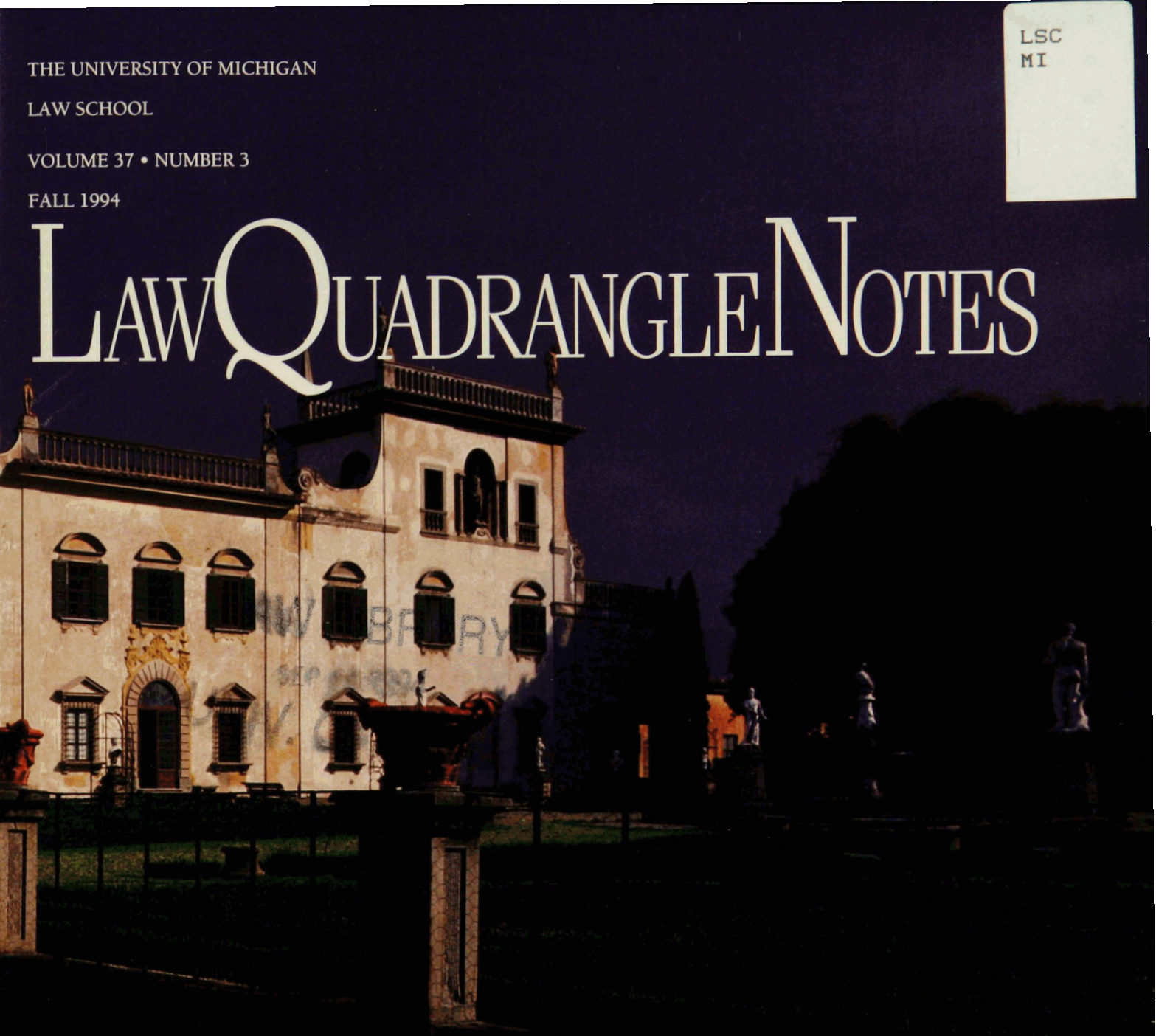
THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
VOLUME 37 • NUMBER 3
FALL 1994

LAW QUADRANGLE NOTES



Transforming telecommunications
The UN Security Council: Are there checks to provide balance?
The origins of the Securities and Exchange Commission

UNIVERSITY OF MICHIGAN
LAW SCHOOL

ALUMNI EVENTS

September 22	Alumni breakfast Michigan State Bar Detroit
September 22-25	Alumni breakfast California State Bar Anaheim
September 23-25	Class reunions 1949, 1954, 1959, 1964, 1969 Ann Arbor
September 24	Law School National Committee Meeting Ann Arbor
September 30	A Conference on the Information Superhighway sponsored by the Michigan Telecommunications Law Forum Ann Arbor
October 28-30	Class reunions 1974, 1979, 1984, 1989 Ann Arbor
October 28-30	Law School Committee of Visitors Ann Arbor
October 28-30	Law School Scholarship Luncheon Ann Arbor

Cover —
Patrick Young's photo captures the elegance of the 16th-century Florentine Villa Corsi-Salviati, the site of the 1994 European Alumni Reunion.

Have you moved lately?

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

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LAW QUADRANGLE NOTES

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New beginnings, evolving ends

A MESSAGE FROM DEAN LEHMAN

Beginnings are the best times to think about ends. At the University of Michigan Law School, three ends are sometimes said to define our mission: preparing students for professional life, disseminating research that deepens human understanding of law and legal institutions, and serving the public good. Now, as I begin my deanship, I would like to claim this space at the front of *Law Quadrangle Notes,* and devote it to a discussion of the first end: What does it mean to *prepare* students for the practice of law?

Dean Lehman celebrates his appointment with faculty.

That question, central to our institutional life, is no more answerable than many other truly important questions. But it is no less worthy of our engagement. Every three months, I will write a column designed to stimulate reflection about what the practice of law is becoming. And, more precisely, about how our Law School can best serve the next generation of attorneys to claim the distinction of having been educated at Michigan.

Over the course of the next five years, I will elaborate five distinct themes, one during each year. Each theme will be a character trait: a trait that is shared by the most outstanding attorneys, a trait that should mark the next generation of Michigan graduates. I will use various fora during each year to explore alternative understandings of that year's theme. I will invite discussion of how Michigan can best help its students to cultivate the trait in question, and whether and how we might exemplify that trait through our institutional conduct.

The character trait I will be stressing during the 1994-95 academic year is the outstanding attorney's commitment to continuous intellectual growth and renewal. I began to invite consideration of that commitment when I had the privilege of speaking with our European alumni at a reunion in June.

[Editor's note: Excerpts from Dean Lehman's Florence remarks may be found on p. 22.] I will have more to say as the year progresses.

While we are engaging that first theme, I would also welcome your participation in my selection of themes for the next four years. The underlying questions are: "What other character traits most distinguish an excellent attorney? What dispositions of temperament, what habits of mind are shared by our most admirable colleagues at the bar?" I have my own tentative list of candidates, but I will keep it private for now, so as not to stifle your imagination. If you are so moved, please drop me a note with your ideas.

Our alumni from the class of 1949 can well attest to the fact that the practice of law can be a source of virtually unlimited satisfaction. We must work today to ensure that members of the class of 1999 enjoy the same opportunities for satisfaction, and are as able to trace that satisfaction back to its Michigan beginnings. Considering, debating, and clarifying the linkage between evolving ends and new beginnings is perhaps the most important way for us at the Law School to fulfill our own institutional commitment to continuous growth and renewal.

Jeffrey S. Lehman

Journal of Gender and Law debuts

The first volume of the new Michigan Journal of Gender and Law now is available. The journal is a forum for exploring how gender issues and the related issues of race, class, sexual orientation, and culture affect the lives of men and women.

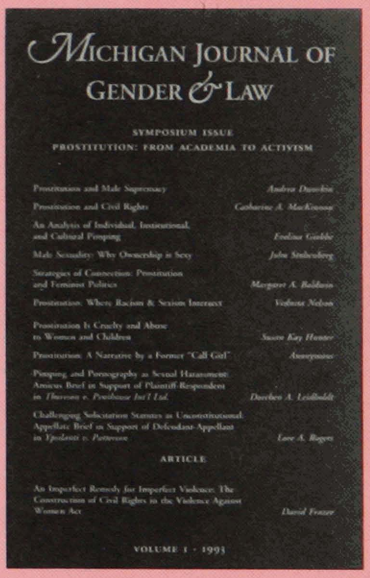
Volume 1 contains proceedings of the journal-sponsored symposium entitled "Prostitution: From Academia to Activism," held in October 1992 at the Law School. The symposium began with the assumption that existing criminal law is an inadequate approach to the problems related to prostitution. The event brought together activists, practicing attorneys, legal scholars, and students to share and develop alternate means for dealing with prostitution.

The journal presents ten papers that explore prostitution in the light of both practical and theoretical perspectives such as male supremacy, civil rights, pimping, feminist politics, racism and sexism, and abuse.

Included are articles by Michigan Law Professor Catharine MacKinnon and Margaret Baldwin, associate professor at the University of Florida College of Law, and contributions by several feminist activists — Andrea Dworkin, Evelina Giobbe, John Stoltenberg, Vednita Nelson and Susan Hunter. "What's interesting about this first issue is that we were able to include so many people who are not law professors," commented the journal's production manager, Stacey Mufson. She said that because of their extensive knowledge and direct involvement with prostitution issues, their articles offer a fresh, compelling perspective.

Dorchen A. Leidholdt, a New York City Legal Aid Society lawyer and founder of Women Against Pornography, contributed an amicus brief which argued that pimping and pornography are sexual harassment. An appellate brief by Ann Arbor attorney Lore A. Rogers, J.D. '83, challenges the constitutionality of an Ypsilanti solicitation statute. The issue's article, "An Imperfect Remedy for Imperfect Violence: The Construction of Civil Rights in the Violence Against Women Act," was written by first-year law student David Frazee.

The journal, produced by a non-hierarchical set of committees instead of traditional editors, will publish the views of legal scholars, social scientists, practitioners, students and others. Submissions are welcome. The next issue is due out in September.



Copies of the journal are $12 for individuals and $20 for all others. They may be obtained by contacting the business manager at the Michigan Journal of Gender and Law, University of Michigan Law School, Hutchins Hall, Ann Arbor, MI, 48109-1215.

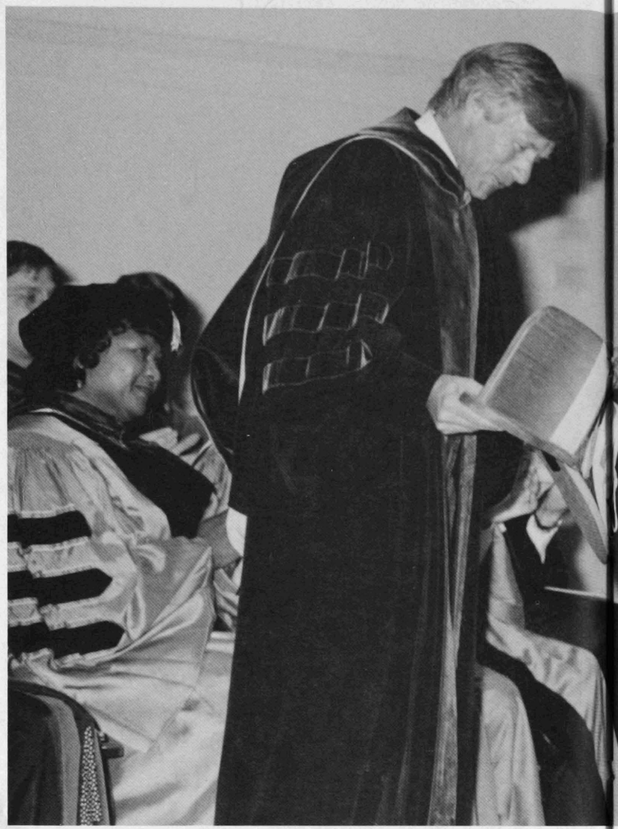
Stories of Senior Day

Senior Day 1994 was storytelling time. The Class of '94 heard stories of the Law School experience behind them and tales from great literature to prepare them for life ahead.

The May 14 ceremony honored 299 candidates for juris doctor degrees and 42 who earned master of laws or master of comparative laws degrees. Some of the December 1993 graduates also were on hand to cross the stage at Hill Auditorium and collect a certificate of membership in the Lawyer's Club.

Heather Gerken, who was selected to address her classmates, summed up the Law School experience in terms of the stories graduates could tell. Some were stories of shared experiences, like "this extraordinary moment when we become lawyers," and "the peculiar method of teaching us law by asking us questions and never giving us the answers." On the other hand, she pointed out, each graduate would carry away individual memories of the experiences closest to the heart. "There are 300 different stories, defining moments that were unique to each of us."

Gerken, the editor-in-chief of the *Michigan Law Review* and the winner of the Bates Award, the highest honor bestowed by the faculty, focused on stories because lawyers are storytellers.



Law School Student Senate President Roopal Shah presents a memento to the "a-maizing person who runs the Law School."

"They stand up in court to tell someone else's story. If there is nobility in our profession, it lies in our storytelling ability, our power to make others listen to stories of everyday people. Sometimes, something extraordinary can happen, like telling the story of a minority child in school in a way that makes a white jury do the right thing."

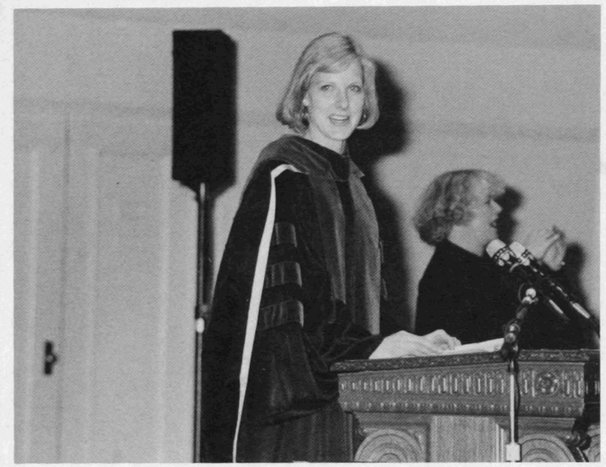
As he has in the past, departing Dean Lee Bollinger turned to stories of great authors like Virginia Woolf, George Orwell, and Anton Chekov to illuminate his advice to graduates. In preparing his last Michigan Senior Day speech, he found himself drawn back to the themes that concerned him in past speeches, so he treated graduates to a sort of "best of Bollinger" review. Concerned as always with their mental and emotional health in the future, he focused on central questions they will face: "What is a good, meaningful life for you? What do you need to watch out for? What inclinations do you have that are dangerous to you? What precautions can you take to avoid them?"

To avoid the dangers of modern life, he advised graduates to:

- practice the capacity to become, like Woolf, "breathless before Shakespeare" by maintaining regular contact with great achievement;
- avoid the trap of not doing anything if you can't do it perfectly. "Engage in a little wildness. Learn to play a musical instrument, learn a language; do something in which you will always be a novice;"

- avoid becoming so immersed in your profession that, as in the example of the butler in Kazuo Ishiguro's novel *The Remains of the Day*, it becomes impossible to have human relationships;
- make general observations from what you read, see and do, and learn from all you experience;
- keep careful watch for what you don't understand and make an effort to figure it out;
- develop an aptitude for being puzzled, for being openly stupid — something heretofore avoided.

Heather Gerken, telling stories



In conclusion, he noted, "One of the things we have seen in this class that we admire the most is a new sense of idealism mixed with pragmatism. That's the best kind of idealism; you have made us proud and more hopeful."

Law School Student Senate President Roopal Shah voiced similar sentiments. "Each and every one of you have contributed something special to the Law School ," the second-year student told graduates."Thank you ever so much for leaving behind a richer Law School."

To Bollinger, "this year's key graduate," Shah presented two gifts. Because he is known for "polishing the rough edges of Law School" with events like the Reading Room concerts and the Bollinger Fun Run, the class gave him bookends bedecked with running shoes. One bears a plaque that reads, "It takes an a-maize-ing person to run the Law School, with special thanks to Lee C. Bollinger." Because Bollinger rarely passed anyone in the hall without a kind word and a smile, Shah said, "We'd like to give that back, in the form of a class photo. You can hang this above your desk at Dartmouth, and if you ever need a kind smile or a wave, just look up."

BRIEFS

Sachs gift supports campaign

Theodore Sachs, J.D. '51, and his wife Joan have pledged a gift of $100,000 to the Law School.

The gift is designated for endowment with unrestricted use of the income. "I've been chair of the Committee of Visitors for many years, and I've heard a succession of deans say time and time again that the unrestricted gifts available for discretionary use are the most helpful," Sachs said. "I'm confident our gift will be put to good use."

Sachs said he made the gift at this time because he was impressed with the Law School Campaign's cause — in the words of former Dean Lee Bollinger, to "shore up the foundation and raise the roof of the intellectual house" of the Law School.

An honors student, Sachs was editor-in-chief of the *Michigan Law Review*. Today, he is the senior member and president of the firm of Sachs, Waldman, O'Hare, Helveston, Hodges & Barnes, P.C. in Detroit. He also is general counsel for the AFL-CIO of Michigan and general counsel of the Michigan Democratic Party. He is widely known and respected for his practice in labor and constitutional law. He authored Michigan's basic labor relations codes and its binding arbitration law for police and firemen, and has successfully argued several cases in the U.S. Supreme Court.

The gift is only the latest of the Sachs family's contributions to the life of the Law School.

Sachs has been a guest lecturer on several occasions. An active member of the Committee of Visitors since 1964, he has chaired the group since 1979. Joan, who did undergraduate work at the University, also is a frequent participant in Law School events. Their daughter Andrea, who earned a Michigan law degree in 1978, now is a law and Supreme Court reporter at *Time* magazine. She has returned to speak and has written articles for *Law Quadrangle Notes*. The Sachs' son, Jeffrey, the Galen L. Stone Professor of International Trade at Harvard University who has advised former Communist nations in their transitions to free-market economies, will deliver the Law School's 37th William W. Cook Lectures on American Institutions in early 1995.

Student wins a seat in South African elections

While law student Firoz Cachalia prepared for final exams in April, his mind was often on a bigger test — the first all-race elections back home in South Africa.

Cachalia, a student in the master of laws program, was a candidate on the African National Congress ballot in South Africa's historic elections. As a long-time ANC member, his name was placed on the list of candidates for both regional and national legislatures in his absence. He watched the powerful drama of justice in action from afar, waiting to see whether he'd win a role in reshaping his country.

Even an ocean away, however, Cachalia took part in the election. He and other South Africans on campus travelled to Cincinnati to cast their ballot at one of several voting centers set up in the United States. In contrast to American candidates who eagerly seek media coverage, Cachalia barely had time to talk to the reporters who interrupted his studies seeking interviews. By the time he flew home in early May with his degree, the votes were counted and he had won a seat in the 86-member regional legislature of Pretoria-Witswatersrand-Vereenining Province.

ANN ARBOR NEWS PHOTO-PAUL WARNER

Firoz Cachalia

In the elections, South Africans cast votes for political parties, not individuals. The parties won seats in the 400-member National Assembly and in nine regional legislatures based on their a share of the total vote. Cachalia, a 35-year-old Johannesburg lawyer, was 18th on the ANC's regional candidate list; he was confident that the ANC would win the 21 percent of the vote necessary for him to earn a regional seat. He ranked 140 on the ANC's list of 200 regional representatives to the National Assembly. The ANC fell short of the 70 percent vote total needed to win a national seat for him.

He told reporters in April that he hoped the elections would "make it possible for us to address real problems in our country through legitimate institutions without violence." Now in his new legislative role, he reports that he is quite busy attending meetings. He hopes to assist in the work of drafting a permanent constitution.

Cachalia was born in South Africa but is of Indian descent. Describing himself as "an ANC person down to the very last bone of my body," he stressed the party has strong roots among all people who oppose apartheid as immoral. "Basic human rights are not a question of color or race," he told the *Ann Arbor News*. He added that the election is something that people of all races worked for. "We're now being acknowledged as equals, liberating our country and establishing a society based on the equality of citizens," he said.

— *The Ann Arbor News* and the U-M's *South Africa Initiative Factsheet* contributed to this report.

Tatel nominated for federal judgeship

David Tatel

PHOTO BY GAYLE KRUGHOFF - LEGAL TIMES

President Clinton has nominated David Tatel to the U.S. Court of Appeals for the District of Columbia. Tatel was an instructor with the Law School's Legal Writing Program in 1966-67.

If approved, Tatel will fill the vacancy left when Ruth Bader Ginsburg was elevated to the Supreme Court last year.

Known as a top-notch litigator with long experience in civil rights work, Tatel now heads the education section at the law firm of Hogan & Hartson in Washington. In announcing the appointment, Clinton hailed his "extraordinary record of dedication" and "lifelong commitment to protecting and preserving the rights of all Americans."

He earned his bachelor's degree in political science at the U-M in 1963 and his law degree at the University of Chicago. He first handled civil rights cases as an associate at Sidley & Austin of Chicago from 1967-69. He was director of the National Lawyer's Committee for Civil Rights Under Law for two years before joining Hogan & Hartson's Community Service Department in 1974. From 1977-79, he was the director of the Office of Civil Rights in the Department of Health, Education and Welfare. In this role, he headed the Carter Administration's efforts to revitalize civil rights law enforcement. Since returning to his firm in 1979, he has handled civil rights, constitutional law and federal regulatory issues for colleges, universities and school districts. He is noted for developing a voluntary interdistrict integration plan that made it possible for the St. Louis school system to comply with a desegregation order.

