THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
VOLUME 38 • NUMBER 2
SUMMER 1995

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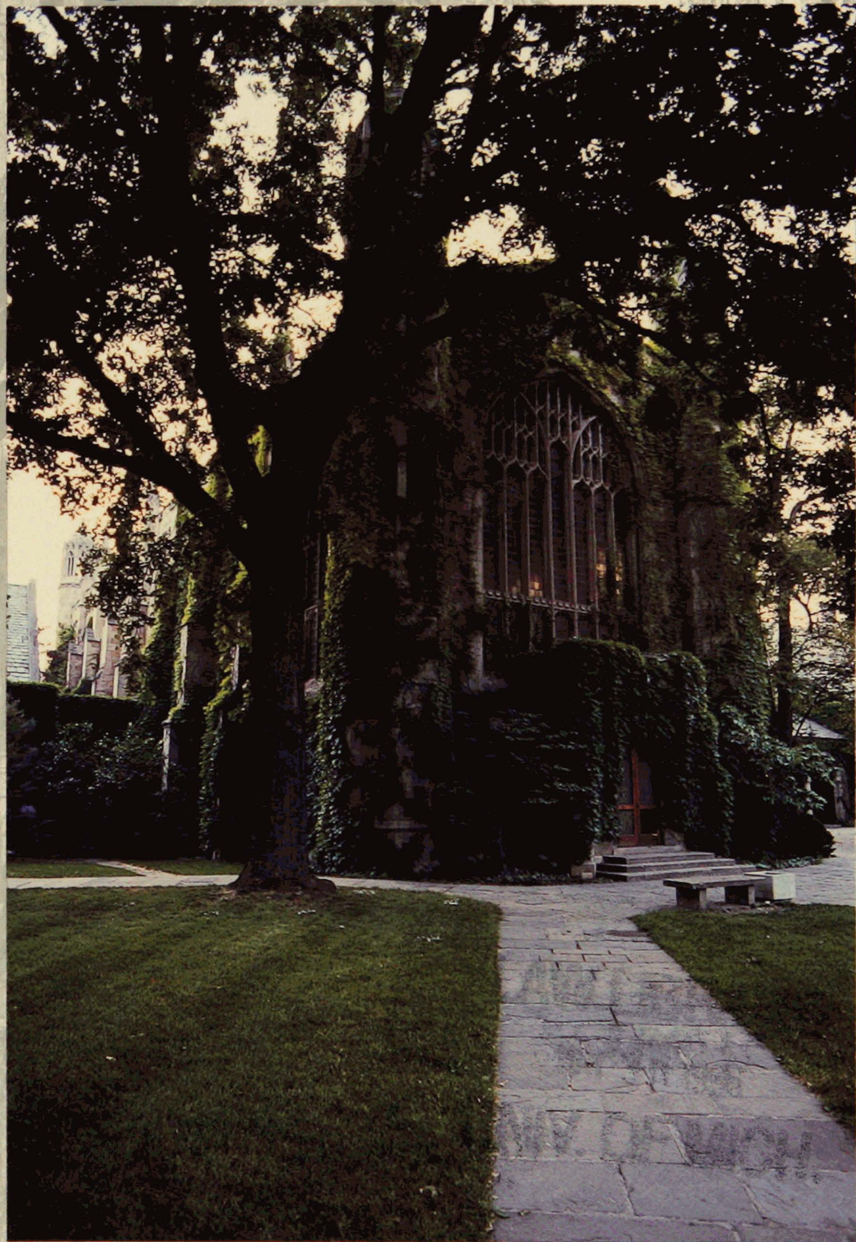
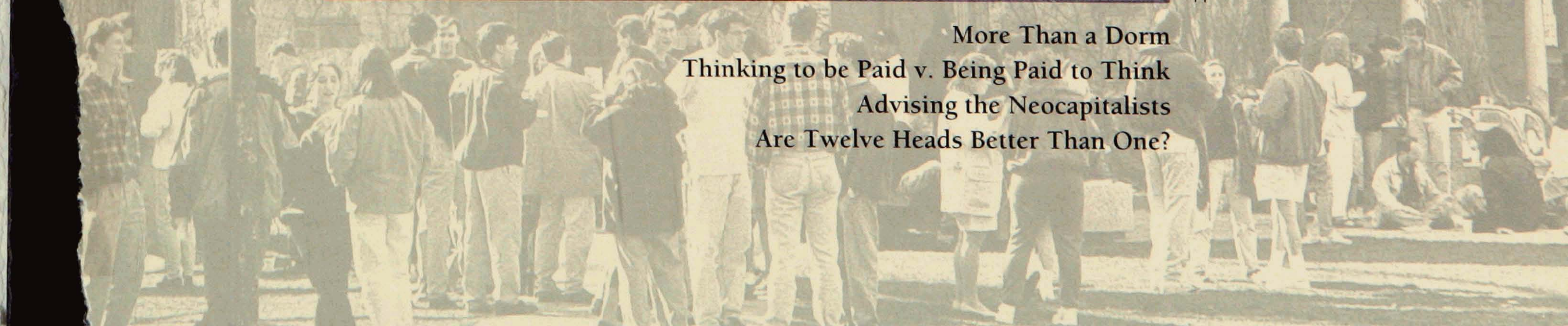
LAW QUADRANGLE NOTES



More Than a Dorm
Thinking to be Paid v. Being Paid to Think
Advising the Neocapitalists
Are Twelve Heads Better Than One?



UNIVERSITY OF MICHIGAN

LAW SCHOOL

ALUMNI EVENTS

Aug. 8	Alumni breakfast ABA Annual Meeting Chicago
Sept. 12	UK alumni dinner London, England
Sept. 19	Dykema Gossett reception Law School
Sept. 21	State Bar of Michigan breakfast Radisson Hotel Lansing
Sept. 29	California State Bar luncheon San Francisco
Sept. 29-Oct. 1	Minority Alumni Weekend Law School
Oct. 5-8	Reunion 1995 Classes of '50, '55, '60, '65, and '70 Law School
Oct. 26-28	Committee of Visitors meeting Law School
Nov. 10-12	Reunion 1995 Classes of '75, '80, '85, and '90 Law School

Have you moved lately?

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MESSAGE FROM DEAN LEHMAN

I HAVE JUST RETURNED FROM A NINE-DAY VISIT WITH OUR GRADUATES IN JAPAN, as well as with some of our many other friends on Japanese law faculties. Our more than three hundred Michigan graduates who live in Japan have achieved extraordinary distinction in all areas of professional endeavor. I had the privilege of meeting with a Supreme Court Justice, a recently retired president of Tokyo University, members of the boards of directors of major corporations, partners in outstanding law firms, and renowned law professors. All of them share a deep affection for Michigan. As I returned to Ann Arbor to welcome a new group of summer starters, I held a heightened appreciation for the fact that our students are destined to be leaders not only in this country, but around the world.

