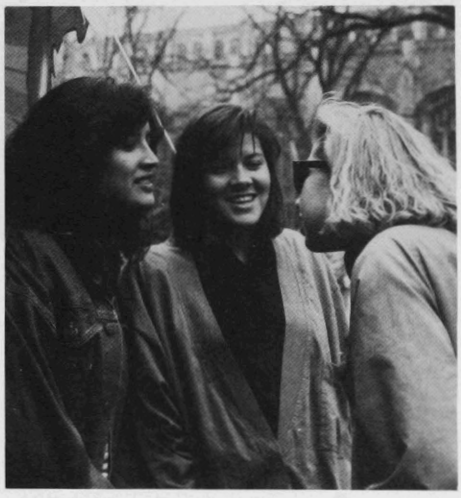
*Theodore J. St. Antoine, the James E. and Sarah A. Degan Professor of Law, is a graduate of Fordham College and the University of Michigan Law School. He is known for his writing in the field of labor relations and his extensive and important labor arbitration. He began his academic career at Michigan in 1965, and served as dean from 1971 to 1978.*



# Law students and their games

*Volleyball, band, barbeque mark end of term*

To celebrate the end of the winter term, the Law School Student Senate sponsored its first annual Barbeque and Games Day on April 28. Held in the Law Quad, the games included volleyball, frisbee, and paddleball. The Trinidad Tripoli Steel Band, a popular, locally-based, Jamaican-born ensemble, provided high-energy calypso and reggae music to motivate the athletes and liven up the dinner hour.



## New look for *LQN*

*Law Quadrangle Notes* was redesigned recently by Omar Davidson, a graphic design major who received his B.A. this spring at the U-M. Through the School of Art's Graphic Design Workshop, under the direction of Professor Bruce Ian Meader, Davidson spent two semesters on the project. Davidson worked closely with Meader and *LQN* editor Bonnie Brereton to create a fresh look for the publication that will allow for better use of copy and photographs, while at the same time incorporating into the design an evocation of the beauty and stateliness of the Law Quadrangle.

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# LAW QUADRANGLE

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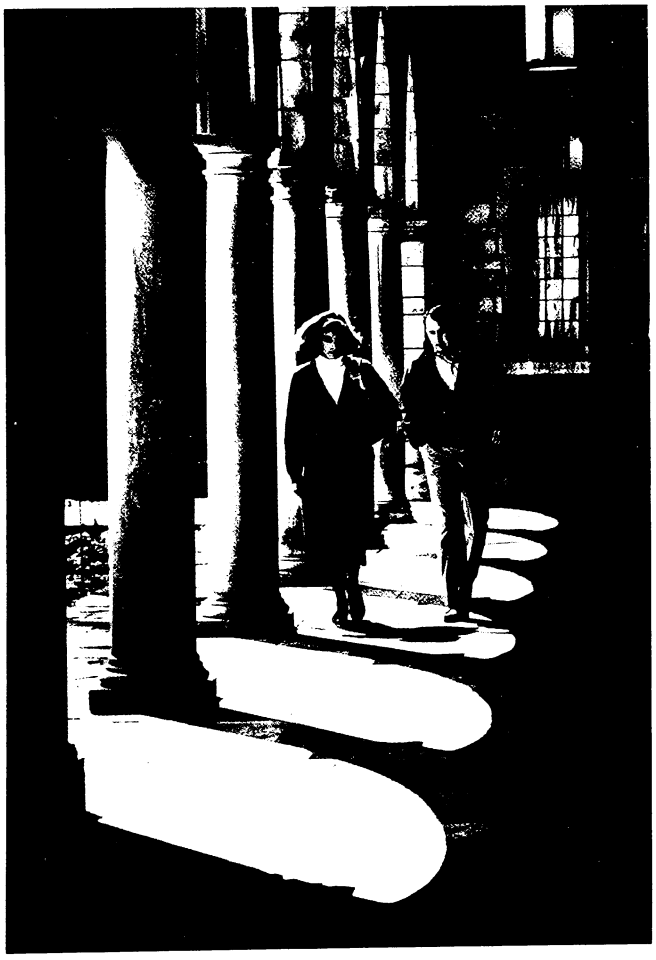

Student Leaders
at the Law School

Articles by

Kennedy
St. Antoine
J.B. White