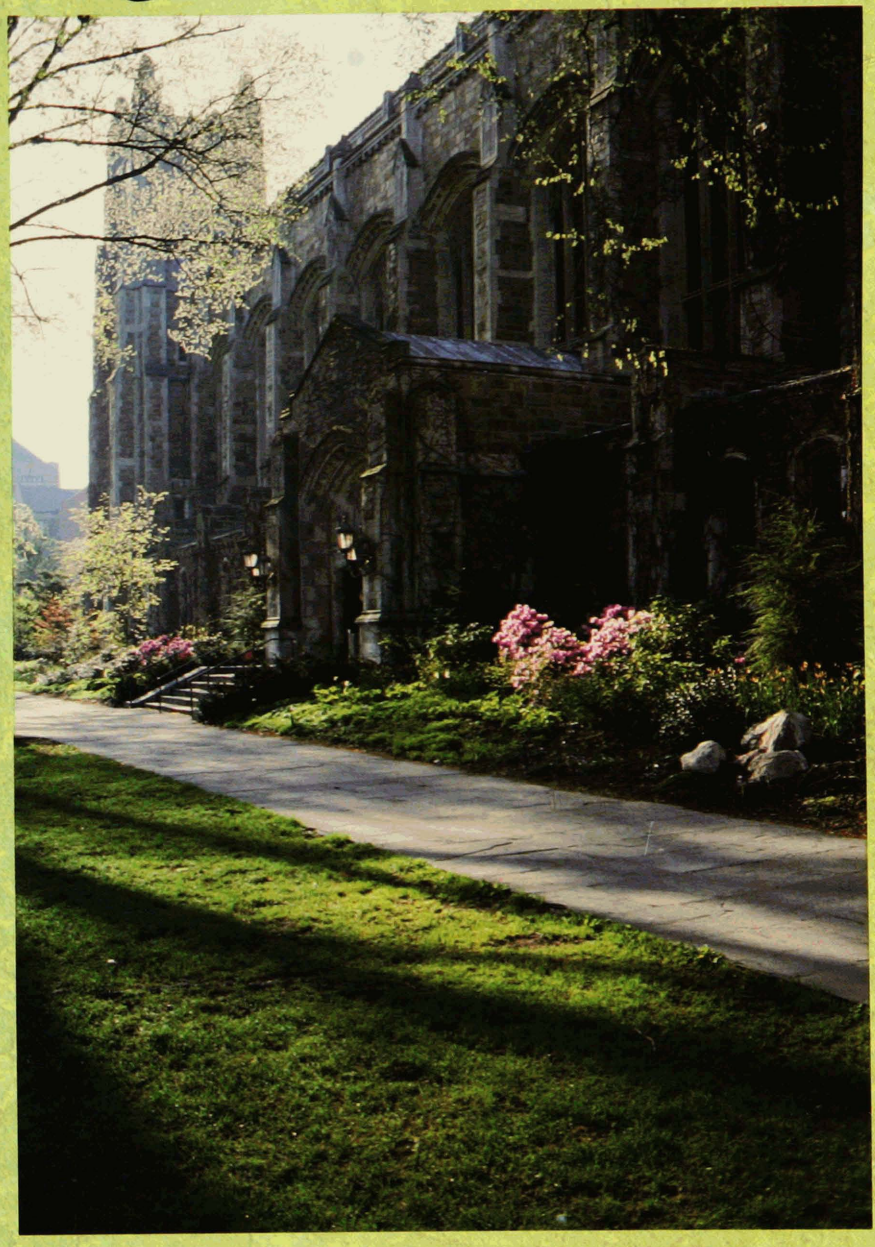
E UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 37 • NUMBER 2
SUMMER 1994

LAW QUADRANGLE NOTES



30 Years of Legal Education for Minorities
Double Vision
The Open-Minded Soldier and the University
Our Worldwide Legal Profession

UNIVERSITY OF MICHIGAN
LAW SCHOOL

ALUMNI EVENTS

August 5	Alumni breakfast American Bar Association New Orleans
September 22	Alumni breakfast Michigan State Bar Detroit
September 22-25	Alumni breakfast California State Bar Los Angeles
September 23-25	Class reunions 1949, 1954, 1959, 1964, 1969 Ann Arbor
October 28-30	Class reunions 1974, 1979, 1984, 1989 Ann Arbor
October 28-30	Law School National Committee Meeting
October 28-30	Committee of Visitors Weekend
October 28-30	Scholarship luncheon

Have you moved lately?

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

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

Non-alumni readers should write directly to:

LAW QUADRANGLE NOTES
919 Legal Research Building
Ann Arbor, Mich.
48109-1215

Cover —
Gregory Fox's camera captures early morning in the Law Quadrangle.

CONTENTS

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Parting Thoughts

an interview with Dean Lee Bollinger

After 21 years on the law school faculty and seven as dean, Lee Bollinger is leaving the University of Michigan July 1 to become provost at Dartmouth University. Here, he shares his thoughts on the state of the law school and his accomplishments here.

Dean Bollinger enjoyed the fond, funny memories faculty shared at his farewell dinner.

LQN: As you prepare to move on to a new institution, how would you describe the state of this one?

LB: It's as strong as I've ever seen it. It's difficult to talk about the strengths of the law school, because the facts and statistics you could provide really don't go to the true heart and soul of this place. I'm always very, very impressed by the personal dedication of the people around this institution. That to me is a sign of real strength. You can look at the LSAT scores of the entering class or the number of articles published; all of those are quite spectacular, but of course, they don't mean anything if the people behind those statistics aren't acting with the kind of dedication and integrity that you want. I don't think there's any law school in the country that exceeds this institution in its seriousness of purpose as well as the abilities of the people here, and I mean both faculty and students.

LQN: Given that, what do you think are the biggest challenges and opportunities the law school faces?

LB: I think that you must build generations to succeed yours. I count among the greatest achievements of the school since I've been dean the formation of a new generation of scholars. That needs to be continued. That's a very high priority.

I think we also need to look at the law school curriculum and ask very hard questions about whether it is sufficient for the kinds of lives our students are going to lead. I myself have serious reservations about the third year of law school in particular. I think if you put people who are 24-25 or older behind desks and simply call on them to answer questions, you are

Continued on page 4

Lehman becomes dean

Jeffrey Sean Lehman will succeed Lee Bollinger as dean of the University of Michigan Law School.

The University's Board of Regents approved Lehman's appointment in May. He will begin his term as the school's fourteenth dean on July 1.

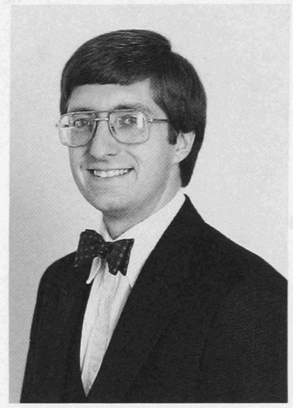
Lehman currently is professor of law and public policy at the law school and at the University's Institute of Public Policy Studies. A nationally-recognized expert on taxation and welfare law, he has been a member of the faculty since 1987. He has just completed a year away from Ann Arbor as a visiting professor at the Yale Law School and the University of Paris.

Lehman's selection caps a national search for Bollinger's successor. "Many outstanding candidates were identified and considered for this position," said Gilbert Whitaker, Jr., provost of the University. "I want to recognize publicly the careful, thoughtful efforts of the search advisory committee and to express my delight that Professor Lehman has accepted this position. I am confident that he will serve all of us as an excellent representative of the law school."

At 37, Lehman is the school's youngest dean since its early days as a law department in 1859. He is believed to be the youngest dean at any American law school today. Professor Theodore St. Antoine, who headed the school's advisory search committee, said, "Jeff Lehman will bring youthful vigor and imagination as well as mature judgment and compassion to the deanship. The law school is blessed by his selection."

"Jeff is a study in contrasts — wonderful contrasts," St. Antoine commented. "He has a steel-trap mind and a warm, human touch. He is a master of an arcane, business-oriented subject, federal taxation, and of a gritty subject, welfare law. He usually knows exactly where he's going, but he doesn't run over people to get there."

Lehman earned a bachelor's degree in mathematics from Cornell University in 1977 and a law degree and a master's degree in public policy from Michigan in 1981. An exceptional student, he was editor-in-chief of Volume 78 of the Michigan Law Review. Ned Gramlich, director of the Institute of Public Policy Studies, recalled that when Lehman took on Law Review duties, he asked permission to stop attending his IPPS classes and study independently. "He scored the highest on the final exams without even coming to class," Gramlich said.



Jeffrey Lehman

After graduation, Lehman clerked for Chief Judge Frank M. Coffin of the United States Court of Appeals for the First Circuit and for Justice John Paul Stevens of the U.S. Supreme Court. He practiced tax law for four years with the Washington, D. C. firm of Caplin and Drysdale, where he specialized primarily in leveraged lease negotiation. He also did some litigation and was the primary author of a brief before the Supreme

Continued on page 7

Parting Thoughts *(continued from page 2)*

not respecting their maturity and you are not taking full advantage of their talents. I do think there are programs we could initiate to allow independent research and writing that would be very beneficial.

I also think we have too few faculty for the size of the student body. We need smaller classes for better education. Unfortunately, under the practical constraints of the world, we have only so much money to hire faculty and support students.

LQN: How has the law school's international focus changed in your years as dean?

LB: We've developed several international initiatives: We've set up programs where our faculty have an opportunity to teach American law at foreign institutions. The first of these is a three-year-old program with Tokyo University. At this point, a quarter of our faculty who had never been to Japan have taught briefly there, and that will continue. We now have set up a similar program with Cambridge University in England, and I'm trying to arrange this with a top institution in Mexico. We've also expanded the number of visitors from abroad. Every year we have between five and 10 distinguished visiting faculty from around the world. We've tried to expand the opportunities for our students to study abroad as well; for example, we have a program with University of Leiden in the Netherlands.

LQN: What about external changes that have shaped education here?

LB: We've heard reports from many people that the practice of law has changed dramatically in the last decade and that for many people it is less satisfying than it has been for previous generations. We are asked, as institutions preparing people for that world, to do something about it. I am dubious that law schools can really implement any kind of reform of legal practice. I *do* think we can prepare students for it, and we've tried to do that. I've set up a forum on changes in the practice of law and invited in distinguished alumni to talk very candidly with students about what the practice of law is like. We've offered some courses on legal practice today. However, as we have constructed law schools in the United States, we can never really prepare people completely for the practice of law. We have only a partial angle of vision on the practice. Perhaps what we do best is to give students an *ideal* of what law can be like. That grand ideal can then provide a constant reference point for evaluating just what law and life are like, and might be.

Perhaps what we do best is to give students an ideal of what law can be like. That grand ideal can then provide a constant reference point for evaluating just what law and life are like, and might be.

One of the most dramatic changes in the history of the school has been a shift, mostly in the last decade, from being a publicly supported institution with very low tuition to a completely self-supporting institution now with tuition rates comparable to our peer institutions. Within this context, we have tried hard to maintain Michigan's stature as of the great law schools. That has meant mostly developing closer relationships with alumni and asking them for more contributions. The $75 million capital campaign is the law school's most ambitious fund-raising effort by far. Right now, we're at approximately $38 million. The only way we can continue to compete with the other major schools, almost all of which are private, is to have very strong endowment and annual giving programs. We have tried to create a relationship with alumni that makes Michigan graduates feel that they are part of the institution, as private schools have done for years. We've done the same for international alumni, holding major reunions in Florence and Tokyo, and the first ever international reunion here in Ann Arbor.

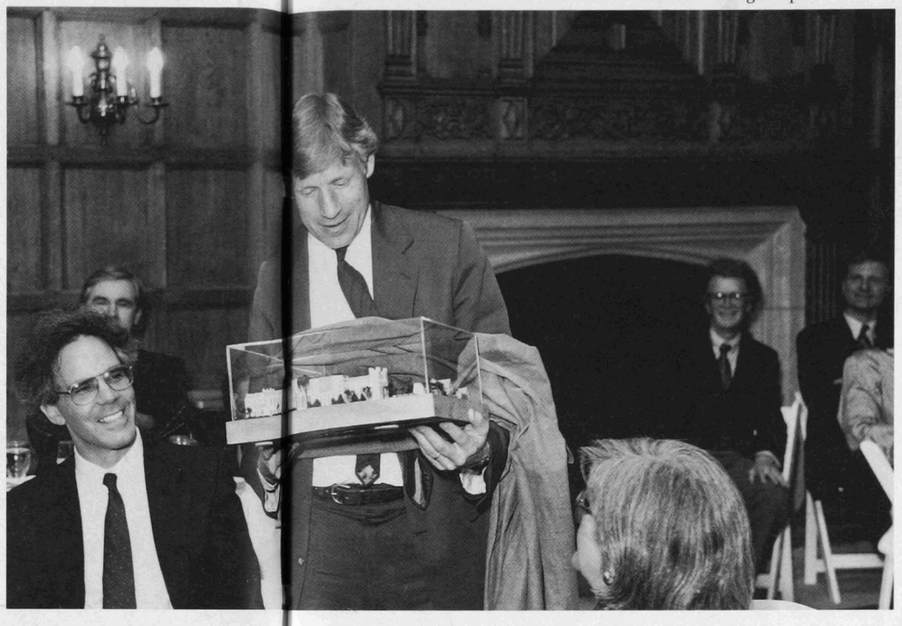
LQN: What other ways have you involved alumni, and how does that enhance the law school community?

LB: Alumni can help you in many ways. One of the great benefits is that they can give you advice, and academic institutions above all should understand the value of having many different perspectives on what it is you're trying to do. Some distinguished alumni have come back to teach. I view that as another significant program, because it brings new perspectives to the classroom. Greater alumni involvement can also help you get better students. Beyond that, they are simply great people who add to the enjoyment of life.

LQN: What has been done for minorities at the law school?

LB: We've worked to make this a place where minorities will flourish. When I became dean, there were great tensions on campus. Minority students on campus and at the law school felt beleaguered. We did a lot to make this a more hospitable environment for them. We hired a private consultant to interview every minority student and many graduates to find out how they felt about their experiences here. Then we had many, many meetings to talk about the issues and focus on criticism of the classroom environment. We as a faculty and institution took these criticisms seriously and tried to change in many ways. I'm proud to say that I think the institution is a better place for minorities today than it was. We had a follow-up study done last year; while there's still work to be done, I think

The departing dean can take the Law Quadrangle with him to Dartmouth, in the form of a scale model that even lights up.



Tributes and mementos

When it came time to bid a public farewell to Dean Lee Bollinger and his family at a dinner in April, the faculty found it a formidable task. Here was a man so acutely self-aware that there was no way to lighten the bittersweet moment by "roasting" him with gentle ribbing. Instead, his colleagues shared fond memories and visions of his strengths. But perhaps the best measure of the man and his deanship can be seen in the gifts he will take with him to Dartmouth and what he leaves behind.

In recognition of his fondness for the beautiful surroundings of the law school, the faculty presented him with a scale model of the Law Quadrangle. "We've reduced the school to fit into the middle of your table. You can literally take the school with you. Michigan can get no smaller nor any farther away than this," said Professor Joseph Vining as he presented the model. "Think of us, on a Lilliputian scale, inside it."

The faculty also presented Bollinger a gift of essays, his favorite form of literature. The essays are three original issues of Samuel Johnson's periodical series "The Rambler," as they were sold on the streets of London 250 years ago. They were selected to reflect themes personally appropriate for Bollinger: future projects; retirement, or the dangers of seclusion from the world; and curiosity, which is sometimes a productive desire to learn and sometimes a dangerous snare for the busy mind.

On behalf of the Law Library staff, director Margaret Leary gave Bollinger a photograph of the stained glass window in the reading room bearing the Dartmouth College seal.

As dean, Bollinger not only established important Law School initiatives like international reunions and the Law School Campaign but commemorated them with two beautiful posters. In keeping with this tradition, Anne Percy Knott, assistant dean and director of development and alumni relations, presented him a third poster of the University's villa in Florence, Italy, the site of the 1994 European alumni reunion.

Finally, Terrence Elkes, J.D. '58, national chair of the Law School Campaign, presented the gift from alumni that will keep on giving to generations of students. "We have, with warm affection, established the Bollinger Prize, an annual award," he told the dean. Pledges now total $25,000, and Elkes encouraged alumni and faculty to help double or triple the fund. Bollinger himself will set the criteria for the prize that will embody his own commitment to building a great law school by seeking and supporting the best students.

From Bollinger's perspective, he and his family leave Ann Arbor with those mementos and much more. His wife, Jean, acknowledged that they hold special memories of growing professionally while their son Lee and daughter Carey grew to adulthood. The dean added, "The core of our lives has been lived here with you. This is where we created our family and our professional lives. The experience has been transformative. I now and always will think, look and talk like a University of Michigan Law School person."

To make a contribution to the Bollinger Prize fund, write to Development and Alumni Relations at 721 S. State, Ann Arbor, Mich. 48104-3071, or call (313) 998-7970.

and the reports show that minority students feel a great deal more comfortable than they did six years ago.

LQN: What other new programs have been created during your tenure?

LB: One I might mention involves the law school and the mass media. Through the Knight Foundation grant, two years ago we launched a journalist-in-residence program at the law school. Each journalist spends a year taking courses here and in other areas on campus. Over time, that will produce a number of people in the media who have been able to take a break from their career and give serious reflection to issues they write about. Of course, we benefit from the presence of a practicing journalist as well. In addition, we've expanded the public relations effort by hiring a new director of media relations.

LQN: Do you have any regrets or unfinished business?

LB: I am disappointed that we were not able to engage in major curriculum reform. We worked on it intensely through two major committees and we made some first-year changes, but we were unable to reach agreement on the third-year curriculum. We have made some other changes. A group of faculty has created the New Section, and now another group is designing a so-called Classical Section. We've increased the amount of teaching about ethics and professionalism. Still, more remains to be done, and I hope our efforts will provide a base for future reform.

Another project only partially completed was my campaign to recapture the Reading Room, which has been lost to undergraduates. The Reading Room is one of the finest buildings on campus, and it would be a great pity if it did not remain an integral part of the law school. I've tried to make sure it does by using it for concerts at the end of the fall semester and by holding a memorial service for Wade McCree there. A second idea is to convert the alcoves around the perimeter into faculty offices, so there would be 16 to 18 faculty in the reading room. The Smith addition to the library is a tremendous achievement; it's beautiful and serviceable, but one unfortunate result is a separation of students from faculty. I think all of these steps would restore vitality to the Reading Room.

I think that the role of the dean is to serve the people within the institution and to make their professional lives here as fulfilled as you can.

LQN: What are the challenges you're looking forward to at Dartmouth?

LB: Focusing on an undergraduate college. Dartmouth has professional schools, but the heart of the institution is the college. I'm very interested in how knowledge is developed and communicated within that forum. A lot of my intellectual work draws on knowledge of other fields, and I look forward very much to deepening my understanding of those fields. I'm also now working on a book that tries to understand the structure of cultural institutions — universities, public broadcasting, museums, endowments for the arts, preservation. Intellectually as well as personally, it's natural for me to want to take a broader look at the university and at other fields.

LQN: You taught while you were a dean. Will you continue to teach at Dartmouth?

LB: I will be a tenured faculty member of the Department of Government. I'll continue to teach courses on free speech and law and culture for several reasons. First, it's very important to maintain a scholarly and teaching life. It's an excellent way of finding out what students are like and what's on their minds. Also, it's important to keep doing what the faculty do, because otherwise it's too easy to forget how difficult it is to write and teach well. Teaching also gives you a special opportunity to explain to students the greatness of their institution.

LQN: After seven years as the law school's leader, how do you view the role of the dean?

LB: I think that the role of the dean is to serve the people within the institution and to make their professional lives here as fulfilled as you can. It's an ambiguous role; a dean is a leader, yet a servant who lives by the good will of the faculty. At times there is great difficulty in deciphering what your authority is. It's constantly negotiable and worked out on a daily basis. I've tried my best to do whatever a dean can to create harmonious relationships among faculty and between faculty and students, so that everybody can do what it is they are here to do.

LQN: Over 20 years at the Law School, what are the fondest memories that stand out for you?

LB: That's very hard, because there are many, but some do stand out. When I became dean, Al Conard came to me and gave me his academic gown. It was a beautiful gown. He said he no longer felt he needed it and he wanted me to have it. To me, at the time and still today, it typifies an attitude within this institution that I prize beyond all else.

Anybody who makes it to this institution as a faculty member or a student has competed in the world very successfully. These are people with very high ambitions in the best sense. To maintain a relationship among them that is supportive and caring is something very special and worth recognizing. I felt this from the time I came here.

People were interested in helping me have the best career I could have. That depends mostly on you and your own energy, but a critical element is the willingness of other people to help you along. I just can't say enough about how valuable that has been.

LQN: What will you miss the most?

LB: I do think that this is the best position I will have in my career. I've said that the role of the dean is to be a servant to the people within the school. As such, I feel unbelievably lucky to be in a position to have the power and resources to help people. I find that tremendously gratifying.

Being the dean of one of the best law schools in the United States has all the components of the best life, including very close contact with an extraordinary number of talented people whom I have known well for many years. To be able to work with these people on a daily basis and to have a real possibility of friendship as well are benefits you cannot replicate outside an institution like this. That, together with the excitement of law and legal education — I deeply regret that this time has come to a close; it's simply a fact of life that it must.

LQN

Lehman *(continued from page 3)*

Court on behalf of more than seventy Nobel Prize-winning scientists explaining how so-called "creation science" deviates from the conventional practices of science.

Significantly, Lehman did his work on the Nobelists' brief while practicing law part time. During his final two years in practice, he became his firm's first part-time attorney in order to be at home with his young children while his wife, Diane, a 1982 Michigan Law graduate, practiced at another law firm.

Since joining the faculty in 1987, Lehman has written broadly on tax policy, welfare, and urban issues. In 1990, he drew national attention when he published a 100-page critical analysis of the Michigan Education Trust, the state's prepaid tuition program. The article exposed structural problems that leave MET financially vulnerable. Recently, he co-authored the forthcoming book *Corporate Income Taxation* with Professor Douglas Kahn.

Lehman also was instrumental in creating a new law school program in legal assistance for urban communities. Through this program, students learn about community economic development law by providing supervised legal advice and assistance to Detroit community groups. Unlike other clinical programs, it emphasizes business law over litigation.

Dean Bollinger praised Lehman's selection: "The law school is extremely fortunate to have as its new dean a person of such extraordinary talents as Professor Lehman. It is unusual for someone of Professor Lehman's many academic achievements to also be so skillful at leading an institution. This is a great appointment."

LQN

THE CHALLENGE: Nurturing intellectual omnivores

Jeff Lehman's interdisciplinary perspective and focus on the future are reflected in his vision for the law school: He writes:

"At Michigan, we have three years to help a superbly talented group of students prepare for a legal practice that never stands still. What it means to be an attorney today is different from what it meant for me 10 years ago. Among other things, the profession is coming to grips with the globalization of capital and labor markets, the pressures of competition, the revolution in information technology, and the recognition that professionals with children need to maintain a sphere of family life.

Law schools must help their students acquire skills and knowledge that will not become obsolete the day after they graduate. That means helping them develop the habits of critical reflection, speculative generalization, and imaginative reorganization that have long been the stock in trade of a skilled attorney. And it means nurturing the values of honesty, dedication, tolerance, and public service that undergird an admirable professional life.

But it seems to me that in today's world, one other character trait is becoming central to first-class legal practice: a commitment to constant intellectual growth and renewal. The best lawyers today are intellectual omnivores, aggressively consuming whatever new forms of knowledge might help their clients. Technological innovation has spawned new modes of research, advocacy, and client counseling. At the same time, new developments in finance theory, in game theory — even in experimental psychology and literary criticism — are being exploited by attorneys who advise, advocate, and negotiate in the business world. The modern law student must learn to relish such developments and must become skilled at identifying how they can be brought to bear on practical problems of professional life.

The University of Michigan Law School is today home to a faculty of unsurpassed quality — one that blends professional distinction with an unparallelled breadth of connections to a world-class research university. Michigan's challenge for the next five years is to exemplify as an institution the very character trait we most wish to cultivate in our students: we must continue to renew ourselves. We must find new and ever more effective ways to prepare our students for professional life, and we must continue to nurture research that significantly enhances the development and understanding of our legal order. It is an exciting time to be at Michigan, and I am honored to have been selected to serve my law school in this new way."

1L wins a Pulitzer

Persistence and good writing helped former *Detroit News* reporter Jim Mitzelfeld win a place in the Law School's class of '96.

The same qualities won him a Pulitzer Prize for beat reporting in April.

PHOTO BY DIANE WEISS/*THE DETROIT NEWS*

Reporter-turned-law student Jim Mitzelfeld (right) and fellow reporter Eric Freedman (left) celebrate winning the Pulitzer Prize for beat reporting with Robert Giles, Detroit News *editor and publisher.*

Mitzelfeld and fellow reporter Eric Freedman shared the most prestigious award in journalism for stories that revealed fraud and embezzelment at the Michigan State Legislature's House Fiscal Agency.

The honor was a dream come true in more ways than one, because Mitzelfeld used the Pulitzer nomination to literally write his way into law school. When he learned that he was was denied admission, he launched a letter campaign to convince the admissions office that he would make a stellar student and a hard-working advocate for justice. As evidence, he cited the changes in government he'd wrought with his expose and its prize-winning potential: "I can think of nothing greater than to be sitting in one of your classrooms next April when the Pulitzer Prize winners are announced and find my name among the winners. What a glorious day that would be for both of us," he wrote.

It was, he admits, pure blue-sky bravado. "I was laying it on pretty thick. After all, anybody can be nominated for a Pulitzer because your paper enters your pieces, and you never really think you'll win," he says with a grin. In fact, his decision to leave journalism for law school depended on what law school he could get into; others had accepted him, but he had his his heart set on Michigan and he was willing to try just about anything legal to get in.

His appeals earned him reconsideration. Meanwhile, through the normal shuffling of the admissions process, places in the class opened up; Mitzelfeld ultimately earned one and enrolled in the fall of 1993.

Despite his persuasive scenario, he was *not* in the classroom when he learned he won. Tipped off to the timing of the announcement, he was in the newsroom to celebrate with Freedman, who already has a law degree, and his colleagues.

A few days after the announcement, still in a state of sleepless jubilation, Mitzelfeld told *LQN,* 'This is the thrill of a lifetime. It's something every journalist dreams about but you don't ever think about actually winning."

For five of his nine years as a journalist, he covered the state legislature, first for the Associated Press and later for the *Detroit News'* Lansing bureau. His approach was often investigative, and he's known for his dedication to digging out details of a story. His bureau chief, Charlie Cain, has called him a "bulldog" and "a man possessed" when he is reporting.

He says he was working on a run-of-the-mill, page B3 story when he got a tip that led to the House Fiscal Agency scandal. Eventually, his stories revealed that agency officials misspent $1.8 million in public funds. The story led to the conviction of five people. Agency director John Morberg, who wrote himself $50,000 bonuses from the agency checkbook, pled guilty to charges in April, and others are still facing charges. Rep. Dominic Jacobetti, a longtime legislator who chaired the committee that oversaw the agency, was removed from that post, and the legislature ordered a thorough audit and sweeping reforms of its financial practices after the story broke.

"It was an incredible story in terms of how much it changed government," he reflects. "For a journalist, the biggest payoff is how much of a difference you can make with a story. In a lot of ways, that is more meaningful to me than the winning the Pulitzer."

Ironically, Mitzelfeld, 32, won the top prize in his field after he left journalism for a new career in law. He says it was time to take a break from reporting because he was perhaps too devoted to it.

"I realized I was becoming almost obsessive. I was at it 24 hours a day," he says, noting that it left no time for the family he and his wife would like to start. His own drive and the expectations he'd set made it impossible to simply slow down, so he switched careers. He has absolutely no regrets.

"I had no idea what to expect from law school. I have been completely blown away by how interesting and how much fun it is. It's terrific to watch my professors think out loud, and I'm in awe of my fellow students. The intellectual atmosphere is like nothing I've experienced in journalism," he says. He was pleasantly surprised to find that law and journalism overlap often. "My writing ability is so helpful, and I'm surprised to find that word choice is even more important in law than in journalism," he says.

Graduation is still two years away, and he is not sure where his career in law will lead, but media law or government law are possibilities. Because he thinks his true talent lies more in investigation than in writing, he also thinks he might become a prosecutor — "a reporter with subpoena power," he jokes.

67 land clerkships

Sixty-seven graduates will be starting judicial clerkships in the summer and fall of 1994. This is the second largest number of clerkships Michigan students have obtained in any single year, and continues a long-term trend of improved clerkship placements. The clerkship class includes two 1993 graduates who will be clerking for U.S. Supreme Court justices.

David Kravitz, who is now clerking for the Hon. Stephen Breyer of the U.S. Court of Appeals for the First Circuit, will work for Justice Sandra Day O'Connor. Gregory Magarian, now with the Hon. Louis F. Oberdorfer of the U.S. District Court for the District of Columbia, will clerk for Justice John Paul Stevens. A 1994 graduate, Sean Gallagher, also has accepted a Supreme Court clerkship with O'Connor for 1995.

Seven May 1994 graduates will clerk in supreme courts in different states. According to Professor Kent Syverud, clerkship faculty advisor to the class of 1994, this is a response to an increase in student applications to state appellate courts.

Meanwhile, the second-year students showed strong interest in clerkships for 1995. About 160 students applied for posts, and faculty wrote well over 10,000 letters of recommendation for applicants, according to Professor Deborah Malamud, this year's clerkship advisor. A final tally on hiring won't be available until fall, but as of April 1, placements were ahead of the count at the same time last year.

Students seeking clerkships for 1995 had the advantage of more precise, fact-based advice this year, because Malamud could turn to a growing set of computer databases to help students assess their chances.