Professor Doug Kahn, who with Professor Thomas Kauper hired Tatel at the Law School and has followed his career ever since, speaks highly of him as a lawyer and a person: "He's a genuinely fine human being. He has a brilliant record, an analytical mind, and a gentle personality. Both as an administrator and a lawyer, he has a reputation as a facilitator. He tries to work out conflicts to the satisfaction of all parties so that litigation can be avoided."

Tatel lost his eyesight 20 years ago to a degenerative disease called retinitis pigmentosa. He handles his practice with the help of aides who read documents to him or to a tape recorder for his listening later, and takes notes on a Braille computer. He downplays his blindness, which doesn't slow him up much; he has run marathons and skis, sails, and hikes. Just after his appointment was announced, he told *LQN* he was off on a trip to Alaska with his family. Colleagues at his firm say that he's considered a brilliant, successful lawyer, not a blind one. His strong record is expected to win him easy confirmation in the late summer or fall.

— *The Legal Times* and *The Washington Post* contributed to this report.

CORRECTION

Identities of Howard Simon, executive director of the American Civil Liberties Union of Michigan, and Kenneth Starr, former U.S. solicitor general, were reversed in a photograph of their debate over religion in schools that appeared in the LQN summer issue. Simon was shown on the left and Starr on the right. LQN regrets the transposition.

BRIEFS

Family gift boosts McCree Professorship

A generous family gift has brought the Wade McCree Jr. Collegiate Professorship closer to its endowment goal. McCree's daugher and son-in-law, Kathleen McCree Lewis and David Baker Lewis of Detroit, have pledged $100,000 to the professorship.

The chair, established after McCree's death in 1987, is believed to be the first collegiate professorship at a major law school to honor an African American.

Judge McCree was part of the generation that brought Black lawyers into successful participation in all branches of the legal profession. A graduate of Fisk University and Harvard Law School, he was the second African American to be named to the federal judiciary and the third to reach federal appellate court. In 23 years on the bench, he served as judge of Wayne County Circuit Court, the U.S. District Court for the Eastern District of Michigan, and the U.S. Court of Appeals for the Sixth Circuit.

He served as U.S. solicitor general for four years before joining the Michigan Law School faculty in 1981 as the Lewis M. Simes Professor of Law. He brought a wealth of experience to his courses: Trial Practice, Constitutional Law, Lawyers and Clients, and Supreme Court Advocacy. Professor David Chambers, who holds the McCree chair and co-taught Lawyers and Clients, has said of the judge, "He relied in large part on bringing into the classroom stories from his own experience, bringing the students into his story and getting them to think through with him the way the problem ought to be handled. He would be pleased and proud that it was as teacher that he was going to be remembered. I think he had a real pleasure in this role, even though it absorbed only a small portion of his total life."

The Lewises' gift not only honors Judge McCree and his contributions to the Law School and the legal profession, but it also shows significant African American investment in the future of legal education.

To date, nearly 300 donors have contributed to the McCree fund. That includes gifts from Chicago area alumni who have celebrated the late professor's accomplishments at luncheons in 1992 and 1993, and reunion giving from the Classes of 1940 and 1957. Last year an anonymous $75,000 gift and a generous donation from a friend of McCree's boosted the fund. The Lewises' gift brings the McCree fund to more than 60 percent of its goal."We hope that our gift will lead others to support the professorship to the point whee it is fully funded, and bring additional success to the Law School Campaign in general," they said.

McCree's family has further enriched the Law School. Since 1988, his wife, Dores, has assisted with minority recruitment, placement and alumni activities as a student services associate. Kathleen McCree Lewis, a 1973 Law School graduate who also holds a bachelor's degree from the U-M, is a partner at Dykema Gossett in Detroit. She was recently honored for her pro bono work there. Her husband, David Baker Lewis, J.D. '70, represents the third generation of his family to earn a Michigan law degree. He is chairman of the board of Lewis, White & Clay, P.C., one of the top Black-owned law firms in the nation, where he practices in the areas of municipal finance and bond law. Both Lewises are members of the Law School's Detroit Major Gifts Committee.

Anyone interested in contributing to the McCree Collegiate Professorship may contact Development and Alumni Relations at 721 S. State St., Ann Arbor, MI 48109-1215 or at (313) 998-7970.

NANETTE LA CROSS, 1957-1994

Nannette La Cross, a former student supervisor with the Family Law Project, was dedicated to helping women and children victimized by domestic violence. As a private attorney and an active community volunteer, she did all she could to win respect for women in the legal process and help her clients rebuild their lives.

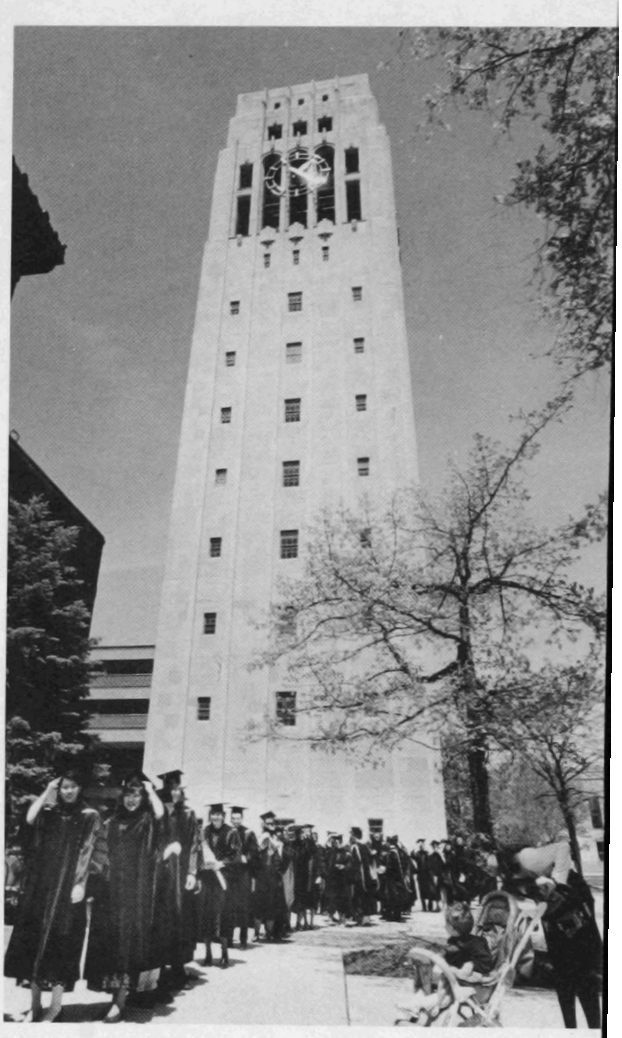
La Cross, 37, was found dead in her Ann Arbor home May 20.

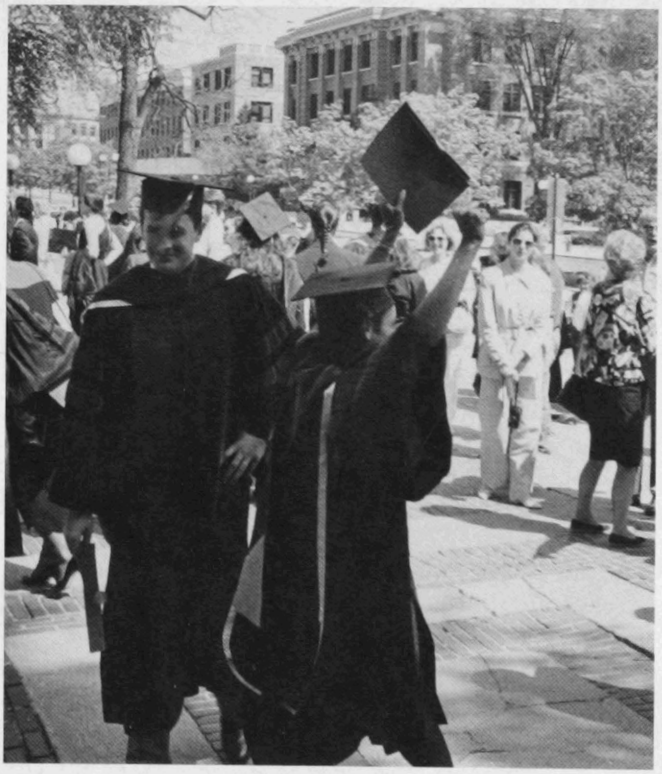
At the Family Law Project, La Cross was both a dedicated teacher and a strong advocate for the project's clients. Professor Suellyn Scarnecchia recalled: "She took great personal interest in helping women move beyond their legal cases, to building new lives for themselves. She was a much-loved teacher. Students became very loyal to her right away and felt that she would do whatever possible to help clients, but also teach them in the process."

La Cross left the Family Law Project to go into private practice. She also volunteered for Catholic Social Services and served as program chairwoman for the Soundings Center for Women. Lin Orrin, executive director of Soundings, described La Cross as a "really energetic and caring person" who worked to expand programs for women at the center.

Funeral services for La Cross were held in her hometown of Davison, Michigan. A memorial service was held at the Michigan League May 27. A scholarship will be established in her name at Soundings.

Memorial contributions may be directed to Soundings Center for Women, 1100 N. Main St., Ann Arbor, MI 48104.





ON THE DOCKET:

Clinics handled complex cases in 1993-94

Paul Reingold

PARENTS SEEKING TO PREVENT a potentially life-threatening pregnancy for their mentally ill daughter turned to the Michigan Clinical Law Program to obtain a court order allowing sterilization. An advocacy agency that earlier refused to help the parents then tried to block the court order permitting the procedure.

This ethically complex case was just one on the Michigan Clinical Law Program's docket in 1993-94. Difficult family issues also occupied students in two other clinics, while the Environmental Law Clinic worked on a plan to help the legal profession save trees.

In the sterilization case, the woman had lived in a mixed-sex ward in an institution for many years, and her parents sought to have her sterilized for her own protection. She could not use self-monitored forms of birth control reliably, and her progressive illness ruled out the previously prescribed chemical method. Her parents contacted the advocacy agency for legal help because they could not afford a lawyer or the operation, and no hospital would perform the procedure through Medicaid without a court order.

The agency turned them away because it did not advocate sterilization for the mentally ill. The parents then sought help from the Clinical Law Program, where students won a court order permitting sterilization if all other medical remedies failed. The agency then sued the probate court judge and the parents in federal court, winning an injunction until a best-interest hearing could be held on behalf of the daughter. Clinic students negotiated dismissal from the case for their clients; meanwhile, the daughter's medical team approved a non-surgical form of birth control.

"Needless to say, this case raised a host of thorny ethical issues," reported Clinic Director Paul Reingold. "Not the least among them was the problem of having the agency's attorneys enter the case after learning of it when the opposing parties sought their counsel. It kept the advanced clinical law students busy for much of the fall term."

In other cases, clinic students represented:

- a fifth-grader who was dropped from a drug education class at his school after wearing a Chicago White Sox jacket to school, because the jacket was deemed to be "gang-related" and a violation of a new dress code. The code gives school officials unlimited discretion to forbid any items considered to be gang-related, yet at the time the code was implemented, there had been no class disruptions related to clothing at the student's school. The case is scheduled for trial in federal court in the fall.
- eight pregnant women who were laid off or fired from a factory in Whitmore Lake, Michigan. The company claimed it was enforcing weight-lifting restrictions, not discriminating. The plaintiffs won before a Michigan Department of Civil Rights referee and again on appeal. Law students Pete Hardy and Terri Schmidt appeared on television when this case was featured on NBC's "Dateline" newsmagazine. Students participated in hearings on damages this summer.

Legal Assistance for Urban Communities Clinic

Students in the Legal Assistance for Urban Communities Clinic (LAUC) teamed up to work with more than ten different Detroit-based community development corporations in 1993-94. The clinic assists these corporations in their community economic development efforts to stabilize their neighborhoods. Much of their work was aimed at freeing up land for development, reports Clinic Director Rochelle Lento.

One extensive project was an inventory of the value, ownership, and tax status of vacant commercial buildings in the downtown area compiled for the Detroit Central Business District Association. Two students from the Undergraduate Research Opportunity Program and a senior law student conducted research to ascertain accurate property descriptions, ownership data, and city and county tax information on approximately 110 parcels. A presentation including descriptive maps and charts was provided to the association.

Community development corporations in Detroit have had difficulty acquiring abandoned, tax-delinquent properties for renovation in a timely fashion. LAUC had previously initiated legislation to accelerate the state foreclosure process for abandoned residential property (Public Act 291, 1993). This year, one organization requested assistance to research the city's tax foreclosure process. A student team met with the city's Law Department, discussed reasons for why it often fails to foreclose, and prepared a memo for clinic's client outlining practical solutions.

Other students worked with groups focusing on providing affordable housing. Teams assisted groups in the initial incorporation phase by drafting articles of incorporation and bylaws, researching federal tax status, and applying for Internal Revenue Service recognition as a tax-exempt 501(c)(3) organ. In addition, students also advised on issues related to lease-purchase and tenant partnership agreements, a construction administration agreement for home-building collaboration, and other types of partnership arrangements between nonprofit and for-profit developers.

LAUC students also helped prepare teenage girls to become tenants. Two years ago, students developed a monthly landlord/tenant workshop for residents of Alternatives for Girls, a Detroit homeless shelter for teens. This year, they trained shelter staff to conduct the workshops. By November, the staff was using workshop materials to instruct their residents while students observed.

Rochelle Lento

Suellyn Scarnecchia

Child Advocacy Law Clinic

After handling the high-profile DeBoer adoption battle last year, the Child Advocacy Law Clinic found itself handling more adoption matters this year. Washtenaw County Probate Court Judge Nancy Francis, J.D. '73, referred to the clinic several complex adoptions that grew out of abuse or neglect cases. "We finalized the adoptions; taking cases at this stage was new for us," reported Clinical Professor Suellyn Scarnecchia.

Six clinic students wrote an amicus brief to the Illinois Supreme Court in the Baby Richard case, a dispute between adoptive parents and a birth father that closely parallelled the 1993 DeBoer case. The brief argued for a custody hearing separate from the adoption process that would protect the child's right to remain with the adoptive parents who raised him, yet also consider the birth father's right to a relationship with his child. The Supreme Court ruled against the adoptive parents, but in response to public reaction to the case, the legislature and the governor passed a law that provided for a custody solution similar to the one outlined in the brief.

Women and the Law Clinic

Students in the Women and the Law Clinic won an unprecedented sixty-year restraining order to protect a victim of domestic abuse. The order enjoins an abusive husband from contact with his family for the rest of his life.

"It was a potentially lethal case in which the wife had suffered many years of abuse and the children had faced physical and sexual abuse," said Clinical Professor Julie Kunce Field, director of the clinic in 1993-94. In an unusual arrangement, the wife was permitted to testify by telephone so she wouldn't have to face her husband in court. His behavior was so extreme that the judge granted a powerful anti-stalking injunction that protects not only the wife and children but members of the extended family.

The clinic, along with Professor Catharine McKinnon, also filed an amicus brief before the Michigan Supreme Court in *Radtke vs. Everett* in support of the "reasonable woman" standard to determine sexual harassment. Another amicus brief in *Borman v. State Farm Insurance* argued against denying a claim based on the intentional acts provision of a policy. State Farm refused to cover the loss of a woman whose grandson, a co-insured party, burned down her house to collect the insurance money. The clinic's brief, authored along with fourteen other organizations, argued that denying claims in cases like this would impact the victims of domestic violence. "It would allow batterers to make women and children homeless," Field said.

The clinic also handled job-related sex discrimination and pregnancy discrimination cases. Eight to ten students enrolled in the clinic each semester.

Externships

In addition to the clinics, externships allow students to explore in depth a specialized interest in an area of law. In 1993-94, a dozen other students acquired hands-on experience in semester-long externships in Washington, D.C., New York or Detroit, according to Assistant Dean Virginia Gordan.

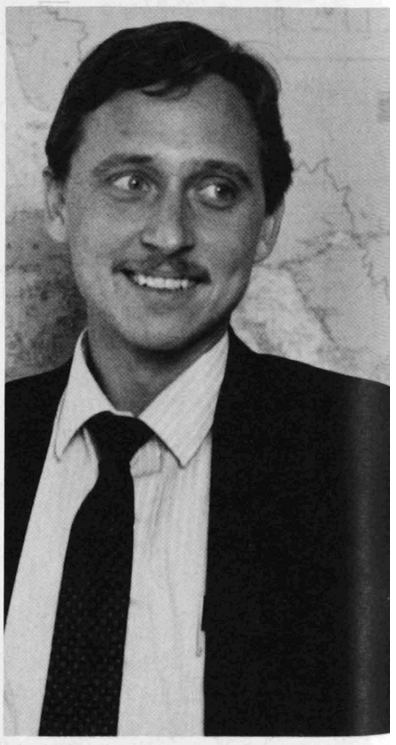
Julie Field

Environmental Law Clinic

In addition to its usual litigation over water and air quality, the Environmental Law Clinic worked on a proposal to stem the flood of paper in Michigan courts.

Clinic Director Mark Van Putten reports that in 1993-94 he and clinic interns helped develop new court rules that would require all pleadings filed or served in Michigan to be printed on recycled paper. In addition, all but the original must be copied on both sides of the paper. The draft rules also include a strong encouragement to use papers not treated with chlorine bleach — a process that produces dioxins.

The clinic, operated by the Great Lakes Office of the National Wildlife Federation, began by preparing a draft petition to the Supreme Court for the rule change and discussing the idea with Gov. John Engler and staff at the Michigan Attorney General's office. Then the clinic brought



Mark Van Putten

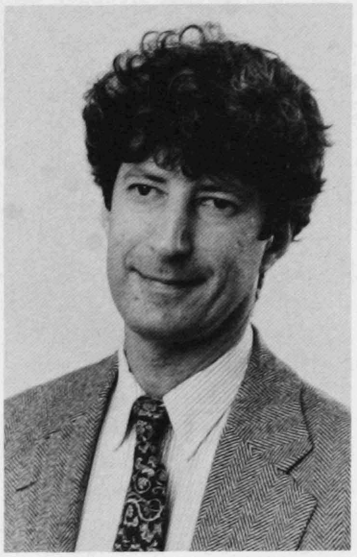
State Appellate Defender's Clinic

Law students also gain practical experience by working on appeals in serious felonies under the guidance of a representative of the State Appellate Defender's Office housed in the Law School. Recently, they handled a case that involved a conflict between the right to self-representation and the right to a fair trial.

"The defendant, who had a history of mental illness and had been declared incompetent in the past but was found competent to stand trial, discharged his attorney, waived his right to counsel and defended himself," explains Richard Ginsberg, who has led the clinic for the past two years. "He basically presented no defense at all and was convicted. There is a question whether the judge should have let him do that." That appeal is still pending. However, in a similar case, an independent study student helped Ginsburg write a Michigan Supreme Court brief that upheld a reversal of a conviction because a judge did not adequately warn a defendant of the dangers of waiving counsel.

Other appeals on the docket range from a first-degree murder conviction for which the defendant is serving a life sentence without parole, to a marijuana possession case.

Paul Bennett is directing the clinic in the summer and fall term.



Richard Ginsberg

its resources and research to an ad hoc committee of the State Bar of Michigan formed to look at paper waste.

"Two student interns researched what other states are doing in this regard, participated in every meeting of the ad hoc committee, made presentations to them, and went to meeting of the State Bar's Environmental Law Section Council," said Van Putten.

Michigan is among only a handful of states that have implemented or are considering court rules that mandate recycled paper use. If adopted, Michigan's rules will go farther than other states' to reduce the environmental impact of the legal paper stream, according to the students' research. The clinic is also backing a proposal to eliminate paper entirely in the courts with an electronic filing system. The ad hoc committee tabled that proposal while concentrating on winning approval for the paper rules.

To help law firms comply with the rule without becoming paper experts, the NWF and clinic have proposed that the State Bar assist attorneys in certifying paper stock that meets the new requirements. Interns have worked with the State Bar and the NWF's paper broker to develop that idea.

Meanwhile, clinic students are litigating Clean Air Act and Clean Water Act violations in several federal courts. They are involved in a challenge to the city of Detroit's wastewater discharge permit, arguing that it doesn't adequately limit discharge of PCBs into Lake Erie.

The clinic has attracted more students in recent years, and it operated over the summer for the first time this year. About 14 law students are enrolled this fall term. In addition, the clinic has student interns from other graduate schools and departments, including Public Health, Natural Resources, Economics and Chemical Engineering. Frequently, law students will work with one of the four supervising attorneys and an intern from one of these other fields.

"Most of our work involves toxic pollution of the Great Lakes, so they might be working with a student in toxicology or atmospheric sciences. This is an important element of the Environmental Law Clinic, because anyone who is going to practice environmental law needs to develop ability to work with scientists and those in technical fields. We give them a real hands-on sense of what that is like."

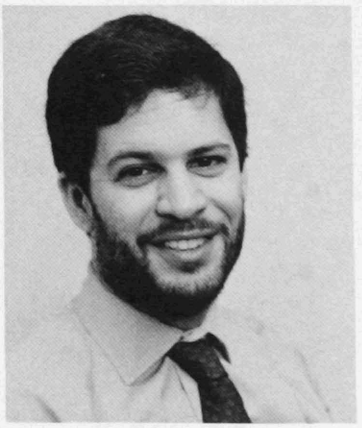
Faculty comings and goings

AN URBAN POLICY EXPERT from the World Bank and a land use specialist joined the University of Michigan Law School faculty this fall.

Michael A. Heller, a legal consultant at the World Bank since 1990, has worked on housing reform projects and housing policy issues all over the world. At Michigan, he will teach a course called "From Marx to Markets" that explores the legal tools necessary for the transition from planned to market economies. In the winter semester, he will teach property.