The beginning of a new generation of students also reminded me that it was time to select a theme for the coming year. As I reported in this page last year, I intend to organize each year of my deanship around a different theme, a different character trait that distinguishes an outstanding attorney. During 1994-95, I chose to emphasize the great lawyer's commitment to continuous intellectual growth and renewal. I am grateful to all those of you who helped me by offering suggested themes for future years.

Several of your letters dealt with the moral dimension of professional life. For example, Judge John Milligan ('52) wrote about how lawyers need to develop the ethical resources to resist a moral degradation that might otherwise too easily follow from life in a competitive commercial world. In a related vein, Albert Donohue ('36) wrote at length about the centrality of integrity to the life of the lawyer. And I believe that "integrity" is indeed an appropriate character trait to adopt as my next theme.

The word "integrity" has multiple connotations. The integrity of a ship's hull is the integrity of completeness: no holes, nothing missing. The integrity of a chemical solution is the integrity of purity: no adulterants, nothing extraneous. In an attorney, it is usually understood to connote moral soundness, uprightness, honesty, sincerity, and a commitment to fair dealing. It is often thought to be most strongly implicated in acts of communication. Thus, a lawyer with integrity is honest and keeps his or her promises.

Scholars of professional responsibility have long debated the way great lawyers reconcile the demands of sincere and truthful communication with the role demands of lawyer-as-advocate and lawyer-as-negotiator. I look forward to having occasions to discuss some of those issues with you during the coming year. And I also look forward to exploring this theme at the institutional level. What does it mean to say that a law school is "complete," "pure", and "morally sound"?

The word "integrity" has multiple connotations. The integrity of a ship's hull is the integrity of completeness: no holes, nothing missing. The integrity of a chemical solution is the integrity of purity: no adulterants, nothing extraneous. In an attorney, it is usually understood to connote moral soundness, uprightness, honesty, sincerity, and a commitment to fair dealing.

Jeffrey S. Lehman

Campbell competitors —

Competing in the final round of the seventy-first annual Henry M. Campbell Competition were (standing, from left) Steven Coberly, David Luigs, Todd Wade, and Robert L. Bronston. Wade and Bronston, counsel for the petitioner, took first place. Judges for the event were the Hon. Shirley Abramson of the Supreme Court of Wisconsin; the Hon. Patrick Higginbotham, U.S. Court of Appeals for the Fifth Circuit; and the Hon. Denise Page Hood, U.S. District Court for the Eastern District of Michigan.

PHOTO BY PETER YATES

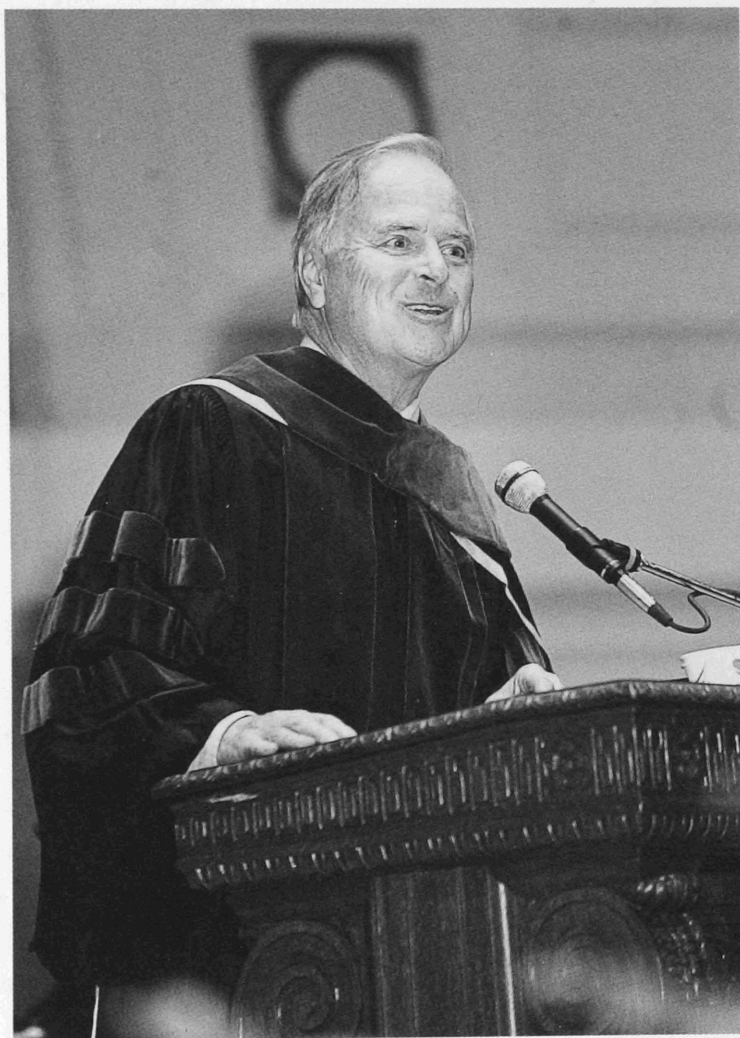
Dean's Forum —

Irving O. Hockaday Jr., president and chief executive officer of Hallmark Cards Inc., returned to the Law School to inaugurate the Dean's Forum series. Dean Lehman has planned this series of opportunities for small groups of students to meet informally with outstanding graduates who have achieved professional distinction outside the domain of large law firms. Hockaday, J.D. '61, (second from left) talked with students about how the skills of a legal education translate well to almost any career.

PHOTO BY PETER YATES

357 problem solvers

L.A. mayor tells graduates their skills are needed



Mayor Richard J. Riordan, J.D. '56

Always do your best — for your clients, your family, and those less fortunate, Los Angeles Mayor Richard J. Riordan urged the Class of 1995 at Senior Day.

Riordan, J.D. '56, congratulated the 357 students about to receive their degrees: "You went to the greatest law school in the world. I see that it still shapes people to be great men and women as well as great lawyers." He cited as examples the students who helped establish the Office of Public Service, represent Jennifer Ireland in her custody battle, and win asylum cases through the Haitian Refugee Project.

Riordan told graduates, "I love the law for giving me the mental tools to become a problem solver. That is the thread that ties together my activities in law, business, the mayor's office, my charitable foundation, and community activities. As mayor, my job is one part political and two parts problem solving."