The Placement Office has long kept a database of judges offering clerkships and another that records graduates' jobs, including clerkships. Both of those have been improved to capture more information relevant to the clerkship search. In

addition, last year Syverud started a complementary database of students seeking clerkships, which includes information on applicants' grade point averages, journal status and clerking preferences.

The databases allow better statistical analysis of clerkship placement, said Malamud. She can easily see placement results by gender, minority status, geographic area, grade point average, or many other variables.

"All of this is an advisory tool," she explained. "If a student comes in and says, 'This is my grade point average and I'm not on a journal; what are my chances of getting a clerkship with this judge?' I can turn to the computer on my desk and give them a pretty good idea," she commented. "On an average phone call or office visit from a student, I'm bouncing back and forth between these three databases.

"Sometimes a student who is clerking will call to let us know about a vacancy with a judge. Using the student database, I can quickly figure out if I have an applicant who will fill the bill," Malamud said.

Malamud noticed three trends in clerkships. First, more students are seeking a second clerkship, moving from a state court to a federal district court or from a federal district court to a court of appeals post. Second, clerkships are generally more popular, so competition has increased. Finally, more judges are hiring permanent clerks, reducing the number of posts available.

Here is the list of new clerks:

Jeffrey Alpern
Hon. Robert McLaren
Illinois Court of Appeals

Jeffrey Appelt
Michigan Court of Appeals

Julie Beck
Michigan Court of Appeals

Joshua Berman
Hon. Joel M. Flaum
U.S. Court of Appeals for the Seventh Circuit

Mitchell Berman
Hon. J. Dickson Phillips Jr.
U.S. Court of Appeals for the Fourth Circuit

Lisa Bernt
Hon. Daniel O'Hern
New Jersey State Supreme Court

Thomas Byrne
Hon. David McKeague
United States District Court for the Western District of Michigan

Mark Carpenter
Hon. James M. Sprouse
U.S. Court of Appeals for the Fourth Circuit

Gary Chambon
Michigan Court of Appeals

Leslie Chang
Hon. Stewart Pollock
New Jersey State Supreme Court

Kimberly Clarke
Hon. Hugh Brenneman, Magistrate
U.S. District Court for the Western District of Michigan

Leslie Collins
Hon. Anna Diggs Taylor
U.S. District Court for the Eastern District of Michigan

Jill Dahlmann
Hon. Norma H. Johnson
U.S. District Court for the District of Columbia

David Dinielli
Hon. Cynthia H. Hall
U.S. Court of Appeals for the Ninth Circuit

Noah Finkel
Hon. Nancy G. Edmunds
U.S. District Court for the Eastern District of Michigan

Matthew Fischer
Hon. John A. Nordberg
U.S. District Court for the Northern District of Illinois

Benson Friedman
Hon. Rya W. Zobel
U.S. District Court for the District of Massachusetts

Karen Gaffke
Hon. Frederic N. Smalkin
U.S. District Court for the District of Maryland

Sean Gallagher
Hon. Alex Kozinski
U.S. Court of Appeals for the Ninth Circuit

Rachel Gandin
Hon. William Johnson
New Hampshire State Supreme Court

James Gehrke
Hon. James H. Brickley
Michigan State Supreme Court

Heather Gerken
Hon. Stephen Reinhardt
U.S. Court of Appeals for the Ninth Circuit

Barbara Gilbert
Hon. William H. Albritton III
U.S. District Court for the Central District of Alabama

Sarah Greden
Hon. Horace W. Gilmore
U.S. District Court for the Eastern District of Michigan

Joseph Grekin
Hon. James H. Brickley
Michigan State Supreme Court

Eric Grimm
Hon. John D. Rainey
U.S. District Court for the Southern District of Texas

Helena Hall
Hon. Allen T. Compton
Alaska State Supreme Court

Peter Hardy
Hon. George Woods
U.S. District Court for the Eastern District of Michigan

Stephen Hart
Hon. Kenneth Hoyt
U.S. District Court for the Southern District of Texas

Jennifer Haskin
Hon. Douglas W. Hillman
U.S. District Court for the Western District of Michigan

Karyn Johnson
Hon. Loretta A. Preska
U.S. District Court for the Southern District of New York

Amy Judge
Hon. Sarah Evans Barker
U.S. District Court for the Southern District of Indiana

Praveen Kamath
Hon. E. Norman Veasey
Delaware State Supreme Court

William Komaroff
Hon. Jerome Farris
U.S. Court of Appeals for the Ninth Circuit

Jeffrey Koppy
Hon. Suzanne Conlon
U.S. District Court for the Northern District of Illinois

Ann Kraemer
Hon. Samuel Wilson
U.S. District Court for the Western District of Virginia

Lauren Krasnow
Hon. Clarence Newcomer
U.S. District Court for the Eastern District of Pennsylvania

David Kravitz
Hon. Sandra Day O'Connor
United States Supreme Court

Nancy Laethem
Hon. Robert Cleland
U.S. District Court for the Eastern District of Michigan

Beth Leibowitz
Michigan Court of Appeals

Cheryl Leighty
Hon. Cornelia Kennedy
U.S. Court of Appeals for the Sixth Circuit

Andrew Levitt
Hon. Frank Battisti
U.S. District Court for the Northern District of Ohio

Lisa Lodin
Michigan Court of Appeals

Gregory Magarian
Hon. John Paul Stevens
United States Supreme Court

Jill Major
Hon. Mildred Edwards
District of Columbia Superior Court

Monica Navarro
Hon. Julian A. Cook Jr.
U.S. District Court for the Eastern District of Michigan

Marilla Ochis
Hon. Raymond J. Pettine
U.S. District Court for the District of Rhode Island

Mona Patel
Hon. Edmund V. Ludwig
U.S. District Court for the Eastern District of Pennsylvania

Kathryn Rand
Hon. J.P. Stadtmueller
U.S. District Court for the Eastern District of Wisconsin

Peter Reitan
Hon. Michael J. Melloy
U.S. District Court for the Northern District of Iowa

Andrew Rosa
Hon. Thomas Penfield Jackson
U.S. District Court for the District of Columbia

Michael Ross
Hon. Jerome Farris
U.S. Court of Appeals for the Ninth Circuit

Rebecca Ross
Hon. Alan N. Bloch
U.S. District Court for the Western District of Pennsylvania

Daniel Ruzumna
Hon. Jay Waldman
U.S. District Court for the Eastern District of Pennsylvania

Diane Smason
Hon. Bernard A. Friedman
U.S. District Court for the Eastern District of Michigan

Michelle Smith
Michigan Court of Appeals

Cynthia Stroman
Hon. Emilio Garza
U.S. Court of Appeals for the Fifth Circuit

Sonia Suter
Hon. John M. Walker Jr.
U.S. Court of Appeals for the Second Circuit

Daniel Varner
Hon. Allan C. Page
Minnesota State Supreme Court

Christopher Ware
Hon. John Feikens
U.S. District Court for the Eastern District of Michigan

Kimberly Wehle
Hon. Charles Richey
U.S. District Court for the District of Columbia

Bryan Wells
Hon. William Hoeveler
U.S. District Court for the Southern District of Florida

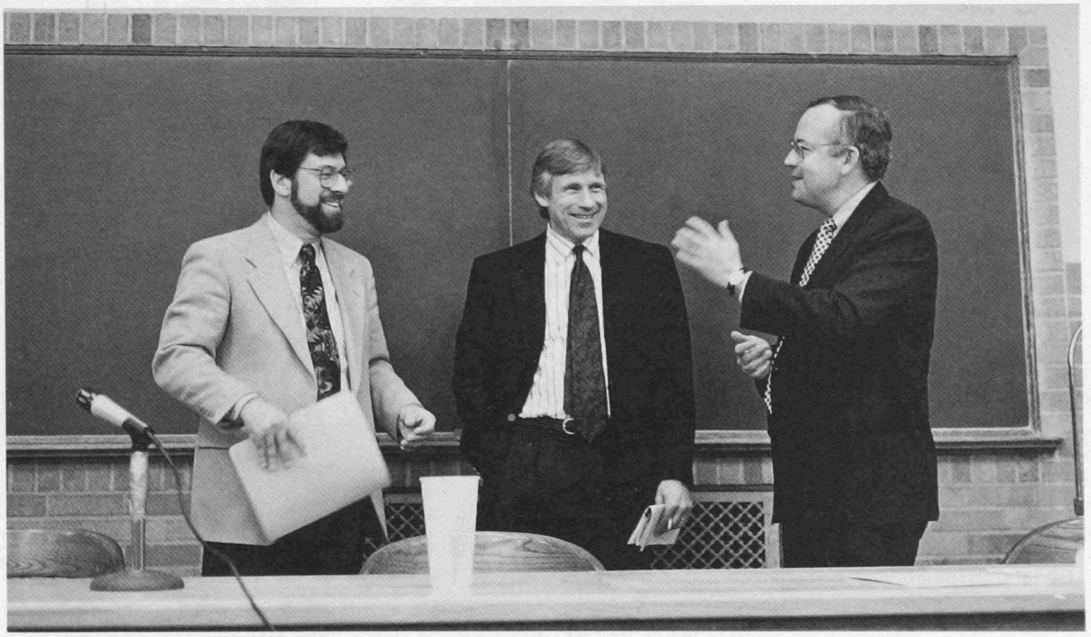
Charles Wiggins
Hon. Robert E. Payne
U.S. District Court for the Eastern District of Virginia

Robert Wilson
Hon. Marilyn Rhyne Herr
Hunterdon County Civil District Court

David Wissert
Hon. Wilfred P. Diana
New Jersey Superior Court

Susan Wittenberg
Hon. Francis D. Murnaghan Jr.
U.S. Court of Appeals for the Fourth Circuit

Katherine Wyman
Hon. Brent E. Dickson
Indiana State Supreme Court



Religion in schools —

In a friendly debate, Howard Simon (right), executive director of the American Civil Liberties Union of Michigan, disagreed with "unabashed Christian" Kenneth Starr over the proper level of religious expression in public schools. Starr is a former U.S. solicitor general and former judge of the U.S. Court of Appeals for the D.C. Circuit. Dean Lee Bollinger moderated the debate, which was sponsored by the Christian Law Students Association, the Federalist Society and the University's ACLU chapter.

Cook lectures critique the media

The 1993 William W. Cook Lectures on American Institutions produced a rich critical analysis of how the media often fails at its historical role in the American political process and of some new ways in which it succeeds.

Roger Wilkins, A.B. '53, J.D. '56, a former journalist and assistant U.S. attorney general, debunked the myth of objectivity in the news media and lamented missing perspectives, particularly that of African Americans.

Kathleen Hall Jamieson, dean of the Annenberg School for Communication at the University of Pennsylvania, used video clips to show how political campaign messages are transmitted effectively in new ways and unexpected places like MTV.

Todd Gitlin, M.A. '66, director of the Mass Communications Program at University of California at Berkeley, argued that the current "moral crusade" against violence in the media is a surrogate for seeking political solutions to the much tougher social problems wracking our society.

The three distinguished lecturers spoke to large crowds at the 36th Cook Lecture Series March 7-8. Dean Lee Bollinger and Jay Rosen, an associate professor of journalism at New York University, joined them in a wrap-up round table discussion that sought ways to improve the media's role in politics.

Wilkins, now the Clarence J. Robinson Professor of History and American Culture at George Mason University, told audiences that he left law school 40 years ago a happy young man, buoyed by his faith in First Amendment freedom, Jeffersonian ideals of democracy, and the 1954 Brown v. Board of Education ruling that struck a decisive blow to race discrimination. "I've come back after 40 years with quite a heavy heart, saddened that our politics is not as healthy as Mr. Jefferson might have hoped. The mass media have failed in ways that contribute to that," he said.

Commercialism and the myth of objectivity prevent the media from keeping Americans fully informed about public affairs, argued Wilkins, who won a Pulitzer prize for Watergate coverage at the Washington Post. "I'm here to tell you I do not believe in objectivity. Reporters are not blank slates," he said. Journalists' views and values inevitably shape choices that, in turn, shape news. "Most news judgment in the U.S. is exercised by middle-aged, middle-class white men. They are afflicted with the powerful delusion that their angle of vision is the broadest view."

Whether he was working at the Department of State or the Department of Justice, the New York Times or in academia, Wilkins said he always viewed the world as a Black American. "We do see America differently than white people do, and our view is not reflected in the newspapers or on TV," he said. "I think if you asked a Black person what the biggest story about Blacks was, the answer wouldn't be Louis Farrakhan. I think the answer would be the lack of jobs. The second biggest story wouldn't be crime and violence; it would be how hard we try [to improve lives.]"

Wilkins, Gitlin, and Rosen all noted the news organizations often fail to live up to their oft-cited responsibility to participatory democracy because they have become big businesses driven by commercial concerns. "The bottom-line value in journalism is the bottom line," Wilkins said. That means the media:

- Fire or don't hire those with unorthodox, anti-capitalist views, thus narrowing the spectrum of ideas put forth for public consumption.
- Focus on the trivial and the sensational (Whitewater, Tonya Harding) and forsake the dull (the HUD scandal, Bonnie Blair's decade of Olympic achievement).

Gitlin said market forces — the media's drive to profit by feeding the public tastes — have driven violence on screen to astonishing heights. He personally loathes "the blood spatters and car crashes and body bags" and thinks the

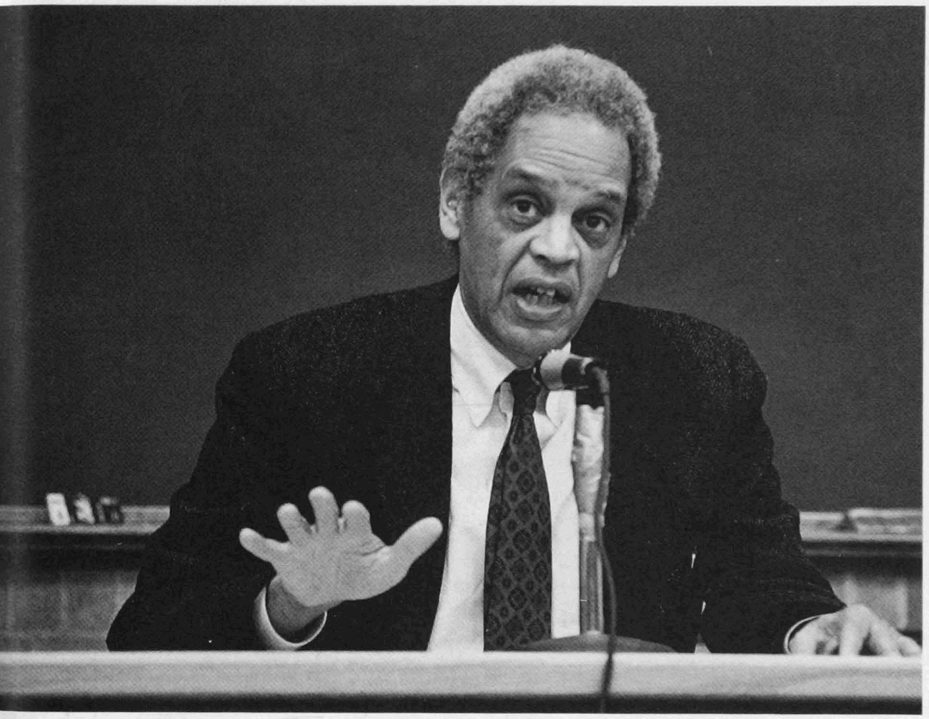
Todd Gitlin

Kathleen Jamieson

media is justifiably criticized for dishing out these images. However, he believes the recent public outcry to reduce real-life violence by censoring on-screen carnage is a symbolic crusade — one that allows Americans to avoid the "appalling political reality" of societal problems.

"The links between media images and violent acts are weaker than recent headlines would lead us to believe. I can't believe the sheer extravagance of the alarms raised recently about media violence are justified by the violence that results," Gitlin said.

Studies of children leave



Roger Wilkins

Lee Bollinger

As the MTV generation assumes control of both the media and the politics, they may bring with them this rapid-fire, image-based communication style they are comfortable with and leave older generations out of the loop.

Jay Rosen

little doubt that watching violence reinforces aggression — among aggressive children. But, Gitlin pointed out, "Correlation is not a cause. When it comes to copycat acts of violence echoing scenes from TV or movies, it's impossible to know if the perpetrator would have found some other way to commit mayhem.

"To paraphrase the National Rifle Association, images don't spill blood; human emotions equipped with guns spill blood. Poverty is a bigger determinant of violence. An increase in jobs with decent wages would save hundreds more lives than violent media images cost," Gitlin stated.

"When liberals fulminate against media violence, they are looking for answers in the wrong place. They are much less interested in a war on poverty, a war on guns, a war to save the crumbling family. They are on a feel-good crusade, a moral panic substituting for serious political solutions to serious problems. It's a costless, but fruitless, approach."

Visual images may not cause violence, but they do convey political ideas effectively to a young audience, according to Jamieson. The author of several books analyzing the media's role in political campaigns, she noted that in the 1992 presidential race, music videos were a new and important source of propositional discourse about the candidates.

"I contend that a debate of sorts took place on MTV, VH1, and the Nashville Network," she said. The last two often aired Randy Travis' "A Thousand Points of Light" video, featuring George and Barbara Bush and returning Desert Storm veterans. MTV countered with a rap tune called "No Points of Light for Me" and the satirical "Read My Lips." After showing all three videos, Jamieson explained that her research has turned up important generational differences in the messages received.

"When we show people under age 30 these rap videos, we find that they are processing the rapidly-paced images faster and making more sense of them. They have more memory of the visual images they've seen, and they ascribed more meaning to the images they recall."

When shown the same videos, "Those over age 40 find it distracting, and they need words in print over the images to translate what they are seeing. They need more exposures to an image to recall it afterward," she said. They also question the legitemacy of messages delivered in this style, while young audiences don't even find the medium noteworthy.

As the MTV generation assumes control of both the media and the politics, they may bring with them this rapid-fire, image-based communication style they are comfortable with and leave older generations out of the loop. "Ultimately, what we think is that there is a whole range of ways to communicate to younger audiences that won't work for older groups, and the opposite may be true," she said. "Academics studying political communication can't ignore these nontraditional media, or they will lose sight of the next generation entering politics."

At the concluding roundtable discussion, Rosen added to the critique of media by naming four crises in journalism: They are:

- economic, because the media have lost viewers and readers as they failed to engage them in public discourse;
- technological, because journalists are very confused about how to deal with new forms of communication like MTV and computer networks;
- intellectual, because no one believes in objectivity, the defining metaphor for journalism, but journalists don't know what should replace this notion; and
- spiritual, because the people bringing us the news have no idea what they are in favor of. "They know what they are against, but they have no idea what kind of society they want to bring about," said Rosen, who is media editor of Tikkun magazine and author of *What Are Journalists For?*

To overcome these crises, journalism has to be rebuilt from the ground up, Rosen said. "The challenge to journalism is to become the most powerful argument for citizenship. It should make consistent, compelling argument about why we should be interested in public affairs."

Summing up the key observations of the three lecturers, Dean Lee Bollinger asked, "What are the policy implications? What kinds of public regulation might bring about the kind of media we want and need?" Jamieson suggested applying equal time broadcast provisions and campaign contribution regulations to new formats like the overtly political music videos, which functioned much like paid advertisements. Gitlin and Wilkins called for more public broadcasting and free political advertising to diminish the power of money in politics.

The panelists agreed that there are some things the media can still do well. For example, the 1992 presidential campaign offered some improved coverage, particularly in televised town meetings when voters — not reporters or politicians — were allowed to ask questions.

Wilkins noted, "I've been thinking as I've listened to our lectures that we've been very hard on journalists. We've said that journalism trivializes our politics, but we can turn that around. Our politics is trivial. Because the difference between our two major political parties has disappeared, politics is not a serious debate of alternate visions of society.

"We decry what we see in the news and wish journalism would tell us more, but as Professor Gitlin has said, there's a lot of stuff we don't want to see," Wilkins said. "We get the politics we deserve."

— by Toni Shears

Allen outlines threats to 'habits of legality'

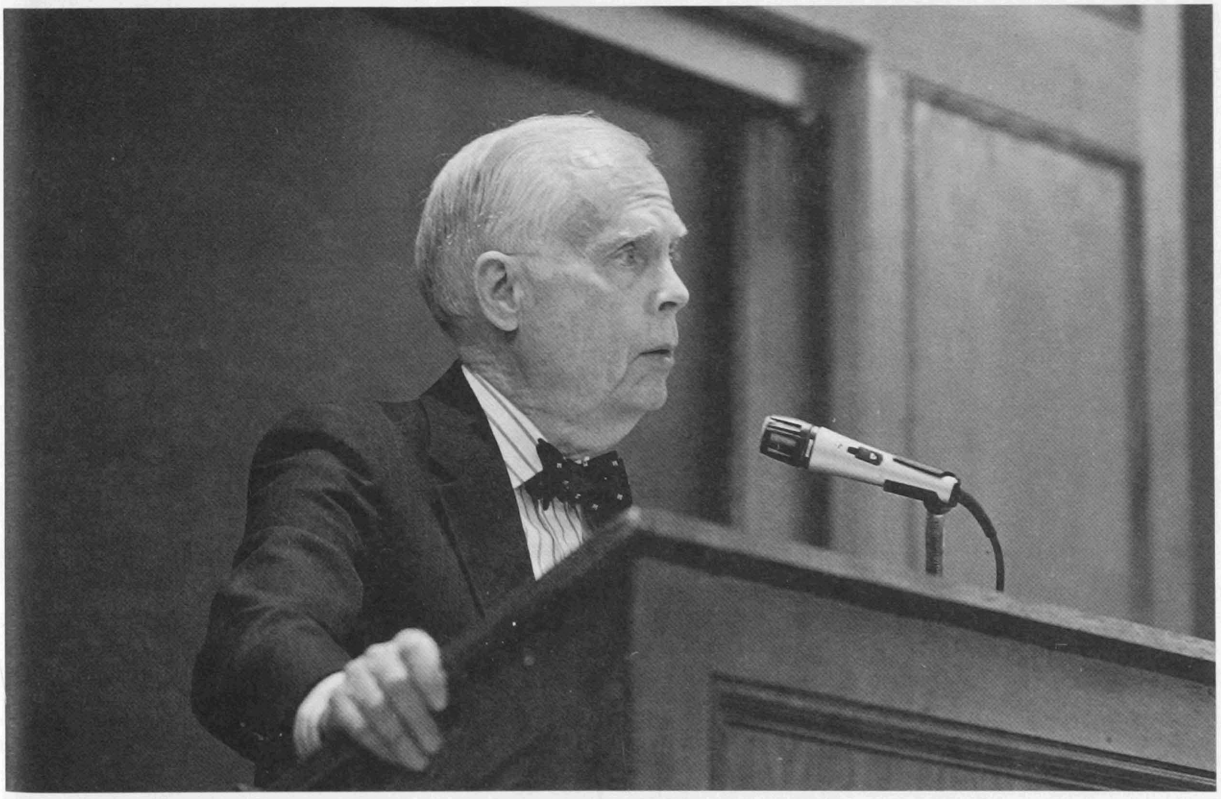
Former Michigan Law School Dean Francis A. Allen highlighted ways the ideal of legality is threatened in the 1994 Thomas M. Cooley Lectures.

Allen, a professor of law and Huber C. Hurst Eminent Scholar at the University of Florida, delivered three speeches April 4-6 under the theme, "The Habits of Legality: Criminal Justice and the Rule of Law." His talks were the 40th in the lectureship series honoring Cooley, a member of the first U-M law faculty and a leading figure in 19th-century law.

In glowing introductions for each talk, Dean Lee Bollinger and Professors Terry Sandalow and Carl Schneider made it clear that there was no one more qualified than Frank Allen to explicate the rule of law. As one of the preeminent criminal law scholars of our time, he has graced the faculties of Northwestern, Harvard, Chicago, Michigan and Florida in a remarkable 46-year teaching career. His ideas have not only inspired thousands of students, but also influenced legislation, judicial decisions, criminal procedure, and the American Law Institute's Model Penal Code.

In his first lecture, Allen explored the intellectual foundation of the rule of law, or the habits of legality. He noted that the rule of law was an ancient concept — an ideal of civilized society in which law constrains the power of rulers. "It is aimed at defining relations between governments and citizens and among each other," he said. Accordingly, it is a concept that encompasses extraordinarily broad areas of public activity and many different meanings. For example, in one interpretation, "the rule of law could be no law at all, as in a system where a ruler rules by pure caprice."

A host of pressures constantly threaten to erode the rule of law; one major source of pressure discussed in Allen's second talk was the fear of crime: "Our fear of overzealous prosecution is overshadowed by our fear of crime. Acute concerns about crime have dominated public and political life for more than a generation." In a community threatened by crime, international aggression, or terrorism,



"Our fear of overzealous prosecution is over shadowed by our fear of crime. Acute concerns about crime have dominated public and political life for more than a generation."

— FRANCIS A. ALLEN

officials seek to exceed law or invent new laws to control these elements."

As a current example, Allen pointed to the so-called war on drugs. He called it "a threat to legality in multifarious ways." Through harsh sentencing guidelines, this drug policy has increased incarceration, with a dwindling emphasis on correction and rehabilitation. Vigorous efforts to prevent drug sales have brought about deeper intrusions into intimate areas of life. Zealous undercover drug enforcement agents have flirted with perjury and entrapment, and too many police officers have succumbed to the temptation of both the drugs themselves and the immense amounts of money they bring. "The effect has been to shrink constitutional rights and the rule of law, for in many areas, the fourth amendment's protection against unreasonable search and seizure is the only applicable law," Allen said.

In the war on drugs, the element of charity underlying key principles in our legal system has been lost, Allen explained. "Crimes are viewed in terms of money. It is a war that is not equal in its victims, who are more Black than white. Our posture toward drug use is punitive, not preventive or rehabilitative. Even medical uses of drugs are treated harshly," he said. By calling it a war, "we make the criminals our enemies, which downplays our responsibility for conditions contributing to drug use and related crime."

Allen cited the revival of the death penalty, with its expensive, capricious, often complex and incoherent administration, as another example of an assault on the rule of law.

In his third lecture, Allen focused on the decentralized structure of the American legal system as a threat to the ideal of legality. "The American system is uniquely fragmented. There is no single institution responsible for the efficiency and decency of criminal justice," he noted.

Within any given geographical area, multiple enforcement agencies administer the law, and each police agency and prosecutor exercises wide discretionary power in pursuing justice. "As a consequence, enforcement is highly parochial, resistant to reform, and weak in accountability."

Cos' jokes for a good cause

It's tough sending children to college.

Nobody tells that truth more comically than Bill Cosby, who kept audiences chuckling over the high psychic and financial costs of educating his offspring at a benefit performance for the Law School.

Ultimately, "An Evening with Bill Cosby," held April 15 at Crisler Arena, will make it much easier for some students to attend the University of Michigan Law School.

The Cosby performance launched the Law School's **Give Something Back** Leadership Program. The program offers three-year, all-expense paid scholarships to students who demonstrate not only leadership and financial need but also a desire to help others like themselves.

During their years at Law School, recipients will go back to their communities to give younger students a helping hand or an encouraging word. As role models and mentors, they will encourage the pursuit of higher education and ambitious career goals.

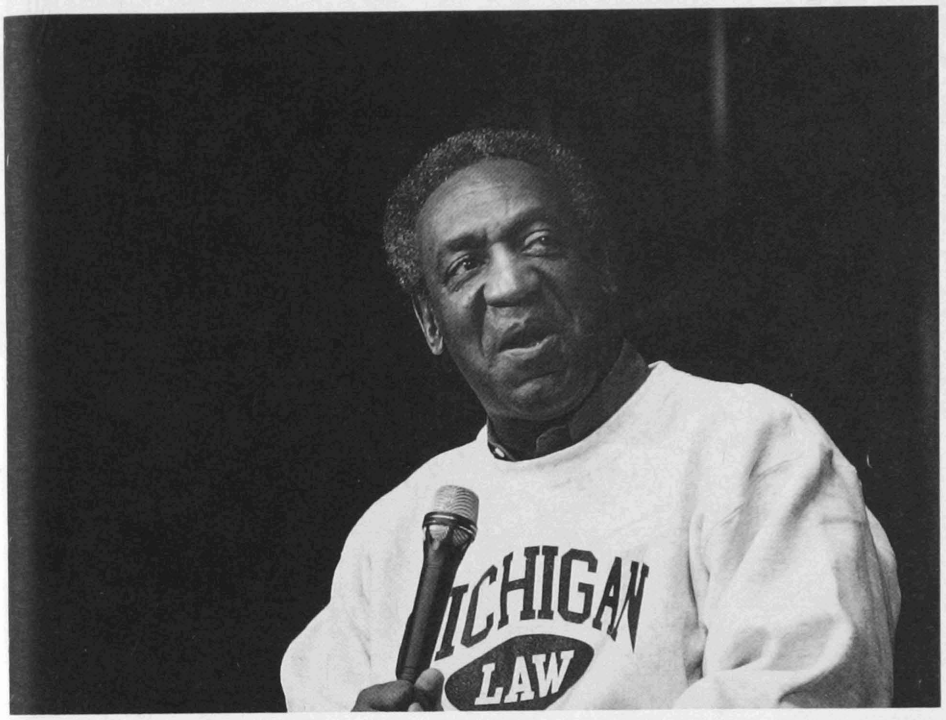
The benefits of the **Give Something Back** program are far-reaching. It enhances the ability of the Law School to attract students who are potential leaders. It gives students greater leeway in making career choices, since the obligation of repaying considerable debt is removed. In addition, it provides one of the finest legal educations in the nation to some who might otherwise find attending Michigan beyond their means.