Roderick M. Hills comes to Michigan from the University of Colorado School of Law, where he has been teaching land-use controls and local government as an adjunct professor. This fall he will teach a course on public control of land use; in the winter he will teach introduction to constitutional law.

Heller worked on housing projects in Latin America for



Michael A. Heller

the Urban Institute before attending Stanford University Law School. A 1989 graduate, he was a member of the Order of the Coif and articles editor of the *Stanford Journal of International Law*. He clerked for the Hon. James R. Browning of the U.S. Court of Appeals for the Ninth Circuit before joining the World Bank.

He was involved in various housing reform programs in former Communist countries like Russia, Hungary, Poland and Romania. Heller worked with governments to rebuild the legal framework for institutions like private ownership and a real estate market. "It's not as simple as just passing laws. The market grows out of a web of political institutions, cultural norms and historical practices," he says. Out of these experiences, he developed the course "From Marx to Markets" that he first co-taught at Yale in 1991. Another major World Bank project involved developing a method to measure quantitatively housing outcomes based on government economic and housing policy decisions. The methodology offers a powerful, practical tool for governments, because it takes policy evaluation out of the realm of ideology.

Hills earned a bachelor's degree in history in 1987 and his law degree in 1991 at Yale University. As an undergraduate, he was active in debate and was a cellist with the Yale Bach Society. Before attending law school, he was a Century Fellow with the Committee on Social Thought at the University of Chicago. He was a member of the *Yale Law Journal* and co-editor-in-chief of the *Yale Journal of Law & Humanities*.

He clerked for the Hon. Patrick Higginbotham of the United States Court of Appeals for the Fifth Circuit in 1991-92. He has published an article on the natural law theory of James Wilson in the *Harvard Journal of Law & Public Policy* (1989) and another defending Colorado's constitutional limits on Congressional terms in the *University of Pittsburgh Law Review* (1991).

JOINING THE FACULTY in January was Professor Jose Alvarez, formerly of George Washington University's National Law Center. He teaches courses on international law, international organizations, international legal theory and foreign investment law. His particular scholarly interest is in the law-making legitimacy of institutions such as the United Nations.

AS NEW FACULTY JOIN THE LAW SCHOOL, a few professors are leaving. Professor Deborah Livingston is moving to New York to teach at Columbia University Law School. She will rejoin her husband John, who has been working in Manhattan while she taught criminal procedure in Ann Arbor.

CONFLICTS SCHOLAR LARRY KRAMER, who has been a visiting professor at New York University Law School in 1992 and 1993, has accepted a faculty position there. He will continue to teach civil procedure and research the history of federalism.

PATRICIA WHITE, a longtime visiting professor who has been teaching torts and taxation, has accepted a tenured position at the University of Utah Law School, where her husband is also teaching.

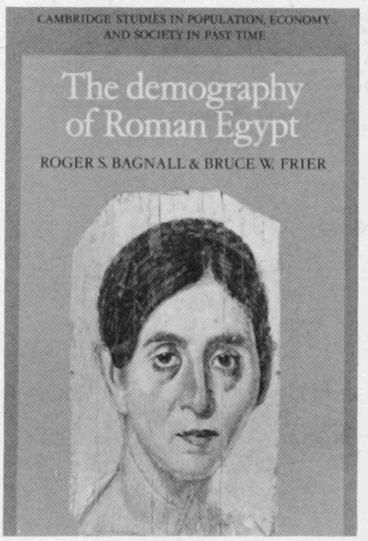
IN PRINT

Faculty books

DEMOGRAPHY OF ANCIENT EGYPT

Roger S. Bagnall and
Bruce W. Frier
Cambridge University Press, 1994

Ancient Egyptians divorced fairly freely and sometimes married a sibling. Women often married in their teens, not infrequently choosing an older husband, and if they were widowed or divorced, they did not necessarily remarry.



These glimpses of ancient society are revealed in a new book by Bruce W. Frier, the Henry King Ransom Professor of Law, and Roger S. Bagnall, a professor of classics and history at Columbia University.

The authors reconstructed social life from about 300 census returns among well-preserved papyri from Roman Egypt. By applying modern demographic models to the census information, they obtained a good sense of population patterns and hints of cultural customs in the second and third century A.D. "Reconstructing ordinary domestic life is essential if we wish to understand how ancient law operated in practice," Frier says.

"We were lucky because Egyptians were great documenters, even among lower classes. More is known about the upper class, but this is the first time we got a good look at the lives of ordinary people. This appears to be best information on life patterns available up until the Renaissance. When we used modern demographic techniques on the records, we found that the statistical models held up fairly well," he adds.

The book catalogues the household information from the census returns in genealogical charts. From this household record of family members, lodgers and slaves, they reconstruct the patterns of mortality, marriage, fertility, and migration. Frier says he was a bit surprised to learn that divorce was quite common in the lower class and available to both the men and women. "In Egypt, it was also fairly common to marry a

full brother or sister; sometimes this practice continued for several generations," he notes. "We found one extended family household in which sibling marriage occurred four times."

Frier also holds an appointment in the University's Classics Department. His previous book was *A Casebook on the Roman Law of Delict* (American Philological Association, 1989.)

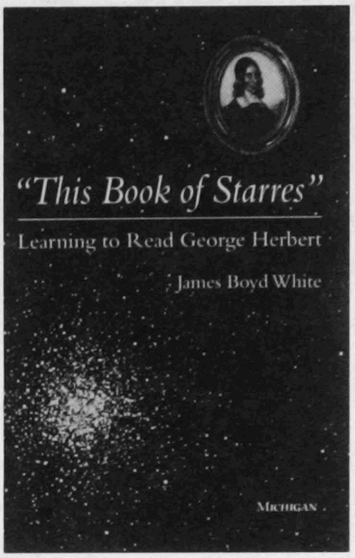
'This Book of Starres': Learning to Read George Herbert

by James Boyd White.
University of Michigan Press, 1994

James Boyd White has followed his recent books on law and literature with a book of literary criticism, *'This Book of Starres': Learning to Read George Herbert*. As the subtitle suggests, this is not a book simply about the poetry of Herbert, but about the process by which one reader came to understand this difficult and remote poetry.

White means to represent this process in such a way as to demonstrate "that Herbert's poetry, and other works of similar quality, can be read by an ordinary interested reader, bringing to the process whatever he or she happens to be at the moment." He says, "This is a claim for the accessibility, and also the importance, of the great works of our tradition, so often now insulated by a kind of professional barrier."

The poetry of this seventeenth-century English country priest presents a special set of challenges: it is



to the modern ear archaic, difficult in thought and structure, and entirely theological in character. To read it requires the exercise of an art of acculturation and translation, which presents its own ethical and intellectual difficulties. White has written about this art in the legal context in his earlier book, *Justice as Translation: An Essay in Cultural and Legal Criticism* (1990); here he examines it in the literary context.

White, the L. Hart Wright Professor of Law, is teaching constitutional law this term, as he has for several years. In his next book, *Acts of Hope: Creating Authority in Literature, Law, and Politics*, to be published by The University of Chicago Press this fall, he returns to the interaction of law and humanities, dealing with such apparently disparate texts as Shakespeare's *Richard II*, Nelson Mandela's speech at his trial for sabotage, Emily Dickinson's poetry, and the Supreme Court case *Planned Parenthood v. Casey*.

Corporate Income Taxation

by Douglas Kahn and Jeffrey Lehman
West, Fourth ed. 1994

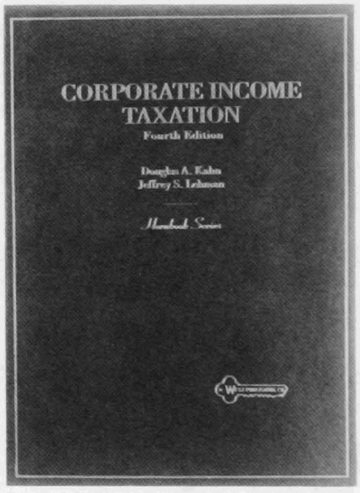
A new collaboration brings a broader perspective to the latest edition of Professor Douglas Kahn's treatise, *Corporate Income Taxation*.

Kahn co-authored the fourth edition with Dean Jeffrey Lehman, whose background in economics, public policy, and mathematics, as well as his experience in practice, enriches the discussion of complex tax provisions.

Kahn, the Paul G. Kauper Professor of Law, brings to the book more than twenty-five years' expertise in clarifying tax provisions and the policies behind them. Lehman, who holds a bachelor's degree in mathematics and a master's degree in public policy in addition to his law degree, contributes new ways to explain complex tax provisions and their impact, often using charts and diagrams.

"Jeff's input was extremely valuable. His economic perspective definitely shows up throughout the book," Kahn says. "His mathematical background was very helpful as well. For example, in one case he came up with a mathematical formula to demonstrate a point I had covered in the last addition. He took a different approach, but we arrived at the same position on the issue. His approach is more conclusive."

Says Lehman, "I am absolutely thrilled to have had the chance to co-author this book. Preparing the opening overview chapter gave me an opportunity to pull together and refine a set of ideas about corporate taxation that I had been developing for several years. And preparing the chapters on the taxation of corporate incorporations, divisions, and reorganizations forced me to grapple with a truly difficult question of pedagogy: what combination of discussion, examples, and diagrams might best convey the policy logic underlying



doctrinal provisions that novices usually find obscure, if not impenetrable?

"But perhaps the greatest satisfaction came from being able to collaborate with my former teacher, Doug Kahn. For every chapter, every page, every paragraph, we exchanged drafts and debated their contents until we were both satisfied with the entire

Continued on page 18

GEORGE E. PALMER 1908-1994

George E. Palmer

"His scholarship on restitution had a profound significance on the law. His unusual combination of gentleness and gruffness left an impression on countless students."

— FORMER DEAN LEE BOLLINGER

PROFESSOR EMERITUS GEORGE E. PALMER, the most prominent American scholar on the law of restitution, died May 10 at age 86.

Born in Washington, Indiana, He earned his bachelor's degree from the University of Michigan in 1930 and his Michigan law degree in 1932. He also holds a master's of law from Columbia University.

Palmer practiced law in Indianapolis from 1932-39, and then joined the faculty at the University of Kansas in 1940. From 1942-45, he served as attorney and associate general counsel for the Office of Price Administration, where he authored the rent control laws for the nation during World War II. He was attorney for the Department of Justice in 1945.

Palmer joined the Michigan law faculty as associate professor in 1946 and was promoted to professor in 1951. He was the author of *Cases in Restitution: Mistake and Unjust Enrichment; Cases of Trust and Succession;* and a landmark treatise, *The Law of Restitution,* published at the time of his retirement in 1978. In 1980, the treatise won the prestigious triennial Order of the Coif Award for significant contributions to legal scholarship.

In a tribute to Palmer published in the *Michigan Law Review* upon his retirement, the late Professor John P. Dawson wrote that this four-volume treatise was "a great achievement" remarkable for its range, accuracy and clarity. Former Professor Luke K. Cooperrider wrote that the treatise "at last brings to light an enormously important and fruitful sector of the law that for too long has remained unaccessible and poorly understood." Cooperrider called him, "deliberate, thorough, and addicted to truth." While these qualities cast an image of an austere man, beneath his sober mien was a "man of compassion, quiet humor, and great personal warmth," he wrote.

In May, Dean Lee Bollinger said of Palmer, "His scholarship on restitution had a profound significance on the law. His unusual combination of gentleness and gruffness left an impression on countless students."

Professor Emeritus Olin Browder remembers Palmer for both his scholarship and his teaching: "George Palmer was one of the really great figures in American legal scholarship during this century. His major work, *The Law of Restitution,* ranks with the monumental works of this century by Willston and Wigmore. He also was acknowledged to be a fine classical teacher."

Professor Thomas Kauper, who knew Palmer all his life and was among his students, observed, "George was a very warm, witty, person, although I think it's fair to say in class he could frighten students somewhat." Students referred to his teaching style as being "Palmerized" — a process of being subjected to the pain of disciplined thought and the relentless pursuit of meaning. Still, Kauper says, "Most of the students I knew thought of him as a really great teacher and one who was very interested in his students. Long after his retirement, he remained very interested in the Law School. He was a very loyal Michigan man."

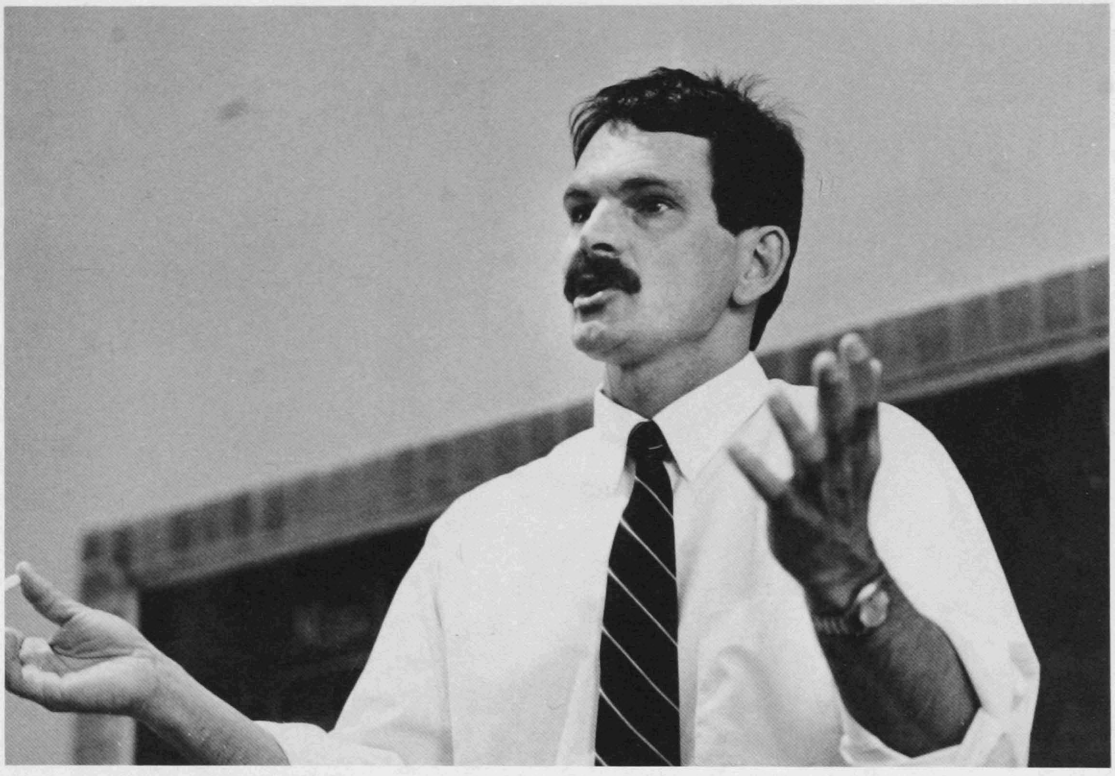
His wife of 56 years, Ruth, preceded him in death in 1991. His two brothers and a sister also preceded him in death. He is survived by his son, Steven Palmer of Grand Rapids; two daughters, Julie Palmer Gzella of San Mateo, California and Katherine Ann Palmer of Lansing; six grandsons, Scott, David, Ken, Jim, Jon, and Chris; one great-granddaughter, Katie; and numerous nieces and nephews.

Throughout his long career at Michigan, first as a student and later as a faculty member, Palmer's devotion to the law school was intense. Accordingly, his family has requested that memorial contributions in his name be directed to the Law School's scholarship fund, care of Development and Alumni Relations, 721 S. State, Ann Arbor, Mich., 48104-3071.

L. Hart Wright winners —

Students awarded Professors Mathias Reimann and Deborah Malamud the L. Hart Wright Award for excellent teaching. The winners were recognized at Honors Convocation in May.

Kudos



IN A RECENT ARTICLE, Harvard Law Professor David Kennedy credits **Professor John H. Jackson** with inventing trade law in the United States.

In "The International Style in Postwar Law and Policy," [*Utah Law Review* 7 (1994): 7-103], Kennedy explores the intellectual sensibilities of international politics. He uses Jackson's 1989 book *The World Trading System: Law and Policy of International Economic Relations*" and Hans Kelsen's 1940-41 Oliver Wendell Holmes Lectures at Harvard to analyze a liberal, centrist tradition he calls pragmatic.

"John Jackson's book on trade law ranks with the best contemporary international policy scholarship," Kennedy writes. "A classic work in the field of international economic law by perhaps its leading North American academic practitioner, the book exemplifies the ideas and practices which make contemporary international economic law a distinctive genre. Fifty years after Kelsen's lectures, the book expresses the wisdom of the post-war international economic order, poised for the challenges of the next century.

". . . Jackson presides over the field of trade law in the United States. Indeed, it was Jackson who largely invented the field, transforming his experiences with the U.S. Trade Representative's office from a narrowing regulatory specialty into a recognized subject of legal study."

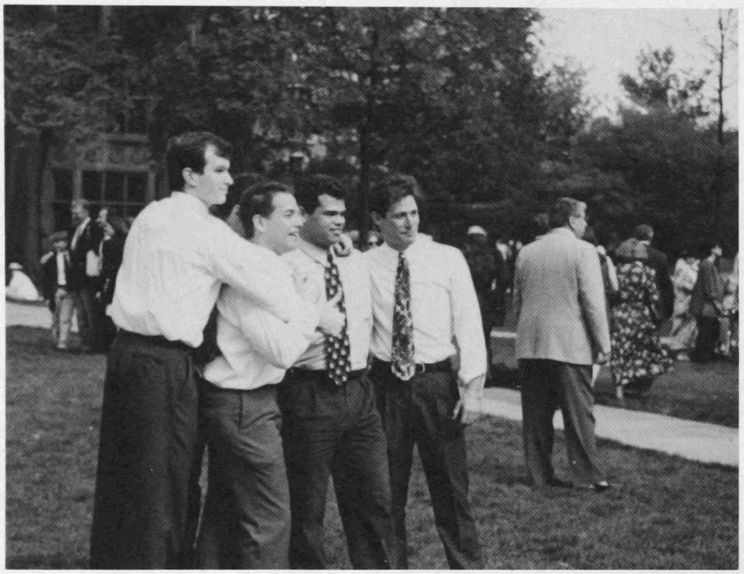
Faculty books *(continued from page 15)*

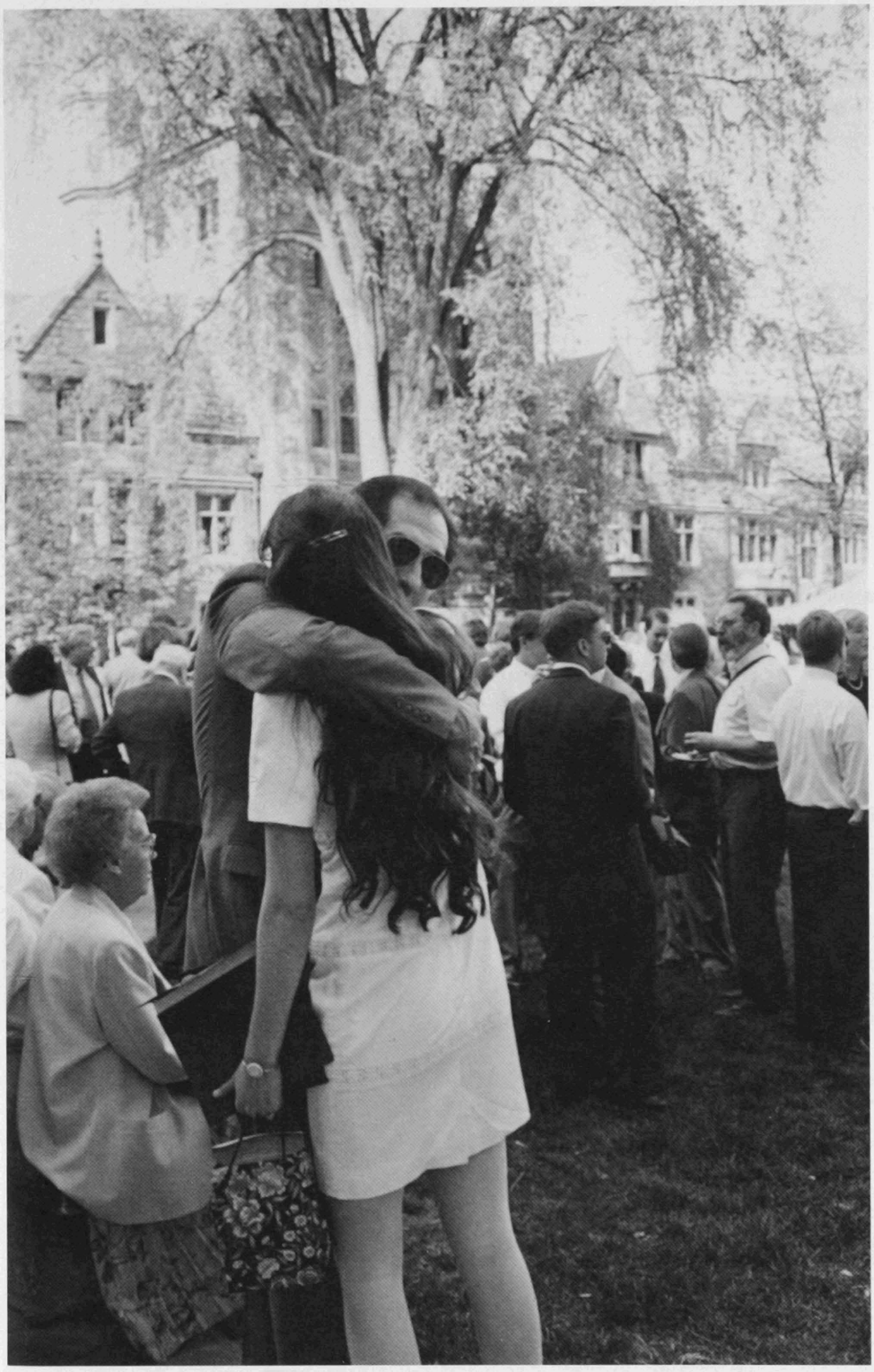
book. The result was a far better work of scholarship than either one of us could possibly have produced alone."