He told graduates that society needs them, even if the legal profession is now downsizing. "We always need problem solvers. We need the best, brightest, and most honest of you to go into government. We need you to apply your problem-solving skills to the less fortunate."

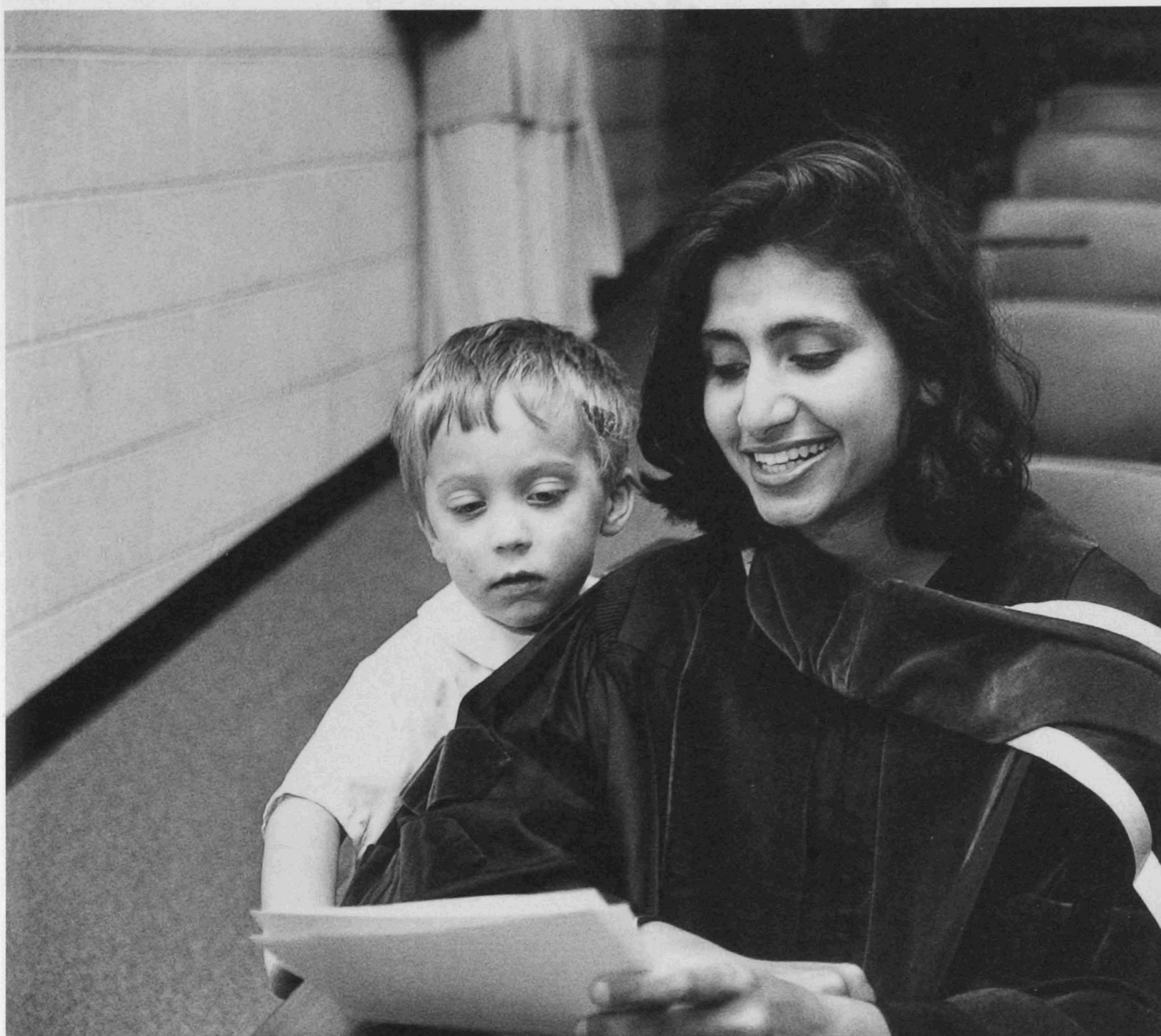
Riordan himself has done both. A tremendously successful lawyer and venture capitalist, he has always shared his time, talents, and wealth. Concerned with children's literacy, he gives millions to educational charities and has funded computer labs at schools from Los Angeles to Mississippi. He also organized a task force that created a plan to improve the public schools in L.A. He served on several city commissions and worked to promote racial harmony in the aftermath of the Rodney King police brutality case. His involvement in city affairs convinced him that the city could be governed much more efficiently, so he ran for mayor successfully in 1993.

With tales of twenty-five page bureaucratic memos about parking issues, Riordan explained his more direct "just do it" style of problem solving: "Set your goals, go after them, and don't let process get in the way. Be creative and daring; take the no parking signs down if you have to!"

Riordan gave a wealth of practical career advice:

"One of your goals must be to do the best job you can for a client. Always work for your client, not a partner. The more you know about your clients, the better you will serve them. Don't do other people's thinking for them; don't assume you know what they need. Be honest. Be tough. The most important things you need are humility and courage."

LQN



Roopal Shah prepares her final Senior Day address with help from Dean Lehman's youngest son, Benjamin.

One extraordinary graduate

The Class of 1995 has contributed much to the Law School and to society. Its members have founded new journals, distinguished themselves in competitions, created a community service day, and addressed important legal issues such as child custody and refugee asylum. At the heart of many of these initiatives, and indeed, at the heart of the class itself, is one extraordinary graduate: Roopal Shah.

As a member of the Law School Student Senate for three years and its president for two, Shah has dedicated her prodigious energy and enthusiasm to the needs of students and the school itself in countless ways.

She has served on the committees responsible for faculty hiring, selecting a new dean, and revamping the writing program, and has been a key communications channel between students and the administration. She helped students present their concerns about Public Service Office funding and the lack of a winter term First Amendment course so effectively that the office was maintained and the class was scheduled.

When the faculty considered grade reform, Shah distributed and tabulated surveys to help measure student views on various proposals. She helped organize supportive pre-class study sessions where female students gained the confidence to voice their opinions more freely in class. A member of the Asian & Pacific-American Law Student Association and a Minority Affairs Program instructor, Shah worked in many ways to make the Law School a better place for students of color.

She not only improved the Law School community, but made sure it served the local community. She was one of five students who established a Community Service Day held as part of student orientation for the first time last fall. About 380 incoming

students and 10 faculty members spent a full day working on service projects in Ann Arbor and Detroit. Saturn Motor Co. recognized this outstanding effort with its 1995 Teamwork Challenge Award, presented at Honors Convocation in April.