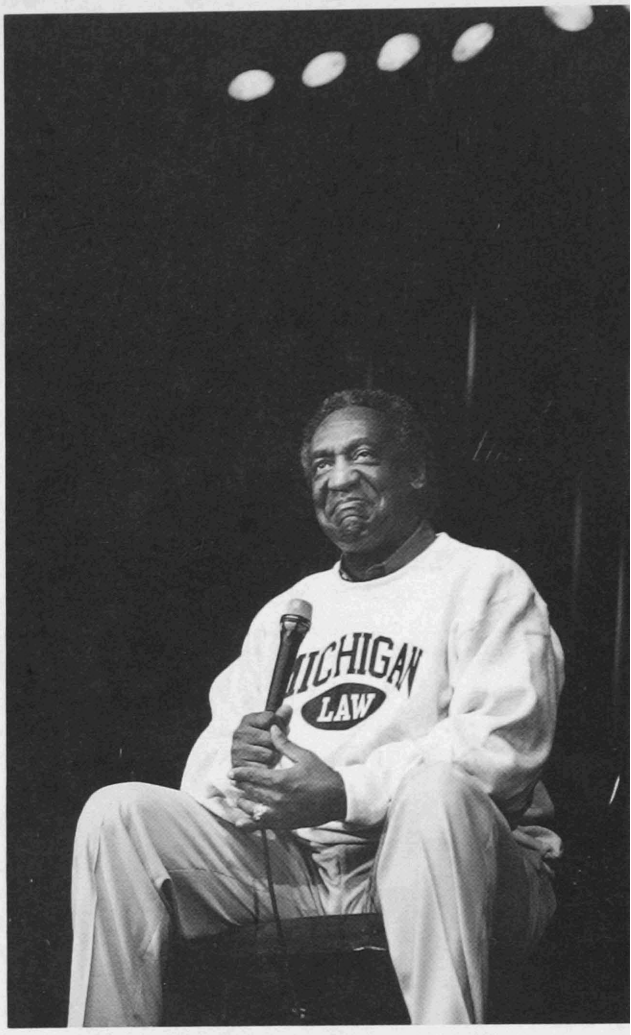
Cosby, who is known both as an entertainer and a humanitarian, contacted the Law School to offer a benefit performance that would support a scholarship designed to encourage students to give something back — to help others as they themselves had been helped. The Law School arranged several ways for fans to enjoy Cosby's timeless humor and contribute to the cause. In addition to arena seats, fans could, for larger donations, purchase tickets for tables near the stage that included a prelude supper and an encore reception.

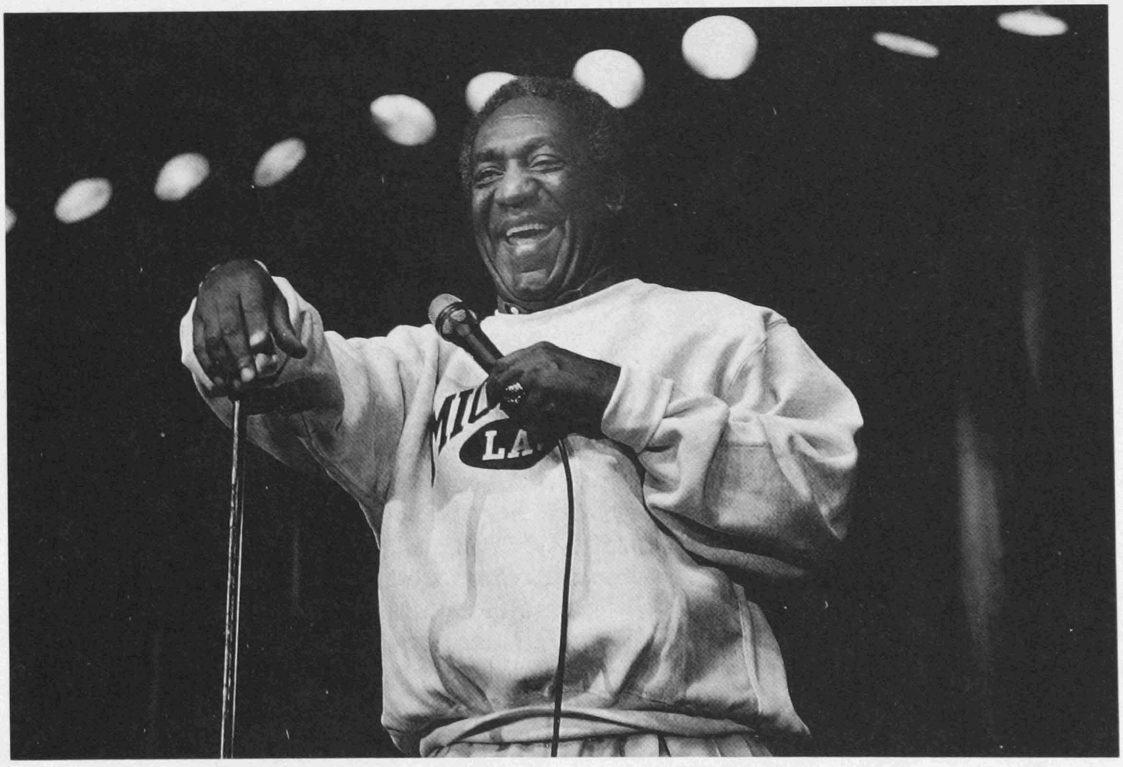
An audience of all ages heartily enjoyed Cosby's thoughts on marriage, aging, face lifts, expensive gifts, and the challenges of educating a daughter with a 1.7 grade point average. By the time she graduated "thank you laude," he had spent $140,000. The Ann Arbor audience roared with appreciation when he added that 60 percent of that was for parking tickets on the car he bought to help her get to the library to raise her grade point average.

Cosby is a star of television and film, an author and producer, and the best-selling comedian of all time on records, but he also is increasingly recognized for his philanthropy. An advocate of education, he is an active trustee of his alma mater, Temple University in Philadelphia. He earned a doctorate in education in 1977 from the University of Massachusetts. His doctoral thesis dealt with using his cartoon characters,

Bill Cosby joked about the high cost of higher education while helping to ease that burden for others.







Fat Albert and the Cosby Kids, as a means for learning in elementary school.

In concert, Cosby talked of the love, understanding, and advantages parents hope to give their children from the day they are born. In real life, Cosby and his wife, Camille, have given millions of dollars to schools and colleges, enhancing the future of many, many children.

With the **Give Something Back** Leadership Program, Cosby has provided impetus to create a circle of students who will lead, serve and mentor future generations of leaders.

To contribute to the Give Something Back Leadership Program, write to Development and Alumni Relations at 721 S. State, Ann Arbor, Mich. 48104-3071, or call (313) 998-7970.

Bridge week examines ethics in all areas of law

First-year students explored the ethics of lawyering across a variety of types of practice during a winter term bridge week.

During the week, students examined legal ethics in the contexts of civil procedure, negotiation, criminal defense and prosecution, the large law firm, public interest law and the judiciary. Visiting speakers and faculty drew issues for discussion from documentary films, "L.A. Law" episodes, prominent cases, scholarly articles, and war stories from their careers.

The result was an especially rich and nuanced examination of ethics, said Heidi Li Feldman, assistant professor of law, who coordinated the bridge week along with David Luban, the Morton & Sophia Macht Professor of Ethics at the University of Maryland.

Bridge weeks are a key feature of the New Section, a program that offers one-fourth of the first-year students a more multidisciplinary approach to standard courses and more frequent evaluation. During the week, normal classes are suspended while students meet with a wide array of experts to discuss a specific, current issue across the boundaries of normal courses.

Luban, the author of several books on legal ethics and professional responsibility, noted, "Legal ethics courses are unique in law school because ethics is the only thing that comes into every form of legal practice. The idea of a bridge week that uses ethics as the bridge to build links between courses is just perfect."

Professor Sam Gross launched the week with a talk on how the adversarial system of law shapes lawyers' conduct. Luban and Judge William Schwarzer, director of the Federal Judicial Center, continued that theme with specific emphasis on civil procedure.

Schwarzer, a key player in efforts to reform the Federal Rules of Civil Procedure, discussed how discovery rules were changed to limit excessive litigation. He also debunked the notion that lawyers must practice deception to be an effective advocate for a client. "Your most important asset in the courtroom is your credibility. If you make an argument that stretches the truth or disregard facts, the chances are that the judge or jury will see right through you. You are most effective by making an argument that can be believed."

To explore the line between being a good advocate and an accessory to crimes, Harris Weinstein, formerly chief counsel of the Office of Thrift Supervision, discussed OTS' case against Kaye, Scholer, Fierman, Hays & Handler. According to Weinstein, the firm's aggressive representation of the financially troubled Lincoln Savings & Loan before federal bank regulators may have crossed that line. After Lincoln failed, OTS sued the firm for $275 million for misrepresenting the extent of the thrift's insolvency and froze the firm's assets to recover losses.

Lincoln Caplan, author of several books and articles on the legal profession, talked about the ethical world of the

70th Campbell Competition —

(From left) Jim Greiner and Jon Hacker delivered the winning brief for the respondent in a case that closely resembled the DeBoer adoption dispute in the 1994 competition. Serving as Supreme Court Justices for moot court were the Hon. Christine Durham, Supreme Court of Utah; Hon. Anthony J. Scirica, J.D. '65, U.S. Court of Appeals for the Third Circuit; and Hon. Richard Bilby, J.D. '58, U.S. District Court, Arizona. Sean Hecht and Peter Beckerman were counsel for the petitioners .

large law firm, and Lucie White, a law professor at the University of California-Los Angeles, discussed the issues faced by public interest lawyers.

The bridge week blended traditional classroom discussions with many other kinds of teaching materials and activities. Professor William Miller's overview of the ethics of negotiation followed an independent negotiation exercise. Carol Steiker, a Harvard Law School assistant professor and a former Washington public defender, used clips from "Anatomy of a Murder" and "L.A. Law" to explore issues such as client perjury and the ethical limits of cross-examination. Professor Debra Livingston shared with students a list of 12 ethically questionable prosecutorial actions compiled by a friend she had worked with at the U.S. Attorney's Office in Manhattan. The list showed "a fair amount of deception and coercion," she observed. Carrie Menkel-Meadow, also a law professor at UCLA, showed a tape of a settlement conference that highlighted ethical conflicts for a judge. Feldman introduced some themes from moral philosophy in a lecture on virtue ethics and lawyers' ethics.

Said Feldman, "We tried to experiment with a range of media and activities, and we found that each type of activity enhanced and built upon the others." She added, "When it comes to ethics, I think the real drama is when you see real human beings confronted with real issues. Therefore, we tried to situate discussions of ethical issues in the settings in which they arise, like public interest legal practice or negotiation."

Luban told students that the existing codes and canons of professional ethics are largely voluntary, and those that are mandatory are not often enforced. Often, violations that result in discipline are related to substance abuse problems. Students, apparently well aware of the demands of high-pressure law practice, asked Luban how to avoid the twin risks of substance abuse and unethical actions.

Luban, Steiker and other visitors said they were extremely impressed with students' participation and sharp perceptions. "I was laying out arguments that I've worked on for 15 years, so I know where all the weak points are. In 10 minutes, the students found them all," Luban said.

The bridge week was supported with funds from the W.M. Keck Foundation, which awarded the Law School an $300,000 grant in 1993 to develop ethics programs.

Lowe leaves the Law School

Jonathan Lowe is leaving the law school after a decade of fund raising for the Law School Fund. He will become director of planned giving with the United Jewish Foundation of Metropolitan Detroit in June.

Lowe, J.D. '76, joined the staff in 1984 as director of law school relations, and was named assistant dean for law school relations in 1986. "At that time, I was a one-man development office with some administrative help," he recalls. Under his stewardship, contributions to the Law School Fund increased from $1 million to $2.5 million annually.

This was vital because at the same time, the school's financial support shifted to resemble that of a private school, with operating funds coming only from tuition, gifts and endowments. The fund's growth "allowed the school to withstand a lot of financial uncertainty," Lowe said.

More recently, as director of planned giving, he worked with alumni to arrange charitable trusts, planned gifts, and bequests that both benefit the donor and help ensure the future of the Law School.

Lowe also was instrumental in establishing the alumni reunion program. Initially, he set up a support system to assist classes that planned their own reunions. "Over time, we've built that framework into a full-fledged substantive program, so that reunions are expected events, something that graduates can look forward to attending every five years."

One of the most rewarding among his many successful fund-raising efforts was the classroom renovation project. "One of my personal highlights was the dedication of Room 100 as the Jason L. Honigman Auditorium. Working with the family and the firm to bring that celebration to fruition and sharing the joy of that occassion with Jason was just wonderful," he recalled.

In his new post, Lowe will market planned gifts and bequests and help manage funds for the endowment arm of the Jewish Federation of Metropolitan Detroit. The United Jewish Foundation supports many Jewish agencies dedicated to community needs, including vocational, health, education, and family services. As he did at the Law School, he will work to ensure the future of the Detroit Jewish community through planned gifts and endowment support.

Lowe and his family will move to Bloomfield Hills. "It's a bittersweet move," he noted. "I'll miss many friends in the Law School community, but I'm excited about the challenges of my new position."

Civil rights movement must shift issues

Economic issues should be the focus of the civil rights movement today, according to panelists at the Black Law Students Alliance's fifth annual symposium held at the Law School April 9.

The symposium was called "Civil Rights in the 1990s: Where are we? Where should we go?" Centerpiece of the program was a panel discussing the question, "Is civil rights the proper focus for today's African American?"

The answer from four panelists was that the civil rights movement should be refocused, not abandoned. It must move beyond traditional issues such as access to the political process and education.

"I don't think the civil rights movement is a movement any longer. That ended in the late 1960s, because the goals set out were by and large achieved through laws that made most forms of discrimination illegal," said Theodore Shaw, a professor at the law school now on leave to serve as associate director-counsel to the NAACP Legal Defense Fund.

While civil rights organizations still receive more traditional discrimination complaints than they can handle, the key issues for the rest of this century and the next are the more subtle, intractable problems caused by economic effects of racism. "We can't continue to live in a country divided not only by Black and white but by have and have not. That gap is wider than ever before," Shaw said. If it's not halted, "that growing disparity will render the social fabric," he added.

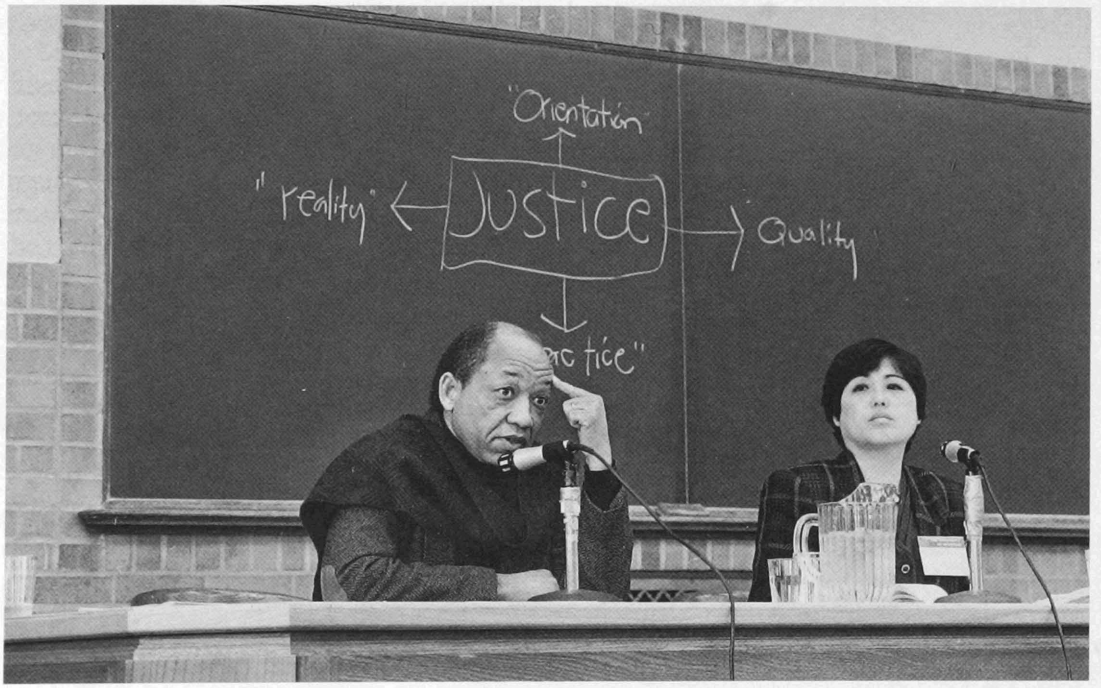
He told students in the audience, "The law won't play much of a role in these economic differences; they'll have to be addressed politically. As future lawyers, you have to look beyond the law. It's not what you'll do in the courtroom; it will be the leadership you take in the community that makes a difference. I don't care if you call it civil rights or call it something else. The issues we're facing now are just as pressing, and they require action from people like you."

Action was Jacqueline Berrien's theme, too. The voting rights litigator with the Lawyer's Commission for Civil Rights Under Law said she often wonders whether her traditional civil rights role is the best way to serve African Americans. Last summer, it was a personal tragedy that made her question whether she was attacking the right problems.

While winding up a voting rights case in one of the poorest parishes of Louisana, she heard that back home in Brooklyn, the 17-year-old son of a friend was shot to death outside his home. "I had to ask myself, if this is going on where I live, what am I doing in Louisiana fighting for voting rights?"

Her answer was that it was not an either/or choice between civil rights litigation and social action that benefits African Americans more directly. "I see by the calls for assistance to our organization that there is plenty of need for litigation, but that's clearly not the end of the agenda. The civil rights movement must become a movement in a different sense: not static, aware of emerging issues and able to listen and shift to meet new needs that arise," Berrien said.

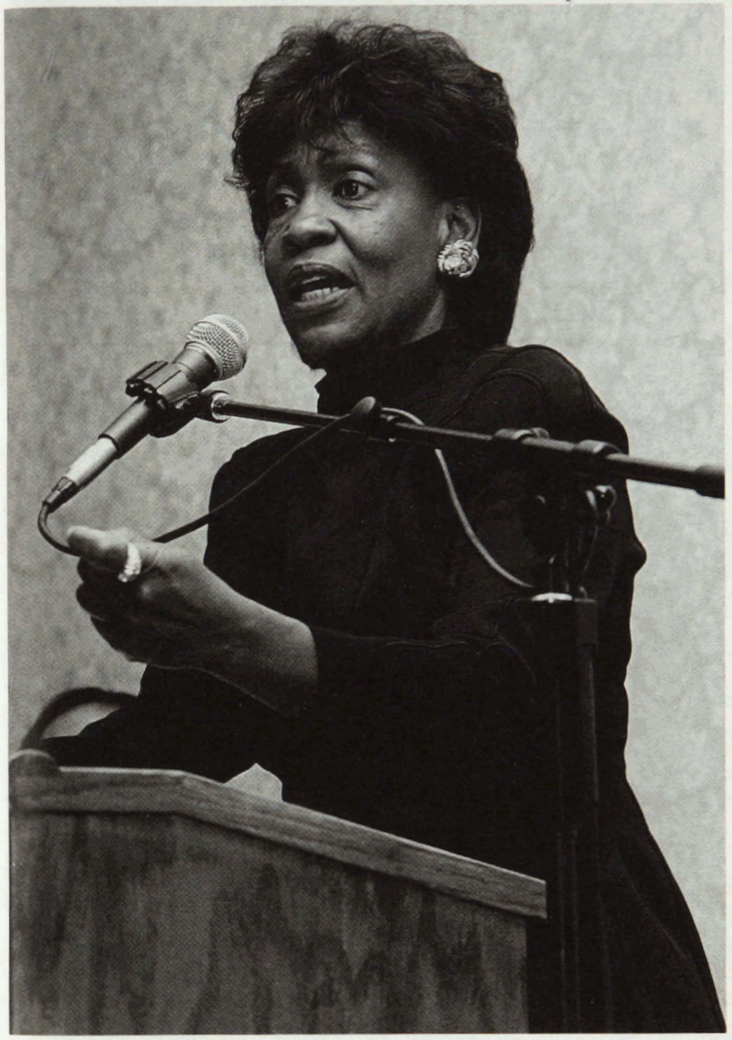
The third panelist, U.S. Rep. Harold Ford of Tennessee, said that he and other African American members of Congress fight for civil rights every day. Their method is legislation that attempts to correct failed policies that have impoverished millions.



Social Justice —

James Chaffers and Gail Nomura argued for ideals with justice at the Law School's Martin Luther King Day panel discussion. Also participating were Sharon McPhail, a Wayne County prosecutor who ran for mayor of Detroit in 1993, and Rick Olguin, a professor of social sciences at North Seattle Community College.

U.S. Rep. Maxine Waters



Ron Daniels, executive director of the Center for Constitutional Rights, argued for a new plank in the civil rights platform: reparations for African Americans economically victimized by discrimination. "I am not at all persuaded that we will be able to shift our position in society on our own, so I'm proposing that our new economic agenda must include reparations, " he said.

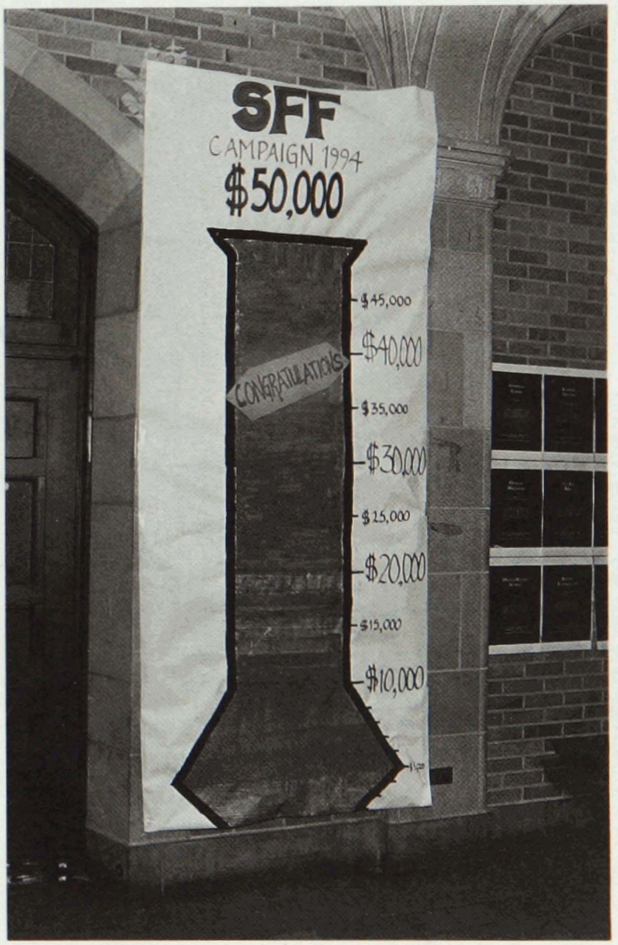
The economic solutions that the panelists suggested are closely linked to the problems of urban communities, which another symposium panel discussed.

A third panel debated the efficacy of the Voting Rights Act.

To conclude the symposium, U.S. Rep. Maxine Waters of California gave the keynote Civil rights-address at BLSA's annual Butch Carpenter Scholarship Banquet.

CLARIFICATION

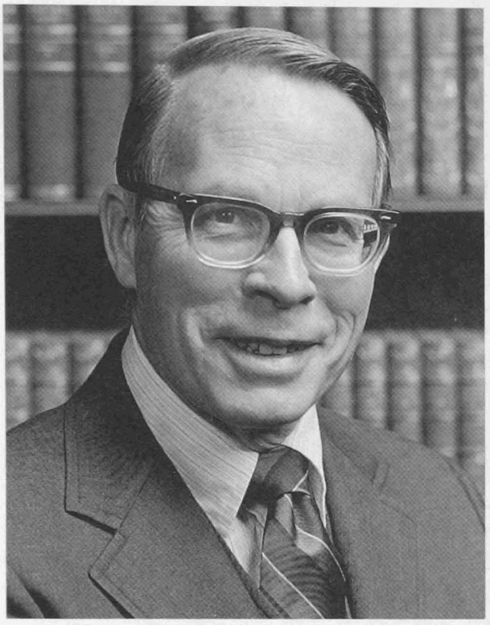
Law Quadrangle Notes would like to clarify that Marian Faupel, the attorney who represented Dan and Cara Schmidt in the Baby Jessica custody battle, did not participate in the DeBoer Dilemma bridge week because she was not invited to speak. From the bridge week story in the Spring 1994 issue, readers may have inferred that Ms. Faupel declined to speak. Ms. Faupel reports that had she been invited, she would have gladly participated. In fact, she has twice accepted student invitations to speak at the Law School about the case.



SFF success —

The law school halls were ablaze this spring with poster pleas for donations to the Student Funded Fellowship. The fund supports students who pursue unpaid summer jobs in many areas of public interest law. The biggest poster of all shows that the vigorous campaign was successful, bringing in pledges of almost $50,000. Combined with proceeds from an auction, casino night, alumni donations and the Law School's generous contribution, the fund will grant fellowships to about 60 applicants.

ROGER A. CUNNINGHAM, 1921-1994



Roger Cunningham

"No one took teaching nor scholarly expertise more seriously than Roger. A nationally-recognized expert on property law, he was a model professor of the old school. Roger will be deeply missed for his unsurpassed breadth of knowledge and his eagerness to share it."

— DEAN LEE BOLLINGER

PROFESSOR ROGER A. CUNNINGHAM, a member of the law school faculty for more than 30 years, died January 31 in Ann Arbor. A specialist in the areas of land use and property, he was the author of numerous books and monographs, including the prominent casebook *Basic Property Law*.

At a memorial service held at the Lawyers Club March 6, Dean Lee Bollinger praised Cunningham. "No one took teaching nor scholarly expertise more seriously than Roger. He was also invariably kind and generous to students and faculty who sought his advice or help. A nationally-recognized expert on property law, he was a model professor of the old school. Roger will be deeply missed for his unsurpassed breadth of knowledge and his eagerness to share it."

"Roger Cunningham was a scholar and a gentleman in the best sense of those terms," said Professor Emeritus Olin Browder, co-author of *Basic Property Law*. "I valued him as a reliable, faithful, and considerate co-editor. His scholarship was expressed in both books and articles, all of which reflected the best traditions of legal writing."

Cunningham was born in Paxton, Illinois in 1921 and attended Harvard University, where he received a bachelor of science (magna cum laude, Phi Beta Kappa) in 1942 and a law degree (cum laude) in 1948.

He served in the U.S. Navy during World War II, then practiced at the Boston firm of Nutter, McClennan and Fish for a year. He began his teaching career as a fellow at Harvard Law School in 1949. In 1950, Cunningham was named assistant professor of law at George Washington University. In 1954, he moved to Rutgers University as associate professor of law and was promoted to professor in 1957.

Cunningham joined the U-M Law School in 1959. He was named to the James V. Campbell chair in 1988 and was granted emeritus status in 1991. In addition, he served as a visiting professor at Washington University, University of Florida, and Florida State University.

At the memorial service , family and faculty members remembered Cunningham for his integrity, his vast knowledge in a surprising range of fields, and his propensity to share that knowledge. Professor John Reed noted that Cunningham took a critical interest in music. On that topic and many others, he was "knowledgable, interesting, and never in doubt. In music, as in the law, he insisted that all efforts be undergirded with a fine attention to detail," Reed said.

Cunningham's wife, Elizabeth Chase, recently preceded him in death. He is survived by a brother, James; a sister, Janice Fridley; four children: Teresa Beem, of Evanston, Illinois; Peter, of Tallahassee, Florida; John, of New Haven, Connecticut; and Christina Postema, of Ann Arbor; and eight grandchildren.

Memorial contributions may be made to the Nature Conservancy or the Roger Cunningham Memorial Fund at the Law School.

Jackson testifies on GATT

PROFESSOR JOHN JACKSON testified in support of Uruguay Round legislation before the U.S. Senate Finance Committee in March.

Jackson was asked to testify on the World Trade Organization and the dispute settlement process — two important administrative components to come out of the Uruguay Round, the eighth and most extensive trade negotiation effort to transpire under General Agreement on Tariffs and Trade.

Jackson, the Hessel E. Yntema Professor of Law, has taught and researched international trade law for many years. In the mid-1970s, he was general counsel of the U.S. Government's Office of the Trade Representative, where he helped develop the "fast track procedure" for adopting trade regulations. His recent books, *The World Trading System: Law and Policy of International Economic Relations* (1989) and *Restructuring the GATT System* (1990), addressed the need for both the World Trade Organization and a stronger dispute resolution mechanism.

The final agreement of the Uruguay Round — all 385 pounds and 22,000 pages of it — was formally completed at a signing ceremony April 15 in Marrakech, Morocco. The agreement now goes to national governments for ratification. The U.S. Congress will approve the agreement under its "fast track" procedure, probably sometime this summer, according to Jackson.

The WTO is one of the most prominent features of the Uruguay Round, Jackson told the committee. It is a "mini-charter" establishing the legal, institutional, and procedural structure necessary to implement the trade rules negotiated.

This charter attempts to address the "birth defects" of GATT, which was never really intended to be an organization at all. When it was first negotiated in 1947-48, GATT included a charter for an International Trade Organization that would provide organizational structure and secretariat services. However, Congress refused to approve the ITO, so GATT has operated without an organizational framework for almost 50 years.