Kahn first published this book in 1969, and updated it in several editions with two different publishers since then. It is precisely because the specifics of tax law change so quickly that his general approach to the material remains the same. The text goes beyond how the law works to discuss the history of tax provisions, the theories behind them, their relative impact and effectiveness, and more.

"Tax law is derived from Congress making statutes, the services taking positions on the interpretation of those statutes, and courts elaborating upon and altering their application," Kahn says. "One of our purposes is for students not just to learn the technical rules of taxation, which will change over time, but to show that those rules must be viewed as parts of an integrated whole rather than as a series of isolated regulations. They have to understand that the provisions come out of a political process that includes compromises, mistakes, and misunderstandings." Understanding the process that shapes statues will help students who may someday be in a position to change those statues, as well as those who may need to anticipate statutory changes on their clients' behalf, he says.

The book results not only from a new scholarly collaboration but from a new publication process. It is one of just a handful of books to date to be desktop published at the Law School. Using WordPerfect software, Kahn's secretary Barbara Shapiro laid out the manuscript in its final format on the pages; West simply photographed the page layouts to print the book. This book was a bit challenging because Shapiro received Lehman's chapters electronically over computer networks from Paris, where he was teaching. Shapiro and John Loyd, the Law School's computer systems specialist, worked hard to reformat his charts and graphs, which were scrambled in transmission. Still, Kahn says desktop publishing leaves him more control over the editorial process and cuts months off the printing schedule. With final copy in hand, West printed, bound and shipped the book in about a month.





European alumni gather for 'intellectual feast'

THE SPLENDID SIXTEENTH-CENTURY VILLA CORSI-SALVIATI NEAR FLORENCE WAS THE SETTING FOR AN INTELLECTUALLY STIMULATING EUROPEAN ALUMNI REUNION HELD JUNE 3-4.

MORE THAN NINETY-FIVE GRADUATES and their guests gathered to meet with old friends and faculty members. The successful event, organized by Jacques H.J. Bourgeois, '59-60, and Marc Hansen, L.L.M. '84, followed in the spirit of the first European reunion held in Florence in 1989 and the international reunion held in Ann Arbor in 1991.

In keeping with the Michigan tradition of offering educational enrichment at reunions, the event featured a symposium on the recently concluded Uruguay Round of the General Agreement on Tariffs and Trade. Michigan is fortunate to count among its alumni many experts on GATT and international trade. Bourgeois and Hansen called upon these experts in academia, government, and private practice to put together a program that addressed the Uruguay Round from many perspectives.

Bourgeois, a partner at the Brussels office of Baker & McKenzie, said the idea of organizing a reunion around the topic of the Uruguay Round grew out of a conversation with friends and colleagues at a dinner party at his home last year. "It was a topic in which we could find rather easily a number of experts. That is due in part to the fact that the Law School has an excellent position in international economic law," he said.

Ninety-five graduates and their guests enjoyed a gala evening under the stars at the European alumni reunion in Florence.

PHOTO BY HOLLYWOOD STUDIO, FLORENCE

Professor John H. Jackson contributed his GATT expertise to the program and enjoyed hearing from other leaders in world trade, many of whom were his former students. "It was really pleasing to see people I've known and had contact with since their student days who are excited about and involved in trade. Many are becoming players on the world scene." He noted that everyone at the reunion seemed to appreciate the wide spectrum of views and lively, substantive discussions, even if they weren't involved in trade issues. "It offered a real intellectual exchange that was worthwhile, because that's what people remember about the Law School."

Professor Theodore St. Antoine noted, "I seriously doubt that any other law school in the country or the world could have put on with its own alumni a program of this depth and quality."

What's more, "it was a truly delightful social occasion as well as an intellectual feast," he added.

A. Paul Victor, a partner with Weil, Gotshal & Manges of New York who gave a talk on competition in lieu of trade laws, agreed. "It was different from reunions back in Ann Arbor because we had people from across the range of classes, instead of just one class year. It was a very compatible group of people, and of course you can't beat the beauty of Florence. It was a splendid event."

All this intense discussion flowed in a Baroque villa surrounded by elaborate, elegant formal gardens. Owned by the Guicciardini family since the eighteenth century, the villa now is the home of the University of Michigan-University of Wisconsin Florence Programs. The magnificent historic villa was the perfect place to renew friendships with international graduates, according to Assistant Dean Virginia Gordan: "For me, it was like a homecoming." Everyone enjoyed a superb six-course dinner of traditional Florentine cuisine at the reunion gala Friday evening. After the symposium ended Saturday afternoon, some guests enjoyed a walking tour of "an insider's Florence."

During the reunion, St. Antoine updated alumni on the state of the law school and on the year-long process of selecting a new dean. He described dean-elect Jeffrey Lehman's storybook career that ranges from scholarly theoretical work on taxation and the welfare state to a real-world program that engages students in the economic development efforts of low-income urban communities.

The Europeans became the first alumni group to meet the new dean. Lehman, who had just completed teaching a semester at the University of Paris, spoke to them of the need for constant intellectual renewal — both for the Law School and its graduates. Regular interaction between the school and its alumni will help meet that need; alumni can gain theoretical stimulus to their practice, while bringing to the school

PHOTO BY THEODORE ST. ANTOINE

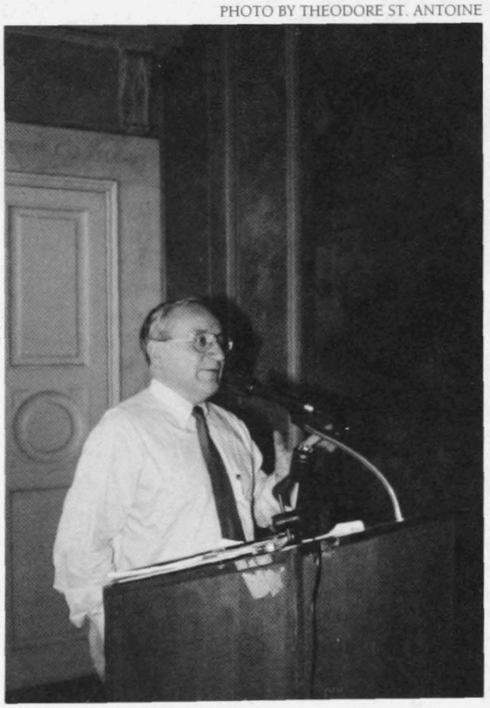
Ed Krauland, J.D. '80, Dean Jeffrey Lehman, Professor John Jackson, and Jacques Bourgeois share a moment at a break in reunion activities.

new perspectives that revitalize legal education, he said. (See sidebar for excerpts from Dean Lehman's talk.)

St. Antoine said Lehman, a youthful 37, won the respect of a European crowd that "prizes gray hair." The new dean won the ultimate compliment from the toughest critic when a Parisian told St. Antoine that Lehman's French was so impeccable that he never would have known Lehman was an American. Victor, a '63 graduate, said it was nice to have the opportunity to meet the new dean in a small setting.

The event flowed smoothly thanks to the organizational efforts of Helen Burroughs, the resident manager at the villa, who worked closely with Hansen, Bourgeois and the law school staff. Burroughs and Chef Bruno even managed to come up with a birthday cake to surprise St. Antoine's wife, Lloyd. By the time the event drew to a close, alumni were already anticipating the next reunion.

PHOTO BY THEODORE ST. ANTOINE



Jacques Bourgeois

Opportunities for renewal

What follows are some edited excerpts from Dean Lehman's address to the participants in the European Alumni Reunion on June 4, 1994:

Many of you have asked me to predict how the Law School's relationship to the international community might evolve over the next five years. I would like to do so by first introducing a theme that I have selected to organize my thinking about the Law School during the next year: my belief that outstanding attorneys are committed to continuous intellectual growth and renewal. It is vital that we continue to nurture that commitment in our students. One important way to do so is by example — by personal example as individual faculty members, and by institutional example.

What examples of institutional renewal might have the most significance for our international alumni? Perhaps the most obvious place to start is with the permanent faculty, and there I am pleased to report that we are continuing Michigan's historic tradition of excellence in international studies. During 1994, three new professors have joined the permanent faculty; two of them — Jose Alvarez and Michael Heller — have important international connections. [See page 13 for new faculty profiles.] Moreover, I expect we will do even more over the next five years to expand the ranks of our permanent faculty with expertise in matters of international and comparative law.

One might also expect to see us grow and find renewal through our visiting foreign faculty. One of the many outstanding legacies of Lee Bollinger's deanship is the increase in the number of visitors we bring to Ann Arbor from other countries to teach for periods ranging from a week to a year. During the coming year, we will have at least six foreign visitors, and we would like to do even more. The more foreign visitors we are able to bring to Ann Arbor, the more our curriculum and the lives of our students and the faculty are enriched.

Our graduate program continues to be a source of extraordinary pride for the law school. Admissions are more competitive than ever. The students remain astonishingly good. What is the opportunity for renewal in that domain? Like our domestic students, our international students sometimes lack the personal resources to keep up with rising tuition rates. An expanded financial aid program can help us ensure that our student body continues to comprise those whom we would most like to have as our students, and not be limited to those who can afford to be our students.

Indeed, we can find opportunities for renewal in almost any aspect of our institutional life that affects international studies. But please permit me to make specific mention of just one more domain — one that may have the most direct connection to the group assembled here today. I am speaking now of the Law School's relationship with its alumni.

To be an alumnus of the Law School means more than to have been, in the past, a student in Ann Arbor. It means that one is, today, a member of the Law School community. It means

that, today, one shares a special set of interests and commitments with other members of that community: with fellow alumni, with current students, and with current faculty. And I believe that the Law School can play a critical role in enabling its alumni to continuously renew their relationship with the school.

One example can undoubtedly be found at this very reunion symposium: Jacques Bourgeois, Marc Hansen, and all the presenters have put together a textbook model for a Michigan alumni event. It is substantive. It is challenging. It disseminates within the community of Michigan alumni the special knowledge that their fellow alumni posess.

A second approach would be to take advantage of recent developments in the world of computer and telecommunications technology. Today there exists a combination of hardware, software, and networking technology that could make it possible for a law school to nurture *continuous* substantive dialogue among alumni about substantive questions. It is technologically possible to have an Uruguay round "forum" whereby Michigan alumni from around the world can engage in an ongoing conversation about the various legal, economic, and policy issues that are being discussed this weekend. Any graduate with a personal computer and a modem could join in the conversation.

Naturally, such an alumni network would not have to be restricted to discussions of the Uruguay round. It could be about anything related to life as a Michigan graduate: substantive legal issues of all kinds; more general issues of professional life; questions of ethics; questions of law firm administration; questions about legal education. And it wouldn't have to be just for alumni. It could be for current law students, and for faculty, and for the dean.

It is a fact of modern institutional life that any serious program of institutional renewal requires new resources. And that suggests that I should conclude by raising a question that many of my closest friends asked me when they learned that I would be dean. "Your school is in the middle of a huge Campaign to raise new endowment funds. Why on earth would you want to step into the middle of that?"

I give my friends a two-part answer. First, I explain the link between a program of institutional renewal and a commitment to develop whatever new resources are needed to sustain such a program. The best lawyers in the world are those who are constantly striving to find the resources of time and will that are needed to renew themselves intellectually. The best law schools in the world are no different.

Second, I remind my friends that leading the Campaign will be only one aspect of my duties as dean. It is only one of the many ways in which I will be given new opportunities to meet interesting people. I will have many different chances to get to know people who can see the Law School from a distance, but with the same kind of devotion that is felt by those of us who live in Ann Arbor. I know that those new friendships will offer me an exciting new avenue through which to pursue my own individual program of intellectual growth and renewal.

To be an alumnus of the Law School means more than to have been, in the past, a student in Ann Arbor. It means that one is, today, a member of the Law School community. I believe that the Law School can play a critical role in enabling its alumni to continuously renew their relationship with the school.

— DEAN JEFFREY LEHMAN

In addition to Jackson, Bourgeois, Hansen, Victor, and St. Antoine, other symposium speakers were:

Professor Luiz O. Baptista, '78-'79
University of Sao Paulo Law School
Baptista, Carvalho, Tess & Hasketh, Sao Paulo

Jean-Francois Bellis, L.L.M. '74
Van Bael & Bellis, Brussels

Marco C.E.J. Bronckers, L.L.M. '80, '83-84
Trenite Van Doorne, Brussels

Professor Thomas Cottier, L.L.M. '82
Institute of European & International Economic Law, University of Bern

Ross L. Denton, L.L.M. '89
Baker & McKenzie, London

Tania Friederichs, L.L.M. '81
Commission of the European Communities, Brussels

Florence Rice Keenan, '81
Digital Equipment Corp., Washington

Edward Joseph Krauland, J.D. '80
Steptoe & Johnson, Washington

Dr. Reinhard Quick, L.L.M. '84
Varband der Chemischen Industrie, Brussels

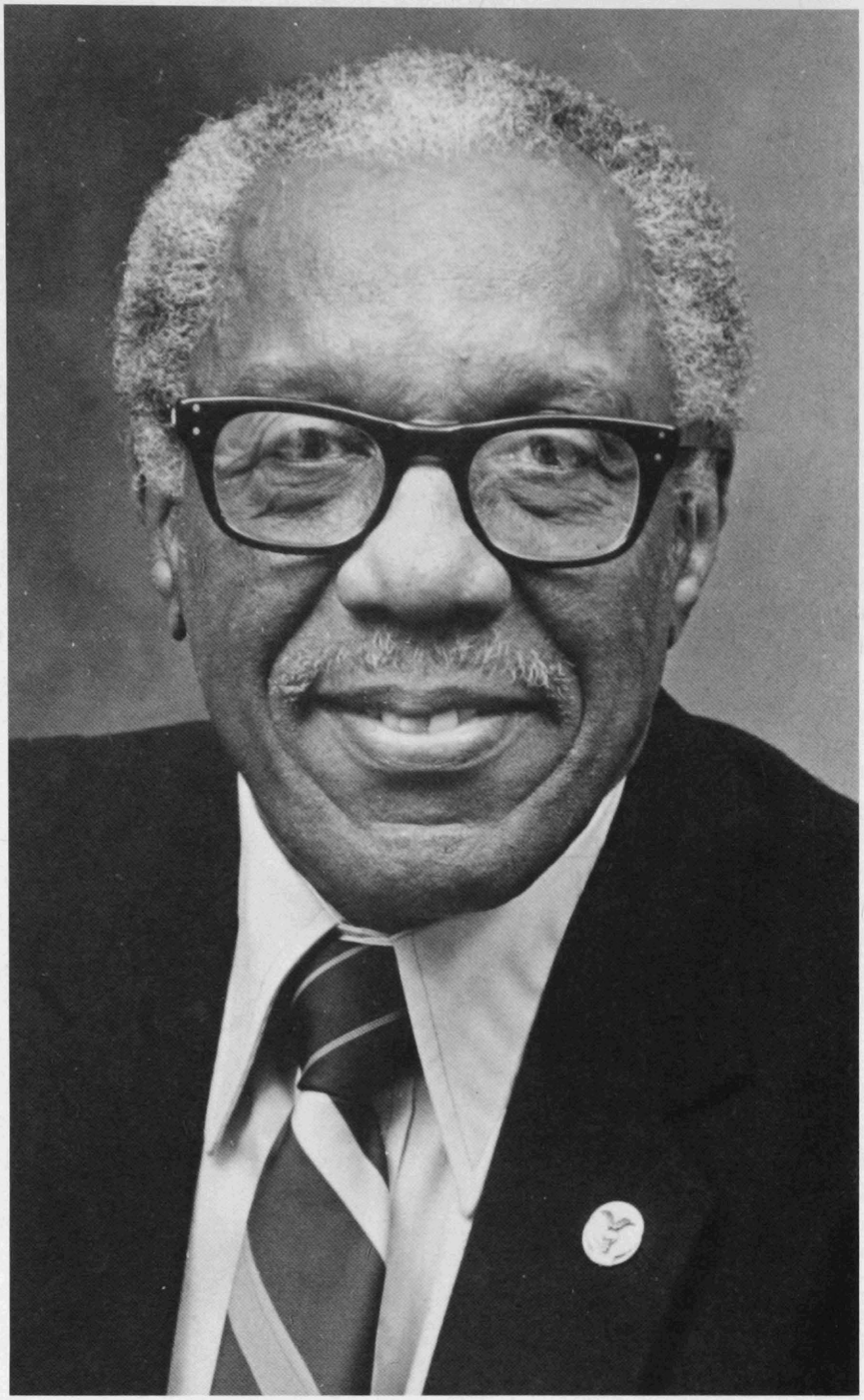
Dr. Raimund T. Raith, L.L.M. '81
Commission of the European Communities, Brussels

Dr. Jean-Pierre Stenger, M.C.L. '61
Avocat, Paris

Peter L. Van Den Bossche, L.L.M. '86
University of Maastricht School of Law, Netherlands

Edwin A. Vermulst, LLM '84, S.J.D. '86
Akin, Gump, Strauss, Hauer & Feld, Brussels

LQN



GEORGE CROCKETT — a biography in Black & Red

— BY ROBERT HARRIS
ADJUNCT PROFESSOR OF LAW

GEORGE W. CROCKETT JR., a poor young man from Florida, enrolled in the University of Michigan Law School in 1931. He decided to attend the U-M rather than Harvard Law School because the tuition at Harvard was $500 a year, while Michigan's annual tuition was only $150. Young Crockett had seen a newspaper photo of Michigan's new Law Quadrangle and was impressed. The newspaper hadn't told him, however, what he learned when he got to Ann Arbor: Blacks were not allowed to live in the Lawyers Club.

Instead, Crockett lived for three years with a Black family on Hill Street. Most white students avoided Crockett, the sole

Black student in the Class of '34, and one faculty member snubbed Black students when he met them crossing the quadrangle. But Dean Bates was helpful. He couldn't get Crockett a job with the New Deal after his graduation, but he arranged the unprecedented: he loaned Crockett $500 to pay bus fare of the young man and his wife to West Virginia. The loan supported the couple for two months while he studied for the bar exam, passed it, rented an office, furnished it, and hung out a shingle. Dean Bates, Crockett recalls, gave him pretty good terms: a year before his loan matured, and then only $5 repayment a month.

These are the tales Crockett told when he participated in a legal ethics seminar at the law school in April and dined with a group of minority students afterward. His audiences enjoyed the opportunity to hear from an alumnus who had fought for justice for 60 years as a pro bono lawyer, a judge, and a legislator. Sprightly, good-natured and sharp as a tack at age 84, Crockett fielded students' questions for three hours in the evening as he shared stories of his remarkable life.

His first law school anecdote brought nods of assent from his largely Black student audience. He told how when he was first called on in class — the only Black in the huge room — he felt that the whites were going to judge his whole race by his response.

Crockett practiced law for a while fresh out of college, then received a proposal from an influential West Virginia Democrat: if Crockett would jump to the Democratic Party, his sponsor would get him a New Deal lawyer job in Washington. (Originally, Crockett was offered a Justice Department job for joining FDR's party, but every Congressman with lawyer in the family had already filled all the Justice jobs with relatives, according to Crockett.) Instead, he became the first Black lawyer in the Labor Department. While there, he authored two articles which were published in the *Michigan Law Review*.

From then on, Crockett was on his way. His recollections cover a lot of American history, including the formation of the National Lawyers Guild and the tumultuous early history of the United Auto Workers. He recalls the UAW's Walter Reuther fighting the Reds and refusing to support Blacks for the union's top board.

With two Jews and a white Protestant, Crockett formed the country's first interracial law firm. The firm of Goodman, Crockett in Detroit sought to make enough money doing personal injury work to support its ambitious pro bono caseload, which mostly involved the defense of leftists facing loss of jobs and reputation in the Red Hysteria that followed Churchill's Iron Curtain Speech, Truman's loyalty program, the Internal Security Act and the Smith Act prosecution of Communist Party members.

Crockett is the sole survivor of the group who served as defense counsel in the critical *Dennis* case, in which the leaders of the Communist Party USA were tried before U.S. District Judge Harold Medina in New York for conspiracy to teach and advocate violent overthrow of the federal government. He recalls that one of the reasons he was asked to participate was that the defendants wanted the legal team to be interracial.

The world remembers that the *Dennis* defendants were convicted, the convictions were sustained by the appellate court over First Amendment objection, and the McCarthy Era was legally established. What is less well-known is that at the end of the trial, Judge Medina sentenced the defense lawyers, including Crockett, to jail without notice or hearing for all the acts of criminal contempt the judge thought he had witnessed during the trial. The judge concluded that there was a conspiracy among defense counsel to make his trial a mockery. Crockett was sentenced to four months in jail. His conviction was sustained by the U.S.Court of Appeals for the Second Circuit (J. Clark dissenting) and by the U.S. Supreme Court (J. Frankfurter, Black, and Douglas dissenting).