Shah also helped revive some social traditions such as Casino Night and the Winter Ball, and launch new ones, like the carnival sponsored by student groups to raise funds for Student Funded Fellowships.

Always positive and upbeat, Shah helped make sure her classmates' legal education ended in a laugh, with a list of "most likely to" awards read at Senior Celebration, and with a hilarious demonstration of the Socratic method in her Senior Day address.

For three years, she was everywhere, doing everything, always with a friendly greeting for everyone. In an award nomination, a classmate noted, "Her actions are always motivated by her constant concern for the Law School, its students, and its community. She has been an activist, commentator, motivator, negotiator, listener, compromiser, role model, and most importantly, a leader." As Dean Jeffrey S. Lehman put it, Roopal (for she was known universally throughout the school by that single name) was remarkable for her "infinite energy, used infinitely to the benefit of the Law School community."

At Senior Day, Roopal spoke with warmth and affection of that community. "It is our common experience that defines us as a community. Here, we have made lifelong friendships and extraordinary achievements. Individually, each of you have excelled. Together, we leave behind a legacy of service to society."

She thanked deans, faculty, and staff for the opportunity to learn from and work with them, and noted that she counted them as friends. To her classmates, she said, "Law school has instilled in us wisdom and courage. Now it's our turn to uphold our part of the bargain. Our challenge is to pursue our dreams with our moral centers intact."

She is bound for a clerkship in Hawaii, and it's evident to everyone that she will go far; after hearing her speech, Los Angeles Mayor Richard Riordan said, "Roopal, if you decide to run for mayor, please go to another city!" Her classmates voted her "Most Likely to Be President in 2020" and gave her a standing ovation at Senior Celebration. Another ovation followed at Honors Convocation, where she shared the Irving Stenn Jr. Award for leadership and contributions to the strength of the Law School with Anthony Montero. She also won the first-ever Dean's Exceptional Service Award. Said Dean Lehman, "She leaves the Law School permanently improved, and we are grateful."

Legal skill drills

It's late in the afternoon on a warm spring Saturday. The welcome sunshine streaming into the Law School classroom is an invitation to escape outdoors, but no one even glances toward the windows. The thirty law students in the room have, for the moment, forgotten their surroundings and indeed, their identities, temorarily becoming aggrieved neighbors, squabbling roommates, and mediators helping the parties to resolve their conflicts.

The students were fully immersed in role-playing exercises that were the centerpiece of a weekend workshop on mediation held in March. Zena Zumeta, J.D. '75, director of the Ann Arbor Mediation Center, and Naomi Woloshin, staff attorney in the Child Advocacy Clinic, presented the program.

The mediation workshop was the second event held during the winter term to help students develop practical legal skills. Earlier, Clinical Professor Suellyn Scarnecchia had offered a half-day client-counseling workshop, followed by a counseling competition the next week.

At the competition, more than sixty students teamed up to conduct a mock meeting with clients played by undergraduates. Local members of the bar judged the student lawyers on how well they elicited a description of the problem, defined client expectations, analyzed issues involved, identified ethical issues, presented alternatives to the client, and more.

The winning team of Roopal Shah and Anthony Montero went on to compete in an American Bar Association regional competition in Toronto. They won that event as well, and moved on to the national event in St. Petersburg, where they made it to the final round of competition, finishing in second place.

"We've been interested in finding extracurricular ways for students to develop professional skills in addition to those offered in the law clinics," said Sue Eklund, associate dean for student affairs. The events and similar programs planned for next year help meet the need for skill development identified in the 1979 McCrate Report prepared by ABA Task Force on Law Schools and the Profession, Eklund said.

The strong student interest in both events suggests students are eager for such opportunities to practice lawyering. At the mediation workshop, participants were quick to volunteer to play the mediator's role, and quite creative when acting as a party in a dispute. Students playing the client roles invented issues to complicate the problem, making sure that the mediator couldn't resolve the dispute too easily.

Zumeta and Woloshin walked participants through six stages of mediation: introducing the ground rules of the mediation process; gathering information about the dispute; framing the issues involved; determining options; negotiating proposals; and finalizing a written agreement. Students were videotaped during their roleplay sessions so they could analyze their techniques later.

First-year student Angela White observed, "The workshop was fantastic because it gave me hands-on practical experience in a non-traditional legal career. It was great to get a taste of mediation in a supportive, non-graded environment. I could explore something new in a single, intense weekend without having to commit to a semester of classes.

"As difficult as it was to see myself in action on videotape, I learned a lot about my personal style and abilities, and came away from the experience with added confidence," White added.

Zumeta stressed that the mediator must remain neutral and not push his or her own options for solutions. That was a new insight for 1L Dave McCreedy. "I didn't realize mediation was more about getting parties to communicate instead of finding a solution for them. I think that it requires specific skills and tactics that I wouldn't have really identified on my own. The session has given me a head start on developing those tactics, and role-playing was a great way to go about it," he said.

McCreedy said he is interested in using mediation in his future practice because he thinks it might be a cost-effective way to resolve conflicts "so parties end up at least not hating each other."

Woloshin, who previously worked as a mediator for the Circuit Court of Cook County, Illinois, was pleased with the strong turnout and active participation. "If you consider that this was a three-day event, over a warm weekend, with no course credit, and students had to pay for their meals, it's really encouraging to see this level of interest. These students really want to be here. This kind of event shows them that there really are ideas and options for resolving all kinds of disputes."

(L-R)First-year student Angela White practices mediating a mock conflict between roomates played by 3L Amit Shashank and 2L Brandon Schmid.

New legal writing program will train masters of the art

The University of Michigan Law School has launched an ambitious program to turn its students into masters of the art of persuasive legal writing. The Legal Practice Program replaces the Case Clubs that have been the home of writing and advocacy instruction for several decades.

The Law School will eliminate the student-run Case Clubs and hire eight full-time professionals who have demonstrated talent as legal writers and teachers. One of the eight will serve as program director; a national search will be conducted for all the positions. Because of the commitment of new staff, all first-year law students will receive individualized instruction in persuasive legal writing and research as well as in oral advocacy.

"This is a difference in kind, not degree.We recognize the importance of direct, personalized feedback. It is the essence of what seems to work best in writing instruction," explained Professor Joel Seligman. He headed the special committee of faculty and students charged with proposing improvements to writing instruction.