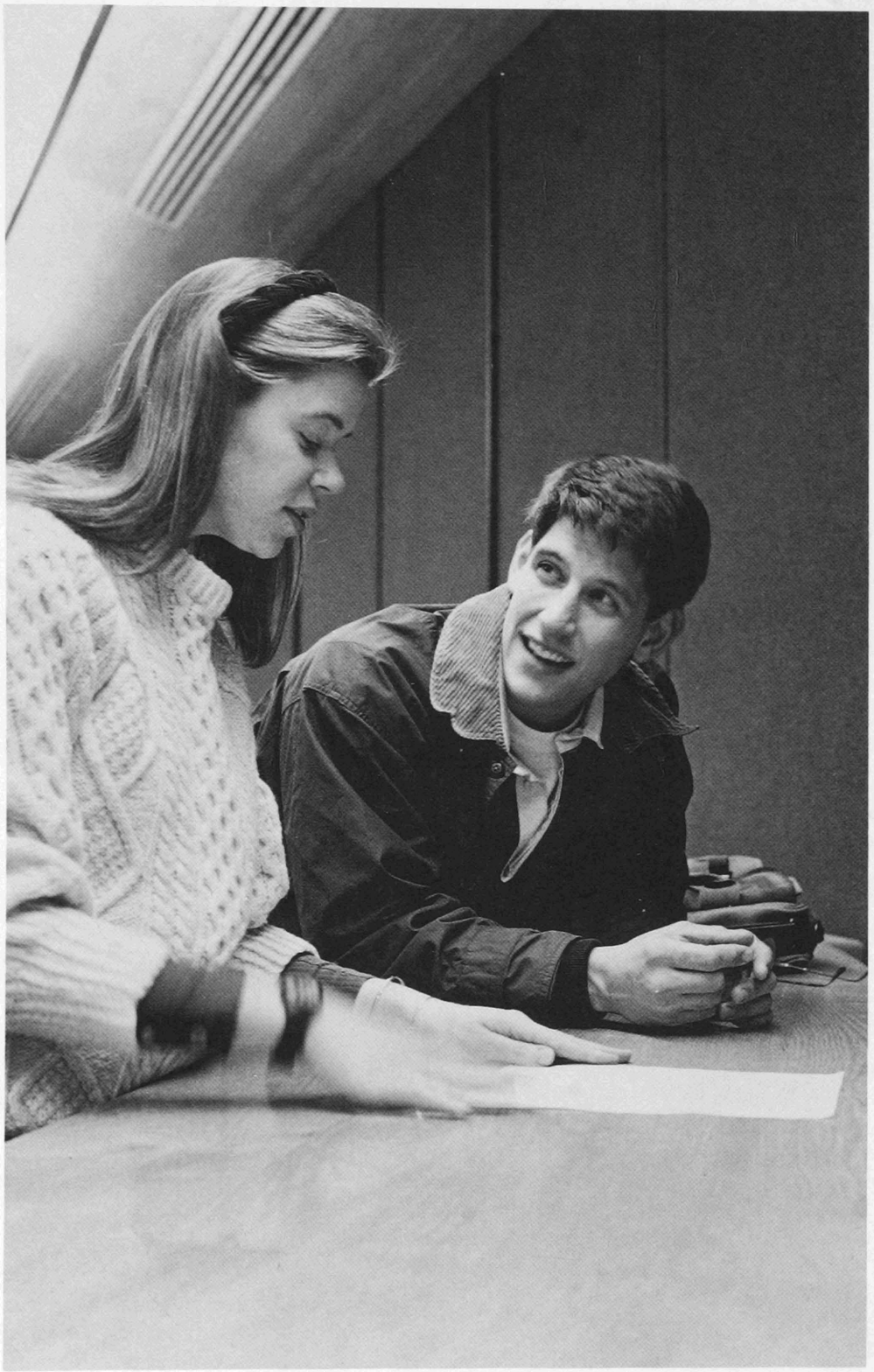
"As the decades passed, however, there was recognition that the GATT system was increasingly challenged by the changing conditions of international economic activity, including the greater interdependence of national economies and the growth in trade of services," Jackson testified. The WTO provides the structure and procedures needed to help nations address increasingly complex trade issues.

"The notion that the WTO will suddenly impose on the world a vast new bureaucracy or an all-powerful organization is more than an overstatement — it is ludicrous," he said. "A careful examination of the WTO charter leads me to conclude that the WTO has no more real power than that which existed for the GATT under the previous agreement. The WTO essentially will continue the GATT institutional ideas and many of its practices, in a form better understood by the public, media, government officials, and lawyers."

The WTO offers several advantages:

- It creates a "new GATT 1994" to eliminate constraints in the amending clause of the old GATT that would make it difficult to implement Uruguay Round provisions.
- It reinforces negotiators' goals that in most cases, countries accepting the Uruguay Round must accept the entire package, eliminating the "GATT a la carte" approach seen in the Tokyo Round.
- It facilitates the extension of the institutional structure of GATT operations to new subjects such as services and intellectual property.
- It provides explicit authority to build relationships with intergovernmental and nongovernmental organizations, paving the way for more input from groups representing the public interest.

Besides the WTO charter, the December 1993 Uruguay Round draft also includes a major new text that significantly improves the dispute resolution process, Jackson said. The text established a unified dispute settlement system for all parts of the GATT/WTO system, including the new subjects of services and intellectual properties. It reaffirms the right of a complaining government to request a panel review process, and establishes a new appellate procedure to handle disagreements over the panel reports. While the dispute system may not be perfect, Jackson said, "there is a great deal of utility in a creditable and efficient rule-oriented dispute settlement system with integrity, and the United States is an important beneficiary of such a system. Overall, the WTO and the dispute resolution rules are important, useful mechanisms for regulating international economic behavior."



Fourth-year medical student John LaGrand and third-year law student Bethanne Hurley discuss their strategy for negotiating a mock malpractice settlement. The exercise was one of several in the Law, Medicine and Society course that made students switch professional roles to think like doctors or lawyers.

Learning from each other

Class combines future doctors, lawyers

IT WASN'T QUITE ANATOMY CLASS, but a unique seminar offered jointly by the University of Michigan Law School and Medical School did teach students from both about how doctors and lawyers' minds work.

"Law, Medicine, and Society" brought together students in both professions to consider the legal foundations of the practice of medicine. The seminar was unlike any course ever offered in either school and turned out to be a popular course in both, said Professor Carl Schneider. He organized and taught the course with Joel Howell, M.D., Ph.D., an associate professor of internal medicine. It was the first course offering that fulfilled credit requirements in both schools, according to Howell.

The course began by examining the legal basis of the doctor/patient relationship, including key issues like patient autonomy and confidentiality. Then the class considered advance directives for medical care, terminating medical treatment and assisted suicide. Next, the course turned to malpractice — an issue that loomed large in the minds of medical students. In class, they said they and the doctors they work with in clinical rotations are often uncomfortably aware of malpractice and other legal constraints on practice.

Students experienced the perspective of the each other's profession through

practical exercises. First, law and medical students paired up to give oral arguments on the constitutionality of Michigan's assisted suicide ban. Later, the student teams negotiated a contract between a mythical patient and a dialysis clinic. In a final role reversal, the medical students played lawyers representing the law student/doctors as they negotiated a settlement in a malpractice case.

The exercises required true teamwork. Outside of class, the law students taught their medical partners enough rudimentary law to conduct the oral argument; the medical students laid the groundwork for the settlement negotiation by reviewing the patient chart from an actual case and writing a memo on whether malpractice had occurred. "By putting the students into teams and reversing their roles, we've forced them to educate each other," Schneider said. "That worked quite well."

The course was designed to offer a better understanding of how law shapes the practice of medicine and how societal values and medical traditions shape law. "What medical students get from the course is a way to explore the legal foundations of bioethics and the medical profession," commented Howell, who is also an associate professor of history and of health services management. "What law students get is learning, as one student put it, that 'it's messy on the ground.' They saw that theories are nice, but when you put them into practice in real-world situations, things sometimes get complicated."

Above all, students say they enjoyed the opportunity to see how differently doctors and lawyers think. Mary Ann Campo, a second-year law student from Buffalo, said she was already aware that law school has made her think differently than the doctors in her family. She expected disagreements in the seminar, but noted, "I wanted the clash. I'm interested in malpractice and I needed a better framework to think about it. It's been helpful to find out about doctors' reaction to cases and their ideas about the duty of care."

Medical student Mark Pinto noted, "It was interesting to see how we looked at a problem differently. Medical students were asking if the physician in a case acted in a patient's best interest; law students were trying to figure out the point of law involved."

John LaGrand took the course because he's planning to specialize in the litigation-prone field of obstetrics. "I'd just as soon know how a lawyer thinks before I'm up against one," he laughed. He credited the law students and his partner, Bethanne Hurley, for "teaching us how to be lawyers in one week."

Hurley said that both the teaching experience and the practical exercises were interesting and fun. The exercises brought together aspects of criminal law, constitutional law and contract law and other courses for her.

The course was educational for the professors, too. "Lawyers think differently than doctors; law students think differently than medical students; law professors think differently than medical professors. This was a chance to experience new ways of thinking," said Howell. "Although we all go back to our own worlds at the end of the course, we all have gained immeasurably."

LQN

"It was interesting to see how we looked at a problem differently. Medical students were asking if the physician in a case acted in a patient's best interest; law students were trying to figure out the point of law involved."

— MARK PINTO, *medical student*

Two named to professorships

THE REGENTS OF THE UNIVERSITY OF MICHIGAN appointed two law faculty members to endowed chairs in April. Professor Phoebe C. Ellsworth has been named to the new Kirkland & Ellis Professorship of Law. Professor Bruce W. Frier was appointed the Henry King Ransom Professor of Law.

Ellsworth is a nationally renowned psychologist who has a joint appointment in the law school and in the University's College of Literature, Science, and the Arts. She joined both faculties in 1987.

Said Dean Lee C. Bollinger, "Professor Ellsworth is a proud example of the many ways in which joint appointments have enriched the law school and the University, forging ever-stronger intellectual bonds between the school and other departments."

"Much of her scholarly work in psychology has a natural affinity for the problems of law, and some is pointedly focused on legal problems," Bollinger noted. Her recent research and writing has focused on the psychology of juror decision-making and identification of suspects. She also is conducting research on public attitudes about capital punishment.

Her new professorship was established in 1993 by the Kirkland and Ellis law firm as part of its long-standing commitment to support faculties at leading American

law schools, according to Bollinger.

Frier is an expert on Roman law who is also is a professor of classics in the U-M College of Literature, Science, and the Arts. He came to Michigan in 1969 as an assistant professor in the Department of Classical Studies. He joined the law faculty in 1986.

"Professor Frier is another of the interdisciplinarians who have done so much to enrich the Law School's curriculum and scholarship in recent years," said Bollinger. Frier's teaching in the Law School originally focused on Roman law; recently it has expanded to include the first-year contracts course. His scholarship on the Roman Empire explored topics as diverse as landlords and tenants; interest and usury; marriage and motherhood; and law as rhetoric. "His students and faculty colleagues benefit greatly from his teaching, research and service in faculty affairs," Bollinger said.

The Ransom professorship was previously held by Yale Kamisar, who became the Clarence Darrow Distinguished University Professor in 1993.

Trip explores the world of international trade

FOR STUDENTS INTERESTED in international trade law and policy, Professor John Jackson's seminar offers the ultimate field trip — a chance to witness world trade experts in action in Washington, D.C.

For about 10 years, Professor John Jackson has arranged the trip for students in the International Trade Law and Policy seminar. For two days, students meet with many different players in the arena of international trade. Typically, the trip might include visits to officials at key U.S. government agencies, foreign embassies, lobbying groups, law firms, and legislative offices.

The seminar, co-taught by Alan Deardorff, professor and chairman of the Department of Economics, is also open to economics students. At the start of the course, participants pick a specific topic in international economics to explore in depth. "I tell them to pick carefully, because we delve into it so intensely that by the end of the seminar, they will be world experts," Jackson said. "Students seldom believe that, but sometimes, after they've watched the real experts on the Washington trip, they realize they are just as knowledgeable."

This year, the class chose to focus on the general topic of regulating international trade. In the classroom and in Washington on March 24-25, students explored major aspects of regulation, including competition policy, antitrust law and the intersection between environmental and trade policy.

Every year, the first meeting of the trip is at the Office of the U.S. Trade Representative, where students meet with various members of the staff. Other stops this year included:

- The U.S. Department of Commerce, to discuss countervailing duty and antidumping cases, the Uruguay round, the World Trade Organization and dispute settlement.
- The Federal Trade Commission, where discussion focused on international competition policy.
- The European Communities Mission, for a discussion of the Uruguay Round.
- The International Trade Commission, to discuss economic regulation in light of increasing economic interdependence.
- The House of Representatives Subcommittee on Trade, to hear about Congressional prospects related to the Uruguay Round.
- Two sessions at a conference room provided by a law firm, for panel discussions concerning trade and the environment and the prospects for the future of trade policy and law after the Uruguay Round.

Jackson, now the Hessel E. Yntema Professor of Law, was a consultant to GATT negotiations in Geneva in 1965. In 1973-74, he was general counsel to the Office of Special Representative for Trade in 1973-74 and later acting deputy there. He returned to the capitol in 1983 as a visiting fellow at the Institute for International Economics. From these roles, he maintains contacts throughout Washington's international trade community that make it possible to schedule activities with key figures. "In some cases, even when officials are incredibly tightly scheduled, they somehow squeezed us in," Jackson said.

"Professor Jackson's contacts are great," said second-year student Paul Tauber. "We got to see what they have to grapple with every day. At the International Trade Commission, we saw two commissioners discussing decisions about an actual antidumping case and watched them get into a debate over different views."

Third-year law student Alyssa Grikscheit was impressed that the officials didn't talk down to students. "The comments we heard were at a really high level. The discussions were quite detailed because they assumed we knew a lot." She added, "People were very frank. Some people said things that were not the view of the U.S. government; they were willing to give us their individual perspectives."

Another advantage to the trip was that Grikscheit was able to gather fresh data for her class paper on sections of GATT negotiations dealing with audiovisual materials. "A lot of the articles published are not current, and the newspaper accounts are not very detailed. I was able to sit down with the head of the European GATT delegation and find out what really happened in negotiations," she said. Later, she heard a foreign perspective, when a woman at the French Embassy delivered a passionate tirade in favor of protecting the French audiovisual industry. "Her view was that it's not goods and services at stake, it's *culture*," Grikscheit said.

To catch all the different perspectives, the class dashed around Washington at a whirlwind pace. Sessions were scheduled non-stop from 9 a.m.-6 p.m both days. Students were responsible for making their own travel and lodging arrangements and showing up at scheduled meetings on time. They moved from session to session in a caravan of cabs, if necessary. Some students extend their stay in the capitol to pursue job opportunities or to conduct research for their class papers.

The trip offers an entree for students who are interested in careers in the arena of international trade. For all participants, the experience is an eye-opening view of law in action. "Because we go from Capitol Hill to downtown economists to lobbyists to embassies for the foreign perspective, students get a sense of the inner ways of Washington. They really get the flavor of the negotiating and turf fighting that goes on and how personality matters," Jackson said.

Conard clarifies the mysteries of Cook

IN MANY WAYS, law school patron William W. Cook remains a mystery, even to those who benefited most from his generosity.

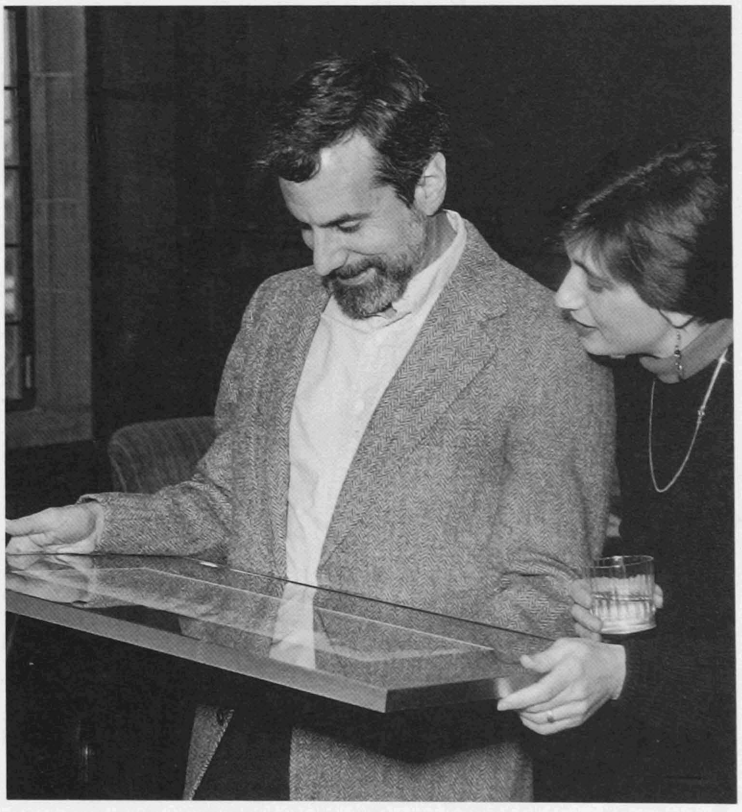
Professor Emeritus Alfred Conard has delved into Cook's own writings for some clues to that mystery. He shared the fruits of his research with faculty and guests recently at a luncheon held in Cook's architectural monument, the Lawyers Club.

William Cook's gifts to Michigan during the 1920s included the buildings of the Law Quadrangle and a multi-million dollar legal research endowment. An expert in corporate law, Conard was inspired to explore Cook's writings both by both professional interest and personal curiosity about the man whose gift supported his research.

Cook, who served as general counsel for a number of corporations, was a prolific author whose writings broke new ground in corporate law. Indeed, Conard was startled to find that there essentially is no treatise on corporate law published before Cook's work that contains anything of interest to a modern corporation lawyer. Earlier books presented only case law related to religious, charitable or other non-stock entities. In the late 19th century, the prevailing wisdom was that "the principles of the law of corporations . . . as found laid down in the elementary works of Blackstone and Kent, are unchanged and will forever

Farewell for now —

Professor Alexander Aleinikoff took a leave of absence from the Law School to serve as as general counsel for the Immigration and Naturalization Service. At INS, he will supervise the work of almost 400 attorneys who represent the government in immigration exclusion, deportation and asylum proceedings while providing general advice on current immigration law and reform. He is scheduled to return to teach refugee law in winter term 1995. At a send-off reception in January, Aleinikoff and his wife Rachel Cohen accept a farewell gift from the faculty.



remain the same," as Platt Potter wrote in an 1881 treatise.

Cook declared that the existing treatises were inadequate, so he set forth his own ideas on the rights of stockholders and the role of the corporation in *Stocks and Stockholders,* first published in 1887. Cook later enlarged the book and changed the title to *Corporations.* He published a total of eight editions, adding and expanding the footnotes with each editions, Conard said. In the 1890s, Cook also wrote about the regulation of trusts, railroads and fraudulent financing.

According to Conard, Cook's writings revealed him as "a true capitalist". He saw the corporation as an instrument of investment, not a creation of the state. While he expressed high moral indignation over stock-watering and profit-skimming by corporate directors, he scoffed at the idea of greater stockholder control in corporations. "You might as well ask the clouds in the air to propel locomotives," he wrote.

By 1920, Cook was quite ill with what may have been tuberculosis. He retired to his suburban New York estate, where Conard pictured him "alone, out on his porch in his overcoat in the brisk air for treatment, conducting a monologue with himself." When he wasn't writing to the University about his building proposals, he turned his attention from corporations to broader societal issues, revealing his reflections in a self-published book called *American Institutions and Their Preservation* (1927).

Conard speculated that Cook wrote *American Institutions* in his later years not only out of an urge to pass on his accumulated wisdom, but also a wish to allay fears expressed by other commentators of the time that the nation was sinking into ruin. The book is spotted with inaccuracies and reveals that Cook held many prejudices about ethnic groups that, although perhaps common in his time, seem shocking today.

Although Cook was unhappy about what he viewed as the invasion of immigrants, he was confident that the nation ultimately would not perish because America is blessed with a number of wonderful institutions: the Constitution, the Supreme Court, universal sufferage, separation of powers, and compulsory public schools. On the other hand, he detected vices in other elements of society, including wealth, Wall Street, railroads, and labor. Cook believed that "the reason we will pull ourselves out of the mess we're in is that we are a government of lawyers, as de Tocqueville said," Conard noted.

Compared to typical views toward immigrants in literature of his own era, Cook was more tolerant than many others. He did not agree that what he called "lower races" would lead to the degeneration of American society. Instead, he believed that all the races, once assimilated, would be uplifted by the redeeming virtues of American institutions.

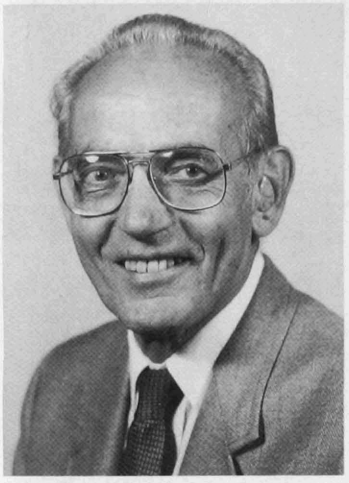
Conard wound up his talk by asking, "So how are we to think about Cook? More than 95 percent of his published writing was about corporations and is admirable work. When Cook undertook to comment on values in American society, he displayed no special insight.

"This is a lesson to us that during one's retirement, one should not start writing about things one knows little about — a lesson I intend to apply to myself right after I complete this research," Conard quipped.

Conard's manuscript, entitled *Cook's Books: The Published Writings of William W. Cook,* is on file at the Law Library and the Bentley Historical Collection. Interested friends of the Law School may also obtain a copy by contacting *Law Quadrangle Notes.*

ALLAN F. SMITH — Young all his life

Professor Kent Syverud delivered this tribute to Allan Smith, his former professor and academic inspiration, at Smith's memorial service Feb. 5, 1994. Smith died Jan. 21 at the age of 82.



Allan Smith

I FIRST MET ALLAN SMITH in the summer of 1978, when he was already 66 years old. That summer, and into the fall, he taught property law to me and 100 other Michigan law students. The course began in early August, and we dreaded it all through the preceding June and July. A 66-year-old professor. Oh boy. A university administrator battered around in the 1960's, now returned to the classroom. Oh boy. Estates in land and heriditaments and boilerplate. We just knew it would all be pompous and doddering, dull and dead.

And then, on a suffocating day in August, Allan gawkily spread out over the teacher's desk in the front of the classroom in Hutchins Hall. Within an hour, we knew he was the youngest teacher in the law school. Within a month, he had changed my life. I knew even then that to become a teacher like Allan Smith would be a lifetime's very challenging ambition.

Allan Smith was young all his life. His portrait at the Law School captures that. Allan's predecessors as dean — Blythe Stason, Harry Hutchins, Henry Bates and others, have traditional portraits, each seated, alone, in a dark suit, staring clear-eyed over the viewer's head into the infinite future. And then comes Allan's portrait: modern art (too modern for some people), bright colors, numerous panels showing Allan smiling, moving, alive, and actually with someone, Alene, who shares in so much of their joint achievements.

Allan did so many things for this University: as director of graduate studies in the law school, as dean, as vice president, as interim president, and as a promoter of the arts. But he was at his greatest in the classroom, and I think it is as a teacher he would most want to be remembered. Many of you surely remember his teaching. The way, when you answered wrong, he would bellow "What?!" Before that, I never knew it was possible, in a single word, to convey irritation, amusement, and forgiveness at the same time. Many of you surely also remember how, after he guided you through a minefield of hypothetical questions — how, after he had needled you into thinking aloud intelligently for the first time in your life — he would finally stop after one of your answers and say to you "Yep, that's pretty good," and then move on to someone else. We students came to live for those "pretty goods" — we prized them above all other praise.

Allan always loved the theater. It has taken me years to understand just how fine an actor he really was. In the classroom he was not an obvious entertainer or a comedian. He did, however, dramatically infect us with his passion for law. His wry humor and ocassional disgust always were sincere, and yet on reflection I see they were also quite calculated — calculated to lead us to the problem or nuance or insight Allan wanted us to struggle with. Allan's acting was invisible (like all great acting), leaving us to focus on the drama of the law itself.

Much of what we do in this college town sometimes seems driven by our desire to triumph in some secular way over death. Some of us seek immortality through our children — through giving them the great values and learning and culture and opportunities that will enable them to look back with pride. Some of us seek immortality through our research and writing, hoping that it will be studied and read long after we are dust. Some of us seek it by erecting enduring buildings or by building immortal institutions.

Allan, of course, did all these things. His children and grandchildren and great-grandson would make anyone proud; he wrote two books; there is a hospital that he helped get built and a beautiful law library that bears his name; and he surely helped nurture this great institution, this University of Michigan, through very troubling times. Yet there is not a soul in this sanctuary who really believes Allan did any of these things so that he would be remembered after his death.

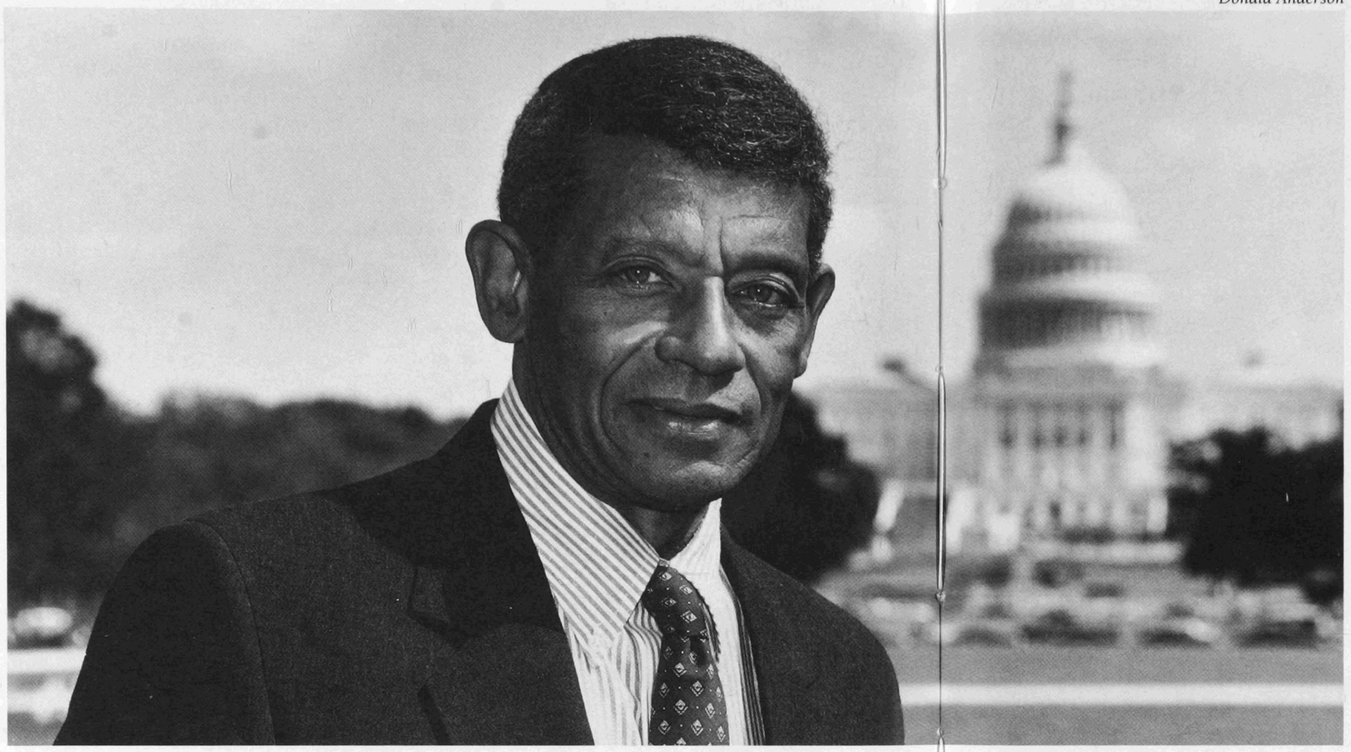
Allan did them because, in his understated, plain-spoken way, he loved people and wanted to teach them. Allan Smith, that youngest of teachers, will live on through the people who learned from him, inside and outside the classroom, and there are an awful lot of us. My colleague, Ted St. Antoine, who is also Allan's former student, has said it far more eloquently than I can: "Allan drew out the best in everyone around him. His memorial will be the careers he fostered and the lives he enriched."

For all these reasons, we have to say to you, Alene, and to Stevie and Greg and the family: We will miss Allan terribly. But it is hard for us to be sad for very long when we think of Allan's life. We can think of no life that was better lived, or that is more worth celebrating. And Allan, wherever you are, please know that, thirty years from now in the year 2024, when I am 66 years old and gawkily presiding over yet another class of 21-year-olds in Hutchins Hall, your portrait will hang before me, and your memory will make me the youngest person in the place.

— Professor Kent Syverud
Michigan Law School

ALUMNI

PHOTO BY ALAN GOLDSTEIN



Donald Anderson

Poverty warrior

IN 1968, DONALD L. ANDERSON SAW THAT THE GOVERNMENT'S WAR ON POVERTY WASN'T WORKING, SO HE QUIT HIS GOVERNMENT JOB AND STARTED HIS OWN WAR.

MORE ACCURATELY, he started grassroots community groups aimed at solving the problems of poor Blacks in the American South.

Anderson, J.D. '60, A.B. '53, founded the National Association for the Southern Poor. NASP organizes counties or cities into quasi-governmental structures called assemblies that exist solely to solve individual or community problems. After 25 years, the assemblies and NASP can take credit for raising income, boosting educational achievement and improving housing in more than 43 communities.

Despite federal programs and the NASP's efforts, one in five American children still live in poverty, so Anderson hopes to expand his battle. "We have targeted 258 counties and cities throughout a nine-state southern region where slavery was most concentrated," he says.

Anderson believes poverty persists in the South because the enduring legacy of slavery denies educational opportunities to rural Blacks. "Historically, we did not educate Blacks in the South. If education is neglected, a person doesn't have an equal chance in life. If you get rid of inequities in education, the underclass would disappear and you'd eliminate the transmission of poverty to the next generation," he states firmly.