As he describes it, he apparently left each phase of his career in a puzzled state: he jumped from his interracial law firm to a judge's career without ever solving all the problems of how one combines moral responsibility with a successful career as a plaintiff's personal injury lawyer.

I asked Crockett whether his conduct before Medina was really "abominable," as Judge Charles E. Clark of the Second Circuit called it. As Crockett recalls it, Judge Medina had told defense counsel at the outset that they could say "I object," but they could not state their reasons for objecting. Hence, each time Crockett or another lawyer would say something like, "I object: hearsay!", the judge counted it as another act of criminal contempt in his private tally.

Crockett was not disbarred, but he suffered a public reprimand. He overcame the shame and horror of imprisonment as he slowly rebuilt a law career in Detroit. He eventually became a judge of Recorders Court in Detroit, where he heard criminal cases exclusively, including some of the most serious state offenses.

His wars with the Establishment continued, culminating in the New Bethel Church case. In the wake of a fight between a militant Black group and the police, 42 men, women and children were arrested on Saturday and held

overnight without arraignment in a police garage lacking water, seats, or a toilet. As a presiding judge responsible for hearing arraignments on Sundays, Crockett went to the police station alone at 6 a.m. on Sunday, announced court was in session, and demanded that every arrestee be brought before him for a habeas corpus hearing. The prosecutors told the police to ignore the court's order. Crockett held them in contempt.

With the legislature and the press calling for his removal over the incident, and with all the official bar associations, including the Wolverine, a Black Michigan bar association, silent, a few brave individuals rallied public opinion in Crockett's defense. Years later, he was vindicated by the U.S. Supreme Court.

Crockett went on from his tumultuous judicial career to Congress, where for ten years he served on the Foreign Affairs Committee and the Judiciary Committee as well as on the Black Congressional Caucus. As he describes it, he apparently left each phase of his career in a puzzled state: he jumped from his interracial law firm to a judge's career without ever solving all the problems of how one combines moral responsibility with a successful career as a plaintiff's personal injury lawyer. And if he hadn't left the judiciary for Congress, his foes in the press probably would have won their battle against him, for it was far from clear that he ever figured out how to do his duty as a judge in time of public hysteria and still retain enough public popularity to win reelection.

Crockett told students about searching for James Chaney, Michael Schwerner and James Goodman, three civil rights workers who vanished in Philadelphia, Mississippi in 1964. He recalled that the local sheriff told him and his Black and white lawyer companions the route to take to the church where the three missing men were last seen. But the sheriff described the route in a voice so loud that every local good old boy in the room heard where the Northern visitors would be driving that night, alone. Crockett and his friends decided they would not drive to that church right then.

I found Crockett's answers to three hours of dinner questions to be an autobiography in black and red. One strand of his life was a story of a Black man's suffering in America and his struggle for Black people's rights. Another strand was the story of the tiny band of National Lawyers Guild and American Civil Liberties Union lawyers who, in the 1930s, '40s and '50s, fought the good fight for the First Amendment and for working men and women. They would not purge American Communists, who had been almost alone in standing up against Fascism before World War II and in including Blacks in their dream of social justice.

For a man who had felt the cutting edge of both Jim Crow and the Red Scare, Crockett struck me as surprisingly mild-tempered and affectionate toward his alma mater and his country. I had been raised as a boy to lionize the New Deal, the labor movement, and the lawyers who defended the First Amendment during the McCarthy Era; it was bittersweet to hear the old tales of these times told a bit differently. For example, Walter Reuther, to him, was not a saint, but a man who fought within the labor movement against the Left, a man who had been too slow to give Blacks their promised roles in the highest echelons of the UAW.

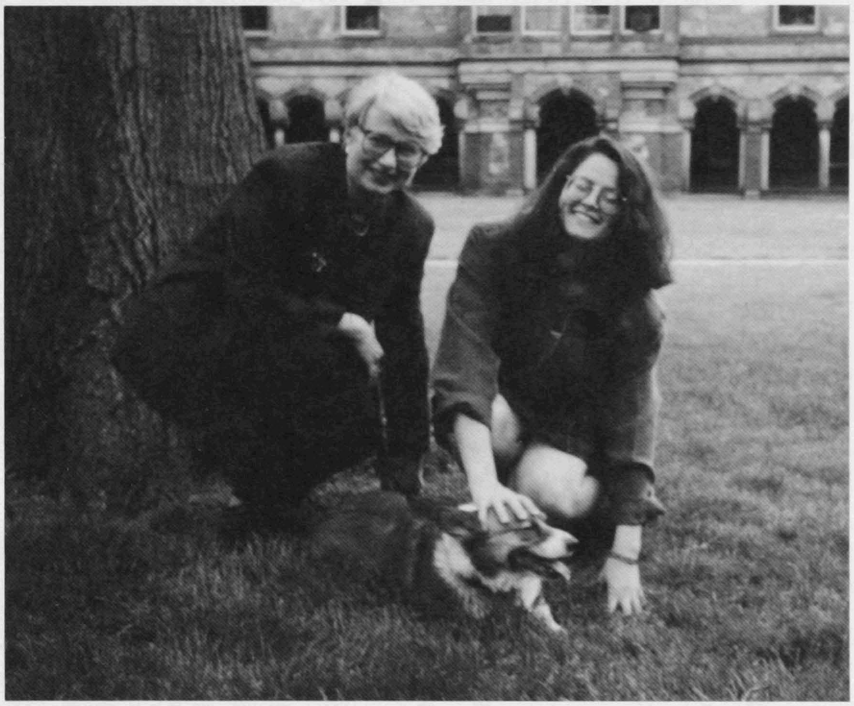
Judge Crockett's visit served a number of purposes. It helped remind some of us that the school's alumni are a group more diverse than we sometimes imagine in race, political beliefs, and careers. It helped some Black students learn more about themselves, by hearing from someone who had been a Black student here more than 60 years ago. It helped some students see a wider array of lawyer role models than they would see if all such visitors to the seminar came from professional lives in large firms. And a small part of the school unofficially paid tribute to an alumnus who had brought honor to the school, not only because he had held high elected offices, but — most important — because he had spent his whole professional life using his lawyer's skills to fight for a more just world for all people, whatever their race or politics.

In a small way, the Law School, last April, told George Crockett, J.D. '34, how proud it was of the way he lived his life. By devoting his life to justice, he has given the greatest gift an alumnus can give to the school. LQN

Students enjoyed a chance to hear from George Crockett Jr., a 1934 graduate with a long, illustrious career at a dinner in April. Seated from left are Crockett, Professor Robert Harris, and Lawrence Garcia. Standing are Lisa Barksdale, B.J. Castle, David Cade, LaRhonda Brown Barrett, and Taisha Rucker.

From civil rights to the CIA

— BY TONI SHEARS



It's no secret that CIA General Counsel Elizabeth Rindskopf enjoys spending time with her daughter Amy and corgi Meggie.

WHEN PEOPLE ASK Elizabeth R. Rindskopf about her job, the most common question often sounds a lot like, "What's a nice person like you doing in a place like this?"

Sometimes the former civil rights litigator is as surprised as anyone else to find herself general counsel of the Central Intelligence Agency.

She's also often asked what the CIA needs lawyers for. "Everything from soup to nuts. I can't conceive of a legal issue that might not possibly cross my desk," says Rindskopf, J.D. '68. Thanks to the fascinating variety and the quality of the people she works with, the answer to a third common question — "Is it fun?" is a definite yes.

The CIA was *not* what the former Elizabeth Roediger had in mind when she was at the Law School in the turbulent 1960s. "I describe myself then as something of a bomb thrower, although that's a little harsh," she says with a laugh, sounding far too calm and cultured to be a flaming radical. "I was very much involved in civil rights in school and very much anti-war, although that was a secondary concern. I was not a friend of the military." She spent the early years of her career first as a legal aid attorney and later worked at Georgia's first integrated law firm handling civil rights cases. Back then, she never suspected that her professional path would lead to the Federal Trade Commission, an international law firm, the National Security Agency, the State Department, and most recently, the CIA.

It's easy to imagine that there Rindskopf is embroiled in top-secret issues of espionage and revolution — especially when on the first few attempts to reach her by phone, you're told there's no one here by that name. This *must* be the CIA! It turns out that a phone number change, not a cover-up, made her hard to find. It's almost disappointing to find that she can talk freely, if generally, about her job.

Much of the legal work she manages differs little from standard administrative law at any other large government operation. Some of her staff of more than 70 attorneys function much like their counterparts in the private sector in areas like tax and patent law. "We're just doing the work in an unusual factual context," she says. Of course, other divisions focus on intelligence, counterintelligence, covert action and classified information,

interpreting the agency's authority and limitations in these areas. "At least some portion of our people who are operating under cover in intelligence situations can have unique legal problems," she notes, adding that the reordering of world powers has changed what the CIA watches, but has not altered its basic role. There's plenty of work for her to do; like many lawyers, she puts in 12-hour days at the agency, followed by another hour or two of work at home.

Increasingly, her staff works with U.S. attorneys around the country when they are dealing with civil or criminal cases in which CIA information is involved. "These days in the post-Cold War world, topics of interest to the international political community can also be of significant interest to law enforcement agencies," she explains. She follows the theory that lawyers should be "forward deployed" close to the facts as they develop, so many of her staff are scattered throughout the agency. The CIA faces fewer Freedom of Information Act disputes than people think, and is less often the target of litigation.

People also think of the CIA as a bastion of the far right — an odd place for Rindskopf, who has always considered herself a liberal on domestic political issues. She has learned that the agency's conservative reputation doesn't hold true, and she's never felt uncomfortable in the CIA's political atmosphere. "Most people here pride themselves on being objective, especially on foreign issues. We tend to be what I call realistic rather than conservative or liberal on those issues." She has found that on a number of domestic social issues like affirmative action, her colleagues are for the most part "forward-leaning."

"I found out how easy it is to make assumptions about people that are wrong. Giving up prejudices was what the civil rights movement was all about, yet it is striking to me that those of us who went to do civil rights work often brought our own biases along."

— ELIZABETH R. RINDSKOPF

Rindskopf credits her civil rights experience for teaching her shed to her preconceptions; her willingness to rethink her assumptions allows her to work effectively in what seem like foreign environments.

She worked in the Deep South two summers before graduation and met her husband there. After school she couldn't find a firm in Georgia that would hire a woman, so at Professor Robert Harris' suggestion she applied for and won a Reginald Heber Smith fellowship from a federal program intended to train the elite legal troops for the War on Poverty. With the fellowship to live on, Rindskopf worked as a litigator for legal services groups in Atlanta, and soon was lucky to have a case that was accepted for review by the Supreme Court.

Her husband became the first to integrate a law firm in Georgia by joining a prestigious Black-owned firm that was then cooperating with the NAACP Legal Defense Fund. When he died in 1971 in a freak auto accident, she decided to take over his large civil rights caseload at the firm, then known as Moore, Alexander and Rindskopf. In court and out, she encountered many unsung heroes of the movement — "magnificent people, very courageous," she recalls. To her surprise, sometimes the heros were her opponents, like the attorney for the Atlanta School Board who shared her values and, at great personal cost, assisted with desegregation cases because it was the right thing to do. Another lawyer in an employment discrimination case turned out to have a strong commitment to affirmative action.

"I'd gone to Atlanta as a carpetbagger to reform the south. In the end, they probably taught me more than I taught them," she says. "I found out how easy it is to make assumptions about people that are wrong. Giving up prejudices was what the civil rights movement was all about, yet it is striking to me that those of us who went to do civil rights work often brought our own biases along."

That lesson stuck with her when she moved north to Connecticut and, over the next ten years, shifted from civil rights work into more commercial law. She became assistant director for mergers and acquisitions at the Federal Trade Commission, where she handled antitrust cases. Next, she joined an international law firm that needed her federal litigation ability. "We were soon hit with a bow wave of litigation arising out of the U.S.-Iran tribunal. I found myself doing round-the-clock international arbitration. No one was more surprised than I." Then, in 1984 she was offered the general counsel post at the National Security Agency.

Career-wise, it felt like a major risk to take a job with an agency usually described as "supersecret" and deeply connected with the military. Her daughter Amy, then a teenager, asked if the NSA job would mean that she could no longer discuss work at the dinner table. "I never thought of it that way, but I suppose you're right," Rindskopf replied, and her daughter flashed back, "Take the job!" She did, and enjoyed both the work

and her colleagues, who again changed her attitudes. "I had to reassess my low regard for the military. I encountered what proved to be an extremely impressive group of lawyers in the various Judge Advocate General's offices in the Army, Navy and Air Force." She also discovered she enjoyed legal management, or "matching jobs with people."

After five years at NSA, she moved to the State Department as principal deputy legal advisor. Her stay there was brief but lively, as the Berlin Wall came down and the U.S. invaded Panama. Within a year, Judge William Webster, then director of the CIA, offered her the general counsel's job. Believing that her background would allow her to contribute more at the CIA than at State, she made the move.

Formerly a defender of draft dodgers, she has made peace with the functions of the military and the CIA. "Much as we would like it to be otherwise, the fact that the Cold War has ended does not make life as we might like it. The Peaceable Kingdom has not arrived. Children of the '60s, and I count myself as one, often don't understand the role of force in ensuring a peaceful world. We can't close up shop; that's unrealistic.

"I think that the perspective I picked up from civil rights work is invaluable, especially in an environment like this one that is hermetically sealed, not open for inspection, but, like any other government agency, must think of itself as responding to the public interest. What I learned in civil rights was that there were people on all sides with fine minds and something to contribute. I keep that in mind, and hope that makes me able to work with all people in the body politic more effectively."

LQN

Justice is blind

APPROXIMATELY 40 JUDGES in courts across the nation are blind. Among them is Wayne County Circuit Court Judge Paul S. Teranes, J.D. '61.

Teranes, who lost his vision years before he went to Law School, says blindness does not affect the performance of a judge.

"The biggest challenge is not so much running a trial or even hearing testimony, because a person who is blind always gets all information audibly. The bigger effort is making arrangements to get all the reading done before trial. Any blind attorney who has been doing research and handling cases has already worked out ways to do that," says Teranes. Jurors in his courtroom sometimes don't realize he's blind for a day or two, and colleagues sometimes forget about it.

Blind judges sometimes face questions about how they can determine if somebody is telling the truth without visual cues. After 20 years as a Wayne County prosecuting attorney and twelve years on the bench, Teranes says he's learned to sense dishonesty."There are lots of other ways; you get a feel for their general demeanor and you learn to read their tone of voice," he says.

Besides, ideally, justice really is blind to appearances. "One advantage I have is that I don't have the tendency to make judgements as soon as someone walks into the courtroom because of how he or she looks. The most important thing is how their testimony fits in with others and matches with the facts of the situation."

BETH ANN MCWILLIAMS, 1953-1994

BETH ANN MCWILLIAMS, a graduate of the Law School Class of 1977 and a reference librarian at the U-M Law Library, died July 11 at age 41.

"To say that Beth possessed character, intellect, and dedication does not fully describe Beth as a colleague," said Law Library Director Margaret Leary. "She also enjoyed her work, and created a joyful aura which enveloped those she served and those with whom she worked."

Head Reference Librarian Barb Vaccaro added, "Her colleagues at the library remember her as a dedicated researcher who provided superb service to law faculty and students, and for her tireless work in making the Law Library's international law collection one of the best in the world. Most of all, her colleagues remember her keen mind, graciousness, and professionalism."

An Ann Arbor native, McWilliams earned a bachelor's degree in 1974 from Indiana University. She was an associate attorney at Ross & Hardies in Chicago from 1978-1981 and a senior attorney at Continental Illinois National Bank and Trust Co. from 1985-1989. After four years as vice president and manager of the Documentation Department at Comerica Inc., she returned to the University for a master's degree in libary science.

She is survived by her parents, Dr. John and Annabell Struble McWilliams; her husband of six years, James M. Garavaglia; one brother, Robert McWilliams of Chicago; and two sisters, Deborah Ratcliff of Phoenix, Arizona and Patricia Whiteland of Nassau, Bahamas.

A private memorial service was held July 15. Memorial contributions may be made to the Cancer Care Center at St. Joseph Mercy Hospital, McAuley Cancer Care Building, 5301 Huron River Drive, Ypsilanti, Michigan, 48197, or the Commonweal Cancer Center, P.O. Box 316, Bolinas, California, 94924.

Class notes

1938

Erwin B. Ellmann has become of counsel to the firm of Mason, Steinhardt, Jacobs & Perlman of Southfield, Michigan.

1941

John W. Cummiskey, founding member of the firm of Miller, Johnson, Snell & Cummiskey, P.L.C., received the Aquinas College Reflection Award at a dinner Sept. 8. The award honors those who consistently reflect the values of the college: commitment, vision, service, loyalty, integrity, and trust.

1948

Dorothy A. Servis received an honorary doctor of laws degree from Washington and Jefferson College of Pennsylvania. She was the first woman lawyer at U.S. Steel.

1949

Lewis Carroll received the 1993 Distinguished Alumni Award from Marshall University in West Virginia. He was honored for a long career that included stints as an assistant U.S. attorney and a lawyer with the Federal Power Commission, and as counsel to utility companies. He also served as chair of the editorial board for the first comprehensive treatise on the law of gas industry regulation, published in 1987.

Eugene Gressman received an honorary doctor of laws degree from Seton Hall University School of Law.

1950

Ernest A. Mika received the Donald R. Worsfold Distinguished Service Award from the Grand Rapids Bar Association. The award honors his significant contributions to the association, the profession, and the community.

1951

Theodore Sachs, general counsel for the Michigan AFL-CIO, will represent his client and several of its Michigan affiliates, including the Detroit Federation of Teachers and AFSCME, in a suit challenging the constitutionality of Michigan's recent school anti-strike legislation.

1952

Gordon I. Ginsberg became a shareholder in the firm of Mason, Stenhardt, Jacobs & Perlman.

George A. Skestos is a trustee and head negotiator for Ohio State University in its efforts to obtain state funding for a new sports arena.

1954

Stephen A. Bromberg has been named chief operating officer of Butzel Long of Detroit. He succeeds his classmate, **Harold A. Ruemenapp.**

1955

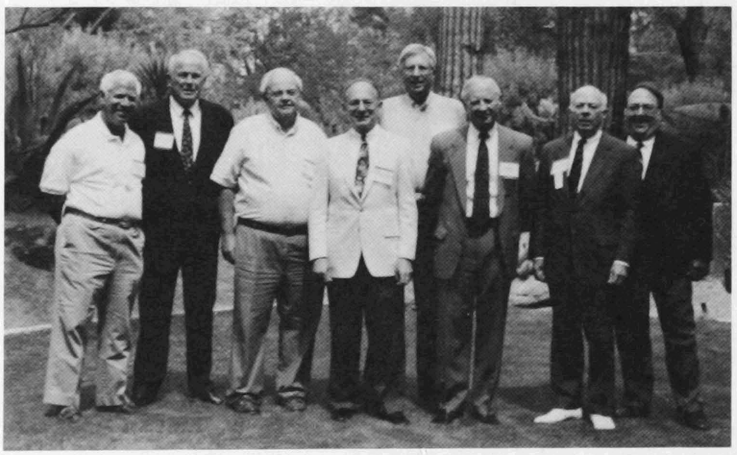
Leland B. Cross was on a panel of twenty-five management attorneys who advised the National Labor Relations Board on procedures for handling unfair labor practices.

1956

Thomas R. Ricketts, president and chief executive officer of Standard Federal Bank, was elected to the board of directors of Detroit Renaissance, a non-profit, private civic organization that focuses on economic development and public policy issues.

1957

Law School Emeritus Professor **Whitmore Gray** now is of counsel to the firm of LeBoeuf, Lamb, Greene & MacRae.



Michigan Law graduates from the 1950s are well-represented in the American College of Trial Lawyers, as this photo from its spring meeting shows. They are, from left: Lee N. Abrams, '57; James E. Pohlmon, '57; Charles B. Park III, '57; Harvey M. Silets, '55; Stewart R. Lefstein, '58; Robert B. Fiske Jr., '55; Joseph L. Hardig Jr., '53; and Roy H. Christiansen, '57. Other 1950s graduates attending the conference but not shown in the class picture were the Hon. Richard M. Bilby, '53, and the Hon. Charles B. Renfrew, '56.

1959

Edward Bransilver has been named to the board of directors of Commercial Bank of New York.

Crain's Detroit Business named **Joel Tauber** its Socially Responsible Entrepreneur of the Year.

1960

Bert Sugar, publisher and editor of *Boxing Illustrated,* now is a regular contributing correspondent on the NewSport television channel.

1961

James N. Adler represented Thrifty Drug Stores in the merger of Thrifty and Payless, which will create the second-largest drug store chain in the country.

Richard E. McEachen now is associated with the Kansas firm of Ferree & Bunn, where he will parctice in the areas of wills, trusts, estate planning, probate, and real estate.

1963

Francis X. Beytagh has resigned as dean of the Ohio State University College of Law after eight years there and a total of fifteen years as dean at two law schools. He received a Fulbright grant to do research and lecture at Trinity College in Dublin from January through June of 1994. He also delivered the Alan Graham Memorial lecture on "Equality and Constitutionalism" at the University of Ulster in March. He is currently working on a book entitled *Constitutionalism in Contemporary Ireland,* and will resume full-time teaching at OSU in the fall.

Norman Otto Stockmeyer Jr. has been named editor-in-chief of *The Compleat Lawyer,* the American Bar Association magazine for attorneys in general practice. He is a member of the faculty of the Thomas M. Cooley Law School.