The committee drafted their recommendations after exploring what many other U.S. law schools are considering or doing to teach legal writing and consulting with students, faculty, alumni, judges and other practitioners. "We worked hard and learned a good deal from students and faculty; we went for pedagogical soundness and looked for a set of need-driven proposals to meet concerns expressed," Seligman said.

The faculty adopted the proposed program structure in January, and in May it approved the decision to hire Grace C. Tonner as the program's first director. Professor Tonner has been director of legal writing at Loyola Law School in Los Angeles for the past three years and has eleven years' experience in teaching legal writing and research in different settings.

The effort and resources poured into developing a new approach to writing instruction affirm its importance. "I believe that no skill is more central to the lawyer's art than the ability to write in a way that is 'persuasive' as opposed to 'argumentative'," said Dean Jeffrey Lehman. "Persuasive writing is clear, crisp, reflective, and balanced; it responds to the concerns of a skeptical but open-minded reader. A student who masters the craft of truly persuasive writing learns intellectual habits that are rewarded in every arena of a lawyer's professional activity. I believe we are extremely fortunate to have attracted a person of Professor Tonner's caliber to breath life into our new program."

Additional monies to support the new program will come from the Law School Fund; recent increases in graduate giving have made this possible.

The proposal to establish this enhanced instructional model noted that legal writing and research are complementary means to better teach students legal reasoning, legal doctrine, and legal theory. "The new program will improve fundamental research skills as well as writing skills," observed Margaret Leary, law library director and a member of the special committee. "First-years should learn the basics: how to find, analyze, and verify cases and statutes. They'll then be well-prepared to learn more sophisticated aspects of using online research, legislative histories, looseleaf services, jury instructions, model and uniform laws and restatements, and the knowledge produced by other disciplines."

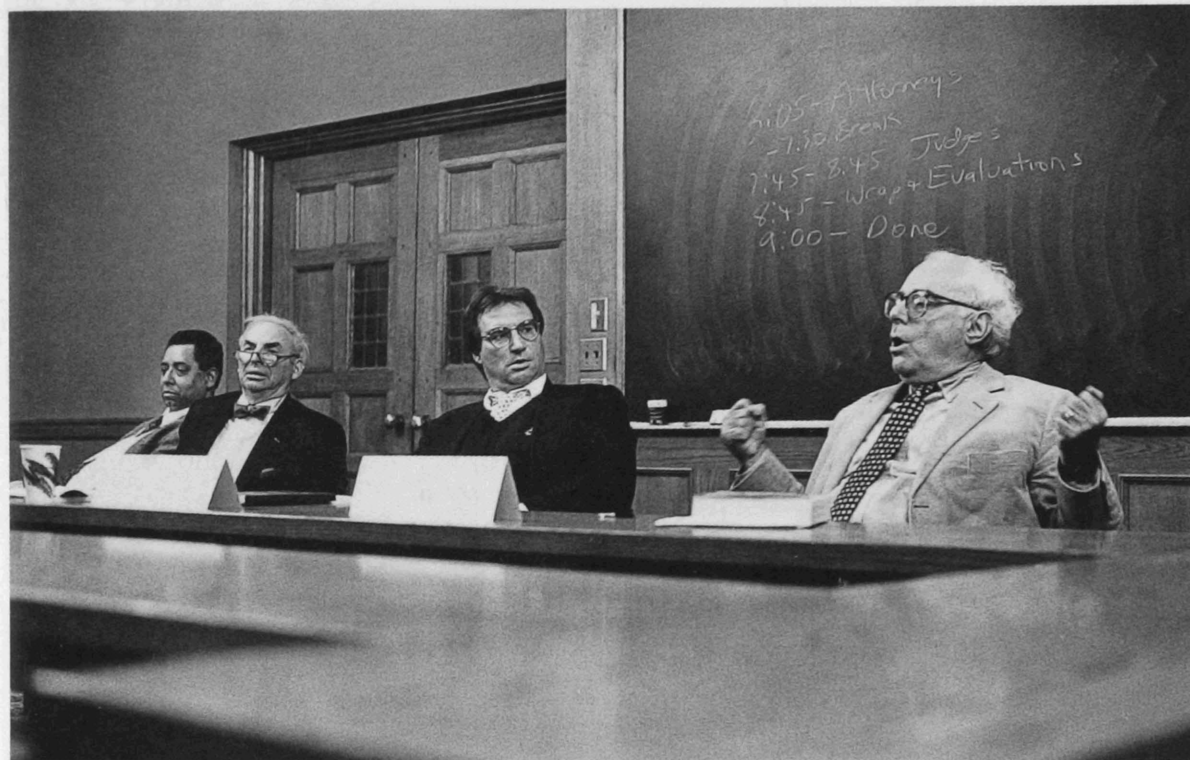
Current plans call for the new curriculum to be fully staffed and implemented in the 1996-97 academic year.

M&A Today —

To explore the recent resurgence of corporate mergers, Professor Joel Seligman arranged a day-long conference in April called "Mergers and Acquisitions in the '90s." The event was cosponsored by the Business Law Section of the State Bar of Michigan. An estimated 200 attorneys and law and business students attended throughout the day. (L-R) Seligman and two Law School visiting professors, A.A. Sommer Jr. and Cyril Moscow, concluded the event with a panel on corporate and securities law.

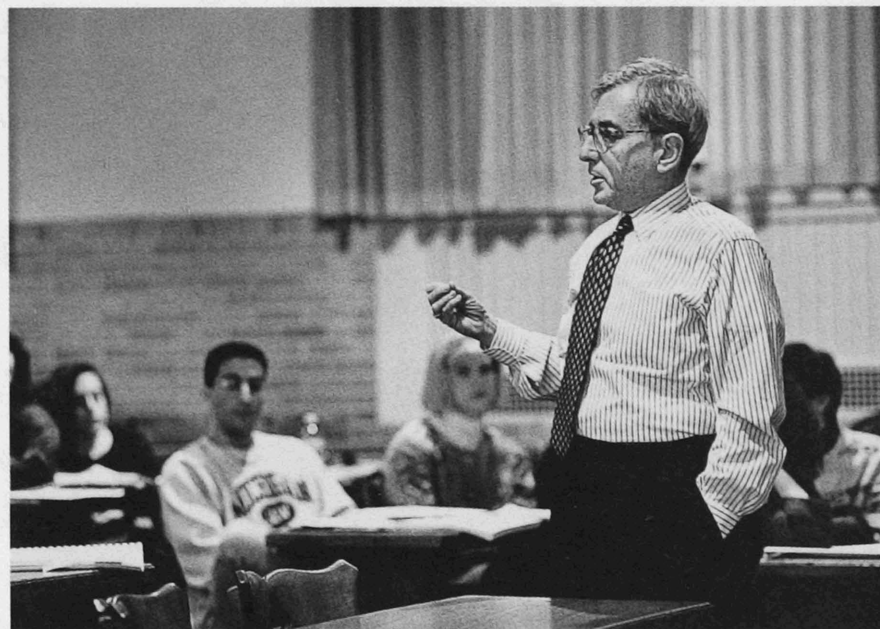
Visiting judges —

A quartet of judges visited a seminar course called Advanced Chapter 11 Bankruptcy taught by a fifth — Judge Steven Rhodes, J.D. '72. From left, the Hons. Ray Reynolds Graves, Walter Shapero, James Gregg, and Avern Cohn, J.D. '49, discussed what they expect from lawyers in Chapter 11 cases and the techniques the best bankruptcy lawyers are using. Judge Cohn also returned to the Law School to take part in a bridge week entitled Judicial Decisions and Legal Process.