Unlike many bureaucratic anti-poverty programs, however, the NASP does not define education as the problem and dictate the solution. Instead, it helps citizens of poor communities help identify and solve their own problems, whatever they may be. The NASP helps organize an assembly, then simply provides support upon request, while assembly members identify problems, seek solutions and raise funds to meet their own needs.

Anderson based the assembly structure on Thomas Jefferson's idea of representative democracy, in which counties were divided into small, self-governing wards so "every man in the state would thus become an acting member of the common government." When a community agrees to form an assembly, the area is subdivided into conferences of 50 people. Each conference selects a seven-member leadership committee plus a representative to the assembly. This structure encourages individual participation and personalized representation. Communication is easy, because any person only needs to contact six other people to spread information through the entire assembly.

Conferences decide what their most pressing problems are and solve smaller ones on their own. Bigger issues are detailed on "problem sheets" and sent to the assembly through their elected representative. The assembly can work with other government agencies to address major needs like paving a road or building a school.

The assembly system works for two reasons, Anderson says. First, every individual in the community participates. NASP starts by first organizing the natural leaders in a community, whether they are ministers or workman, but ultimately, no one is left out. That helps reduce factionalism in the community.

Second, Anderson says, "The assembly is organized not for any particular objective, but for whatever issues come up. People stay involved because the assemblies address both individual and community problems." That may be improving senior citizen services, building schools, restoring someone's social security benefits or finding child care for a working mother. "The first problem we addressed in our first assembly was getting a washing machine for an old lady who needed one," Anderson recalls.

The son of a North Carolina geneticist, Anderson wasn't born poor, but even as a boy he recognized the injustice that divided Black from white and rich from poor. "Even before I went to law school, I was interested in finding techniques to help poor blacks out of poverty and degradation," he says. By the mid 1950s, he'd dreamed up the assembly plan; all he needed was financing. He discussed his ideas with Martin Luther King Jr. in 1962, and King introduced him to people in Washington who could help put these ideas in action, but they weren't interested at the time. Later, after earning his law degree and a master's degree from the London School of Economics, he went to Washington in 1964 to try again.

In just two weeks, he landed a job with Adam Clayton Powell, the Congressman from Harlem who was then chairman of the House Committee on Education and Labor. A few days after that, President Lyndon Johnson sent his anti-poverty legislation to the committee. Anderson was assigned to work on it, and spent the next three years helping turn good intentions into workable programs. He quickly rose through the ranks of Powell's staff to become the Congressman's chief advisor on poverty issues. Powell tripled his salary within a year and named him general counsel for the Ad Hoc Subcommittee on the War on Poverty.

Anderson's career was going well, but the anti-poverty program was not. "I saw how it was working and was convinced it was not reaching its objectives, so I left the House of Representatives in 1968 and established this organization. It's been very successful," he says.

The first assembly, established in Surry County, Va., remains the model for what these organizations can accomplish. A long history of segregation had kept the county's Black population underemployed and undereducated. They lived in shacks with no running water; no medical care was available. Blacks could not get loans, food stamps, Medicaid, or welfare assistance. When the schools were desegregated, white students fled to private schools, and the public facilities were neglected. Student scores on scholastic aptitude tests were hovering around the 17th percentile, the lowest in Virginia. The assembly made education a

"The assembly is organized not for any particular objective, but for whatever issues come up. People stay involved because the assemblies address both individual and community problems."

— DONALD L. ANDERSON

priority problem, and the results were dramatic.

"They've built a new elementary school and high school. Before the assembly was formed, annual expenditure per pupil was about $169; now it's $6,000. Then, only about 25 percent of students went on to higher education; now it's near 90 percent," Anderson says. Average achievement scores now are among the best in the state.

Education is just one measure of the change. "Two decades ago, the average income per capita was about $2,000; now it's $19,000, above the national average. Now Surry County is a dream society where there is almost no crime; they've closed the jail," Anderson says. Voter registration is at about 90 percent, and Blacks now are leading communities as principals, school board superintendents, county officials, mayors and sheriffs.

In "Light of Day," his forthcoming book about the assemblies, Anderson writes, "All that I had hoped for had occurred in Surry County. The people themselves had done it, and Blacks had taken the leadership and created an extraordinary community. I had done no more than create a structure of organization for implementing that society's wishes."

The assembly system is remarkably cost-effective. NASP operates on donated funds and a staff made up mostly of volunteers, and spends less than $20,000 in the first year to support an assembly. NASP invests a great deal of time in training leaders and guiding communities to available resources. This investment pays off in what Anderson calls "human capital formation," because assembly members gain all kinds of negotiating and problem-solving skills.

He explains that the NASP and the assemblies have no political agenda, but once Blacks are organized for action, community leaders find their way naturally into political roles. "It's no coincidence that the first Black governor was elected in Virginia. The First Congressional District in North Carolina just elected its first Black woman ever to Congress," he says.

Anderson himself achieved a great deal in the 1950s and '60s, when advanced degrees and influential Washington jobs were not widely available to Blacks. He credits his legal training for giving him a broader understanding of social problems he wanted to solve and the credentials he needed to work on them in Washington. He could have chosen a high-profile, high-paying law career, but he's not interested in wealth for himself. "I felt the most important thing I could do is help Black people get out of poverty, one of the most basic problems in our country."

His payoff is seeing young men and women from the assemblies go to college and become doctors and lawyers. "There is one shy young man who was working in the cotton fields in the most remote area you can imagine. He performed in the assembly music competition, went on to Shenandoah University and now is singing at the Metropolitan Opera. This is the sort of thing that America could become if we could solve this basic problem."

— by Toni Shears

Wilderness is O'Neill's calling

Through 17 years of protecting the wilderness through pro bono litigation, Brian O'Neill's entire practice has gradually turned "green," evolving into a nearly full-time focus on environmental law.

O'Neill, J.D. '74, a partner at Faegre & Benson in Minneapolis, spends about 35 percent of his time on pro bono cases aimed at preserving endangered species or their habitats. He has gone to court to protect the black bear, the bald eagle, Minnesota's Boundary Waters wilderness area, and a long list of other natural resources. Over the years, O'Neill has represented almost all of the Minnesota and national environmental groups.

His pro bono work has been so successful that he is now regularly hired to handle major environmental lawsuits. "I used to do general commercial litigation: antitrust, securities, bankruptcy, patent cases. Now I do oil spill cases. I represent ordinary folks against oil companies and try to make a living doing that while I do the public interest work," O'Neill says.

Currently, O'Neill is in court in Anchorage, representing the largest coalition of Alaska fisherman hurt by the Exxon Valdez oil spill in civil trials that started May 2. He previously won damages for fisherman in a case over the 1987 British Petroleum oil spill in Glacier Bay, Alaska. He also now represents the Shetland Islands fisherman and seafood industries as a result of the 1993 oil spill there.

O'Neill spends his time in court fighting for the environment because when he's not, he likes to spend time outdoors enjoying it. He canoes, fishes, camps, skis and sails. Faegre and Benson, a 300-lawyer firm, supports his unusually large pro bono caseload "because it's the right thing to do," he says.

Faegre & Benson has a long tradition of community service, explains managing partner John D. French. The late John C. Benson, a founder of the century-old firm, was the first legal aid lawyer in Minneapolis, and he founded the Legal Aid Society there. The firm still follows his example by encouraging all its attorneys to give something back to the community. "There are causes and people who don't get attention if they don't pay a fee. In this firm, it's very natural for lawyers to put in a lot of time and money into supporting those people and causes," French says. "I think Brian is just wonderful at it."

O'Neill took on the Boundary Waters project shortly after he joined the firm in 1977, tried the first case in 1978, and has been involved in litigation over the area countinously ever since. A million acres of pristine forest, lakes and rivers, the Boundary Waters is the most heavily-used element of the National Wilderness system. On behalf of citizens and environmental groups, O'Neill has fought to preserve the area by carefully limiting use. "There's always pressure on a wilderness area to run motorboats through it, run snowmobiles on it, use cars and trucks to portage canoes, and just bring in more people," he says. His clients won every case, obtaining rulings that restricted motor use to designated areas and halted Air Force overflights.

In other pro bono lawsuits, he has won limitations on road densities and below-cost timber sales in the Superior National Forest, and on snowmobiling and hunting in Voyageurs National Park. He was involved in all the litigation to protect timber wolves in northern Minnesota, and halted the Department of Natural Resources plan to move an elk heard from one part of the state to another. "The move would have decimated the herd and it's the last one," he says.

His efforts aren't limited to Minnesota. In the mid-1980s, he won an injunction against the nationwide use of strychnine, which endangered bald eagles. He argued before the U.S. Supreme Court that the Endangered Species Act applies to U.S. projects overseas. He is now involved in a pending lawsuit to enjoin construction of the Three Gorges Dam in China.

His pro bono clients are usually citizens or environmental groups, and his opponents are the U.S. government or corporations who bring massive resources to the battlefield. "The biggest problem you face in environmental work is that normally, you are suing the government, the biggest institution in the world, or Exxon, the 26th biggest institution in the world," he comments. "There's no cheap or easy way to win. It takes people, it takes resources, it takes time and it takes effort. You need to handle it the same way you would any other big-time litigation."

O'Neill doesn't handle these David vs. Goliath matters alone. At least two Faegre & Benson associates usually join him on the cases. The firm also runs a summer internship program that lets law students gain experience in public interest work. Third-year student Martha Dye worked there in 1993.

"The interesting thing about my practice, and the purpose for the internship program, is to show people we can make the world a better place within the context of an ordinary, big firm practice. It's possible to thrive in a big institution and do good works at the same time."

Besides, he adds, "It's a lot of fun."

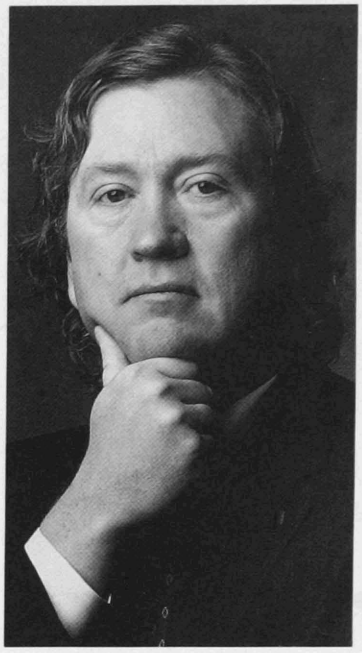


PHOTO BY PER BREIEHAGEN

Brian O'Neill

Class notes

1944

Luis Maria Ramirez-Boettner has been appointed minister of foreign affairs in Paraguay.

1948

Judge Helen W. Nies has completed her term chief judge of the U.S. Court of Appeals for the Federal Circuit in March. She remains on the court.

1949

45TH REUNION

The Class of '49 reunion will be Sept. 23-25, 1994

1953

After 37 years with Jones, Day, Reavis & Pogue, **Richard Pogue,** who has reached the age of mandatory retirement at the firm, will join the public relations firm of Dix & Eaton as senior advisor. He was elected to the board of directors at TRW Inc. in February.

Gordon H. Smith Jr. has joined the firm of von Briesen & Purtell, s.c., as head of its estate planning and probate section.

1954

40TH REUNION

The Class of '54 reunion will be Sept. 23-25, 1994

1955

Leland B. Cross has been appointed to a joint advisory panel to the National Labor Relations Board. He will represent employer interests. A partner in the Indianapolis firm of Ice Miller Donadio & Ryan, he also serves as a member of the Federal Commission on Leave, established by the Family and Medical Leave Act of 1993.

1956

Charles Renfrew has been named a trustee of the Fibreboard Asbestos Compensation Trust. The $1.53 billion trust was created by a global settlement agreement to settle all future cases filed by individuals exposed to asbestos-containing products manufactured by Fibreboard. Renfrew is a partner at LeBoeuf, Lamb, Greene & MacRae in San Francisco.

1958

Yoshimichi Hiraide, a visiting scholar in 1958-59, has become dean of the Institute of Advanced Studies at the University of Tsukuba in Tokyo.

1959

35TH REUNION

The class of '59 reunion will be Sept. 23-25, 1994.

Wilbur J. Markstrom recently completed a four-week visit to Latvia as a volunteer of the International Executive Service Corps. There, he counseled the Riga municipal government on self-government and management issues, drawing on his experiences in practice at Squire, Sanders & Dempsey.

Denis Rice has been appointed to the California State Bar's Committee on the Administration of Justice, which reviews and issues recommendations on proposed changes to state courts.

1961

Barry I. Fredericks has been appointed to the faculty of the Trial Advocacy Program at the Benjamin N. Cardozo School of Law at Yeshiva University in New York City. In addition, he is the 1993 recipient of the William J. Brennan Jr. Award for substantial contributions to the field of trial advocacy from the University of Virginia School of Law.

1963

Myron E. Sildon currently is campaigning for the U.S. Congress from the Fifth District of Missouri. He will face other Democrats in an August primary.

1964

30TH REUNION

The class of '64 reunion will be Sept. 23-25, 1994.

Dykema Gossett honored **Fred J. Fechheimer** for outstanding pro bono service in January. As the pro bono partner from 1990-93, he led the firm to quadruple its pro bono work.

Henry Ingram has been appointed to the National Coal Council by U.S. Secretary of Energy Hazel O'Leary. The council advises the secretary on policy matters related to the coal industry.

1965

Richard L. Blatt established his own firm, Blatt Hammersfahr & Eaton, in Chicago. The firm concentrates on representing domestic and international insurers and reinsurers.

1966

Ronald L. Olson has been named to the board of trustees of RAND, the indepedent public policy research and analysis organization.

1967

Bill Brodhead is a candidate for the Democratic nomination for the U.S. Senate from Michigan. He was a member of the House of Representatives from 1974-82.

1968

Richard P. Berg, a law professor at Santa Clara University, runs a program for American law students in Singapore.

Robert Eastaugh, an Anchorage appellate lawyer, has been named to the Alaska Supreme Court.

Melvin S. Shotten has been appointed chair of the health care group at the firm of Taft, Stettinius & Hollister in Cincinnati.

1969

25TH REUNION

The class of '69 reunion will be Sept. 23-25, 1994.

Stephen C. Brown has been named vice president of labor relations and international human resources for McDonald's Corporation.

Allan J. Claypool has been named a member of the International Academy of Estate and Trust Law. The distinguished membership of the academy is dedicated to improving and enhancing the legal standards in this area of practice.

Sadayuki Funabashi, a prosecutor and judge in the Tokyo High Court for 28 years, was appointed director of the Judges Indictment Committee. He is responsible for investigating, indicting and proving complaints against judges in the Court of Impeachment.

1970

Lawrence D. Owen is a candidate for the Democratic nomination for governor of Michigan. A senior partner at Miller, Canfield, Paddock and Stone, he is in charge of the firm's goverment regulation and environment section.

1971

Thomas P. McMahon, former chief of the Colorado Attorney General's Antitrust Unit, has become counsel to the Denver firm of Musgrave and Theis, P.C.

Donald F. Tucker has joined the Bloomfield Hills, Mich. office of Howard and Howard, where he practices in commercial litigation and governmental relations law.

1972

Keith T. Borman has been named shareholder at Shook, Hardy & Bacon P.C., Kansas City's largest law firm.

Saul A. Green has been nominated to be the new U.S. attorney in Detroit. Green was sworn in as interim U.S. attorney in March. The Senate confirmed his appointment in May. He previously was Wayne County Corporation Counsel. In the 1970s, he served as an assistant U.S. attorney for the Eastern District of Michigan and as chief counsel for the Detroit office of the Department of Housing and Urban Development.

Dennis M. O'Dea has transferred from Chicago to the New York office of Keck Mahin & Cate, where he concentrates in insolvency cases and corporate litigation.

1971

Larry C. Willey has been named a fellow of the American College of Trial Lawyers, an honor bestowed on only one percent of practicing attorneys. He is in private practice in Grand Rapids, Mich.

1973

John M. Burkhoff, law professor at the University of Pittsburgh, has travelled around the world teaching Semester at Sea. He also went to Burundi under the auspices of the Department of State to assist in drafting a new constitution and reforming the nation's criminal justice system in 1991.

Robert M. Gould has been named president-elect of the Washington State Bar Association. He will assume presidency of the organization in September 1994.

Kathleen McCree Lewis won recognition for outstanding pro bono service at Dykema Gossett at the firm's awards dinner in January.

Jack I. Pulley has joined the Bloomfield Hills, Mich. office of Howard and Howard, where he will practice environmental law.

Tim Stalnaker has authored the *Employer's Guide to Using Independent Contractors,* which helps businesses comply with the Internal Revenue Service's new definition of independent contractors. He has co-written several other books on labor law topics.

1974

20TH REUNION

The Class of '74 reunion will be Oct. 28-30, 1994.

1975

Patrick Geary has been elected a shareholder at Smith, Haughey, Rice & Roegge, P.C.

Miriam L. Siefer of the Federal Defender's Office is the 1994 recipient of the Leonard R. Gilman Award from the Detroit Chapter of the Federal Bar Associations. The Gilman award is presented each year to a lawyer who exemplifies the integrity, fairness, excellence and zealous advocacy that marked the late U.S. attorney's career.

Robert Thomson has joined the employee benefits group at Stoel Rives Boley Jones & Grey in Portland, Ore. Previously, he was with Weiss Jensen Ellis & Botteri.

1977

Earl K. Cantwell has joined the Buffalo firm of Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria as special counsel. He will practice in the commercial litigation department. Formerly he was with Jaeckle, Fleischmann & Mugel.

Bruce A. Hiler has left his post as associate director of the Division of Enforcement at the Securities and Exchange Commision to become partner at the Washington, D.C. office of O'Melveny & Myers.

Bruce C. Johnson has joined the New York firm of Graubard Mollen Horowitz Pomeranz & Shapiro as an associate.

Michelle Jordan, a partner specializing in enviornmental law at the Chicago firm of Hopkins and Sutter, has been appointed by President Clinton as deputy regional administrator for the Environmental Protection Agency Region 5.

George A. Vinyard has been named vice president and general counsel of U.S. Robotics of Skokie, Ill.

1978

Arthur R. Block has been named vice president and deputy general counsel at Comcast Corp., which develops, manages and operates cable and cellular communications networks.

Terrance L. Carlson was appointed vice president and general counsel at AlliedSignal Aerospace. Previously, he was a partner at the Los Angeles firm of Gibson, Dunn & Crutcher, where he handled global business transactions.

1979

15TH REUNION

The Class of '79 reunion will be Oct. 28-30, 1994.

Col. Richard F. Currey received the Legion of Merit upon his retirement from the U.S. Air Force. He joined the general practice law firm of Samelson, Dodge & Currey, P.C., in Colorado Springs.

CLASS *notes*

Richard K. Graham of Kepley, MacConnell & Eyrich has been named to the firm's board of directors.

1980

Edwin J. Madaj was recently appointed assistant general counsel for the U.S. International Trade Commission. He first joined the ITC in 1985 and had handled many antidumping and countervailing duty matters.

Stephanie M. Smith has been named as a lawyer representative to the Ninth Circuit Judicial Conference. She is a shareholder in the Las Vegas firm of Jolley, Urga, Wirth & Woodbury, where she specializes in bankruptcy and employment matters.

Diane M. Soubly has joined the firm of Butzel Long as a shareholder. She specializes in ERISA litigation, class action cases and labor and employment litigation.

1981

Richard L. Bouma has been named partner in the law firm of Warner, Norcross & Judd. He concentrates in the areas of health law and general business law in the firm's Grand Rapids, Mich. office.

Karl R. Fink has become a member of Dressler, Goldsmith, Shore & Milnamow, Ltd., a firm concentrating on intellectual property matters.

David P. Radelet has joined the new firm of Franczek, Sullivan, Mann, Crement, Hein & Relias, P.C., a partnership formed by members of four leading Chicago-based law firms. Radelet, formerly of Wildman, Harrold, Allen & Dixon, concentrates in labor and employment law.

1982

Clarence D. Arbrister has been appointed city treasurer in Philadelphia. A partner in the law firm of Saul, Ewing, Remick & Saul, he is an expert in the field of public finance.

Kenneth McClain of the Kansas City firm of Humphrey Farrington & McClain has become one of the nation's leading plaintiff's lawyers in the area of asbestos litigation. In late 1993, he won a $19.7 million verdict for owners of a Minneapolis commercial complex, believed to be the largest verdict ever awarded in an asbestos property suit.

Kirk D. Messmer was promoted to senior attorney at the Chicago firm of Matkov, Salzman, Madoff & Gunn. The firm, which recently marked its 10th anniversary, represents management in all areas of labor and employment law.

1983

Katharine Bowman Bills is serving as associate counsel for Banc One Corporation.

Clifford E. Douglas is the tobacco policy director for the Advocacy Institute, a Washington-based consultant to public interest organizations. He lobbies for legislation that bans smoking on airlines, in restaurants and at workplaces, and has documented the tobacco industry's contribution to political campaigns.

Bebe Fairchild of Squire Sanders & Dempsey's Prague office helped represent the Hungarian government in the sale of 30 percent of the state-owned telephone company to a German-U.S. consortium of private investors. The $875 million deal was the first telecommunications privatization in Eastern Europe.

Thomas R. Fox has become a shareholder of Kleberg and Head, P.C., of Corpus Christi, Texas. Along with his practice in employment relations, franchise and insurance litigation, he teaches trial advocacy and pretrial procedure as an adjunct professor at the University of Houston School of Law.

Diann H. Kim served as a deputy general counsel to William Webster, special advisor to the Los Angeles Police Commission, in preparing a report on the Los Angeles Police Department's readiness and response to the 1992 verdict in the Rodney King trial.

Gare Smith is senior foreign policy advisor and counsel to Sen. Edward Kennedy. His post involves him in human rights issues in Central America, Africa and Asia, as well as new democracies in Latin America and Eastern Europe.

Frank J. Saibert was named partner in the Chicago firm of Matkov, Salzman, Madoff & Gunn.

Special Counsel Robert Fiske Jr., J.D. '55, has named **Mark J. Stein** to the team investigating the First Family's involvement in the Whitewater real estate deal and Madison Guaranty. Stein was a deputy chief of the criminal division of the U.S.attorney's office in New York; from 1984-89 he was an associate at Davis, Polk and Wardwell, where Fiske is a partner.

1984

10TH REUNION

The Class of '84 reunion will be Oct. 28-30, 1994.

Elizabeth A. Downey and **Michael A. Sosin** have formed a new law firm, Downey, Hildinger & Sosin, P.C., in Southfield, Mich.

Marie Deveney, a former law school faculty member and an attorney at Dykema Gossett since 1991, has been elected chair of the Washtenaw County Bar Association's Estate Planning, Probate and Trust Law Section.

Kathleen B. Hayward co-authored two books in the field of labor and employment law. They are *An Employer's Handbook: The Law of Libel and Slander* (M. Lee Smith Publishers, 1991) and *Designing an Effective Fair Hiring and Termination Compliance Program* (Clark Boardman Callaghan, 1993).

Per Ramfjord has joined the litigation department at Stoel Rives Boley Jones & Grey. Formerly, he was a prosecutor in the U.S. Attorney's Office for the District of Columbia.

Eric J. Sinrod recently published "Freedom of Information Act Response Deadlines: Bridging the Gap Between Liegislative Intent and Economic Reality," 43 *American University Law Review* 325 (1994).

Rose Ann Sullivan has joined National Public Radio in Washington, D.C. as an assistant general counsel.

Jane P. Wilson has become a member of the firm Duvin, Cahn, Barnard & Messerman of Cleveland.

1985

Thomas N. Bulleit Jr. has been named partner of the firm of Hogan & Hartson, L.L.P. He practices in the areas of health care and technology transfer law.

Robert L. Jonker has been named partner at Warner, Norcross & Judd, of Grand Rapids, Mich. His practice is in the area of litigation.

Deborah Alfred Monson, formerly with Schiff Hardin & Waite of Chicago, has joined Mayer, Brown & Platt as a partner, specializing in derivatives, futures, and securities law.

Mark E. Weinhardt has been named partner in the firm of Belin Harris Lamson McCormick, P.C., in Des Moines, Iowa. He is a trial attorney specializing in complex civil litigation and white-collar crime.

1986

Timothy J. Chorvat, David M. Greenwald and **Rebecca L. Raftery** were named partners at Jenner & Block.

Donald Itzkoff has become deputy administrator of the Federal Railroad Administration.

Arturo G. Michel has been named partner at Bracewell & Patterson, L.L.P. of Houston. He also currently serves as treasurer of the Houston Hispanic Bar Association.

Steven A. Roach and **Richard A. Walawender** have become a principles at Miller, Canfield, Paddock and Stone. Roach practices in the area of commercial litigation in the firm's Detroit office; Walawender, also of the Detroit office, practices in the areas of public finance, business law, international law and finance, concentrating in Poland and Eastern Europe.

Devin S. Schindler has been named partner at Norcross & Judd. He practices litigation with emphasis on environmental matters in the firm's Grand Rapids, Mich. office.

Lori M. Silsbury has joined the Lansing, Mich. office of Dykema Gossett, where she is a member of the litigation group.

Steven M. Taber was named partner at Ross & Hardies. He concentrates on environmental law.

1987

Joel L. Herz left the firm of Fried, Frank, Harris, Shriver & Jacobson in New York to establish his own firm in Tuscon, Arizona. His practice concentrates in litigation, business and environmental matters.

Michael L. Huyghue left his post as vice president of administration and general counsel for the Detroit Lions football team to become vice president of football operations for the Jacksonville Jaguars. He is one of just two African American vice presidents in the National Football League.

1988

Martin R. Castro, an attorney with Baker & McKenzie in Chicago, has been elected to a second term as president of the Mexican American Lawyers Association.

Donn M. Davis is general counsel for the Chicago Cubs Baseball Club and senior counsel for the Tribune Company.

George Fishman, legislative counsel to Rep. Henry Hyde, now is counsel to the House Republican Policy Committee. He has been involved with litigation such as the Collegiate Speech Protection Act, the Civil Asset Forfeiture Reform Act and the Uniform Child Support Enforcement Act.

1989

5TH REUNION

The Class of '89 reunion will be Oct. 28-30, 1994.

Frederick Ramos has been elected president of the Minnesota Hispanic Bar Association and named regional president of the Hispanic National Bar Association for Minnesota.

Ruth E. Zimmerman has been named partner at Honigman Miller Schwartz and Cohn. She concentrates her practice in litigation and environmental law at the firm's Lansing, Mich. office.

1990

Scott Hollander has joined the Children's Legal Clinic of Denver as staff attorney. He fills the position vacated by Susan Pachota, J.D. '88.

1992

Louise A. Kirk has joined the South Bend, Ind. law firm of May, Oberfell & Lorber.

1993

William P. Dani has joined the Grand Rapids office of Warner, Norcross and Judd as an associate.

Kristina M. Entner has joined Jenner & Block as an associate.

Ometrias Deon Long has joined the Orlando office of Foley & Lardner as an associate in the corporate group.

Christopher C. Cinnamon has joined the Lansing, Mich. office of Howard and Howard, where he practices corporate and real estate law.

Douglas Rayburn has joined the Dallas office of Baker and Botts.

Michelle Wood has joined Damon and Morey of Buffalo as an associate in the firm's litigation department. She will focus on personal injury and insurance defense litigation.

CORRECTION:
In the Spring 1994 LQN class notes, we mistakenly moved Hugh Hewitt from the class of '83 to the class of '82. LQN apologizes for the error.

In memoriam

Liang Chien Cha, a law school graduate who went on to hold several important governmental positions in Taiwan, died March 13, 1994 in Taiwan. He was chief justice of the Supreme Court, a minister at the Ministry of Justice, a delegate to the United Nations, chair of the Sino-American Cultural and Economic Association, and chair of the China Human Rights Foundation. *LQN* also notes with regret the death of these graduates:

'27	Joseph T. Ives	Dec. 24, 1993
'28	Clarence W. Blenman	Feb. 27, 1994
	Benton E. Gates Sr.	Dec. 17, 1993
'30	Franklin J. Rauner	Jan. 3, 1994
	Kenneth R. Smith	
'32	John H. Eliasohn	May 7, 1993
	Jack W. Hackett	Dec. 1, 1993
	Hubert Thompson	Jan. 21, 1994
'34	Howard Fant	July 18, 1993
	William I. Robinson	Dec. 24, 1993
'35	Ernest Lunt Rushmer	Aug. 8, 1993
'36	James C. Enloe	April 19, 1993
'37	Leonard B. Crandall	Dec. 25, 1993
	Francis W. Haskell	Feb. 19, 1994
'38	Edward D. Ransom	March 31, 1994
'40	Robert D. Handley	Jan. 16, 1994
'41	Harry A. Carson	Jan. 5, 1994
	Harold J. Egloff	Nov. 30, 1993
	James O. Shetterly	Dec. 3, 1992
'42	Lloyd Mason Forster	Nov. 8, 1993
	John M. Rice	Nov. 29, 1993
'44	Arthur L. Kramer	Jan. 7, 1994
'45	Alice G. Greene	March 17, 1994
'47	Robert L. Vandenberg	July 22, 1993
'48	Cyrus Y. Atlee	July 5, 1993
	Robert W. Bibler	Dec. 17, 1993
	Bert H. Walker	Jan. 24, 1994
'49	Bertel M. Sparks	Jan. 24, 1994
'50	Roger J. Oeming	Feb. 6, 1993
'53	S. John Templeton	Feb. 1, 1994
'54	Donald C. Coulter	Dec. 25, 1993
'64	Richard S. Stoddart	
'67	Franklen M. Abelman	Oct. 2, 1993
'80	James D. Williams Jr.	Jan. 15, 1994

Personal reflections on 30 years of legal education for **minority students**

— BY HARRY T. EDWARDS

Edwards, circuit judge for the U.S. Court of Appeals for the District of Columbia Circuit, presented this paper at the University of Michigan Law School's Minority Alumni Weekend, Nov. 5, 1993.