Kathryn D. Wriston was re-elected vice-president of the Practising Law Institute.

1964

Charles A. Walker has left Masco Corp. to open his private law practice in Howell, Michigan.

1966

Ronald L. Olson was elected a director of Pacific American Income Shares Inc., and to the board of trustees of RAND.

Richard E. Rassel has been named chairman and chief executive officer of Butzel Long. He succeeds **William M. Saxton**, J.D. '52, who remains a shareholder and a member of the firm's board of directors. Rassel, a litigator who specializes in libel and slander law, has been with the firm since 1969 and has been managing director since 1981.

1969

David Jamison, a longtime faculty member at the University of Akron in Ohio, has been named senior vice-president and provost there. He has held the post on an interim basis since July 1993. He is an expert on media law, freedom of speech issues, and sports law.

Joseph Krieger was installed in May as president of the Intellectual Property Law Association of Chicago. This group is one of the oldest and largest associations for practitioners in this area of law. Krieger is a partner in the law firm of Mason, Kolehmainen, Rathburn & Wyss of Chicago.

Judge Donald E. Shelton, a Michigan Circuit Court judge since 1990, is a candidate for the Supreme Court of Michigan.

1970

Dr. Richard J. Erickson was awarded the degree of Master of Letters of Law with distinction in international and comparative law at Georgetown University commencement. As a Ford Foundation fellow, he has completed a research study entitled *Making of Executive Agreements by the United States Department of Defense.*

1971

Jules I. Crystal joined the Chicago firm of Ross & Hardies as a partner.

Roger Simmons is chief counsel in author Dan Moldea's $10 million suit against the *New York Times.* Moldea charges that the *Times'* review of his book, *Interference: How Organized Crime Influences Professional Football,* was libelous.

Karin A. Verdon, a partner in the Atlanta office of Ford & Harrison, has been named as head of the firm's Compensation and Employee Benefits Practice.

1972

Mark B. Hillis has been named managing partner of the St. Louis-based law firm of Bryan Cave, which ranks among the forty largest law firms in the nation.

William B. Wilson received an 1994 Alumni Achievement Award from Westminster College for demonstrated achievement in his career.

Stephen R. Wright was named senior vice president of Destec Energy Inc., an independent power producer based in Houston.

1973

Ronald J. Allen was honored in April with the 1994 Distinguished Alumnus Award from Marshall University in West Virginia. Allen is the John Henry Wigmore Professor of Law at Northwestern University.

Thomas M. Forman, president of Cleveland's Forman Capital, Inc., was appointed to the board of directors of Olympic Steel.

Roger M. Theis now is of counsel to the firm of Hinkle, Eberhart & Elkouri, L.L.C. A former assistant U.S. attorney for the District of Kansas and an assistant attorney general for the State of Kansas, he has practiced in the areas of civil rights, employment and commercial litigation since 1981.

1974

Alan Miller has written a book entitled *Green Gold - Japan, Germany, the United States, and the Race for Environmental Technology* with Curtis Moore. Miller is executive director of the Center for Global Change at the University of Maryland at College Park.

Larry D. Thompson, a partner at King & Spalding of Atlanta, was elected to the board of directors of the Capital Holding Corp.

1975

Timothy K. McMorrow is a candidate for one of the four newly-created seats on the Michigan Court of Appeals.

1976

Henry Lee Morgenstern is taking a year-long sabbatical from his public interest environmental law practice in Key West, Florida, to travel the rainforests of the Pacific for the Rainforest Action Network.

1977

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

Greg Pickrell, who was a founding partner of the Silicon Valley office of Coudert Brothers, became managing partner of Coudert's Tokyo office in 1993.

1978

Ann E. Mattson was appointed to the 15th Judicial District Court for the City of Ann Arbor by Michigan Gov. John Engler.

1979

W. Jeffrey Cecil has moved to the Naples, Florida office of his firm, Porter, Wright, Morris & Arthur.

Bruce D. Celebrezze and Laura L. Goodman have formed a new San Francisco firm, Celebrezze & Goodman, that will focus on insurance and business litigation.

Class notes

Michael B. Peisner recently chaired the Maine State Bar Association's task force on limited liability companies. The task force was instrumental in passing new legislation. Peisner is a partner of the Portland firm of Curtis Thaxter Stevens Broder & Micoleau, where he practices corporate law.

Joseph E. Tilson has joined the newly formed Chicago law firm of Bates, Meckler, Bulger & Tilson as a name partner. Previously with Katten Muchin & Zavis, he will continue to practice in labor and employment litigation and collective bargaining negotiations.

1980

Andrew R. Etkind is now vice-president and general counsel of Information Management Resources in Clearwater, Florida.

Ronald I. Heller, A.B. '76, M.B.A '79, has become the first attorney to be elected president of the Hawaii Society of Certified Public Accountants. He currently practices in the areas of taxation, tax litigation and business litigation with the firm of Torkildson, Katz, Jossem, Fonseca, Jaffe, Moore & Hetherington.

Betty R. Widgeon was selected by Gov. John Engler to serve on the 14-A District Court of Washtenaw County.

1981

Marc Abrams has been elected first vice-chair of the Democratic Party of Oregon. He previously served as chair of the party's Finance Committee.

1982

Paul J. Koivuniemi was appointed vice-president and general counsel of Synergen, Inc., a biopharmaceutical company engaged in the discovery, development, and manufacture of protein-based pharmaceuticals.

Myint Zan, LL.M., returned to Ann Arbor and the Law School after an absence of almost twelve years to give a luncheon talk April 12 at the Lawyers' Club on legal and political developments in Burma and Malaysia. For the past few years he taught in two Malaysian law schools. He regularly contributes articles on international law to law journals and newspapers in Malaysia. His most recent publications were "Some International Law Issues and 'Lessons' from the Cambodian Past," published in the *Malayan Law Journal* (8 May 1992) and "Abductions: American vs. International Law" in *New Straits Times* (Kuala Lumpur, 30 September 1992) which critiqued the *U.S. v. Alverez-Machain* U.S. Supreme Court case. He was also a judge in the international finals of the 1994 Jessup International Law Moot Court competition held in April in Washington, D.C.

1983

Clifford E. Douglas is serving as special counsel to U.S. Rep. Martin T. Meehan of Massachusetts. In coordination with the Department of Justice, he is investigating allegations of the potential criminal and civil liability of tobacco companies. Douglas alleged on the ABC news magazine "Day One" that manufacturers manipulate nicotine levels in tobacco products and have long had, but have hidden, information about the harmful effects of their products.

Michael R. Lied has been appointed chair of the Illinois State Bar Association's Labor and Employment Law Section Council. A partner in the Peoria office of Husch & Eppenberger, he has been a member of the council since 1988.

Carl J. Surma recently established a solo practice in Charlotte, Michigan. He practices commercial litigation and criminal defense.

1984

Steven R. Heacock won the Grand Rapids Jaycees' 1994 Distinguished Service Award for outstanding achievement in community, career, family, and church.

Daniel M. Sandberg was named vice-president, general counsel and secretary for Hayes Wheels International, Inc. of Romulus, Michigan. Previously, he was with Kelter-Thorner, Inc., a national property and casualty insurance broker.

1985

Emil Arca has become a partner at Dewey Ballantine, where he practices in the Securitization Group of the firm's New York office. He formerly was a partner in the New York office of Winston & Strawn.

David Herring has received tenure as associate professor of law at the University of Pittsburgh School of Law. He directs the school's clinical programs and teaches the Child Welfare Law Clinic, the Corporate Counsel Clinic and Civil Procedure.

1986

Richard N. Drake of Hahn Loeser & Parks was elected to the Board of Trustees of the Greater Cleveland Community Shares, an organization dedicated to advancing social change and progress by raising funds for local groups.

Peter C. Krupp has been named a partner in the Chicago office of Skadden, Arps, Slate, Meagher & Flom.

Michael P. O'Neil has been named partner at Freeborn & Peters in Chicago. He practices in the areas of bankruptcy and commercial litigation.

Kenneth Schneyer and his wife, Janice Okoomian, are delighted to announce the April 10th birth of their "six pound, ten ounce Jewish-Armenian feminist daughter," Hannah Schneyer Okoomian. The proud father was just promoted to associate professor in the College of Business at Johnson & Wales University in Rhode Island, where he teaches business law. He has recently published articles on the rhetoric of legal texts in the *American Business Law Journal* and the *Rutgers Law Review.*

Lu-in Wang has written a treatise entitled *Hate Crimes Law* (Clark Boardman Callahan, 1994), believed to be the first produced on this topic. She will be teaching contracts and law and economics at the University of Pittsburgh as a visiting assistant professor in the 1994-95 academic year.

1987

Kathleen Tyson-Quah has left the U.K. Securities & Investments Board after four years to join the London office of Cedel, the Luxembourg-based global securities depository and clearinghouse.

Thomas C. Willcox has spent the last year doing freelance writing on antitrust topics. He recently published an article in the *National Law Journal* arguing that contracts between the Big Three automobile companies and rental car firms may be an unlawful restraint of trade that forced up the price of used cars. Other articles on the invitation to collude doctrine and vertical mergers will be published later this year.

1988

Michael Carowitz, an attorney advisor at the Federal Communications Commission, has been appointed by Washington, D.C. Mayor Sharon Pratt Kelly to the board of trustees for the D.C. Public Library System.

Chayra P. Smith Stopp has entered a post-graduate law program at the University of Heidelberg in Germany. Formerly employed in the general counsel's office of Hallmark Cards, she now practices intellectual property and entertainment law in her own firm. Her classmate and husband of five years, **Alexander H. Stopp**, recently joined the German law firm of Wessing & Partner after three years in the Frankfurt office of the New York-based firm of Rogers & Wells. He received his doctorate in law in 1993. His dissertation on German constitutional law has been published under the title, "The Treatment of Minorities as an Issue of Equality" (Die Behandlung ethnischer Minderheiten als Gleichheitsproblem).

1989

Robert H. Dawson Jr. has opened his own law practice in Dallas.

1990

James R. Rowader Jr. has been named senior employee relations attorney for Target Stores, a division of the Dayton Hudson Corp. He was previously with the Minneapolis firm of Martin L. Garden & Associates. He married **Theresa M. Harris**, J.D. '91, in a September 1992 ceremony that included **Lisa Jordan** and **Enid Stebbins**, both 1991 graduates. Ms. Harris has left practice at Bowman and Brooke of Minneapolis to join the law firm of Fredrickson & Byron. She will be practicing primarily in the areas of cable television regulation and entertainment law.

1991

Brian E. Bragg has joined the New Jersey firm of Riker, Danzig, Scherer, Hyland & Perretti. He formerly practiced commercial litigation at Bressler, Amery and Ross.

Timothy W. Brink has joined the firm of Lord, Bissell & Brook in its Chicago office. He will concentrate in bankruptcy and creditors' rights matters.

Lisa M. Konwinski has joined the Washington D.C. office of Congresswoman Marcy Kaptur of Ohio as a legislative assistant .

Correction

Our apologies to Ronald M. Gould, who we accidentally renamed Robert Gould in the summer issue of LQN. Gould now is beginning a one-year term as president of the Washington State Bar Association.

In memoriam

The Law School notes with regret the passing of these graduates:

'26	Harry W. Jones	March 29, 1994
'25	William P. Foster	March 7, 1994
'29	Richard J. Shaull	May 24, 1994
'32	J. Donald Murphy	May 16, 1994
	Verle C. Witham	Feb. 9, 1994
'35	Robert N. Sawyer	March 31, 1994
'43	James R. Frankel	June 15, 1994
'46	Alden C. Johnson	April 8, 1994
	Robert C. William	March 2, 1994
'48	Joseph B. Miller Jr.	
'49	Jack K. Hudson	Jan. 26, 1994
	John H. Myers	June 1, 1994
	Robert M. Petteys	Feb. 13, 1994
'52	Scott H. Elder	March 24, 1994
	Helen V. Lee Mer	
'53	David C. Bull	April 15, 1994
'62	John E. Haley	May 5, 1994
	Hon. Walter F. Ransom	April 15, 1994
'66	Gerald T. Noffsinger	Jan. 28, 1994
	J. Gordon Zaloom	June 8, 1993
'69	James L. Crane III	June 4, 1994

Keep in touch

Take a moment to let your classmates know what you're up to. Send news to Class Notes, *Law Quadrangle Notes*, 727 Legal Research, Ann Arbor, MI 48109. Send items by Internet e-mail to toni.l.shears@um.cc.umich.edu.

TRANSFORMING TELECOMMUNICATIONS

— BY TONI SHEARS

A century ago, notable University of Michigan Law School graduate and donor William W. Cook made his fortune as counsel for corporations that tried to break Western Union's monopoly on communication. In the last few decades, other graduates have followed Cook's example in careers that are reshaping the telecommunications industry. At least three attorneys with Law School ties played key roles in challenging American Telephone & Telegraph's lock on long distance telephone service in the 1970s. Others now handle legal and public policy matters at AT&T and its spinoff telephone companies. Several graduates are with smaller, aggressive telecommunications companies that are bringing new services and fresh competition to the industry, while many more are enjoying fast-paced private practice in communication law. And watching over all this change are at least nine alumni at the Federal Communications Commission.

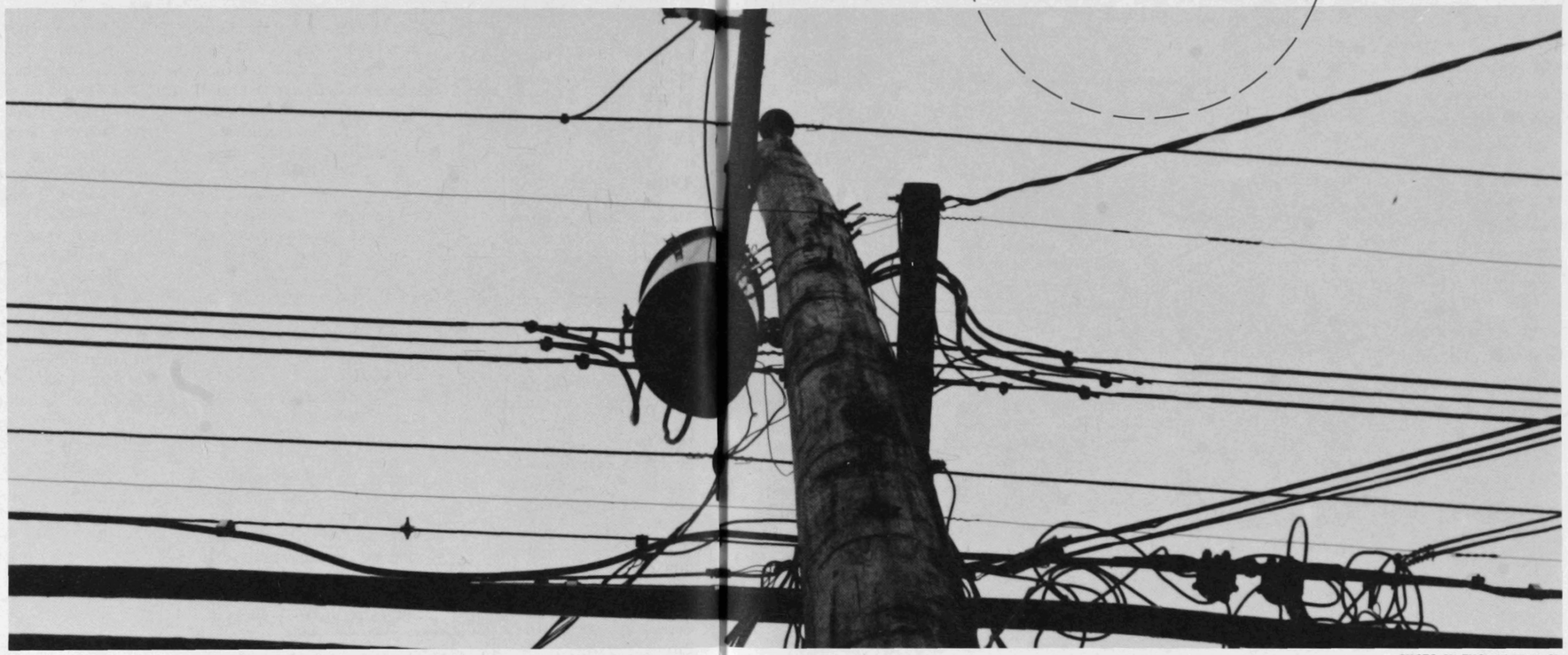


PHOTO BY THOMAS TREUTER

JOHN WORTHINGTON, J.D. '55, never suspected when a fledgling enterprise hired him in 1966 to do a bit of securities law analysis that his work would grow into an epic legal battle to break AT&T's monopoly and entirely reshape the telephone service market.

That enterprise was Microwave Communications Inc., the forerunner of MCI Communications, where he today is general counsel and senior vice president. Worthington and other lawyers like him turned out to be the chief assets of this scrappy little company that fought for more than a decade just for the right to put calls through.

Initially, all Microwave wanted to do was provide private-line, point-to-point phone service by microwave relay between Chicago and St. Louis. Its 1963 application to the Federal Communications Commission to establish the microwave route drew opposition from AT&T, Illinois Bell, Western Union and others; they charged that Microwave's plan violated securities regulations. Worthington, then with the Chicago firm of Jenner and Block, was hired to research that issue, and he continued to handle some of Microwave's legal matters.

Worthington later recruited one of his clients, Bill McGowan, as an investor who became chairman when the company incorporated as MCI Communications in 1968. In 1970, FCC Commissioner Kenneth Cox, a 1941 Michigan law graduate, joined MCI as senior vice president for regulatory matters. Worthington himself left his law firm to join MCI in 1971.

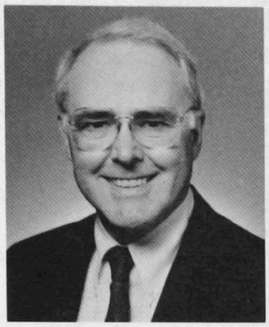
"By 1971 or 1972, we were beginning to discuss the idea of an antitrust suit, when we realized how determined AT&T was to thwart MCI's ventures. Certainly I as well as everybody else underestimated their resistance to us," recalls Worthington, who also holds bachelor and master of business administration degrees from Michigan. "We were in court almost constantly from 1972-78. Every fight that we got into was one that had we not won, it would have been curtains for MCI." Cox adds, "There was a period between 1970 and 1974, with the help of Haley, Bader and Potts, that we won just an incredible series of victories, when you consider we were tremendously outmanned. They had about 100 lawyers to our 15."

One key barrier was that AT&T and its Bell companies denied MCI access to interconnections necessary to put through calls to a local exchange. The FCC ordered AT&T to provide the interconnections, but the phone giant resisted; only after MCI sued and won in federal court did AT&T comply. Then, when the court's ruling was vacated for what was expected to be a matter of days, "AT&T ripped out all the connections they had given us. They didn't bother to tell our customers, so we had customers with no service, no warning, and no idea what was wrong," recalls Worthington.

"What do we do to regulate the major wire line phone companies? How much freedom should they have in an era when they are facing competition, yet that competition has not yet fully blossomed? How and when do we decide that there is sufficient competition that we can legitimately allow market forces to take over? The large traditional phone companies are still an overwhelming force, and how they are regulated will affect each and every one of us."

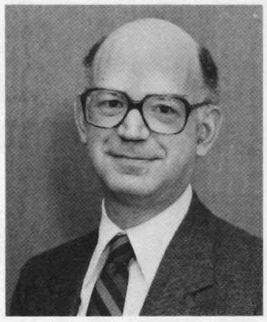
— WILLIAM COVINGTON

PHOTO COURTESY OF MCI



Ultimately, the divestiture fight paid off with all the classic benefits of competition, according to Kauper and Worthington. For consumers, long distance rates dropped by 60 percent while services expanded dramatically.

JOHN WORTHINGTON



"We got thousands of negative letters from people. I started to think that everybody in the country either worked for AT&T or owned its stock. AT&T thought the public good was served by having a single network."

THOMAS KAUPER

"This later became a key part of our antitrust suit."

MCI finally won the right to provide regular long distance service in 1978, which allowed it to expand rapidly. The antitrust battle, however, was far from over.

MCI's complaints about AT&T coincided with growing concern about telephone competition at the FCC and the Justice Department. Not long after Professor Thomas Kauper, J.D. '60, became Assistant U.S. Attorney General in charge of the Antitrust Division in 1972, he launched a long, large investigation of AT&T's practices. "Our big concern was that AT&T was sitting almost totally astride of technology," recalls Kauper. In a 1956 case, the government had tried and failed to divest AT&T of Western Electric, its equipment manufacturing arm, resulting in a consent decree that preserved AT&T's manufacturing monopoly but prevented the telecommunications giant from doing business in other fields. "I thought that decree was ridiculous and anticompetitive. I made the decision to add to the investigation the whole question of AT&T's manufacture of equipment," he says. In 1974 he filed suit against AT&T under Section 2 of the Sherman Antitrust Act for "acts and practices of monopoly."

It turned out to be an unpopular act against an all-American enterprise. "We got thousands of negative letters from people. I started to think that everybody in the country either worked for AT&T or owned its stock," he remarks. As for AT&T, "They thought the public good was served by having a single network. They really believed that."

Kauper, however, was confident that the government would win. "The most critical question was whether the whole issue was in the exclusive jurisdiction of the FCC. Once that was resolved and it was decided that antitrust could be applied to AT&T, it did not seem to be a difficult case. It was clear that they had a monopoly and acted to preserve the monopoly," he says.