What would you do?

Harris Weinstein (below), former chief counsel to the Office of Thrift Supervision, is well-known for taking action against the law firm of Kaye, Scholer, Fierman, Hays & Handler for helping its client, Lincoln Savings and Loan, deceive federal regulators. Weinstein returned to the Law School for the fourth year in a row to speak about issues of professional responsibility during a winter term bridge week. He helped students prepare for potential future conflicts between their duty to clients and their duty to uphold the law by presenting myriad hypothetical situations and asking, "What would you do?"



Professional responsibility —

Boston University Law Professor Susan Koniak (left) presented a winter term bridge week on legal ethics and professional responsibility. Koniak and other Law School faculty discussed conflicts of interest and confidentiality issues likely to emerge in many areas of law, including each of the first-year course subjects. The bridge week was supported by a grant from the W.M. Keck Foundation.

Major league lawyer — *Alan Rothenberg, J.D. '63, told students how he'd "combined his vocation and avocation into a wonderful career" representing several pro athletes and teams. The chairman of the 1994 World Cup soccer tourney and of Major League Soccer shared advice on how to build a career in sports law at a Law School talk in March.*

Breaking the Mold

Conference explores sports career opportunities, myths

The odds of a high school football player making it to the pros are 6,320 to 1. The odds of a high school basketball player making it to the pros are 10,340 to 1. Still, 32 percent of all high school male football and basketball players believe they will play professionally.

Statistics like these dramatically illustrate the reality gap in common perceptions of sports careers. They also explain why the new Sports Education Society held a symposium called "Breaking the Mold: Exploring Career-Related Opportunities in the Sports Industry" at the Law School April 22.

The Sports Education Society is an interdisciplinary organization founded by three third-year law students J. Darrel Barros, Walter J. Lanier, and LaMont M. McKim, and aspiring law student Leslie W. Scoggins. Its mission is to educate people about the myriad career opportunities in the sports industry and to show that sports and education are not mutually exclusive.

To expand the notion of sports careers beyond the focus on professional play, the society invited students of all ages to hear from professionals involved in all aspects of the sports industry: media and communications, administration, management, kinesiology and sports medicine, player representation, marketing and public relations, and sports-related corporations.

The breadth of the conference emphasized that every profession, skill, and social issue can be found in the business of sports: "Sports is a microcosm of our society. It just happens to be one we

focus on intently," observed society founder and symposium organizer Walter J. Lanier.

The conference exposed the realities behind these popular myths:

- Jobs in sports are glamorous and exciting. In reality, they involve hard work and receive very little attention.
- Jobs in sports pay well. Actually, only the top athletes earn top dollar.
- Most sports jobs are filled by former student athletes. Hardly any sports organizations require that employees have athletic experience. A passionate interest in the sport goes a long way, however.

A recurrent theme throughout the daylong conference was that for many professionals in the sports industry, there is no mold to make a sports professional; a multidisciplinary career track is the best route to success. Agents and player representatives advised that the best way to enter the field is to work hard at building skills in related fields and make as many contacts as possible in sports organizations. Similarly, at a plenary session featuring women in the industry, panelists all said they worked their way into key positions in sports organizations by first proving themselves in other businesses.

"We are interdisciplinary; to succeed in the corporate world, we have to know a lot of things," said M. Jessica Muha, who was in advertising and marketing with EDS and McDonalds before she became marketing director for NFL properties.

The female panelists responded to several questions about the status of women in the male-dominated sports industry. "My view is that sports, like the rest of corporate America, is changing too slowly in terms of hiring women and minorities. There are more women in the front offices of sports organizations, but not nearly enough," said Janet Hill, co-owner of a Washington, D.C. consulting firm that advises Major League Baseball on human relations issues, including minority and gender hiring policies. She also has an insider's view of pro sports as the wife of Calvin Hill, a veteran of the National Football League and a former Baltimore Orioles vice-president, and the mother of Grant Hill, the National Basketball Association's 1995 Rookie of the Year.

Panelists agreed that while obstacles still exist for women in sports, they are overcome by hard work and the refusal to take no for an answer. "Doors are sometimes closed, but that's O.K. If the front door is closed, find another one. If you are willing to work and give 200 percent, it will pay off," said Adrienne Lotson. Discouraged from becoming a sports lawyer, she volunteered for the Women's Sports Foundation to develop the skills and contacts that lead to her position as an enforcement official for the National Collegiate Athletic Association. Currently, she is Sports Logistics Manager for The Atlanta Committee for the Olympic Games.

The final plenary session on student-athlete concerns attacked the myths of megabuck pro contracts and fame that seduce young people, who then fail to take advantage of the educational opportunities a sports scholarship provides.

In five years of enforcing regulations in collegiate athletics, Lotson said she saw some tragedies. "Each player is treated like the best who ever played the game. A lot of students believe the hype," she said. To athletes in the audience, she said, "Coaches and professors will tell you anything to get you to come to their school. You're not that special. You're here to get an education. Your first career is over when you are 28. What are you going to do? Use the system while you're here; stay clean, have a good time, and get an education."

Gerald Irons, a former Oakland Raider, spoke of how the football team resisted his efforts to finish college and pursue a graduate degree in business. "You have to prepare yourself *early* for life after football. Education and sports are not mutually exclusive. You can do both; you can do as many things as you dream."

A challenge met —
Wayne Richards proudly presented Dean Lehman with proof that all thirty-five graduating African American students accepted the Nannes-Elkes Challenge to contribute to the Law School in each of the next four years. The first 100 students who made that pledge got to designate $250 from a fund established by John Nannes, J.D. '73, and Terrence Elkes, J.D. '58, to the Law School program of his or her choice. Each of the African American students directed their challenge money to the Wade McCree Professorship, adding $8,750 and the promise of future gifts to the fund. At last count, more than ninety students took the challenge, capturing more than $22,500 in new financial support.