IN THE FALL OF 1962, when I entered the University of Michigan Law School, I was the only Black student in my class. And, if I remember correctly, there were a total of four Black students in the entire law school. (Blacks had no monopoly on underrepresentation in legal education, however, for there were no more than about ten women in my class.) By the time I graduated in 1965, I was the only Black student in the law school, and not a single Black student entered Michigan Law School in the fall after my graduation. I have often wondered whether I was somehow responsible for the decline in Black enrollment from four to zero!

As it turns out, 1965 is a convenient starting point for me to reflect on three decades of legal education for minority students at the University of Michigan Law School, for it marks more than just my graduation from the institution. During the 1965-66 academic year, the law faculty approved the inauguration of an affirmative action program to increase minority admissions. Under this program, eight Black students were admitted to the law school in the fall of 1966. By 1970-71, there were 77 Black law students at Michigan (second only to Harvard in total number and third only to Harvard and Yale in percentage of total enrollment among the major law schools).

Before I reflect further on the fruits of affirmative action, permit me to digress for a moment to recall some of the interesting history of the law school during the decades preceding the advent of affirmative action. In his outstanding book, *Emancipation: The Making of the Black Lawyer (1844-1944)*, J. Clay Smith reports that "[t]he nondiscriminatory policy of the University of Michigan Law School is apparently one of the reasons for the early entry of black lawyers into the profession in Michigan." It was at the University of South Carolina and the University of Michigan that Blacks were first admitted and graduated from publicly supported law schools. Michigan graduated its first Black law students, Albert Burgess and Thomas Crispus, in 1877. By 1890, Crispus had gained a reputation as the "most promising constitutional lawyer in the state."

During the period from 1877 to 1965, Michigan had a thin but fairly consistent stream of Black law graduates. They included such luminaries as Mason Nelson, a graduate of Howard Law School, who was admitted to Michigan's Master of Laws program two years after it started and earned his degree in 1893; Oscar Baker Sr., who graduated at the dawn of the twentieth century, and his sons, Oscar Jr., who graduated in 1935, and James, who graduated in 1951, who have dominated law practice in Bay City, Mich., for much of this century; Hobart Taylor, who is reported to have published 10 articles in the *Michigan Law Review* between 1942 and 1943; George Crockett, who served as a Michigan state court judge and then a member of Congress; Cecil Poole, the first Black U.S. attorney in history, who was appointed to the United States District Court and then the Court of Appeals for the Ninth Circuit; Roger Wilkins, who served as an assistant attorney general in the Department of Justice and then went on to win a Pulitzer Prize for journalism; Amalya Kearse, an esteemed member of the United States of Court of Appeals for the Second Circuit; and J. B. McDade, who is now a federal District Court Judge in Illinois.

Oddly, despite the distinguished records of many of the Michigan minority alumni, no Black person was ever hired to serve as a regular member of the law school faculty until I accepted a position in the fall of 1970. Sadly, in the 116 years since the graduation of Albert Burgess and Thomas Crispus, only three Black persons have been members of tenured faculty at Michigan: the late Hon. Wade McCree, Professor Sallyanne Payton, and yours truly.

Some may wonder what it was like for those of us who attended law schools like Michigan as "lone" (often "token") minorities. Curiously, in ways, it was easier than the experiences now faced by Black students. My social life was admittedly restricted (both at Cornell, my undergraduate school, and at Michigan), at least until I was married and gained entry into the circle of married couples. Because we were such a small population group, almost all of the Black students on campus knew one another. We "hung out" together, and my first wife was another minority graduate student, working on her master's in English. I add, however, that, although there was no dating across racial lines (at least not openly), there was no other significant divide between minority and non-minority students. I guess that there were not enough minorities on campus to be worrisome to those who might otherwise object.

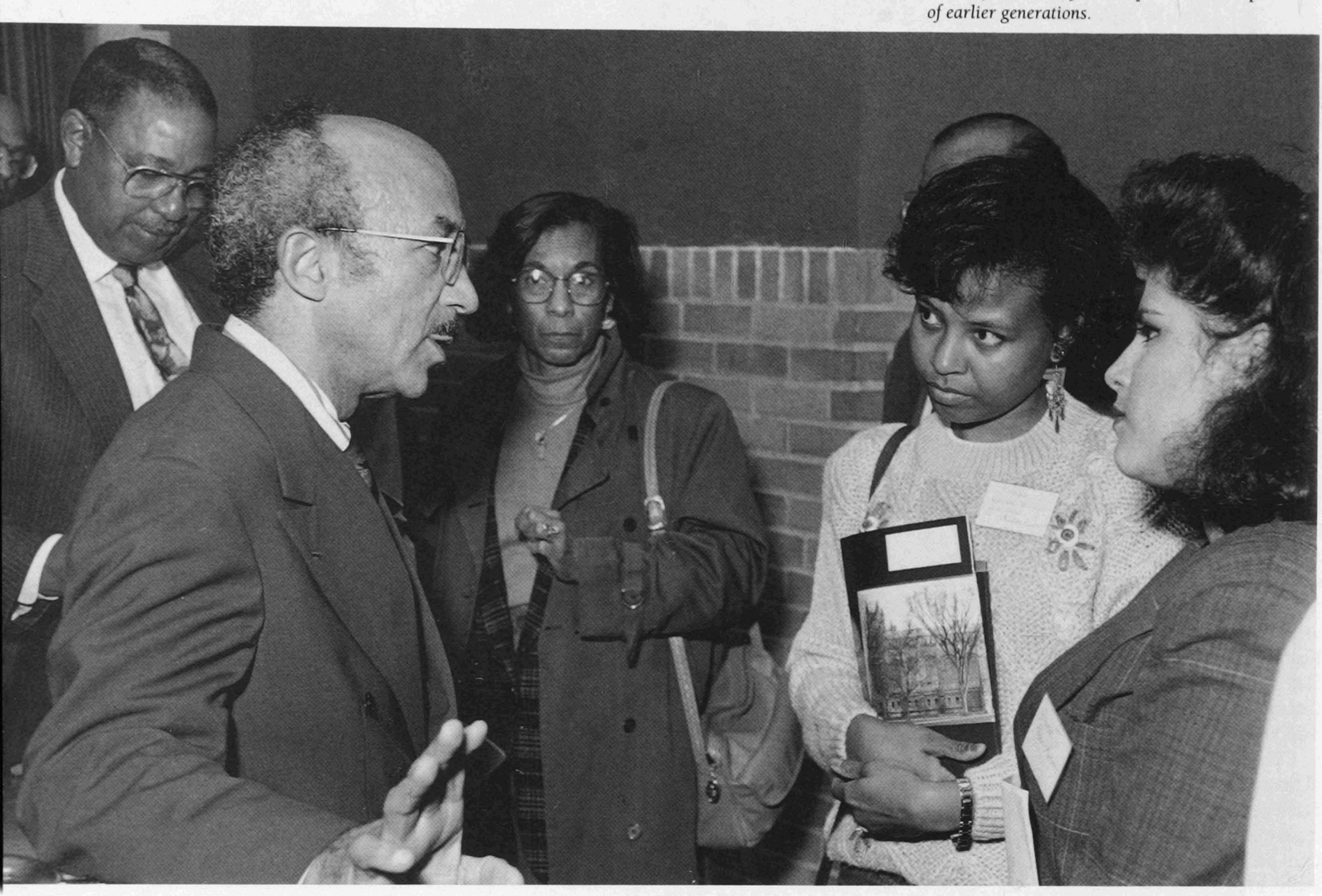
In any event, I never felt isolated from the intellectual life of the law school: A number of my closest friends were non-minority students (several of whom have remained among my most loyal friends in life). I had some wonderful faculty mentors, like Russell Smith, who got me my first job with a labor law firm in Chicago, helped me start a career in labor arbitration, and ensured the publication of my first book; Robert Harris, who gave me my worst grade in law school in my first-year Contracts class, but who then proved to be a wonderful mentor under whom I did some highly rewarding work on housing discrimination (and from whom I bought my house in Ann Arbor when I returned to teach); Roger Cramton, a tough conservative scholar with a sometimes sharp manner, who fired me up in the classroom, inspired me to think hard, and rewarded me with A's in the Procedure, Conflicts and Administrative Law classes that I took from him; and Richard Wellman, the faculty sponsor of the Barrister's Club to which I belonged, who embraced me in a way that made me know that I belonged.

All was not good in law school, however. Despite being a member of the Michigan Law Review and having relatively high grades, I had a devil of a time getting a job. Judge McCree urged me to consider a law clerkship, but I declined because I did not understand its value and because I was broke and really wanted to get on with my career. When I interviewed with major law firms in Chicago, Detroit, Los Angeles, San Francisco and Washington, I was told quite frankly by some partners that, although my record was impressive, the firm could not risk hiring a Negro. It was only because Professor Smith interceded on my behalf that I was finally hired to practice labor law with Seyfarth, Shaw, Fairweather & Geraldson in Chicago. Even there several partners told me that they were not sure that my hiring could work out, because the firm's clients might not welcome dealings with a Negro. Interestingly, however, once I got my foot in the door, I never really worried about whether I could succeed. I honestly believed that, having been taught by the likes of Russ Smith, Paul Kauper, Frank Allen, George Palmer and Roger Cramton, there was no way that I could do other than succeed — I had an air of confidence that was typical of any student graduating from Michigan Law School. When I have talked with Amalya Kearse and Roger Wilkins about this, I have had the sense that they felt the same way upon entering the profession.

All in all, 30 years ago life for Black students may have been easier, although not necessarily qualitatively better, than it is today in predominantly white universities. My son and I have talked about this often. It is clear today that there are many opportunities for minorities, women and other historically disadvantaged groups which did not exist 30 years ago. When I was in college at Cornell University between 1958 and 1962, there were relatively few Black lawyers and, as far as I know, only one Black federal appellate judge; my odds of becoming either were long indeed. Nonetheless, when I graduated from Cornell, and later with honors from the University of Michigan Law School, no one doubted that I had made it on my own merits; indeed, I often received backhanded compliments from people who said that I *must* be talented, because I had been admitted to Cornell and Michigan and had succeeded *despite* my race. I had the advantage of an *assumption* that I was smart, and I believed it.

All in all, 30 years ago life for Black students may have been easier, although not necessarily qualitatively better, than it is today in predominantly white universities.

Judge Harry T. Edwards talks with the current minority students after his speech on the experiences of earlier generations.



Do I doubt the propriety of affirmative action? Absolutely not. The costs have been great in some respects, but the need was even greater.

In today's world, thanks in part to monumental changes in the law, minorities and women do not face the long odds of success that I and my contemporaries did; but when they do succeed, they often face precisely the opposite assumption. Thus, my son — a summa cum laude, Phi Beta Kappa graduate from Yale who has earned a full fellowship from Columbia to do a Ph.D in comparative literature — frequently encounters people who question whether minority students of his generation have achieved success on their own merits; it is often assumed that have "made it" only because they are Black. Rather ironically, then, our society has expanded the opportunities available to minorities and women, but has, at the same time, devalued the meaning attached to succeeding at those opportunities.

What is even worse is that, more and more, we find that esteemed institutions of higher education have been polluted by racial, ethnic and gender polarization. In recent years, the scene on some campuses has resembled a war zone, albeit without guns; but the battle of hateful words that now plagues these and other communities in our society is no less disgraceful or dangerous. Things have gotten so bad, at times, that we now debate the propriety of "legislating" good behavior that ought to be forthcoming as a matter of common courtesy and human decency.

With this said, do I doubt the propriety of affirmative action? Absolutely not. The costs have been great in some respects, but the need was even greater. Let's face it, much as I would like to believe otherwise, I joined the law school faculties at Michigan and at Harvard because of affirmative action. I was fully "qualified" to be considered for a

teaching position based on my law school record and my work as a practitioner, but it never would have happened if students at Michigan and elsewhere had not demanded a change in the status quo.

To give you a sense of the intensity of the situation, when I came to Michigan to negotiate a teaching contract with then-Dean Frank Allen in 1970, I had to cross a student picket line to get to the dean's office. As I entered the law school, a Black woman screamed an obscenity at me for daring to cross the picket line. I stopped and told her that I thought that I was the concessions to the picketers' demands. I explained that I was on my way to sign a teaching contract, to which she responded: "Well, why the h— are you standing here? You should be up in the dean's office!"

I could have taken that scene to portend the worst, but I have only fond memories of my time with minority students while I was at Michigan between 1970 and 1980. We were travelling uncharted waters together: the first Black law professor and the first significant *group* of minority students, hired and admitted with an aim of integrating what had been an almost all-white institution. We did not kid ourselves about our roles or our mission: We were the "test cases" (to see if Blacks really could compete with non-minorities at an elite institution), and we were determined to succeed despite the fact that we faced countless doubters. I remember sitting in the faculty lounge on many occasions and having a colleague ask me, "What are you up to?", as if to question the justification for my existence at the law school. I finally learned to answer, "nothing," to ward off inane queries about my work. I also remember some of my colleagues routinely asking me, "How are they doing?", in reference to the minority students. What always amused me about this question was the unstated assumption that I alone knew the answer, and that I could give an answer that could cover every individual Black student. Indeed, this question forecast a problem that has stayed with us — too often the unique talents of *individual* minority students are lost in the preconceived stereotypes of the group.

As I think back on my time at Michigan, I realize how lucky I was to be associated with the particular minority students who made up the early so-called "affirmative action classes" in the 1970s. When I started teaching, in the heat of the civil rights battles that were aiming to integrate academia, I faced some conflicting signals about my role. On the one hand, there was the possibility of being an "activist" professor mostly involved in civil rights protests, with my teaching focused on discrimination and race relations. On the other hand, there was the possibility of focusing on teaching and scholarship in labor law (my field of expertise) and fully integrating myself in the life of the law school. I chose the latter course, in part because of what I was told by the minority students when I arrived on campus.

I remember a meeting with the members of the Black Law Students Alliance (BLSA), during which the students told me, "We don't need you on any picket lines. We need you to be a role model. We want you to be as good as any professor in the law school. We want students to subscribe to your classes in the same numbers as they do for Professor St. Antoine's classes. If you are respected, we will be respected." It was an extraordinary occasion for me, one that I never forgot. I got a message that a number of my Black colleagues across the country never heard upon entering teaching, and I think this may explain why some remained conflicted over how to define their roles in academia. I left that meeting with BLSA sure of my role and determined to answer the challenges that the minority students had set.

As an aside, I should note that, in recalling my relationships with BLSA during my early years as a law teacher, I have come to understand the vital importance of minority scholars in legal education. As a critical mass of minority students has entered law school, the need for diverse role models has been magnified for all members of the academic community. Indeed, in the times in which we now live, it is almost too much of a burden for minority students to attend preeminent schools like Michigan without a significant presence of minority faculty. When non-minority students are not exposed to outstanding minority teachers, they too easily harbor distorted views of minority students as intellectually deficient. Likewise, some non-minority faculty have confused views of minority students when they have no occasion to work with minority peers of equal standing in the profession. Finally, many minority students may feel that, in the absence of outstanding minority faculty members, they lack the role models necessary to overcome some burdens of racial polarization.

What was good about my early interactions with BLSA was that I was "liberated" to be me. I had a beginning-of-the-year barbecue for BLSA students each year, as a way to say "hello," but I never suggested to minority students that they should see me as the only possibility of a mentor. I refused to let race define my existence at Michigan, and urged I students to avoid any such tendencies. (Indeed, I felt that minority students always should integrate themselves in the intellectual life of the school, to take full advantage of it.) I also did not believe that I had to be a personal friend of every minority student; rather, mutual respect was my goal.

I remember one occasion early in my teaching career when a Black student, who was a well-known civil rights advocate on campus, flunked a mid-term examination that I had given in labor law. After the grades were posted, the student came to my office to whine about how busy he had been with his outside activities, thus causing him to perform so badly. I told him that I did not want to hear it, and then, when his mouth opened in disbelief, I told him that I would not hesitate to give him an F if he repeated his performance on the final exam. He stormed out of my office, muttering unpleasantries under his breath. A few weeks later, at the conclusion of the final exam, the same student me in the hallway, stopped, and said: "I just kicked the heck out of your exam." He then smiled and walked away. Indeed he had — he got a final grade of B+, after starting out with an F on the midterm! We laughed about it together later, and the student told me that he appreciated the fact that I respected him enough to demand his best.

The Black students with whom I worked during the early years of affirmative action in the 1970s are real heroes. They made change happen. In August of 1971, I wrote an article for the *Michigan Law Review* entitled "A New Role for the Black Law Graduate: Reality or Illusion?" In this article, I made a study of the major law firms in the major midwestern cities

The backlash from affirmative action continues to haunt us, even as minorities achieve great in professional endeavors.

in the United States, showing that very few, if any Blacks were employed in these firms. I concluded with the following observation:

> In this era of intense and expanding conflict, society can ill afford to lose or underutilize Black resources. Frustration, dissatisfaction, and disillusionment have built to the point that the legal profession must change to accommodate Black lawyers within all levels of the profession, even if only in response to imminency of social eruption. Blacks will be the engine of Black progress in America; or, to a lesser extent, Blacks will be the engine of societal destruction if there is not sufficient recognition by the establishment that there must be an input of the Black vision in the societal process.

I always tried to encourage the minority students to set their sights high, and to avoid a narrow focus in pursuing educational experiences and career opportunities. Just as I had been challenged by minority law students, I challenged them to persevere and make a mark on the profession. That they did.

The heroes are too numerous to name in full, but there are many from that early group of so-called "affirmative action admittees." To cite a few:

- Saul Green, who has just been tapped to be the new U.S. attorney in the Eastern District of Michigan;
- Wayne McCoy, one of my first research assistants, now a prominent partner at a major law firm in Chicago;
- Mary Frances Berry, chairperson of the U.S. Civil Rights Commission;
- Frank Jackson, now assistant general counsel of Blue Cross Blue Shield of Detroit;
- Jesse Womack, corporate counsel with ARCO in Los Angeles;
- David Baker Lewis, the founder of one of the most influential law firms in Detroit;
- Diane Fraser, another of my research assistants, who was associate general counsel of Harvard University before returning to Mississippi with her family;
- Iraline Barnes, formerly a judge on the Superior Court of D.C. and now vice president of Potomac Electric Power Company;
- Myra Selby, another former research assistant who became a partner at one of the most prestigious firms in Indianapolis, and who was recently appointed by the Governor to head the state commission on health care;
- Nancy Francis, a judge on the Washtenaw County, Mich., Juvenile Court;
- Curtis Mack, former regional director of the National Labor Relations Board and now a partner with an Atlanta law firm;
- Don Hubert, founder of his own firm in Chicago, and recently named Lawyer of the Year in Chicago;
- Kathleen McCree Lewis, a leading partner at one of the top law firms in Michigan;
- Henry Jones, a federal magistrate judge in Little Rock, Arkansas;
- Wilhelmina Reuben-Cooke, a law professor and associate dean at Syracuse Law School;
- James Waters, a member of the Board of Regents of the University of Michigan; and
- Lea Vaughn, a tenured professor at the University of Washington Law School.

This group is merely a sample drawn from a long list of "heroes" from the past. Very few of these graduates finished near the top of the class, but they were smart, resourceful, determined and well-educated. Their successes have proved that class rank is beside the point. All have succeeded where it counts: in the profession — in the real world of private practice, public interest work, government service and teaching. And they have helped to make real gains in the integration of the legal profession.

In 1970, out of approximately 300,000 lawyers in America, only about 4,000 were Black; very few of them were graduates of the "elite" law schools, or members of the prestigious firms, or occupants of important government positions. Today, the figures show signs of slow progress: As of 1991, it was estimated that there were approximately 19,000 Black lawyers in the United States, constituting nearly 3 percent of all practicing lawyers. Minority students probably constitute between 5 percent and 15 percent of the populations of a majority of the law schools. And Black students are now involved in the full range of activities within most schools, from law review, to moot court, to student government, to public interest work, to faculty hiring committees. Although placement remains a difficult issue, minority graduates from schools like Michigan are now being hired to fill judicial clerkships and to serve as associates in distinguished firms in all of the major cities in the country, in positions that previously were closed to Blacks. And today, although the numbers are still relatively low, we see Blacks serving as federal judges in almost every area in the country (in district courts, circuit courts and the Supreme Court), as judges in numerous state court positions, as the Solicitor General of the United States, as the personal advisor to the president, and in a number of other important positions in the government and business.

I would like to end my "Reflections" on an upbeat note, and say that the profession is fully integrated and there is nothing more to do. Unfortunately, we know that this is not true. The backlash from affirmative action continues to haunt us, even as minorities achieve great in professional endeavors. University campuses have been polarized by ethnic battles, especially as the resources to support special programs have diminished and as the incidence of "hate politics" has increased; earnest leaders among non-minorities — outstanding people like Michigan's Dean Bollinger — have been burned out by the tensions emanating from continued conflicts over racial, ethnic, and gender issues; and minority students often are frustrated and alienated by what they perceive to be openly hostile environments at some schools.

In addition, even when minorities achieve great professional success, they are sometimes treated in a way that is perceived to be different from the treatment accorded their non-minority colleagues. We scratch our heads in disbelief over situations like the one in which Professor Lani Guinier was not allowed to defend herself before the Senate, and the outrageous decision by the director of the Library of Congress to release the papers of Justice Thurgood Marshall without ever seeking advice from members of the Supreme Court or from Justice Marshall's

family or counsel. Blacks wonder if whites in the same situation would have been treated with greater respect and courtesy.

There are also subtle "snubs" that continue to nag minorities in the profession. Recently, a nationally prominent attorney — recognized to be one of the smartest and very best attorneys in the country — was selected to receive an award from a very prestigious group. The last recipient of the award was a member of the Supreme Court, and, on the occasion when he was honored, we treated the Justice and his wife to a lavish meal at a fancy restaurant in Washington, presented him with a beautifully framed memento of his award, and photographed the entire event. When it came time to give the award to the Black attorney, the head of the group told me that he would take care of arrangements. What happened was that we met at the law offices of the Black attorney, and, upon greeting him, the head of the organization removed an unframed certificate from the packing tube in which it had been mailed, handed it to the Black attorney, and said, "Congratulations." I sat speechless, not believing what I was witnessing. As we were leaving the building, the head of the organization turned to me and said, "Gee, maybe I should have framed the certificate." I was furious, but I bit my tongue, as did the recipient (who I knew was dumbstruck by the entire affair). Later, I had my law clerk retrieve the certificate to have it framed and I had my secretary make arrangements for a dinner celebration in honor of the awardee. My wife and I talked about this at length, and she agreed that it was outrageous, but we decided that the head of the organization never would have comprehended my anger if I had expressed it directly. We agreed that it was not worth exasperating myself over the issue, especially when I had other options available to remedy the situation.

Which brings me to my last point. To the minority students of today, I say, do not get distracted by petty people and petty issues. There is too much to do, and we cannot afford to waste your talents. As I told Professor Guinier, she is too good a legal scholar and too well-respected by her peers to view herself as a "victim" of Washington politics; indeed, she has more doors open to her now than ever before to speak out on important issues, and she should capitalize on the opportunities.

In reflecting on my life as a lawyer, I often have thought of my grandfather, who was himself a lawyer and who taught me so many things that have greatly influenced me as an adult. Three years ago, I heard one of my heroes, Marian Wright Edelman, president of the Children's Defense Fund, give an eloquent speech to the graduates of Yale University on the "lessons of life." After listening to Ms. Edelman, I realized that many of the lessons of which she spoke were the same ones that I had been taught by my grandfather. It also occurred to me that many of these lessons are directly relevant to any consideration of a lawyer's duty to serve the public good. Permit me to end by recalling a few of these lessons, occasionally borrowing (with permission) from the words of Marian Wright Edelman.

LESSON I: No person has a right to feel entitled to anything for which he has not worked. Frederick Douglass once said that "men may not get all they pay for in this world, but they must certainly pay for all they get." Even the most talented among us must struggle to achieve. Probably the most important thing that my grandfather ever told me was that I should never have to rely on anyone else to assess my work. What he meant was that if I kept my standards high enough, I always would be my own most severe critic, and I would never kid myself about the quality or significance of my work.

LESSON II: Never work just for money. In amplifying on this point, my mother used to tell me that money alone does not give satisfaction, nor does it prove personal worth. We see this every day, for we are the richest nation on earth, yet we have among the highest rates of incarceration, drug addiction and child poverty in the world.

I was also constantly reminded not to confuse wealth or fame with character, and told never to tolerate or condone moral corruption. This of course meant that the pursuit of material wealth could never justify corrupt or immoral behavior. It also meant that I should never confuse morality with legality. As Dr. Martin Luther King once noted, much of what Hitler did in Nazi Germany was "legal," emphasizing the obvious point that no one should be given a proxy for our conscience.

LESSON III: Do not be afraid of taking risks or of being criticized, especially in defense of goodness or in pursuit of justice. And, as my grandfather said, never be afraid of making mistakes; it is the way you learn to do things right. Dr. Benjamin Mays, the former president of Morehouse College, said it best: "It's not failure that is a sin, it's low aim."

LESSON IV: In a decent society, the fellowship of human beings is more important than the fellowship of race and class and gender. This moral precept was a principal teaching of Dr. Martin Luther King.

I know that, because of the problems that we continue to face, many minorities feel alienated. But, at least for those of us who have graduated from schools like Michigan, we must remember that, all things considered, we are substantially better off than most people in society. There are some people who live in what Roger Wilkins calls the "underclass of society," people who are truly suffering — we are not among them. We are among the class who can help them, especially with an education and degree from a law school like Michigan. We must find ways to offer real opportunities (and with them, real hope) for the truly disadvantaged members of our society. . . . We must educate, protect and love our children, and teach them to love one another. . . . We must find a way to restore civility in our society. . . . We must promote the "fellowship of human beings" and learn to live as a community of one. And those among us who are just entering the legal profession — trained to ensure justice in society — must be at the center of these efforts. With courage, I know that they will.

LQN

We must promote the "fellowship of human beings" and learn to live as a community of one.

Double vision

Twins' views of the climate for minorities aren't identical

DAVID AND NATHANIEL CADE, Class of '96, are heirs to a Michigan Law School tradition that is even longer than Judge Harry T. Edward's 30-year history.

The identical twins from Detroit represent the fourth generation of their family to study law at Michigan. Their relatives appear prominently in Edwards' honor roll of Black graduates.

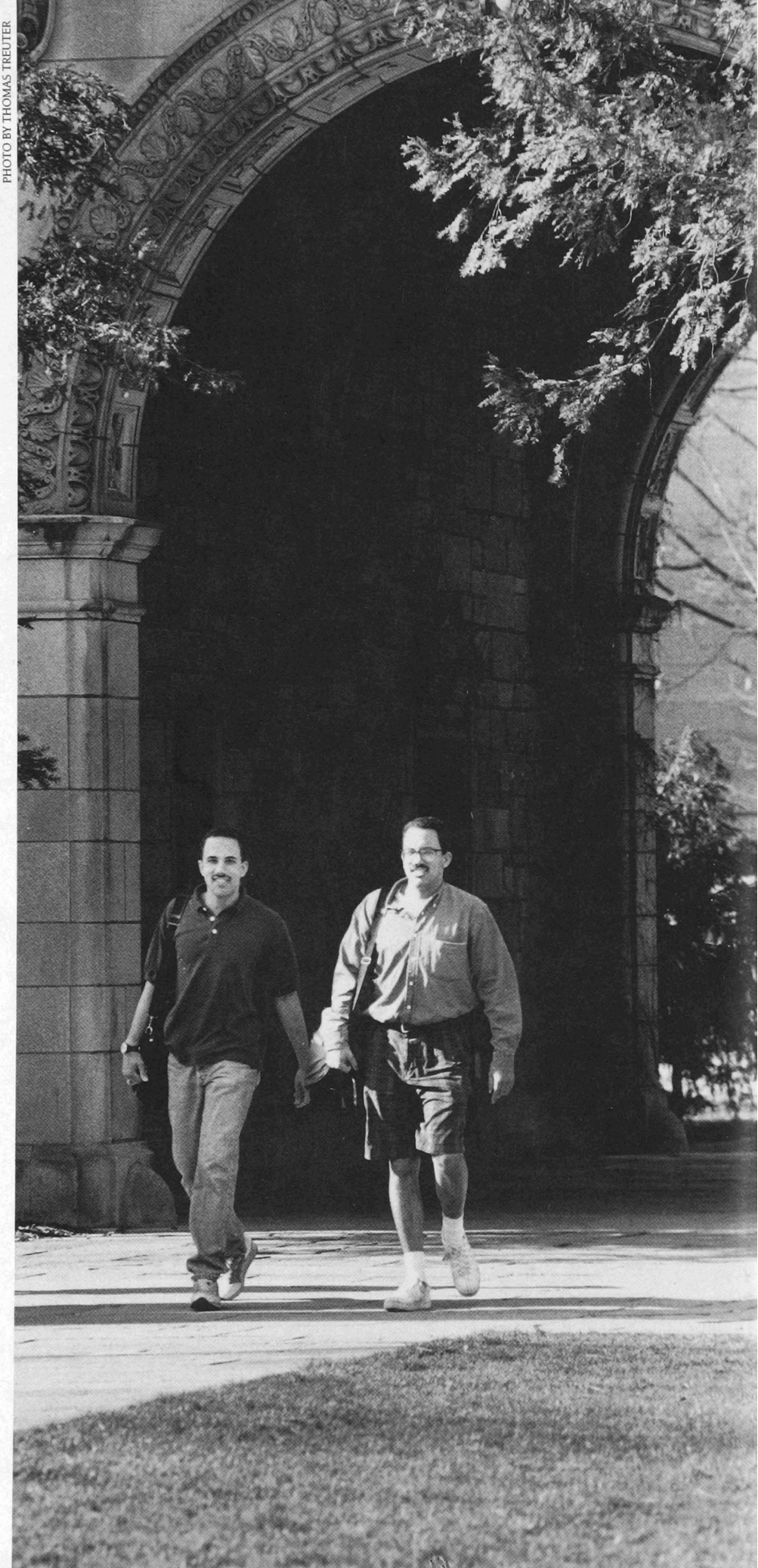
The first was Oscar Baker, '02, their great-grandfather. Baker's sons, Oscar Jr. and James, graduated in 1935 and 1951, respectively. A cousin, David Baker Lewis, graduated in 1971.