Kauper returned to the Law School faculty in 1976 and watched the rest of the case from afar. He finds some irony that the biggest corporate restructuring in history came out of an antitrust case that was never decided. After an eight-year battle, AT&T entered a consent decree for divestiture in January 1982. MCI won some $1.8 billion in damages in 1981; the damages were dramatically reduced upon appeal, but "at least MCI was finally doing business, so the loss wasn't fatal," say Cox. Still, it was 1988, twenty years after it was incorporated, before MCI turned a profit.

"I can recall a time when our annual revenue hit $1 million and we thought Nirvana had come. But, following that, there were still a number of weeks when Friday came and we started figuring out if we had enough money to make payroll," says

Worthington, who now is a member of the Law School's committee of visitors and co-chair of its Washington, D.C. Major Gifts Committee. "It got to the point where I hated to pick up the phone because it was always some law firm asking when we were going to pay them," he recalls with a laugh.

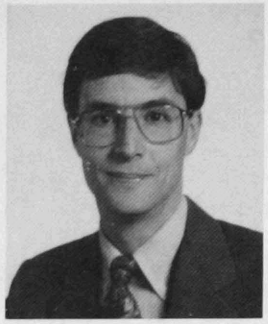
Ultimately, the divestiture fight paid off with all the classic benefits of competition, according to Kauper and Worthington. For consumers, long distance rates dropped by 60 percent while services expanded dramatically. (The former Bell operating companies maintain that long distance prices dropped not because of competition, but because they reduced the charges that long distance carriers pay for the use of local networks where long distance calls originate and terminate.) Customers today have a choice of long distance carriers; MCI now controls about 20 percent of the long distance market, with revenues of more than $12 billion. AT&T absorbed a huge blow, learned to compete, and flourished fiscally. It has won quality management awards and developed new products and services like a universal credit card.

A dozen years later, the consent decree still provides challenging employment for lawyers, according to Mark Rosenblum, J.D. '79, AT&T's vice-president for law and public policy. He heads a group of about 30 antitrust and regulatory experts among the corporation's 400 attorneys; they keep the corporation in compliance with the decree, antitrust law, and federal regulatory requirements.

Rosenblum and his counterparts at the regional Bell companies each believe that they are burdened with restrictive regulations that are based on their historical position, not the current competitive world. Four of the former Bell operating companies took dramatic action to change that in July, filing a 3,000-page motion seeking to overturn the consent decree so that they can compete in the long distance market. "Ten years of the decree is enough, on a whole host of fronts," says James R. Young, J.D. '76, vice-president and general counsel for Bell Atlantic, one of the four plaintiffs.

Pacific Telesis, California's post-divestiture phone company, didn't join that action but is in complete accord with it, says Richard Odgers, J.D. '61, PacTel executive vice-president and general counsel. "We think the decree is outdated, but we're not involved in the effort to overturn it at present," he says. Instead, "we're making a concerted effort in California to obtain legislation that will give us relief from the long distance service restrictions. Our principal issue is to make policymakers aware of the fact that the world has changed dramatically in the last twenty-five years, while we are being regulated as if the world has not changed."

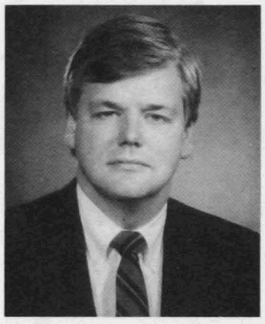
PHOTO COURTESY OF AT&T



"AT&T is on a crusade to promote competition in the local market. Competition made us a better company; we'd like to extend the same opportunity to former affiliates."

MARK ROSENBLUM

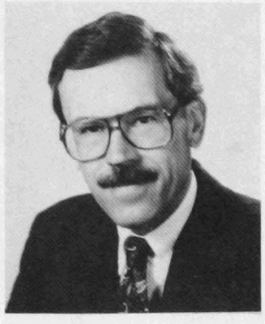
BACHRACH PHOTO



"Ten years of the decree is enough, on a whole host of fronts."

JAMES YOUNG

PHOTO COURTESY OF PACIFIC TELESIS



"The world has changed dramatically in the last twenty-five years, while we are being regulated as if the world has not changed."

RICHARD ODGERS

Regulation is also a major concern for cellular companies competing with the giants of traditional phone service, according to William Covington, J.D. '77, state regulatory counsel at McCaw Cellular Communications. "What do we do to regulate the major wire line phone companies? How much freedom should they have in an era when they are facing competition, yet that competition has not yet fully blossomed? How and when do we decide that there is sufficient competition that we can legitimately allow market forces to take over?" he asks. The large traditional phone companies "are still an overwhelming force, and how they are regulated will affect each and every one of us," he notes.

At AT&T, MCI, Sprint, Bell Atlantic, and smaller telecommunications companies, much of the legal work focuses on mergers that support new technology and advanced services. In June, MCI launched a joint venture called Concert Inc. with British Telecom; it has similar arrangements with telecommunications companies in Canada and Mexico. AT&T recently announced non-exclusive alliances with Dutch, Swiss, Swedish, and Spanish telephone companies.

In an era of mergers, attorneys in telecommunications are careful to comply with antitrust laws. After a decade of relative disinterest in antitrust regulation, today enforcement is growing, but it has a different focus, Rosenblum says. Instead of "the old kneejerk antitrust attitude" where regulators would crack down on industries based on their sheer size, today they are more likely to look at whether size and concentration are necessary to allow innovations that benefit consumers, he says.

The long distance companies now are out to smash monopolies. Given its origins, Worthington says MCI is a fan of free competition. "We found it so hard to get people to compete fairly with us that free and open competition became one of our corporate tenets," he says. Accordingly, it has created a subsidiary called MCI Metro aimed at breaking into the long-monopolized local telephone service. This and an investment in a firm called Nextel also offer opportunities to build easier access to the information superhighway, which is, after all, mostly phone lines.

Likewise, AT&T is on a "crusade to promote competition in the local market," Rosenblum says. If the FCC approves its plans to acquire a controlling interest in McCaw Cellular Communications, the nation's largest provider of wireless telephone service, it will compete directly with its own former regional Bell operating companies. This spring, AT&T also filed a case in Illinois, seeking entry into the local phone market for potential

competitors to Illinois Bell; more such legal challenges to the Baby Bells will follow. "Competition made us a better company; we'd like to extend the same opportunity to former affiliates," he says cheerily.

But while AT&T is vigorously promoting competition for local telephone companies, its proposed McCaw deal has itself been questioned on competition grounds, and AT&T has been accused of acting anticompetitively toward small resellers of long distance services in cases that are now pending, according to Richard Firestone, J.D. '73, a partner at Arnold & Porter with a broad-ranging practice in telecommunications law.

Meanwhile, Cox reports with some irony that the Bell operating companies are pushing Congress to adopt legislation that would let them try for the long distance turf of their former parent company. In turn, he says, MCI is backing a bill that says, "'fine, allow that, but only after competition is allowed in the local exchanges."

The FCC also is keeping an eye on competition in the local telephone service market , according to Ruth Milkman, J.D. '85, an eight-year veteran of the commission who is now senior legal advisor to its chairman. While many areas of telecommunications have been deregulated significantly in recent years, local telephone companies are still heavily regulated, she says. "As they move into new services like video, we have to police the boundaries. They should not be able to use their dominance of the local phone market to gain anticompetitive advantages in these new markets." The FCC is now expanding the availability of the local interconnections MCI once fought for, "breaking up local monopolies much in the same way that long distance was years before," says Michael Carowitz, J.D. '88, an attorney with the Common Carrier Bureau enforcement division.

Milkman, Carowitz and other Law School graduates at the FCC are working to shape regulations that will address new technology and service arrangements as the divisions between television broadcasting and telephone service disappear. Cable companies like Time-Warner seek to enter the telephone business, while Bell Atlantic is starting to carry television. Federal regulations and terms of the divestiture decree once prevented telephone companies from creating their own television programming, but Bell Atlantic has won court decisions that are loosening up those restrictions, according to Young. Now the East Coast phone company intends to get involved in the entertainment market. Soon it will pilot a program in northern Virginia to offer movies on demand over telephone lines.

PacTel has launched an ambitious $16 billion program to rebuild its entire California network with broadband coaxial fiber that will carry video and more. "We intend ultimately to provide a full range of multimedia services to everyone in our service areas in the state of California. We regard our horizon as unlimited," says Odgers, a former chair of the Law School Fund.

PHOTO COURTESY OF ARNOLD & PORTER

"Keeping abreast of issues is a major challenge. You have to work very hard to keep up; because you *were* an expert at telecommunications law doesn't mean you *are* one."

RICHARD FIRESTONE

PHOTO COURTESY OF FCC

"Local telephone companies are still heavily regulated. As they move into new services like video, we have to police the boundaries.

RUTH MILKMAN

PHOTO COURTESY OF CITICASTERS

"People would ask then, 'Why should I care about cable TV and publishing?' I'd tell them that with the convergence of technology, they will be the same thing."

ANITA WALLGREN

Each innovation raises policy and regulatory issues for the FCC. As telephone companies enter the cable television and video market, the FCC is developing standards for the "video dial tone" that will signal visual, not voice, transmissions. Stanley Wiggins, a 1974 graduate who recently shifted to the Bureau's Mobile Services Division from the Tariff Division of the Common Carrier Bureau, is working to implement a whole range of new wireless services. Available frequencies are in hot demand for interactive television systems, wireless, radio-based telephone systems and new, multi-feature personal communication service (PCS) devices, which will compete with existing cellular phone service. MCI is vying for a chunk of the PCS market, and PacTel spun off its cellular phone service into a separate company so it will be well positioned to bid for broad blocks of the PCS spectrum.

With new players competing for slices of the spectrum, the commission also is determining fair channel allocation among competing interests. In the FCC's Office of Plans and Policy, Kent Nakamura, J.D. '77, is working on a plan to auction off the airwaves. Firestone, former chief counsel of National Telecommunications and Information Administration and former chief of the FCC's Common Carrier Bureau, says, "It's been estimated that auctioning this spectrum will raise $10 billion in government revenue, although no one knows if that will happen."

Meanwhile, phone lines are becoming a significant conduit for printed information as well as music and video (formerly known as radio and television). "We're moving to a point where information comes through phone technology as well as over the spectrum," says Anita Wallgren, J.D. '81. At the Department of Commerce in the mid-1980s, she dealt with the issues of converging technology and ownership of media. "People would ask then, 'Why should I care about cable TV and publishing?' I'd tell them that with the convergence of technology, they will be the same thing," she recalls.

Wallgren now is vice-president and associate general counsel of Cincinnati-based Citicasters, which owns six television and fourteen radio stations. While she's handling intellectual property, privacy, defamation and regulatory matters, she also is trying to anticipate changes the company will need to make to accommodate new technologies like high-definition TV and digital audio broadcasting direct via satellite. "Digital audio broadcasting isn't authorized yet, but we're trying to be prepared," she notes.

All the alumni in telecommunications agree that the rapid rate of change makes telecommunications a fascinating field. Wiggins, who joined the FCC right after graduation, says he's enjoyed the intellectual pleasure of resolving issues for which there was little existing law to work from. Carowitz finds his job more exciting than he thought a government job could be. When Milkman hired him three years ago, "she told me I was going to be right in the center of big issues, and that's definitely proven to be true. There's an overwhelming opportunity to get right at the heart of headline issues," he notes. He looks forward to even greater change in the next few years, as Congress shapes legislation that may allow greater integration of cable TV and telephone services. "I don't think anybody knows what the changes will be, but the new possibilities are growing so fast that they'll probably double again in the next year or two."

Rosenblum calls the field "fabulously dynamic." "We're doing things that no one had even thought of ten years ago, and ten years from now, we'll be doing something that no one has predicted either." At McCaw, Covington envisions growth in the cellular phone market as the demand for mobile communication rises, but he's not sure yet what direction it will take. "All we know is that there will be a lot of movement; it will be very significant in terms of the convergence of services. Audio, data and video will all be coming from one provider or one alliance of providers. It's no accident that you are seeing companies investing in one another. We are on the verge of a telecommunications revolution."

Firestone enjoys a practice that ranges from helping foreign governments privatize their telephone systems to representing small resellers of long distance service. "It's an interesting field not only because of the growing industry and changing issues, but because so many different people have concerns in this field and so many more people *should* be concerned." He notes, "Keeping abreast of issues is a major challenge. You have to work very hard to keep up; because you *were* an expert at telecommunications law doesn't mean you *are* one."

However, in an industry dominated by revolution, the more things change, the more some legal issues stay the same, says Wallgren at Citicasters. "To my surprise, some things don't change at all. For instance, intellectual property issues are becoming more complex, but the principles remain the same. *Wired* magazine said recently that with data becoming so widely available on the information superhighway, copyright may not matter anymore, but it does."

LQN

New student group to present telecom symposium

A new group of students interested in telecommunications law will present a symposium on the Information Superhighway Friday, Sept. 30.

The event, sponsored by the Michigan Telecommunications Law Forum, will be held at the University of Michigan School of Business Administration's Hale Auditorium. In two sessions, distinguished guests will discuss major regulatory, legal, and business questions that will shape the future of the telecommunications industry and the way we acquire and trade information electronically.

The industry is pivotal because "it's in the business of handling technology that in itself will transform how we do business," says Mark Long, a founding member of the Telecommunications Law Forum who is pursuing a joint degree in business and law.

In a morning panel discussion, key members of federal agencies and the telecommunications industry will discuss the deregulation of local and long-distance telephone service. Speakers will focus on pending legislation.

In the afternoon, guests will address the impact of mergers, acquisitions, strategic alliances and consolidation within the telecommunications industry.

The fee for the conference is $75. Anyone interested in attending the conference may obtain registration details by contacting Mark Long at (313) 995-1773.

The students expect that the conference will be only the beginning of the Telecommunications Law Forum's work. They have received Dean Lehman's support for their efforts to launch a new Journal of Telecommunications Law. They believe the journal will be the world's first on-line law review. If the first year proves as successful as they expect, they will ask the faculty to approve its permanent addition to the steadily expanding group of legal periodicals emanating from the Law School.

Panelists include:

Andrew Barrett, *FCC Commissioner;*

Ruth Milkman, J.D. '85, *senior legal advisor to the FCC chairman;*

Thomas Sugrue, *deputy assistant secretary of the National Telecommunications and Information Agency;* and

Thomas Hester, *executive vice president and general counsel for Ameritech Corp.*

James Young, J.D. '76, *vice president and general counsel of Bell Atlantic;*

C. Benjamin Crisman Jr., *a partner at Skadden, Arps, Meagher & Flom;*

Richard Firestone, J.D.'73, *a communications law specialist at Arnold & Porter formerly with the FCC and NTIA;*

David Teece, *Mitsubishi Bank Professor and director of the Center for Research in Management at University of California-Berkeley;* and

David Turetsky, *senior legal counsel to Assistant Attorney General Anne Bingaman.*

THE U.N. SECURITY COUNCIL

Are there checks to provide balance?

The revival of the Security Council has come with a price: its new found power has been accompanied by questions about the council's continuing legitimacy. Calls for restructuring the membership of the council now are coming both from states with a presumptive interest in maintaining the status quo, such as the United States, as well as from states which do not have either permanent membership or the veto.[1] Thus the Clinton Administration has now officially endorsed the idea that Germany and Japan be given permanent council membership.

— BY JOSE E. ALVAREZ

This is the text of a speech delivered to the Council on Foreign Relations, in Washington, D.C. in November 1993.

It is not hard to understand why this topic is au courant: at the same time that the end of the Cold War ended the council's stagnation, it also marked the end of the consensus on which members ought to be entitled to permanent membership and/or the veto. As Tom Franck suggested in his recent book, *The Power of Legitimacy Among Nations* (1990), the special voting privileges originally given to the Permanent Five, though inconsistent with the charter principle of sovereign equality, were justified because the United States, the United Kingdom, France, China, and the USSR were (at least for most of the Cold War) plausibly those most responsible for world security. Today, as Franck notes, Britain, France, and China are "middle powers" economically inferior to Germany and Japan, both of whom have greater potential for a larger institutional role in maintaining the peace.

Democratic deficit

Demands for greater "democratization" within the UN comparable to the democratization increasingly evident amongst member states have encouraged proposals to expand the council membership and/or the veto to include Germany and Japan, as well as Third World representatives such as India, Nigeria or Brazil. Such expansion proposals are grounded in the assumption that potentially the most powerful organ in the world should reflect the views of a considerable portion of the world's population, including the views of the less industrialized nations.[2] In this realpolitik view of legitimacy, it is assumed that a council which more accurately reflects the real powers and competing concerns in the world facilitates enforcement of its decisions and may even secure more timely payments of peacekeeping and other necessary assessments.

The threat to the legitimacy of the council is, however, more fundamental and more intractable than these proposals would suggest, in at least two respects. First, the United States needs to address demands that the UN ameliorate the "democratic deficit" through the most obvious mechanism: by increasing the involvement of the General Assembly. One can scarcely ask for a more "representative" group than the General Assembly, and the United States is hardly in a position to complain about proposals to increase the General Assembly's role with respect to peace and security. It was, after all, the United States which, near the beginning of the Cold War, helped to redefine the role of the General Assembly with respect to these issues through the Uniting for Peace Resolution, under which the assembly can authorize a peace-keeping mission whenever the council fails to take action.[3] The United States helped convince the membership then that the council's "primary" responsibility for international peace and security did not confer on it "exclusive" power,[4] so today the United States must be prepared to cope with the institutional precedent it helped establish. Today, though conditions for invoking that resolution appear remote, a stalemate within the council may yet trigger an attempt to do so.

More palatable to the United States may be Professor W. Michael Reisman's suggestion that the council encourage the formation of a "Chapter VII Consultation Committee" of twenty-one members of the Assembly.[5] Under Reisman's proposal, the council would immediately notify this committee whenever it planned to move into a Chapter VII mode. The Secretary-General and the President of the council would promptly meet with the committee to share information and solicit its views. Throughout the crisis, the council and committee would remain in constant contact in the best tradition of "consultation" as understood in international law and practice. The assembly would not have a veto over council action, but at the same time its participation would extend beyond a right to mere notification. Such institutionalized give-and-take would facilitate a greater sense of participation and endow final council decisions with the imprimatur, the legitimacy, of the larger world community. (Any similarities with, for example, joint Congressional/Executive consultations under the War Powers Act are presumably intentional.)

Along with such formalized procedures, or possibly in place of them, any number of other changes to the present council's overly secretive "informal consultations" can be envisaged to expand the sense of participation. At a minimum, some members have suggested that states particularly affected by the imposition of economic sanctions or states which would be expected to contribute troops to a contemplated mission should be invited to council deliberations before decisions are made — even when these states are not council members. Others have suggested more modest reforms. One is that the council take more seriously its duty to report to the assembly — i.e., that such reports be more timely and include substantive discussions of the issues, something more than a mere list of council decisions.

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1 See e.g., Statement by Ambassador Madeleine K. Albright before the Foreign Policy Association, New York City, USUN Press Release 89-(93), June 8, 1993, at 5. For the many restructuring proposals by other states, see responses made in response to the Secretary-General's request in "Question of Equitable Representation on and Increase in the Membership of the Security Council," Report of the Secretary-General, A/48/264 and additions thereto.

2 See report of the General-Secretary, supra note 1.

3 UN G.A. Res. 337A (V 1950), adopted November 3, 1950.

4 Compare Articles 24 and 12 of the UN Charter.

5 W. Michael Reisman, "The Constitutional Crisis in the United Nations," 87 Amer. Jour. Int'l L. 83, at 99 (1993).

Council 'law-making'

The second and more difficult problem for the council is that some of the legitimacy concerns have nothing to do with representation on the council, the veto power as such, or the degree of openness of its procedures. Some of the disquiet surrounding recent council action stems from the substantive content of its decisions. Many are troubled because the council is sometimes acting as a judicial and a law-making body without the traditional attributes of either. A few examples will illustrate the point.

First, consider measures imposed on post-Gulf War Iraq under Council Resolutions 686, 687, and beyond. Under these continuing sanctions, Iraqi sovereignty has been put, in effect, under receivership. For the first time, the UN has told a supposedly sovereign state what its borders are supposed to be, what proportion of its export earnings it is entitled to keep, what financial liability it has now incurred, what kinds of observers it must admit into its most sensitive areas, what types of weapons it may possess, and even what treaties it must ratify. These determinations have been imposed as if by a legislature or a court, subject to no time constraint; indeed, some of them, such as with respect to boundaries, are presumably to apply in perpetuity. One need not be a friend of Iraq to wonder whether these resolutions are really justified by an existing threat to the international peace or whether they are designed to bring down a particular regime — perhaps in pursuit of publicly stated U.S. foreign policy goals (i.e, to stifle a powerful regional enemy of democracy, encourage nuclear non-proliferation, and secure regional stability).[6]

Others may question aspects of these decisions on moral or humanitarian grounds. Should the people of Iraq suffer — perhaps in perpetuity or until the council decides the Gulf War debt has been paid? The doubts are only heightened by the suspicion that unlike a legislature or court, the council has not established clear rules of *general* applicability on when comparable actions will be taken on other culprits. Certainly the council has not visited such a plight on all those who have violated the charter.

Second, consider council Resolution 748, which imposed economic and other sanctions on Libya to force it to extradite two Libyans accused of masterminding the Lockerbie bombing. Resolution 748, adopted March 31, 1992, cut air links with Libya, prohibited arms-related material, advice, or assistance, reduced the level of Libyan diplomatic representa-

The law's need for consistency and impartiality raises other doubts as well. Is every state accused by a permanent member of international terrorism now subject to council sanction? If not, is the council only applying *and creating* a rule as against an outlaw regime under the pretext of an existing "threat to the international peace"?

tion, closed down all Libyan Arab Airlines offices, and allowed the expulsion or denial of entry to Libyans accused of international terrorism — all because Libya had not complied with Resolution 731 of January 21, 1992, which called upon Libya to cooperate fully with requests concerning acts of terrorism.