TRADITION as our guide

PHOTO BY THOMAS TREUTER

Michael McConnell

Disputes in society are relatively easy to resolve when there are clear laws or precedents governing an issue. But how do we proceed in hard cases when authoritative legal texts or precedents aren't available?

Tradition is the authority behind much of our constitutional law and the source we turn to in such hard cases, said Professor Michael McConnell in the 1995 Thomas M. Cooley lectures.

McConnell, the William B. Graham Professor of Law at the University of Chicago Law School, is best known as a scholar of religious freedom. However, his research spans a broad array of constitutional topics, including interpretive theory, allocation of powers, economic rights and regulation, and the Fourteenth Amendment. He touched on many of these areas in his three lectures, which focused on the legitimacy, coherence, and reasonableness of tradition as a source of authority.

Tradition or custom, along with command (authority derived from carrying out the will of the people) and reason (our judgment of what is right) are three components of any legal system, McConnell said. "Tradition involves the actual practices and rules for dispute resolution that have evolved in a community over time; these practices have normative standing due to their long-standing acceptance," he explained.

The American Constitution, drafted against the backdrop of centuries of constitutional thought and Whiggish tradition, safeguards rights that parallel the customary practices protected under English common law. Likewise, the privileges and immunities clause "traces back to a great body of liberties as defined by English common law." Tradition serves as a guide for defining and delineating the unenumerated rights that fall under these broad categories, he pointed out.

"I'd like to correct one misconception: that traditionalism leads to a static conception of law," McConnell stressed. "Tradition itself is always changing as the mores and perspectives of people change."

Other sources of authority may change faster, and have more impact at times than tradition does. For example, McConnell pointed out that

the Fourteenth Amendment extended rights grounded in custom and the Constitution to people traditionally denied those rights. "We were satisfied with existing rights; we were not satisfied with states' application of those rights to selected groups of the population. To demand *equality* of rights was highly non-traditional," he said.

Given that tradition continually evolves, "is it possible to run a traditionalist jurisprudence with any coherence?" McConnell asked in his second lecture. He outlined *Michael H.*, a parental rights case of soap-opera complexity to demonstrate that the Supreme Court sometimes struggles to find a basis for new rights that are outside both the Constitution and accepted tradition. He defended Justice Scalia's often-criticized view that traditions must be identified at the lowest level of generality. "Unless a claim of a right is made with specificity, it will lack all plausibility," McConnell said.

He gave as an example the Court's first and only "right to die" case, *Cruzan*. The Court tried to decide the case by characterizing the right of privacy. Did it include the right to kill yourself, the right to commit suicide with the help of others, the right to refuse medical treatment, or the right to refuse food and hydration? Justice Scalia, who equated refusal of food or medical treatment with suicide, "said there was no right to suicide, but he was uncharacteristically claiming too high a level of generality," McConnell said. "Only by defining the right more narrowly — as the right to refuse medical care — was there a plausible claim of constitutional right based on tradition. Scalia thus ironically demonstrated the utility of his approach in a case where he departed from it."

In his third lecture, McConnell pointed out that reliance on reason as a source of legal authority calls tradition into question. "Rationalists hold that there is no necessary link between tradition and reason; tradition could just as well be the result of prejudice." In radical critiques, "tradition is viewed as faulty by definition — as being a product of the past."

However, McConnell concluded with a defense of tradition. "The process of ordering a society is difficult. The law of unintended consequences works very strongly in the laws we use to do so. There is no *a priori* way to know what will work in a human organization. Only the experience of what has worked before can guide us."

Some enchanted evening — *The Forty-Fifth Not-Annual Law Revue and Variety Show featured humorous skits and a video as well as several fine musical moments, including a performance by Kim Easter and Lawrence Garcia.*

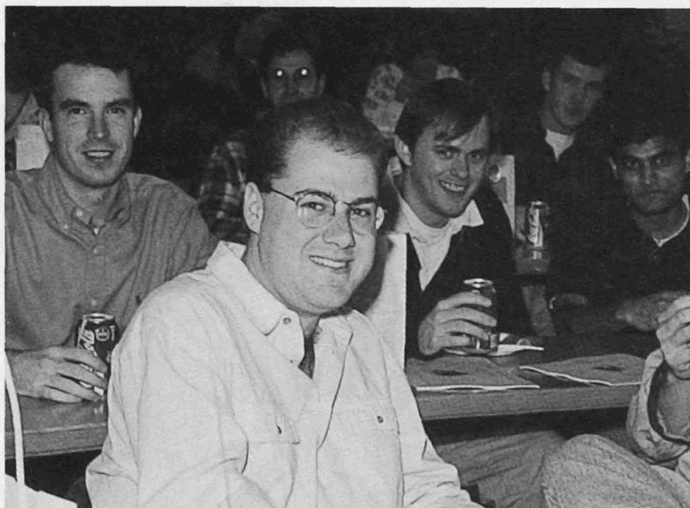


PHOTO BY DUANE BLACK

Senior Celebration — *"Regional" pizza parties were a highlight of Senior Celebration, a festive new event for graduating students. Before the formalities of Senior Day, students listened to career advice from '73 graduate John Nannes, laughed at "Most Likely To" Awards, and received a bag of mementos. The pizza parties afterward grouped students geographically so they could identify classmates who would be living and working nearby and keep in touch.*

Precht leads the Office of Public Service

There are many ways for a lawyer to do good and serve society. Rob Precht's goal is to help students find some way to integrate service into their careers right from the start.

Precht joined the Law School in January as director of the new Office of Public Service. The office provides job-hunting advice and support, networking opportunities, financial counseling, and other services to students who want a practice that aids clients who otherwise have little access to the legal system.

Although the Placement Office has always helped students explore job opportunities beyond the "big firm" jobs, students have expressed a desire for additional support, services, and resources. A public interest law program was first established at the Law School on a trial basis in the fall of 1993. Lisa D'Aunno, J.D. '84, was hired as a part-time director, and began to assess the need for public interest programming. Attorney advisor Kristen Bickel Clark joined the program two months later to counsel students.

When Jeffrey Lehman became dean in July 1994, he decided to continue the program and renamed it the Office of Public Service. After D'Aunno moved to Illinois with her husband last fall, Precht was selected as the new director.