Their mother holds a law degree from Wayne State University, and there are several other attorneys in the family. No one pressed the twins to pursue law — in fact, their mother lobbied against it and their father wanted a doctor in the family. Still, "I pretty much knew I was going to come here since I was little," says David. Nate adds, "I was thinking about engineering, but law school was always in the back of my mind." With all those lawyers around, legal training started early. As children, "We used to gather around the table and there would be seven or eight of them giving us hypotheticals," David says.

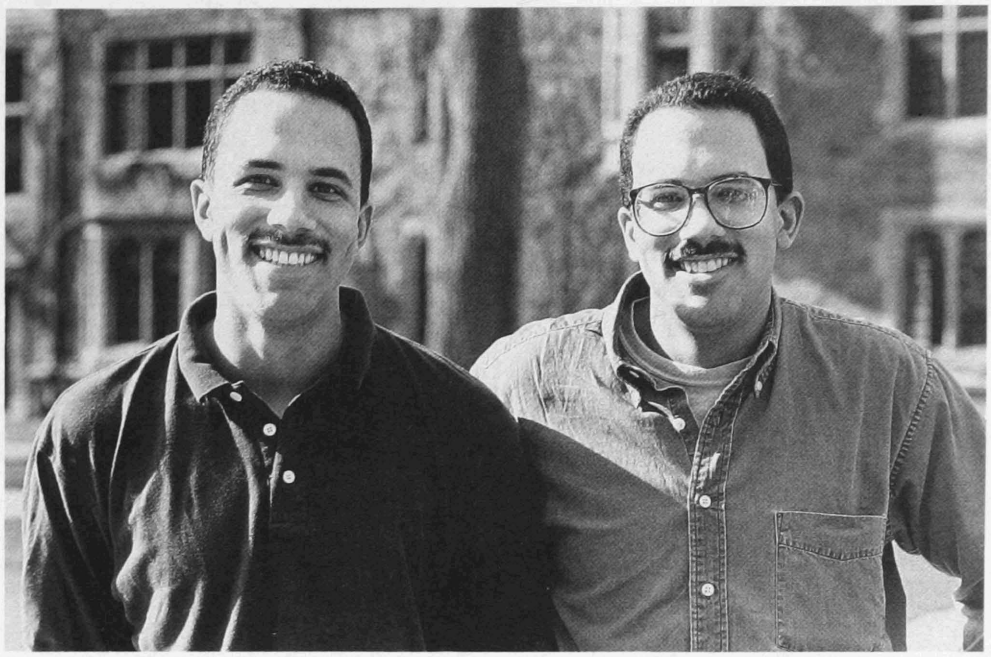
Both say they enjoy generous encouragement from their relatives who know what law school is like. Uncle Bud (Oscar Baker Jr.) jokes with them about his low grades and Uncle Jimmy shares tales of his classmates and life in the Lawyers Club. However, the twins agree with Edwards that they sometimes face a troubling attitude that their relatives did not — the assumption that they are enrolled solely as "affirmative action admittees."

"I think it is worse now [for Blacks]," says David. It goes without saying that the Cades, graduates of a Massachusettes prep school

PHOTO BY THOMAS TREUTER



David and Nathaniel Cade



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and the University of Pennsylvania, are eminently qualified law students, and yet "there's a perception that we got here on affirmative action," he notes. Professors don't appear to doubt their abilities, but other students have told David, "I had a friend who didn't get in. You took his spot." Says Nate, "Some people get wrapped up in the end product — they see a minority candidate who got in and they fail to see less visible reasons why, like test scores. There may not be respect for an individual's achievements."

In years past, minority students stood out because there were so few in class. Now they are noticed as a group. "Some people think that if you have X percent of African Americans here, you don't need any more," says David. "I've had a professor ask my study group, 'Why do African American students always sit together in class?' My friend asked him why he thought Jewish students always sat together, and he said he'd never noticed that," David recalls. "We just stand out a little more. Minorities are more of a focal point now because of sheer numbers, but having the numbers doesn't guarantee successful integration."

The twins report these views matter-of-factly. They say they usually aren't uncomfortable at the Law School; they speak of incidents and comments on campus and off as "everyday racism."

Half-way through their first year, the Cades don't have a perspective on how the Law School's racial climate has changed over time, and their relatives don't seem to have dwelt on how it was in their student days. However, Dean Lee Bollinger says the faculty has made significant, concerted efforts to improve that climate. In 1988, he arranged a survey that gathered the perceptions of every minority student and many alumni. After extensive discussions of the criticisms and issues raised, many changes were made throughout the school. Follow-up studies show that the climate is warming. "We still have more to do, but there's no doubt in my mind that students feel a great deal more comfortable than they did six years ago," Bollinger says.

The Cades' experiences suggest that by their presence, minority students themselves offer an education for their nonminority peers. Both say they've encountered people who say there are no race problems. "They don't believe the automatic attention you get because you're Black. They don't understand what it's like to have a clerk follow you around when you go into store because he thinks you're going to shoplift," says David. For one doubting friend, he conducted a little demonstration. When the clerk did indeed trail David, the friend angrily confronted the clerk afterward.

Other students have told David, "You're different, you're not one of them" when they found that he didn't match their stereotypes of uneducated, criminalistic or violent African Americans. The suggestion that he is "not really Black" angers him, yet he realizes that some people who get to know him will change their stereotypical views.

The Cades both observed some discomfort in constitutional law class when amendments dealing with discrimination were discussed. Some students felt compelled to state that they had Black friends when expressing their views. Nate says he felt other students didn't dare speak up, and that bothered him. "The classroom should be a sheltered place where people can say what they feel," even if it's unpopular. "Otherwise, you stifle honest, open debate. I'd rather have someone attack from the front than from the back. That way, if I hear racist ideas, I can ask what they are based on, and show that they are not based on facts or evidence."

The twins share an apartment and some common interests. Both are members of the Black Law Student Alliance and are college basketball fans. Beyond that, their activities and career goals diverge. Nate, who is older by four minutes, belongs to the American Bar Association student division and was elected treasurer of the Law School Student Senate in March. He plans to pursue a career in corporate law. David, the vice chair of BLSA and a member of the Alpha Phi Alpha Fraternity, Inc. and Washtenaw County Big Brothers, would like to teach.

Their views on race aren't identical, either. David agrees with former Harvard Law School Professor Derrick Bell that Blacks are the scapegoats of American society who will always be the target of discrimination, just because they are different. Nate thinks mingling with people who look, act or think differently is the key to overcoming racism. "I'll hang out with anyone I meet — if they are green, I'll hang out with them. At no other time than in college will you have the opportunity to be with so many different people with different backgrounds, and if you isolate yourself with your own group, you lose that opportunity to learn about each other.

"Racism is not necessarily always hatred; sometimes it's just unfamiliarity. If we encourage interaction between free thinkers of all kinds, it will break down racism and build understanding that will permeate society."

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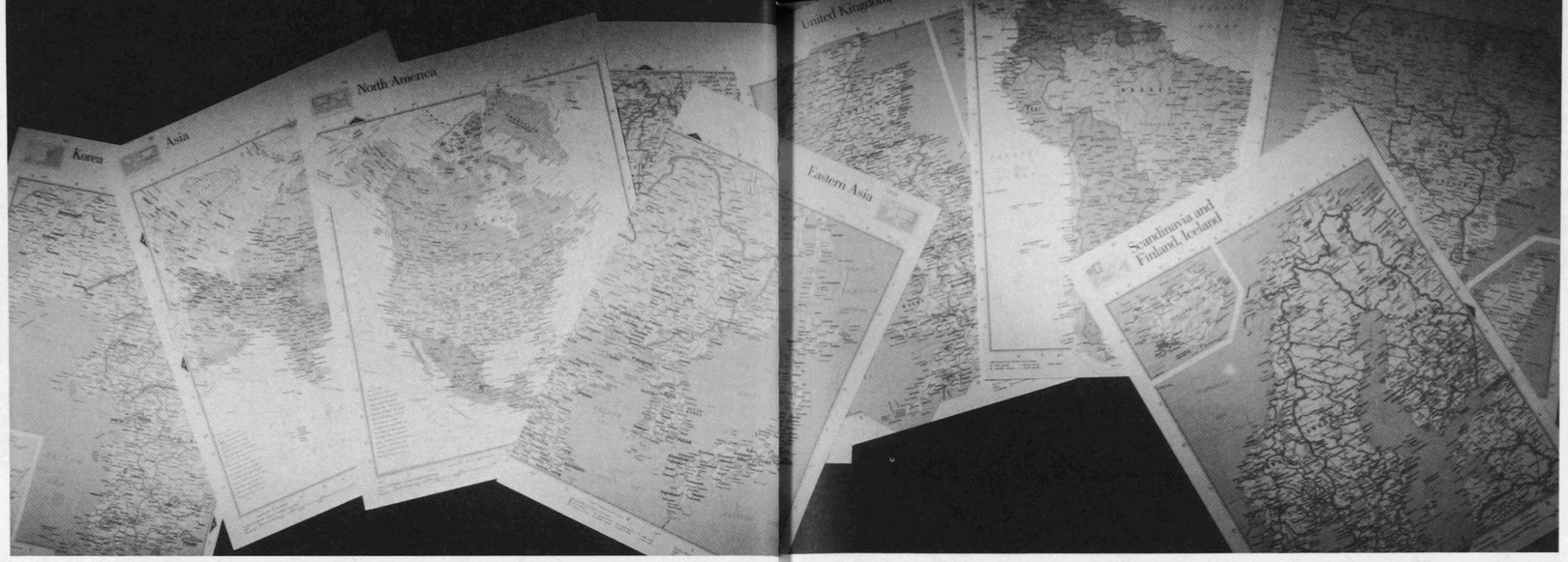

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Increasingly, we lawyers are interdependent in thought and deed. What happens in one country will affect directly not only the practice in another country, but even the way in which lawyers are regarded in that country.

Our **worldwide** legal profession

— BY JOHN C. TOULMIN, Q.C.

John Toulmin, Queen's Counsel, was a student of Professor William Bishop when he attended the U-M Law School as a foreign Ford Foundation Fellow and Fulbright Scholar in 1964-65. As the president of the Council of the Bars and Law Societies of the European Community (CCBE), he returned to Ann Arbor as the William W. Bishop Jr. Fellow to give the 1993 Bishop Memorial Lecture on the international practice of law. This article is based on his lecture.

IN 1965, IT DID NOT MAKE SENSE to talk about a worldwide legal profession. There were many different legal professions which, in the spirit of those times, had little need to harmonise their rules or consider what effect changes in the rules would have on the pattern of practice in other countries. Indeed, until the last few years there was, except for a few specialists, little practical need for ordinary lawyers to study either the law or law practice in other countries.

What was until recently an academic pursuit of the few is now recognised as being of great practical importance to all of us. It is clear that we now have a worldwide legal profession and that it is developing at a considerable pace. Lawyers provide services for clients; clients respond to and take advantage of changes in the political and economic situation and in technology, thus driving change in the profession. In order to understand what our worldwide profession requires, it is necessary to look at the extent of the changes that have taken place.

The political and economic map has changed. On this continent, you now have the North American Free Trade Area. Recently, the GATT agreement was signed. Legal services are included in GATT as part of business services. The European Community (renamed the European Union in October 1993 by the Maastricht Treaty) of six member states has enlarged to 12, and is still growing. On Jan. 1, 1994, a number of the European Free Trade Association countries entered into close association with the full members of the EU.[1] Central and Eastern Europe are now part of the free world. This region has cooperation agreements with the EU and strong links with the United States and other countries. The Mercosul countries in South America — Brazil, Argentina, Uruguay and Paraguay — have formed their free trade area. There are trading agreements in the Pacific Rim. In each case, there is increasing cooperation between nations and lowering of regional trade barriers, which allow law firms to expand and become multinational.

The development of technology, particularly computers, facsimile and voice mail, has made worldwide communications easier, not only for businesses but for law firms. The world also seems a smaller place when satellites beam news around the world. For instance, the Rodney King trial and the Senate hearings of Judge Clarence Thomas received a great deal of television coverage in many countries.

Practices changing everywhere

Within the United States, the change in the pattern of legal practice has been marked. In 1965, the largest American law firm had about 175 lawyers. Now there are more than 200 U.S. firms with 250 lawyers or more. Then, there were no national law firms in the United States. Now it is wrong to think, for example, of Winthrop Stimson Putnam & Roberts solely as a New York firm, or of Morrison and Foerster as a San Francisco firm. They have offices in other parts of the United States and the rest of the world. At least 12 firms in Detroit have out-of-state offices. Meanwhile, the profession has grown in size. In 1971, there were 350,000 lawyers in the United States. Now there are over 900,000.

In Europe, too, there have been great changes, particularly in the last few years. Until 1970, English solicitor firms had a statutory maximum of 19 partners. Now there are at least 10 firms with more than 100 partners. As a result of changes in the rest of Europe, there are large law firms in Germany and France and especially in the Netherlands, which has a number of firms with more than 200 lawyers.

Throughout Europe, the practice of law is increasingly transnational. In 1965, there were two U.S. firms with offices in London. By 1992, more than 50 of the 100 largest U.S. firms had offices there. This expansion of practice is not confined to Europe and the United States. It has taken place in all the major commercial centres of the world, particularly in the Far East.

There have been other changes for lawyers. In the 1960s, and indeed after, lawyers' privileges and immunities were accepted by politicians and the general public. Now, throughout the world, they have to be justified at the bar of public opinion. Law firms, particularly in the United States, are regarded as commercial enterprises. There is talk of "one-stop shopping"; a proposal in the United Kingdom for reform of the legal profession questioned why all professional services — legal, accounting, architectural, surveying, etc. — could not be provided by one partnership.

I am told that in the United States, lawyers are poorly regarded by the public. Former Vice President Dan Quayle's speech at the 1991 American Bar Association convention, which was deeply critical of lawyers, was the most sympathetically reported speech he ever made. Lawyers' mystique is disappearing in other countries as well.

Something positive must take the place of that mystique. If there is contempt for lawyers, contempt for the law is not far behind. What is needed worldwide is a vigorous assertion of those values which are important for the functioning of the legal system, so that these values are preserved in this time of rapid change. To do this, lawyers must play a constructive role in bringing about necessary change. It is, for example, a blot on the legal system that in most of the free world, the majority of citizens cannot afford to use the civil courts.

Increasing interdependence among legal professions

Increasingly, we lawyers are interdependent in thought and deed. What happens in one country will affect directly not only the practice in another country, but even the way in which lawyers are regarded in that country.

The speed of these changes in the pattern of legal practice has largely taken unawares those who regulate our profession. Yesterday, the movement of lawyers affected only a few and could be dealt with by informal arrangements. Now it is necessary to make clear the regulatory process by which lawyers can qualify as members of the bars in other countries; the rules of conduct which will apply when they visit other countries; whether they can establish branch office abroad and, if so, what scope of practice they should be permitted to undertake.

In dealing with these questions, there is a need to understand each other's legal systems. Such an understanding is particularly important in Europe, where we have many different legal systems. There may be a good reason why a particular proposal causes difficulty in a country. For example, Germany and France give lawyers a monopoly on

1 Most members of the EFTA —Austria, Finland, Iceland, Norway and Sweden — joined the European Economic Association (EEA) as part of an enlarged trading market on Jan. 1, 1994. Switzerland and Liechtenstein did not join.

providing paid legal advice. There is no such monopoly for lawyers in the United Kingdom, Ireland and Belgium.

It is also important to understand that we are at the start rather than at the end of a period of rapid change for the profession. For example, there are at present only three foreign legal consultants registered under the Michigan law, but it is not hard to see that foreign lawyers may wish to establish offices in Detroit to serve clients connected to the automobile industry or in Kalamazoo for the pharmaceutical industry, or that there may be a need for greater interchange of lawyers across the Canadian border.

Shaping cross-border practice — the profession's role

As the EC has developed, the legal profession in Europe has been forced, often unwillingly, to face up to problems in the profession and consider not only in a theoretical but also in a practical way how solutions can be found. The Council of Bars and Law Societies of Europe (CCBE) plays a major role in ensuring that the views of the legal profession are understood and taken into account when changes affecting the profession are considered by the European institutions and national governments.

The CCBE consists of national delegations from the legal profession of all 12 EU states and the countries in the EEA as full members; five other nations are observers.[2] This umbrella organization represents the legal professions of these nations before the institutions of the EU and other international bodies. The CCBE delegates also meet to discuss topics such as multinational and multidisciplinary partnerships, access to justice, a common code of conduct for lawyers, the GATT round and alternative dispute resolution.

Professor Bishop taught me a very valuable lesson — that if negotiations are

PHOTO BY THOMAS TREUTER

There are at present only three foreign legal consultants registered under the Michigan law, but it is not hard to see that foreign lawyers may wish to establish offices in Detroit to serve clients connected to the automobile industry... or that there may be a need for greater interchange of lawyers across the Canadian border.

2 EEA countries were admitted to the CCBE as full members on Jan. 1, 1994. Observer countries are Switzerland, the Czech and Slovak Republics, Hungary and Cyprus.

to succeed, they must not only be based on principle, but must also be practical. In discharging the duties of president of the CCBE, I found it was important to keep in mind at all times what is practical and what is possible when trying to reach a common position between a large number of legal professions operating different legal systems in different languages. Before the legal professions can influence others, they must reach agreement amongst themselves, however difficult that may be.

The legal framework in Europe

The Treaty of Rome, as U-M Professor Eric Stein taught me, provides in Article 3(c) for the abolition of obstacles to the freedom of movement of persons, services and capital within the member states and prohibits discrimination on the grounds of nationality[3]. Under Article 52 of the treaty, restrictions on freedom of establishment by nationals of one member state in the territory of another member state should be progressively abolished; this applies specifically to professional activities. Under Article 59, there is a right to provide cross-border services. Articles 54 and 57(2) require the Council of Ministers of the Governments of Member States to issue directives on the mutual recognition of diplomas, certificates and other qualifications for the exercise of professions.

The general programme for the professions was originally was set out in 1961. Progress toward these objectives was very slow. It wasn't until 1977 that the EC adopted the Lawyers' Services Directive (77/2491 EEC), which permits lawyers who are nationals of and qualified in one member state to provide a wide range of cross-border services including, in particular, giving legal advice on host state law.

For example, an Irish lawyer would be permitted to go to Spain and advise on Spanish law as well as Irish law. He or she is also permitted under the directive to appear in the Spanish courts on an occasional basis, provided that the lawyer is introduced by a lawyer qualified to appear before that court. The foreign lawyer providing services is prohibited otherwise from appearing in court and also may not carry out the notarial activities of probate and conveyancing. In court-related activities, the rules of the host bar apply; otherwise, home rules apply, although the lawyer must respect host rules, particularly in relation to advertising.

The EC passed no other legislation specifically related to lawyers until 1989, but in the meantime, the European Court of Justice consistently struck down restrictions on professional practices which it held to be contrary to the Treaty of Rome. In *Reyners* [1974] ECR 631, it held that lawyers in independent practice were not exercising public authority, and thus were not exempt from the treaty under Article 55. Then the court struck down residence requirements in *Van Binsbergen* [1974] ECR 1799; nationality requirements in *Van Ameyde v. UCI* [1977] ECR 1041; restriction on the number of offices in *Klopp* [1984] ECR 2971; and disguised discrimination in *Thieffrey* [1977] ECR 765 and *Patrick* [1977] ECR 1189. The European Court has made it increasingly clear that it will place a liberal construction on its interpretation of the Treaty of Rome.[4]

In 1989, the Council of Ministers adopted a Directive on the Recognition of Higher Education Diplomas, also known as the Diplomas Directive (89/48/EEC). This directive, which applies to all professionals, has special provisions for lawyers. It outlines how EC member states must recognize relevant professional qualifications acquired in another state. Under the directive, an EC national admitted to the bar in a member state may, without examination, become a full member of the bar in another member state where the legal systems are similar. They may join the bar in a member state where the legal systems are different after taking a shortened version of the bar examination which takes into account relevant knowledge acquired in the home state. This is particularly helpful for lawyers from those countries where the law is very similar, and for the young lawyer. It does not assist those who wish to give advisory services primarily on international commercial law and the law of their home country as qualified legal consultants.

There is one other piece of EC-wide legislation that is important for lawyers. In 1988, the CCBE unanimously adopted a code of conduct that applies to all cross-border dealings between EC lawyers. The code has been adopted by all the legal professions represented in the CCBE. It stresses the independence of the lawyer and the general ethics under which lawyers should practice. It also deals with detailed rules on topics such as acceptance and termination of instructions, relations with the client and relations with the court. It tackles subjects where there is no uniformity of practice between different legal systems: confidentiality of correspondence, conflicts of interest, and contingency fees. To protect the public, the code calls for safeguarding clients' funds and requires lawyers to carry professional indemnity insurance. Another key provision states clearly that a lawyer should only undertake work which he or she is competent to perform.

The joint committee of the CCBE and the ABA has compared this code with disciplinary rules in the United States. There are some differences, notably on contingency fees, but if there was a desire to have a code of general principles that applied to cross-border activities between EC and U.S. lawyers, this could be achieved. The Japanese disciplinary code is also consistent with the principles in

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3 Article 8a added by Article 13 of the Single European Act of 1986 establishes the specific aim of establishing the internal market by Dec. 31, 1992. "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with provisions of this treaty."

4 See Commission v. Federal Republic of Germany [1988] ECR 1123.

A worldwide code would help to build confidence not only between lawyers, but also for their clients.

the CCBE code. A worldwide code would help to build confidence not only between lawyers, but also for their clients. When delegations from the American, European and Japanese legal professions met together for the first time ever in Evian les Bains in October 1993, they agreed that this task should be undertaken.

PHOTO BY THOMAS TREUTER

A practical proposal within the European Union

To complete the freedom of movement for lawyers within the European Union, the CCBE has drafted its own directive giving a lawyer the right to establish an office in another member state and act as a legal consultant, carrying on a limited range of activities under his or her own title of qualifications. Such consultants would be subject to the host's professional rules and discipline, and have the right to participate in host bar committees.

The CCBE had debated this subject for more than a decade without any agreement. In Copenhagen in 1988, the 12 delegations were hopelessly divided in support of three competing drafts. The authors of those drafts — Michel Gout from France, Neils Fisch-Thomsen from Denmark and Heinz Weil from Germany — and I came together as experts over a weekend at the end of June 1988. We discussed the issues purely on the basis of taking into account the needs and fears of the host professions and the incoming lawyers. Rather to our surprise, we found that when we looked at it in this practical way, many of the points of difference disappeared. The small print required much discussion, but in October 1992 in Lisbon, a draft directive in substantially the same form as we devised was approved by the CCBE by 10 votes to two.

This draft directive is passing through the necessary preliminary stages of redrafting and consultation within the EC Commission and we hope that a Commission draft will be issued soon. The fact that it has been delayed for so long has caused the EC substantial difficulty in the GATT negotiations. The main principles of the CCBE draft are:

- All lawyers in good standing have a right to establish offices in another member state, upon proof of enrollment with the competent authority of the home member state (Art. 2).
- Lawyers have a duty to register with the host bar or competent authority, and a corresponding right to be registered after a simple process of verification (Art. 5). Unlike the United States, the host bar has no right to conduct a due diligence procedure, but must accept the certificate of the home state bar.
- After the lawyer can prove three years' effective and permanent professional activity in that state (including the practice of local law), he or she may require the host state admitting authority to take this period of practice into account if he or she wishes to become a full member of the local bar. The host bar is required to exempt the applicant from at least a substantial part of the test for admission. However, the lawyer cannot be required to become a full member of the host bar (Art. 4.2).
- The lawyer established under home title may not use the professional title of the host profession, but must give an indication that he or she is authorised to practice as a foreign legal consultant (Art. 7).
- The established EC lawyer may, unlike the foreign legal consultant in the United States, advise on local law and appear on an occasional basis in the courts of the host jurisdiction, but may not undertake notarial activities or otherwise conduct litigation (Art. 6).
- The established lawyers are subject to the host bar's rules of conduct and discipline, provided that they conform to EC law and, insofar as they are restrictive, can be objectively justified (Art. 8).
- For registered legal consultants, the bar of the home state may participate in any disciplinary procedures (Art. 10)[5].
- In imposing insurance requirements, the host member state must ensure that equivalent arrangements in the home state are fully taken into account and that the requirements do not discriminate against the foreign qualified lawyer (Art. 8.3).

- Lawyers from one jurisdiction are permitted to set up branch offices in the same form as in their home state. Otherwise, rules on multinational practices must be the same for established foreign lawyers as for fully qualified lawyers in the home state (Art. 11).

The draft directive is intended to help lawyers in border areas who wish to establish offices in the neighbouring state, and those who wish to provide a service for their own nationals residing in another member state as well as those who wish to carry on international practice from foreign offices in major business centres. Like all other EC directives, it applies to EC nationals who are members of a recognized EC profession but not to nonnationals, even if they are members of a bar or law society in a member state. Currently, the CCBE and member states are discussing what the rights of non-EC lawyers should be, but at present there is no consensus on this question and it is difficult to achieve any consensus until the internal question is settled.

Although the EU draft directive will take time to be adopted and take effect, it will have a more immediate influence. In the event of a challenge to existing bar rules, the Court of Justice will look to the CCBE and Commission drafts when deciding if the rules can be regarded as objectively justified.

The U.S. system

Regulation of foreign lawyers in the United States has taken a different route. Unlike the European process, it is the courts in individual states — not the profession itself — which decide the questions of admission to practice in that state. At present, the number of foreign legal consultants is small — only about 200 are practicing in the United States, of which about 170 are in New York. This compares with more than 500 in London and Brussels and just under 200 in Japan. The right for foreign lawyers to practice as legal consultants exists only in about 14 states, including Michigan. In half of the states, there is no reciprocity allowing interstate practice; lawyers from other states must pass the state bar exam to be admitted to practice, so it is argued that it is difficult to permit foreign legal consultants from other jurisdictions to establish offices as legal consultants albeit to undertake limited areas of work..

All the states permitting foreign legal consultants have a rule requiring a period of practice in the law of the home state before admission to practice as a foreign legal consultant. Many states require the practice to have been undertaken exclusively in the country where the lawyer qualified. Foreign legal consultants generally may not advise on U.S. state and federal law. In some states, however, they may do so if it is based on the advise of a locally-qualified lawyer. Formal requirements include due diligence investigations by the state bar to verify the status and suitability of the applicant.

Some states, particularly California and Texas, have indemnity insurance requirements with which it is almost impossible for foreign legal consultants to comply. As a result, there are only six legal consultants registered in California and only one in Texas. Some in the ABA, including former International Section chairs Steven Nelson of Dorsey and Whitney and Joe Griffin of Morgan Lewis and Bockius, expressed concern that the lack of a general right to establish as a foreign legal consultant in the United States was inhibiting discussions for liberalising rules in other countries. They drafted the Model Rules for Foreign Legal Consultants, which the ABA adopted as official policy in August 1993, although the actual decision to adopt the rules is a matter for each state alone.

The model rules are carefully drafted to leave residual discretion on admitting legal consultants to the competent authority of the host state.[6] Under the rules, the foreign lawyer should have five years' experience in the laws of the home state, but it could be obtained in offices outside the home state. As a result of the strong position taken by the CCBE and others, this requirement is not mandatory. A shorter period may be substituted, or the qualifying period may be omitted entirely.

Article 1(c) and Article 2 preserve the right to make due diligence searches into the character of the legal consultant, rather than the due verification procedure. Article 1(d) has an age limit of 26, although it is optional. (Michigan has an age limit of 18). Article 3 has a clause giving the right, but not the obligation, to make reciprocal treatment for members of the bar of a U.S. state a precondition in accepting foreign legal consultants. (Michigan Code Article 5E(b) requires that Michigan lawyers should have a reasonable opportunity to practice in the applicant's jurisdiction.) In discussions within the CCBE, there has also been a strong feeling that there should be some broad element of reciprocity.

Article 4 of the model rules permits a much narrower scope of activity than under the EC draft directive. Court work is excluded; legal consultation is confined to advice on foreign law, although advice on local law can be given if based on the advice of a locally-qualified lawyer. However, the forms of practice allowed under Article 5(b) are wider than in the EC draft, in that a foreign lawyer is entitled to employ locally qualified-lawyers and take them into partnership. The explanatory memorandum to this rule says that it thinks only a limited number of foreign legal consultants will register. I disagree. I expect the movement of lawyers which is taking place increasingly in the rest of the world will also take place in the United States.

The model rules also include provisions on discipline, application and renewal fees, revocation of license, and admission to the bar. They do not deal with the problems of compliance with insurance requirements, which in some

5 The precise form of the participation is likely to be changed in the EC Commission draft.

6 See e.g. Michigan Code Article 5E(a)(1).

states are a significant barrier for foreign lawyers wishing to become legal consultants. The ABA's adoption of model rules is a positive and welcome step forward, although, as can be seen, much remains to be discussed before these basic differences in approach can be reconciled.

Beyond the Atlantic area — the GATT Round

Our worldwide legal profession does not, of course, only include Europe and the United States, but also the rest of the world. Both the CCBE and the ABA and their governments have been having separate discussions on foreign legal practice not only with each other but also particularly with the Japanese. These discussions have often taken the form of demands that the Japanese liberalise their rules for foreign legal consultants. Japanese rules are indeed too restrictive, but it is right to point out that foreign legal consultants are permitted to establish offices in Japan, whereas they are not at present permitted to practice as such in a majority of U.S. states or in a number of countries in Europe.