The council acted while Libya's complaint against the legality of compelled extradition was being heard by the World Court. Libya argued that under relevant treaty law, it has the right to extradite *or* prosecute and that, at a minimum, it has the right to have its nationals tried by an impartial international body rather than courts in the United States or Scotland. Once the council had acted under Chapter VII, however, the Court dismissed Libya's request for provisional relief.[7] While Libya may yet comply with the council's demands and its case may never proceed to the merits, the legal doubts remain. Not all UN members are comfortable with the precedent that the council, without benefit of trial, can compel any state to turn over any national to another state on the basis of that other state's mere allegations of wrongdoing, without any specific warrant in existing treaties between requesting and requested state.

The law's need for consistency and impartiality raises other doubts as well. Is every state accused by a permanent member of international terrorism now subject to council sanction? If not, is the council only applying *and creating* a rule as against an outlaw regime under the pretext of an existing "threat to the international peace"? In addition, the tools available to the council under Chapter VII — essentially sanctions or use of force — seem both too blunt and too weak, and ill-suited to the remedy sought. On the one hand, broad economic sanctions which may prove extremely costly to the economies of innocent third parties not responsible for Libya's defiance seem an awfully blunt instrument to compel a small ministerial act: the turning over of two individuals. On the other hand, how serious can the council be as an enforcer if it refrains from the one type of sanctions — a ban on oil imports from Libya — most likely to prove effective?

A TROUBLING TRIBUNAL

Finally, consider certain council actions with respect to Bosnia-Herzegovina and Serbia and Montenegro. The council has, as part of its peacemaking effort, authorized the establishment of an international tribunal to prosecute persons responsible for war crimes in the former Yugoslavia.[8] Although intended to reaffirm the Nuremberg Principles, this tribunal is unprecedented because it is not created by treaty, as was Nuremberg, but by the council, acting under Chapter VII. The tribunal and its statute, although widely praised, has prompted some timid questions from an American Bar Association Special Task Force, U.N. Ambassador Madeleine K. Albright, and others.

Was it ever really intended that the council be authorized to create a standing international court capable of trying and convicting individuals? Will the hastily conceived tribunal now be regarded as a precedent for a permanent international criminal court which many have sought for so long? If this is the case, we should look at the statute of this tribunal especially carefully, because it does not always respect the rights of the criminal defendant in ways consistent with international human rights norms or national constitutions, including our own. For example, the tribunal is left to resolve important issues essential to the due process rights of defendants and its own legitimacy. Its hastily drafted statute deals inadequately with such basic human rights as the right of confrontation, the right to counsel, and the right against double jeopardy.

Moreover, the crimes over which the tribunal has jurisdiction reflect the UN's confusion over the nature of the dispute in the former Yugoslavia. The new war crimes tribunal departs from the judgment at Nuremberg in one significant respect: the tribunal has no jurisdiction to try persons for the waging of aggressive war. Yet the judges at Nuremberg specifically found such charges to be the linchpin for all convictions.[9] The omission is probably due to the UN's hesitation in branding the conflict in the former Yugoslavia as something other than a civil war. Notwithstanding the admission of Bosnia and Herzegovina to UN membership, the UN has not made up its mind about whether the war in that region is a civil war or an act of aggression against a sovereign state. This equivocation is understandable at the political level but may wreak havoc with the legal goals which inspired the creation of the tribunal. It was established to buttress existing laws of war and of human rights, to confirm to the world that such rights are well-established under customary international law and are applicable to all, whether or not they are parties to relevant treaties. Instead, the tribunal departs from Nuremberg precedent, withholds condemnation of possibly the gravest violation of the laws of war, and may yet undermine the human rights of defendants brought before it. Such doubts invite criticism that the tribunal exists merely to soothe the consciences of those lacking the political will to deal more directly with the atrocities in Bosnia.

DOING TOO MUCH, TOO QUICKLY

In each of these three instances we entertain these admittedly legalistic doubts because the council, when it acts under Chapter VII, is authorized to make binding law which can be invoked on

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6 See, e.g., Remarks of Anthony Lake, Assistant to the President for National Security Affairs, at Johns Hopkins University, September 21, 1993 (citing these as part of U.S. foreign policy goals).

7 Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie, Interim Measures Order, April 14, 1992, 1992 ICJ Rep. 114.

8 S/RES/827, adopted May 25, 1993.

9 Judgment of the International Military Tribunal, Nuremberg, Germany, 1946, 22 I.M.T., Trial of the Major War Criminals, 411, 427 (1948).

10 See, e.g., Franck, *The Power of Legitimacy Among Nations* (1990).

members and non-members of the UN alike. (See UN Charter, Articles 2(7), 25, 41, and 48.) The council also purports to act in a law-making or judicial manner. Council decisions "determine" that Iraq, Libya, and Serbia and Montenegro have violated international law in specific ways, invoke treaty authority to render judgment, and invite us to judge the council as if it were a court or legislature. We are encouraged to judge the council's actions — which after all constitute precedents for the interpretation of the Charter — in the same way we judge all laws: by their textual clarity, coherency with other rules of general application, the match between deed and sanction, and the impartiality of application.[10]

Much of the criticism directed at the council of late seems to suggest that it is doing too little, too late — as with respect to Bosnia. Yet in the long run, the greater problem may be that at times it is undertaking too much, too quickly — not only because what it is doing is exceeding its operative capabilities but because it is trying to accomplish what others might do better, albeit more slowly.

Today the council sometimes goes beyond the immediate need to defuse a threat to the international peace and security. At times it is attempting to adjudicate legal disputes and impose long-term legal solutions (as with Iraq on weapons and boundaries); trying to alter (or progressively develop) established law (as with the regime to "extradite or prosecute" terrorists); or trying to apply principles of international law much as the World Court would (as for war crimes). Nothing in the charter, of course, precludes any of this.

Indeed, back in 1945, the United States argued that the council has two functions: the "political function" of taking enforcement action and a "quasi-judicial" function of settling disputes. It argued that the veto applied only to the first type of action and that every nation "large or small" should abstain from voting on disputes to which it was a party.[11] Although the United States's promise not to deploy its veto and to abstain pretty much died with the Cold War, the premise that the Security Council can successfully carry out this dual role is with us yet again.

Revival of the anti-veto/abstention promise might yet make the council's claim to 'quasi-judicial' status credible, but this is dubious. The council is preeminently a reactive, political forum apt to act on the basis of short-term needs, not long term judicious (or judicial) perspective. Council representatives do not necessarily consider the broader legal consequences of what they do. And this is as it probably must and should be, since the enforcer of the international peace must be political. A decision to act or to refuse to act in a case like Bosnia needs to consider factors other than the establishment of legal precedent pleasing to law professors. And no amount of tinkering in its membership is likely to turn the council into an impartial court or a deliberative "law-making" body like the International Law Commission. (As the World Court noted when it approved the assembly's creation of an administrative tribunal to deal with UN employee complaints, the assembly had little choice, since a deliberative political body can hardly be expected to act in a judicial capacity.[12]) In fact, if the United States Senate and Senator Packwood are any indication, even a real legislature has trouble assuming the role of a court.

Yet, if at least some of the doubts we now entertain about the council are due to its tendency to assume a broader quasi-judicial or legislative role than is warranted by the existing threat to the peace, there are ways to defuse these doubts. The council cannot and should not avoid taking legally binding decisions. This is part of its job. It can, however, consciously exercise some normative restraint.

If at least some of the doubts we now entertain about the council are due to its tendency to assume a broader quasi-judicial or legislative role than is warranted by the existing threat to the peace, there are ways to defuse these doubts. The council cannot and should not avoid taking legally binding decisions. This is part of its job. It can, however, consciously exercise some normative restraint.

Nothing precluded the council from, for example, requiring Iraq and Kuwait to settle their boundary and treaty interpretation through submission to the World Court or arbitration; the council could also have accepted the possibility of an international forum for the trial of the accused Libyans in which Libya's claims based on the Montreal Convention also would have been aired. The council could have included "sunset" provisions or disclaimers on certain of its actions to limit the legal effect to the crisis at hand. For example, a determination that the need to continue weapons inspections in Iraq would be re-examined either by the council or by some impartial body in five years' time would have shown council acceptance of some limits to its power and helped to distinguish its actions from those of a court or a general law-making body. Rather than delegate to the Secretary General the drafting of a rushed statute for a new war crimes tribunal for Bosnia, it might have turned to UN fact-finding processes such as an El Salvador-style "Truth Commission." Such an approach might have mobilized shame against war criminals pending the creation of an International Criminal Tribunal through a more deliberative process or pending results in the greater peace process.

At the risk of being labelled what Reisman calls a "judicial romantic,"[13] I would also suggest that some of these legitimacy concerns might also be met by greater recourse to the World Court — particularly when it is foreseeable that council actions would otherwise be subject to challenges in that Court or elsewhere. Even back in 1945, when the United States (perhaps naively) believed that the council could act in a quasi-judicial capacity, the United States stressed that legal aspects of disputes should be referred to the Court for advice (as is contemplated by article 36(3) of the Charter).

Current challenges to the council's actions now pending before the World Court may prompt the council to reconsider its role vis-a-vis the court. Otherwise, a crisis looms which may undermine the entire organization. Libya's challenge to the actions of the United States and the United Kingdom in pursuit of the council's sanctions, the subject of a provisional measures opinion in the ICJ now being heard on the merits, already has tempted individual judges on that court into saying (however obliquely) that the council is either violating international law or acting ultra vires.[14]

Similarly, Bosnia's moving plea before the ICJ for the lifting of the council's arms embargo, however resolved by the court,[15] puts the council potentially at odds with the inherent right of self-defense — to the discredit of the council, the organization, and international law. Anticipating, encouraging, and accepting the assistance of the Court on those issues appropriate for judicial resolution would reduce the likelihood of such embarrassing spectacles before the Court and be in the long-term interest of the Court, the council, and the rule of law.

From a Western lawyer's perspective, the council's current dilemma is predictable. A charter which puts at its helm unreviewable political authority with no competing political or judicial check may indeed be a workable system but it is not, as Professor Reisman has suggested, a constitution worthy of the name.[16] Yet if there is to be a "New World Order" based on the rule of law, it is difficult to see how *that* world can come about except through some approximation of such a constitutional system.

In its stead, the council is flexing its legal muscles, and no other entity — certainly not the General Assembly and not the World Court— has yet emerged as an acceptable check or balance on council action. No organ exists which can call the council to account under the rule of law to protect the interests of members, or to protect other persons with no voting power, or to protect the long term interests of law itself. The result is fear — fear that power which is accountable to no one is only coincidentally power pursuant to law and fear that any peace achieved at the expense of the rule of law may be short-lived. Reducing these fears will require something more than the admission of Germany and Japan to the council.

LQN

Professor Alvarez teaches international law, international organizations, international legal theory and foreign investment law.

10 See, e.g., Franck, *The Power of Legitimacy Among Nations* (1990).

11 Statement by the Secretary of State, Mar. 5, 1945, XII *Bulletin*, Department of State, No. 298, Mar. 11, 1945, at 395-97.

12 Should the General Assembly contemplate, for dealing with future disputes, the making of some provision for the review of awards of the Tribunal, the Court is of the opinion that the General Assembly itself, in view of its composition and functions, could hardly act as a judicial organ — considering the arguments of the parties, appraising the evidence produced by them, establishing the facts and declaring the law applicable to them — all the more so as one party to the dispute is the United Nations Organization itself.

Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, 1954 ICJ Rep. 47, at 56.

13 Cf. Reisman, supra note 5, at 94.

14 Lockerbie Case, supra note 7, Separate Opinion of Judge Shahabuddeen and Dissenting Opinions of Judges Bedjaoui, Weeramantry, Ajibola, and El-Kosheri.

15 See Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), 1993 ICJ Rep. (Order on Provisional Measures).

16 Reisman, supra note 5, at 95.

THE ORIGINS OF THE $ecurities & Exchange COMMISION

— BY JOEL SELIGMAN

On July 7, the Securities and Exchange Commission was 60 years old. The SEC was born in crisis.

Between September 1, 1929, and July 1, 1932, the value of all stock listed on the New York Stock Exchange shrank from a total of nearly $90 billion to just under $16 billion — a loss of 83 percent. In a comparable period, bonds listed on the New York Stock Exchange declined from a value of $49 billion to $31 billion. "The annals of finance," the Senate Banking Committee would write, "present no counterpart to this enormous decline in security prices." Nor did these figures, staggering as they were, fully gauge the extent of the 1929-1932 stock market crash. During the post-World War I decade, approximately $50 billion of new securities were sold in the United States. Approximately half or $25 billion would prove near or totally valueless. Leading "blue chip" securities, including General Electric, Sears, Roebuck, and U.S. Steel common stock, would lose over 90 percent of their value between selected dates in 1929 and 1932.

The SEC itself was created at the conclusion of the Senate Banking and Currency Committee's 1932-1934 investigation of Stock Exchange Practices, usually called the Pecora Hearings, in recognition of the decisive role played by the committee's counsel, Ferdinand Pecora.

ABUSES UNVEILED

Among other revelations, the Pecora hearings showed that stock pools, including several allied with senior corporate executives, regularly employed publicists to plant news stories and tips with newspaper and radio journalists during pool operations. Such revelations were shocking both because of the likelihood that false and misleading information often was disseminated and because one publicist was found to have made cash payments to reporters work-

ing for the *New York Times*, the *Wall Street Journal*, and several other leading newspapers.

The hearings documented that shareholders were requested to sign proxies vesting incumbent management with power to cast their votes without disclosure of management interests in the transactions on which a vote was to be taken.

Albert Wiggin, chairman of the board of the Chase National Bank, it was revealed, organized three corporations to trade stock in the Chase National. During the 1927 to 1932 period, these three corporations earned profits of $10,425,657, including over $4 million as a result of fall 1929 short sales in the Chase National Bank when Wiggin concluded the bank's stock price was "ridiculously high."

The most influential testimony of the hearings concerned J.P. Morgan & Company, which long had been regarded as the leading American investment bank and as the exemplar of conservative underwriting practices. Yet, even the House of Morgan was found to have employed get-rich-quick tactics during the late 1920s bull market.

In January 1929 Morgan & Company and Bonbright & Company organized the United Corporation, then one of the nation's largest public utility holding companies. Each firm traded shares in other public utility firms and approximately $10 million in cash in return for United Corporation's initial preferred and common shares. In addition, the Morgan and Bonbright firms received a total of 3,994,757 perpetual option warrants. Each option warrant entitled the holder at any time to purchase one share of common stock at $27.50 a share, which compares rather favorably to the high of $73 that the common stock reached during the summer of 1929.

The Morgan and Bonbright firms distributed United Corporation shares to the public by initially privately selling them to a "preferred list," largely of business and political figures, who, in turn, created a market in United Corporation securities by reselling to the public. At no point was a prospectus or offering circular distributed. The initial public shareholders knew some of the securities in the United Corporation's portfolio but did not know the extent of United's holdings. The initial public shareholders had never seen United Corporation's balance sheet. They did not know that the United Corporation's certificate of incorporation granted its directors "the power at any time . . . without any action by the stockholders of this corporation . . . to grant [additional] rights or options . . . for any consideration . . . ." In fact, the initial public shareholders were inspired to purchase United Corporation shares largely on the basis of their faith in J.P. Morgan & Company. They lacked adequate data to rationally evaluate the value of United Corporation's shares.

FIXING THE COMMON PROBLEMS

Much of this and similar evidence of management or investment bank concealment or misrepresentation of material investment information obviously was episodic in nature. One reason that it was so widely accepted as demonstrating the need for new federal legislation was that independent private studies and informed persons in the investment community corroborated that the Pecora Hearings' illustrations were typical of common problems in the financial community before 1934. On the basis of 1927 financial reports, for example, Laurence Sloan, vice-president of Standard Statistics Company, found it possible to compare the gross incomes and net profits of only 43 percent of 545 leading industrial firms. Gross incomes, Sloan found, were not reported by the rest of these firms. For only 219 of the 545 firms was it possible to obtain data revealing the sums that were charged to depreciation and depletion in the years 1926 and 1927.

In 1935, the Twentieth Century Fund's much-cited study, *The Security Markets*, reached virtually the same conclusion. The Fund was critical of the sales tactics employed by investment banks in preparing prospectuses, stating, "The chief aim of the sponsors was to induce customers to buy, rather than to inform them . . . [t]he guiding principles and the devices were those which had been successfully employed in the field of advertising and salesmanship."[1]

Against this backdrop, the New Deal witnessed the enactment of the six basic federal securities laws:

- The Securities Act of 1933, is concerned primarily with the initial distribution of securities to the public. Initially this act was enforced by the Federal Trade Commission.
- The Securities Exchange Act of 1934 addresses postdistribution trading through a combination of periodic mandatory disclosure, antifraud remedies, regulation of broker-dealers and securities markets, and control of securities credit. The act, long the most important of the federal securities laws, also created the SEC. Later, the 1934 act was amended to add regulation of tender offers, municipal securities, government securities dealers, securities clearance and settlement, and to substantially broaden its securities market regulatory provisions.
- The Public Utility Holding Company Act of 1935 dominated the early history of the SEC. Under this act, the most comprehensive reorganization of an industry in United States history occurred. The act has long since spent its force.
- The Trust Indenture Act of 1939 supplements the 1933 act when a distribution consists of certain debt securities.
- The Investment Company Act of 1940 provides pervasive regulation of investment companies (such as mutual funds).
- The Investment Advisers Act of 1940 requires registration with the SEC of persons engaged for compensation in the business of rendering advice or issuing analyses concerning services.

Later a seventh law, the Securities Investor Protection Act of 1970, was adopted to provide the equivalent to FDIC depository insurance for securities customers.

THREE REASONS FOR SUCCESS

The intriguing historical question is why these acts have endured as well as they have. In my opinion, there are three general explanations.

First, the SEC throughout its history has been the beneficiary of an unusually talented staff. In large measure, this was a tribute to Felix Frankfurter, who recruited the drafters of the 1933 and 1934 acts, and the agency's first three chairmen (Joseph Kennedy, James Landis, and William O. Douglas), who within a period of seven years hired, trained, and organized more than 1,700 employees. While the quality of commissioners throughout the agency's history has varied greatly, the quality of the senior staff, in particular, has remained high. The staff has given the agency its institutional memory, its panache, and if I may be so bold as to offer a compliment to a recently much-criticized profession, its lawyerly respect for facts.

Second, the SEC has shown unusual prowess in exploiting the flexibility of the administrative process. Its great achievement during the New Deal period was to move beyond laws formed in crisis to the systematic study of the relevant industries. This was done initially through Congressional studies such as the Pecora hearings, which produced a record of more than 12,000 pages. Soon the SEC itself hired William O. Douglas to conduct what became an eight- volume study of Protective Committees which laid the groundwork for the Chandler Bankruptcy Revision Act of 1938 and the Trust Indenture Act of 1939. Later SEC Commissioner Robert Healy presided over a 5,100 page study of investment companies, which resulted in 1940 in the enactment of the Investment Company and Investment Advisers acts. The most outstanding post-World War II illustration of this genre was the 1961-1964 Special Study of Securities Markets, led by Milton Cohen, who worked closely with SEC Chairman William Cary, and provided a detailed and informed basis for securities market regulation for a generation.

Another aspect of the SEC's ingenious use of the administrative process was its early determination to use nonadversarial approaches to help businesses comply with the securities laws. Even before the SEC was created in 1934, FTC Commissioner James Landis popularized the idea of forwarding to issuers a "deficiency letter" when a registration statement was insufficient rather than seeking a stop order. Similarly, early in the agency's history the opportunity to write and request staff no-action or interpretative letters was originated.

In addition, the agency's use of the administrative process has typically (but not invariably) been thoughtful in recognizing that an industry problem could be solved by a vast panoply of techniques ranging from a legislative proposal, a new rule, an enforcement action, an interpretative release, a study, or an industry conference. The SEC, more often than not, has erred on the side of caution, in encouraging self-regulatory organizations such as the New York Stock Exchange, the National Association of Securities Dealers, or the Financial Accounting Standards Board to take the lead oar in addressing emerging problems.

Third, the most important reason that the SEC has endured, I submit, is that ultimately it is based on a regulatory theory that works. At its core, the primary policy of the federal securities laws involves the remediation of information asymmetries. This is most obviously the case with respect to the mandatory disclosure system which compels issuers and registrants to provide detailed generally firm-specific information when selling new securities and in periodic disclosure documents. It is equally the basis of the Commission's regulation of broker-dealers and investment advisers, which through a variety of techniques — including reporting, record-keeping, minimum net capital, and inspection — attempts to deter broker-dealers from charging excessive commissions or markups in individual securities transactions and to protect customers from entrusting their securities or funds to broker-dealers on the verge of insolvency.

The remediation of information asymmetries has provided a third and superior alternative to *laissez-faire* capitalism and regulation of fundamental economic conditions such as entry or merger. The theory attempts to provide sufficient information so that a largely market-driven segment of the economy can work. To be sure, it is not perfect. It requires an effective enforcement program and constant, and sometimes subtle, adjustments as the context of regulation charges. But it has proven to be a method of unparalleled resiliency in addressing new economic conditions throughout a 60-year history.

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