At the insistence of the U.S. Trade Representative, with the support of the ABA, legal services were included in GATT as part of business services[7]. European lawyers raised objections to this. On one occasion, the head of the Belgian delegation asked a senior representative of the EC Commission why he thought lawyers should be treated as traders in the same way as sellers of tomatoes. However, the EC Commission itself was sympathetic to keeping legal services in the GATS.

The CCBE had a choice to object to the inclusion of legal services and do nothing constructive, or to try to play a constructive role. We chose the latter. In our view, business legal services are essentially advisory services. Court-related activities are essentially participation in the process of justice and cannot properly be characterised as business services. If legal services were to remain part of the GATS, we argued that inclusion should be confined to advisory services and should not deal with questions of access as full members of the local profession, employment and partnership, which should be left to individual countries.

The United States, in its discussions with the Japanese, in its Annex on Legal Services of Oct. 3, 1990, took the opposite view and demanded extensive rights for foreign attorneys, including the right to recruit local lawyers as employees and to take local lawyers into U.S. partnerships. The EC Commission took the position that the GATT should not regulate the status of lawyers as partners or employees, but should concentrate on activities. These activities should include advice on the law in which a person is qualified and on international law, but not local law. For this purpose, EC law was to be treated as local law.

At a private sector meeting with EC senior officials in 1991, I suggested that the CCBE could aid negotiations by meeting its counterpart professions in other countries, in cooperation with E.C. officials. Officials welcomed the idea, and since then, the CCBE has had many discussions on the GATT Round with representatives of the ABA, the EC Commission and the U.S. Trade Representative. Similar meetings were held with the Japanese.

There are, of course, many other countries in the world for which additional freedom for lawyers to provide services to their clients in other countries is of greatest importance. It is dangerous to single out any in particular, but among others, Hong Kong, China, Singapore, Malaysia, Australia, New Zealand, Canada, Brazil and Egypt spring readily to mind. All interested countries must have the opportunity to take part in the detailed discussions. The experience of past discussions shows that we must strike a balance between the progress urged by the exporters of legal services and the concerns of the importers. We must understand the concerns of smaller countries which fear domination by the larger ones. The arrival of one lawyer

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Foreign legal consultants are permitted to establish offices in Japan, whereas they are not at present permitted to practice as such in a majority of U.S. states or in a number of countries in Europe.

7 These are covered under the General Agreement on Trade in Services, known as GATS. Specific provisions for lawyers are contained in the Annexes on Legal Services prepared by the participating countries.

8 Perhaps these principles could be similar to the Common Code of Conduct set out in my article in the Fordham International Law Journal, Vol. 15. No. 5 p. 673 (1991-92).

from a small country in the third world in the United States or the United Kingdom should not necessarily trigger a large exodus in the opposite direction on the basis of reciprocity.

In my mind, I can hear Professor Bishop asking what is the practical method for obtaining more liberal offers within the GATS framework to extend the very limited liberalisation so far achieved. The present offers from the European Union, the United States and Japan provide a confusing patchwork. If other countries follow suit, the objective of progressive liberalisation will not be met. It also will be difficult to put pressure on those countries that do not wish to open their borders to foreign lawyers.

Taking into account the different views expressed at the historic Evian les Bains meeting with representatives of the Japanese, American and European legal professions and at other meetings I attended during my year as president of the CCBE, I believe it may be possible to form a consensus around the following positive proposals, which countries would be encouraged to offer as a minimum:

- The scope of activities for foreign lawyers established in other jurisdictions would be home state law and international law. (This would not include EC law for lawyers from countries outside the European Union.) In addition, foreign lawyers would be permitted to advise on third-country and local law provided it was based on the advice of an appropriate, qualified lawyer.
- The foreign lawyer would be required to register with the host bar, but have a right to be registered after fulfilling formal requirements. He or she would be subject to host rules and discipline, provided that they conformed with accepted principles of conduct.[8]
- Where the present rules in any state are more liberal for foreign lawyers than the GATS rules, existing rules apply. This provision would apply, for example, in the United Kingdom.
- Foreign qualified lawyers should be entitled to conduct all arbitrations, except for purely domestic ones.
- Courts will decide whether or not to admit a foreign qualified lawyer to plead a particular case before a domestic court or tribunal (as in the present system in the United States).
- The foreign qualified lawyer practicing from a branch of a firm should be entitled to use the name by which the firm is habitually known.

An agreement by all the states in the GATT along the lines of these proposals would substantially liberalise the provision of legal services that support business sources. It would create its own momentum for change. The requirements of clients inevitably would provoke additional liberalisation in those countries which offered only the minimum. In this area, it is much more important to start the process than to wait for years in hope of achieving the perfect agreement.

I wish to end with a tribute to the farsightedness of the Law School faculty. My year at the Law School was one of the most rewarding and enjoyable of my life. Professor Bishop, a brilliant teacher who combined rigorous scholarship with a sense of fun, gave us a lesson in practical skills at my first seminar in international law. He gave us a treaty of friendship, commerce and navigation to construe, then told us that one clause meant "absolutely nothing but we had to put it in because the point had to be covered." He taught us the importance of working out in advance the practical future consequences of action taken on behalf of your client. I know that he was loved and revered not only by his students and fellow teachers, but also by his colleagues in the State Department, where he served as legal advisor from 1939-1947.

Professor Bishop was among a number of other remarkable teachers: Professor Paul Kauper teaching American Constitutional law; Professor Jerry Israel teaching a seminar on the American law of free speech; Professor S. Chesterfield Oppenheim teaching American antitrust law; Professor Jackson giving a seminar on international trade law; Professor Whitmore Gray teaching a comparative law course in contracts and Professor Eric Stein teaching the law and institutions of the Atlantic area.

I never thought when preparing for Professor Stein's class that I would ever need to know about the GATT Round or even be directly involved in the EEC, since the United Kingdom had just been rejected for EEC membership. There was no course similar to Professor Stein's at that time anywhere in Britain. When I attended a seminar of law professors and members of the European Court of Justice in 1991, it was agreed that a course along the lines of his was essential background for all lawyers in the EC, so you can see how far-sighted it was in 1965. The faculty today continues to reflect in its courses the changing times in which we live. The profession's regulatory authorities, too, must keep up with the pace of change; otherwise they will lose the respect of both the legal profession and the public.

LQN

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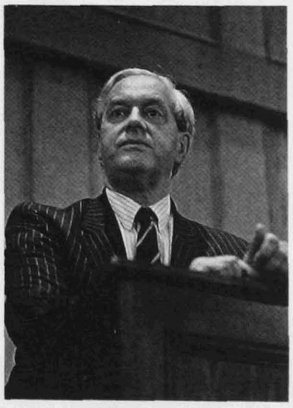

THE OPEN MINDED SOLDIER

AND THE UNIVERSITY

— BY LEE C. BOLLINGER

THIS ARTICLE IS ADAPTED FROM A SPEECH FIRST DELIVERED AS THE SECOND ANNUAL DAVIS, MARKERT, NICKERSON LECTURE ON ACADEMIC AND INTELLECTUAL FREEDOM IN APRIL 1992. THE LECTURE, SPONSORED BY THE UNIVERSITY OF MICHIGAN SENATE, RECOGNIZES THREE INDIVIDUALS WHO WERE DEPRIVED OF THEIR FACULTY POSITIONS DURING THE MCCARTHY ERA BECAUSE OF THEIR REFUSAL TO EXPLAIN THEIR POLITICAL BELIEFS TO A CONGRESSIONAL COMMITTEE BENT ON UNCOVERING SUBVERSIVE AND SEDITIOUS ACTIVITIES. IT WAS LATER PRINTED IN THE *MICHIGAN QUARTERLY REVIEW* (WINTER 1993) AND IS REPRINTED HERE WITH PERMISSION.

TODAY OUR EARS ARE FILLED with cries of alarm that we are about to be swept away by a new flowing of the sea of intolerance. Comparisons are even being drawn to the McCarthy era. As the problem has come to be characterized in the last few years, the present phenomenon of intolerance is possessed of a double irony. Where the McCarthy era involved the *right wing* of the American political spectrum victimizing the university (among others), now it is said to be the *university itself,* in the thralls of the *left,* devouring its own members.

The charge is that a political orthodoxy has arisen about issues that are reasonably debatable. There are, it is said, prescribed views about various subjects, but mostly about issues relating to certain groups — blacks, women, gay and lesbian individuals and so on. Indiscriminate charges of racism and sexism are said to be everywhere. Mere ideas are being equated with acts of discrimination. And an insistence on the dominance of a single ideological perspective is masquerading as protection of civil rights, just as the McCarthyites with willful blindness mistook political opinion for subversion and revolutionary action.

The new orthodoxy is supposedly enforced, as before, through defamatory accusations. In the McCarthy era, an individual was labeled a "sympathizer" or a "fellow traveler"; the person now is said to be "racist" or "sexist." In recent years, ideology is enforced also through official sanctions under university speech codes, ranging from coerced courses in "right" thinking to expulsion from the university.

My view is that there is, indeed, a serious problem of intolerance within the American university today, but it is not as simple as many believe. I do not think,

however, that this is a problem, as many claim, that is exclusively, or even primarily, of the left. I see many intolerant people on the right and in the middle as well, perhaps especially among those who view themselves as preservers of the status quo. People increasingly view it as necessary and desirable to be committed to certain positions, to the point where discussion is virtually closed off or infected by hostility. Viewpoints are too quickly dismissed as nondiscussable. And positions are deliberately taken with a vehemence that augurs high costs for those who would disagree.

At the same time, it is too easy simply to criticize extreme examples of intolerance. There are many issues of great importance to people within and without the academic world being debated today. I think many reasonable people within the university are deeply confused or conflicted about how to be an intellectual, or how to *conceive* of being an intellectual, in such an environment.

Today, therefore, I am interested not in legal rules related to the expression of ideas, but in what legal thought can tell us about some of the tensions that govern our everyday lives. More than anything, therefore, I want to try to understand the internal and external pressures we feel, or at least I feel, and, drawing particularly on the theoretical literature of freedom of speech, to offer some working assumptions about the human character that help us understand both the basis for the principle of academic freedom and why it is continuously at risk of being undermined. I have divided my thoughts into four parts, all leading up to what I hope will explain my title, "The Open-Minded Soldier and the University."

I
THE DANGERS OF BELIEF

To begin to understand the underlying reasons and social function of academic freedom, or of intellectual values, we must situate our inquiry in a broader theoretical context. We must begin with the problem of belief. The basic theme is this: The impulse to intolerance arises out of the wish to believe, which is an ever-present and powerful force in the human psyche. Never far from the surface in social interactions, it is a continual threat to democratic societies and to fundamental principles of human decency.

Intolerance attacks at every point of disagreement, insisting on conformity of every outward action, including speech, and frequently attempts to control the inner world of the mind as well. It can produce the most vicious behavior human beings are capable of, the potential for which is detectable in its more modest manifestations. And the impulse to intolerance does not follow bad ideas only; some of the worst cruelty in human affairs has been committed in the pursuit of morally perfect utopian visions — leading to speculation that beliefs sometimes only provide a protective cover for other impulses, such as the wish to dominate and destroy.

This wary vision of the human personality is a profoundly important theme in the traditions of this country and of Western political and social theory. The literature of freedom of speech is steeped in it. The history of censorship of speech, and of persecution (or punishment) based on ideas held or expressed, has produced some of the most eloquent and insightful observations about the human desire to have your way, to demand that others conform to your way of thinking, and to rid the world of those who would not. "Persecution for the expression of opinions is perfectly logical," Justice Oliver Wendell Holmes wrote in a famous judicial passage, "[for] if you have no doubt of your premises or your power and want a certain result with all your heart, you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent . . . or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises."[1]

This potential "logic" of belief impels people to very destructive ends. This is the central theme of Socrates, John Milton, John Stuart Mill, and great jurists like Louis Brandeis and Learned Hand. Indeed, the "logic" of belief ends ultimately in the annihilation of those who disagree: "Pleasures are ultimates," Holmes said in one of his many letters to Harold Laski, "and in cases of difference between ourself and another there is nothing to do except in unimportant matters to think ill of him and in important ones to kill him."[2]

"[O]n their premises," Holmes continued, "it seems to me logical in the Catholic Church to kill heretics and [for] the Puritans to whip Quakers — and I see nothing more wrong in it from ultimate standards than I do in killing Germans when we are at war. When you are thoroughly convinced that you are right . . . I see nothing but municipal regulations to interfere with your using your power to accomplish it. The sacredness of human life is a formula that is good only inside a system of law."[3]

Writers of social and political theory often also express the same fears about the hegemonic tendencies of belief. Take, as a recent example, a volume of essays by the political theorist and philosopher Isaiah Berlin, entitled *The Crooked Timber of Humanity*. In his opening essay, "The Pursuit of the Ideal", Berlin begins with the observation that two forces, above all others, have shaped human history in this century, the first being advances in scientific and technological knowledge

and the second the "great ideological storms that have altered the lives of virtually all mankind."[4] Berlin's theme is the dangers of "ideology" or belief.

"Happy are those," he says at one point, "who live under a discipline which they accept without question, who freely obey the orders of leaders, spiritual or temporal, whose word is fully accepted as unbreakable law; or those who have, by their own methods, arrived at clear and unshakeable convictions about what to do and what to be that brook no possible doubt." But, though perhaps happy, these people are also very dangerous: The possibility of a final solution, writes Berlin, — even if we forget the terrible sense that these words acquired in Hitler's day — turns out to be an illusion, and a very dangerous one. "For if one really believes that such a solution is possible, then surely no cost would be too high to obtain it: to make mankind just and happy and creative and harmonious forever — what could be too high a price to pay for that?"

Echoing Holmes's very language, Berlin's mind follows the path of certitude about our beliefs to killing: "You declare that a given policy will make you happier, or freer, or give you room to breathe; but I know that you are mistaken, I know what you need, what all men need; and if there is resistance based on ignorance or malevolence, then it must be broken and hundreds of thousands may have to perish to make millions happy for all time."[5]

With this vision of such a dangerous propensity in the human character to intolerance, writers like Berlin and Holmes prescribe a heavy dose of self-doubt and uncertainty. They tend to differ only in the degree to which they would commit themselves, and others, toward a posture of relativism in the world. "Tolerance is the twin of incredulity," Learned Hand once said to Holmes.[6] And Holmes himself wrote in a famous opinion that once we "have realized that time has upset many fighting faiths," we must "come to believe even more than [we] believe the very foundations of [our] own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ."[7]

Berlin writes that he accept the position of "pluralism" after he read Machiavelli and realized that "not all the supreme values pursued by mankind now and in the past were necessarily compatible with one another." Thus the Homeric Greeks may have been "cruel, barbarous, mean, oppressive to the weak; but they created the Iliad and the Odyssey, something we cannot do in our more enlightened day." And what is true across time and across cultures is also true between individuals. "You believe in always telling the truth, no matter what;" wheras, "I do not, because I believe that it can sometimes be too painful and too destructive," he writes. So, "We can discuss each other's point of view, we can try to reach common ground, but in the end what you pursue may not be reconcilable with the ends to which I find that I have dedicated my life."[8]

The essence of life, therefore, for Holmes and Berlin and others like them, is the "collision of values." We must learn — in Berlin's words — that we "cannot have everything, in principle as well as in practice."[9] In this way Berlin concludes his essay, and it would seem embarrassingly simplistic were it not said against the background of what he had said before and what we know he had lived through.

II
MORALITY AND COMMITMENT

Ultimately, this perspective of Holmes, Berlin and others does not satisfy, is seriously incomplete, and therefore does not account for the tensions of real life. The critical problem with the recommendation of self-doubt, or of an acceptance of multiple truths and pluralism, is that it must end somewhere. As powerful as their perspective is, it simply cannot provide a full and complete guide to life. At some point we will draw the line and insist on having our way, insist that the book is closed and the mind settled.

Of course, once that is pointed out, everyone acknowledges it as if it were obvious — even Holmes and Berlin. Thus, Berlin, at the conclusion of his essay says in the penultimate paragraph, that certainly there are "if not universal values, at any rate a minimum without which societies could scarcely survive." There can be no compromise, he acknowledges, when it comes to "slavery or ritual murder or Nazi gas chambers or torture . . . or mindless killing."[10] There is, in other words, an end to tolerance.

It is hardly surprising that our most compelling warnings about the connections between belief and the darker regions of the human personality come from the pens of individuals who, in one case (Mill), was raised from infancy under the tutelage of an autocratic father on a single intellectual and emotional diet of Benthamite utilitarianism; who in another (Holmes) fought and was seriously wounded in the Civil War and lived through the rabid intolerance of the Red Scare; or who in still another (Berlin) witnessed firsthand the barbarism beneath the ideologies of fascism and communism.

In the face of these firsthand encounters with the suffocating and cruel tendencies of true belief, is it any wonder that they would pursue self-doubt until

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1 Abrams v. United States, 250 U.S. 616, 130 (1919), (Holmes, J. dissenting).
2 Edmund Wilson, "Justice Oliver Wendell Holmes," in Patriotic Gore (New York: Farrar, Straus & Giroux, 1962), p. 762.
3 Ibid., p. 764.
4 Isaiah Berlin, "The Pursuit of the Ideal," in *The Crooked Timber of Humanity* (New York: Knopf, 1991), p. 1.
5 Ibid., pp. 13-14, 15.

they even flirted with relativism? Because their personal lives brushed up against one of the most destructive sides of the human personality, these individuals seem possessed of a need to articulate a vision of life that is more open-minded, more self-doubting, more willing to see the possibility of multiple truths in life, than the visions of those who have never encountered the tyranny of the zealot and are eager to embark on the reformation of mankind.

But, whatever the reason for the partial vision of pluralists, the fact remains that life is not only learning to be conscious of the potential destructiveness of belief; it is also learning and embracing — and being able to act on, which also means insisting on — a basic code of morals and justice. And that, it turns out, is not a simple or straightforward matter either. To do the right thing, even when we clearly see it, often involves costs our weaker wills will not bear, despite the scoldings of our nobler sentiments. To make matters worse, the right thing is, unfortunately, often unclear in life, which means not only that we experience a good deal of anxiety about what to do but, more importantly, our weaker sides are provided with ready cover for choosing to do nothing.

All this has acute relevance when you live in a time, as we do, in which (what Berlin called) the "minimum" is being renegotiated. Many if not most of the matters about which intolerant-mindedness is claimed today relate to another great strand in our intellectual and cultural heritage, namely our great project of equality and civil rights. This tremendous social effort to redefine relationships between groups within the society involves using both legal and social power to change both legal rules and social attitudes.

Now, as the early civil rights movement, spurred on by the Supreme Court's decision in *Brown v. Board of Education* (1954), successfully completed its goal of ridding the society of virtually all de jure forms of racial discrimination, attention has inevitably shifted to the next source of segregation and discrimination — that which originates in the hearts and minds of people, not in legislative and official corridors. Today, and this has been true now for many years, the problem of racism in American society is primarily a problem of attitude, of mind, not of official policy. No rule makes white and Black students, in this university or any other educational institution, eat at separate tables in dining halls, or socialize exclusively within each group. No official policy makes a Black student or faculty member suffer a verbal insult at night while walking across the campus.

And, as the civil rights movement achieved its successes and awakened the conscience of the nation, other groups within the society have naturally been moved to press their "rights" too. For many people it has become clear, disturbingly clear, that we are partially if not largely socially created, so that the sense of oneself within the society is the result of how other people see you. Thus, the status of women, Asian Americans, Hispanic Americans and gay and lesbian persons within the society has become a major focus. While some of the problems these groups face still involve discriminatory laws and official acts, for them, too, the most significant source of discrimination is that which comes from the mind.

Now, it would be naive to think that using social power — by which I mean all the myriad informal sanctions we impose on people every day: censuring, denouncing, shunning, etc. — to shape peoples' attitudes is not a legitimate part of this process of change. Social coercion only seems illegitimate when the effort is made *to reform* the way we think now; it does not when used to enforce what we already believe firmly to be wrong. No one today, presumably, would think it illegitimate to condemn someone who refused to associate with another person just because of the color of that person's skin. We would express disgust, collectively if we could, and employ what social powers we possessed to make him reform his conduct and his attitude.

But, of course, it was not always this way. If we had lived in, say, the 1930s or '40s, our objection to this behavior and the attitude it reflects would probably have been only that it was impolite or imprudently inflammatory, not morally repugnant. "Reasonable" people then believed that they had a "right" not to associate with black people, just like "reasonable" people in the 1950s were convinced that it was appropriate to fire people because they thought the precepts of communism or socialism superior to those of capitalism. We now feel very differently. Our attitudes toward those attitudes have changed. That happened in part through reason, but it also happened, and continues to happen today, through the exercise of social coercion. People who continue to think that way are made to feel the consequences of private sanctions, of being personally "disliked," or "unwelcome."

That is how it should be. That is how the moral conscience has been created and recreated over time. And now the same process continues. We are in the midst of a great social Reformation, which, in my view, is generally all to the good. It is an appropriate and desirable step in following the aspirations of our social and political principles.

The great Reformation of mind and attitude we are in the middle of, like any Reformation, is filled with confusion about how we want to reform ourselves and others. As in any revolution, there is uncertainty about what of the past regime to jettison as tainted and what to preserve and carry forward. And there is confusion and uncertainty about how exactly to revise the incredibly intricate interactions of our daily lives. For example, where to draw the lines between treating women as sexual objects and being latter-

day Puritans is, unfortunately, not always self-evident.

Here's the main point: Belief and its tendencies are a great concern of our culture and give rise to the felt need to inculcate self-doubt and self-restraint. But there is also a minimum, a floor of principles to which we legitimately will demand adherence. And inside the process of defining these basic principles of morality and justice, which is ongoing and changing, the call is for belief and commitment. There our fear is of apathy and timidity, of not having the courage of our convictions, or even the courage to *have* convictions, of being the "reasonable" people who in the past accepted as normal what we now regard as immoral and unjust.

We live with this abiding tension of needing to be more self-doubting and at the same time becoming even more committed to our basic principles.

III
ACADEMIC FREEDOM AND INTELLECTUAL VALUES

In this complex world, there is, I believe, a special role for the university. It is a role that focuses more on the correction of the impulse to intolerance than on the need for commitment to belief. All institutions, all professions, indeed all individuals, have ideal images toward which they orient their behavior. For me, the image of the university involves a profoundly important process of suspension of belief, which produces an open mind and a sympathetic imagination that bravely explores the paths of human thought and experience, as well as nature, without reserve. This process is not standardless; it is guided by notions of reason and truth. But it is continuously self-reflective, even about what we take to be "reason" and "truth."

Intellectuals, artists, scientists, are watchers — always looking for what seems to make no sense, for what's surprising, for what's foreign, for what's hidden. And so the healthy academic community has its own special sounds, the sounds of sentences like these: But is that true? Maybe there's something to that. Let me think about it. I wonder. That's interesting. I've changed my mind.

The university strives to be this way not because it is the only way to improve our understanding of the world. The life of action, of commitment to belief, with all its sharp conflict, too has its own way of giving off the sparks of truth. But the approach of intellectual freedom is one distinctive method, and in a world so largely organized around the other approach, the special character of the university is all the more useful to preserve, as wilderness is so much more precious in an urbanized life.

Additionally, the special world of intellectual and artistic freedom in the university also stands as a fixed warning for the rest of society that the commitment to belief has its excesses and must be moderated with self-doubt. In this, I believe, academic freedom shares the same function as the principle of freedom of speech — a special preserve of openness in a society forever on the verge of entering the destructive territory that concerns Holmes and Berlin.

So, in these two great pulls of life, the impulse to intolerance and the need for commitment to belief, the university and its principle of academic freedom opts to overcome the former, because it lives primarily in a world of the latter. No claim should be made that it is an ideal toward which all human activity should aim, nor that it is the only way — or perhaps even the best way if one had to choose among several — to achieve its goals (i.e., truth, understanding). It is, rather, an extreme extension of a single strand of the human character, justified in being extreme by its location in a human universe that tends toward extremes in other directions. The defining characteristic of the university, therefore, ought to be the *extraordinary* degree to which it is open to ideas.

IV
THE VULNERABILITY OF ACADEMIC FREEDOM

But there are many reasons why this ideal of intellectual freedom is so vulnerable in the real world. The contemporary university is inextricably entwined in the political and moral issues of the day. That is partly because social change often begins with society's youth, and it is at the university that youth tend first to become politically active and to seek social change.

It is also partly due to the actions of the university itself. Driven by financial needs to seek the assistance of outside individuals and institutions, the university must deal with donors who insist on supporting only research or programs with a high degree of "relevance." There is the risk that deans and administrators within the university will themselves tend to internalize this value, which gradually undermines the ideal of open and unconstrained intellectual inquiry. Finally, the university is itself an actor, not only a body of individuals pursuing ideas in the abstract. The university decides which faculty to hire and which courses to require and offer.

But there is something even more profound, I believe, than any of these pressures that continually threatens to erode the ideal of academic freedom. It stems from a dilemma deep in the psyche of the enterprise. To put the matter sharply, intellectuals are good at thinking through a problem, but never to lead, and probably not even to join, the platoon.

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6 Gerald Gunther, "Learned Hand and the Origins of Modern First Amendment Doctrine: Some Fragments of History," 27 Stan. L. Rev. 757 (1975).

7 Gerald Gunther, "Learned Hand and the Origins of Modern First Amendment Doctrine: Some Fragments of History," 27 Stan. L. Rev. 757 (1975).

8 Berlin, supra note 12, pp. 5-6, 8.

9 Ibid., p. 17.

10 Ibid., pp. 10, 11, 17, 18.

The suspension of belief, the openness to ideas necessary to academic freedom, I think, is achieved only through a process that involves some mental distancing from the real-world consequences of choices, from pain and suffering, in the way that a surgeon develops a numbness to the knife. In addition, the capacity for fixed commitment and decisive action tends to atrophy with a developed character of self-doubt and open-mindedness. The capacities for dealing with a less-than-perfect world, and a less self-doubting world, are also diminished. (The effective politician, for example, must shed the potentiality for intellectual embarrassment, which is absolutely central to the identity of the true intellectual.)

Within the world of academic freedom there will forever be discomfort with the incapacities generated by the way of life shaped by heightened awareness of ignorance, self-doubt and open-mindedness. Along with discomfort, there will be efforts to deny that truth about our condition and to prove that we are capable of commitment to beliefs.

Like many people of genius, Holmes expressed these tensions powerfully because he suffered from them so acutely. He almost lusted after self-doubt, because he was repelled by the behavior of true believers (among whom, significantly, he counted himself when he served as a soldier in the Civil War). He "detested," he said, the person who "knows that he knows" and who "catches postulates like the influenza,"[11] yet he also felt some deep admiration for those who saw clearly a truth and pursued it even to the point of sacrificing their own lives.

Sometimes, Holmes seemed to face up to the potentially enervating consequences that self-doubt has for commitment to action. On one occasion, in a letter, he forged an ideal of what he hoped he could be — what I call the open-minded soldier: "[T]ake thy place on the one side or the other," he recommended, "if with the added grace of knowing that the Enemy is as good . . . as thou, so much the better, but kill him if thou Canst."[12] Given what we know about how the mind works in war, whose participants more than at any other time must summon the will (or the courage) to act, the image of combining this action with an intellectual character of self-doubt and sympathetic imagination has always seemed to me vivid and powerful (though, I should add, its drift toward relativism does not). Its seeming improbability reveals its central and profound message.

But whether one should take this as a viable ideal toward which all should strive or (following what I believe are the implications of Berlin's argument, which he does not pursue) as a hopeless attachment to incompatible ways of life, I remain ambivalent. I am inclined toward the latter, the less sunny, view. To act is to darken the periphery of our vision. To regain the periphery, we sacrifice the single-mindedness that is the spring of the will to act. And, if that is true, then to try to have both states is to have neither as well as we might, producing perhaps a kind of oscillation between mediocre states of both.

That is not to say, however, that the will and capacity to act effectively is entirely destroyed in the intellectual world; only that it is diminished. And, as I mentioned a moment ago, the university must act. It has an intellectual center, in which the principle of academic freedom reigns, but it also has a workplace, residences and a system of faculty and course selection created by choice. And whenever it does act, I believe the university most follows and reinforces its special social identity by aspiring to be Holmes's open-minded soldier.

This leads me to close with an illustration of what I have in mind and a paradox for the university and the principle of academic freedom. The dilemma is this: Among the actions we are periodically called upon to take is that of deciding whether to maintain the principle of academic freedom itself or to modify or abandon it altogether. Yet, if it is true that the practice of academic freedom diminishes the capacity to act, then the principle is especially vulnerable to attacks from without, as well as from psychological tensions from within (for reasons I have already suggested); or its defense will be taken over by those more accustomed to action but whose defense paradoxically will violate the very spirit of the enterprise.

I see this happening all the time with freedom of speech. Challenges to the prevailing rule that extremist or highly offensive speech is protected are growing. It is being pointed out that the harm of these speech acts is greater than generally acknowledged, that further exceptions to the First Amendment can safely be created, and that the specter of McCarthyism is now more behind us than we think. These arguments, though I disagree with them, are perfectly reasonable and debatable positions. However, such challenges are frequently met with a closed-mindedness, a pig-headedness, that makes me wince.

We must understand that the soul of academic freedom, just like the soul of freedom of speech, resides not in particular rules or outcomes but in a spirit with which we approach life. It is a spirit that is born of a wariness of the dangers of belief, but that recognizes the importance of belief and commitment too. It is a spirit that while stretching in one direction, for perfectly good social reasons, lives comfortably with the disabling consequences of that course. Above all else, it seeks a capacity of understanding of the world, and of the consequences of our actions in it, that tries to come as close as we can to Holmes's open-minded soldier.

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11 Wilson, supra note 10, p. 777.
12 Gunther, supra note 14, p. 757.

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