A career public defender who most recently represented the lead defendant in the World Trade Center bombing case, Precht brings to the Law School a wealth of experience in public service. After graduating from the University of Wisconsin Law School in 1980, he worked for the Legal Aid Society in New York City, handling state criminal appeals. In 1986 he moved to the Federal Defender Division, where he became a trial attorney working in the U.S. District Court for the Southern District of New York. He's almost evangelistic about personal, professional, and social benefits of such a career.

"I became involved in public interest law for the sheer fun of it. I handled all kinds of cases — fraud, threats, drugs, tax evasion — for an incredibly diverse range of people. My clients ranged from the teenagers to white-collar individuals who had exhausted their resources on their defense.

"My practice stimulated every part of my being: it was intellectually exciting, brought me great interpersonal relationships, added depth to my client contact, and I made a difference," he observed. "Every lawyer should have the benefit of that high."

The peak of his public defender career was representing Mohammad Salameh in the World Trade Center case. "It was exhilarating and agonizing all at once," he said. He emerged from the six-month trial ready to find a new forum for sharing and spreading the values at the foundation of his work.

The Law School's strong commitment to service drew him to Michigan. "My goal is to build on what's here to create a culture that supports the ideal of public service. I want to make sure students are exposed to it and bring it into whatever kind of practice they choose. Michigan can be a leader in that," Precht said.

"I would like the office to be a clearinghouse of information, resources, and encouragement for the diverse sectors of the Law School already involved in public service: the clinics, the student organizations, the faculty. I want to build a sense of community." He also views the office as a resource for alumni attorneys who want to pursue a public service career or integrate some service-oriented work into their existing practices.

Both Clark and Precht are gratified by the strong student interest in service-oriented careers. Precht arrived in time to take part in an all-day career conference Clark arranged featuring guests like keynoter Bryan Stevenson, director of the Alabama Capital Representation Project, an organization for clients and attorneys appealing death sentences. Students have made good use of the other programs and resources the office has provided. These include:

- a career workshop designed to help students plan for a public service career and actually land the job they want. Nationally-recognized career consultant Vera Sullivan presented the day-long event.
- a forum on debt management featuring advice from recent graduates.
- opportunities to talk with alumni in public service practice, such as MaryAnn Sarosi, J.D. '87, who works with a legal services organization in Chicago.
- a quarterly newsletter.

At a career conference sponsored by the Law School's Office of Public Service, (l-r) Rob Precht, Assistant Professor Theodore Shaw, and Gerald Torres of the University of Texas Law School discuss their public service experiences.

Students welcome these aids because the job market is competitive, and they are learning that they need some solid experience to win the jobs they want. The Office of Public Service is about to add an important tool that will help students gain that essential experience.

In the fall, the office will become the regional center for Pro Bono Services America, Precht reported proudly. At the heart of PBSA is a nation-wide database listing opportunities for volunteer legal work. It will match students with pro bono internships based on their interests: the type of agency they'd like to work for, the client population they wish to serve, the kind of work they'd like to do, and so on.

As a regional center, the office will identify new organizations in the Great Lakes area with available positions for the database, keep the database current, and support other law schools subscribing to the program. Precht will hire a deputy director to handle these tasks and to guide students through the matching process.

Although the job market is tight and funding for legal service positions is disappearing, "I believe that with guidance and counseling, all Michigan graduates with interest in public service can get jobs," Precht said firmly.

No matter what kind of jobs they get, he wants every student to be aware of opportunities to serve others with their legal skills. "I believe very strongly that the legal profession is undergoing dramatic structural changes. As law becomes increasingly business-oriented, we have to make a special effort to retain that which makes this activity a profession." After all, he added, "lawyers are involved in the business of humanity."

Course offers a taste of law practice

As part of an innovative Course on the Practice of Law at Michigan, students have handled misdemeanor trials, attended settlement conferences, refereed juvenile violations, visited jails, drafted judicial opinions, written complaints and motions, and interviewed clients.

The course, first offered in the 1992 fall term, assigns about thirty second- and third-year students each term to posts in public-sector legal offices, where they put in about forty hours of pro bono work during the term. Students may be assigned to work with one of eight sponsors, including Ann Arbor area judges, Legal Services of Southeastern Michigan, Student Legal Services, the Washtenaw County prosecutor and public defender, the U-M Medical Center attorney's office, the Ann Arbor city attorney, and some offices in Detroit and Monroe.

Professor Sam Gross and Virginia Gordan, assistant dean for student affairs, organized the course to give students an opportunity to apply classroom ideas to real-life settings. They share credit for the idea with Bob Gillett, director of Legal Services of Southeastern Michigan. As a member of the Law School's Committee of Visitors and recent president of the Washtenaw County Bar Association, Gillett suggested the course as a way of increasing law students' involvement in the local legal community and the legal community's involvement in legal education.

Students write papers about their individual work experiences midway through the course. Students also gather three times in a classroom setting to discuss their experiences.

Gordan said students report that they gain insight from legal settings they'd never been exposed to, like the courtroom, the jail, or the client interview. "They gain confidence in their own legal abilities, are exposed to ethical issues, and see first-hand the value of the legal system," she noted. Students report that they appreciate the sense that they have made a significant contribution to a case. Participating judges and lawyers say that they've enjoyed working with their assigned students as well, Gordan says.

Scholarships attract the best and brightest

More merit scholarships, more thoughtfully awarded, have brought the Law School an exceptional group of the nation's best and brightest students.

The Class of 1998 entering this fall will include about twenty students whose high academic and personal achievements have earned scholarships covering part or all of their tuition. Enrolling these students enriches the stew of talent, intelligence, and experience that makes up a Law School class. It also ensures that the University of Michigan Law School is playing its part in training the leaders and great legal minds of tomorrow.

In the past, the Law School has awarded Clarence Darrow Scholarships for full tuition plus a stipend to a handful of the most exceptional students selected by the Admissions Office staff. In addition, other outstanding students won partial tuition merit scholarships endowed by generous donors.

This year, the school broadened both the definition of Darrow Scholarships and the participation in the merit scholar selection process. "We're going to call all merit awards Darrow Scholarships, with an added designation for a specific donor endowment — for example, the William and Janet Jentes – Darrow Scholarship," explained Dennis Shields, assistant dean for admissions.

More significantly, "we had a faculty committee evaluate potential students that the admissions staff had identified as possible merit recipients. We also asked these candidates to write an additional essay," Shields explained. Promising merit scholars were also invited to visit campus, which encouraged them to consider Michigan more seriously.

This expanded assessment offered many advantages, Shields explained. "In some ways, applicants are getting much more careful scrutiny than they are at other institutions. The top students' files are being reviewed by one admissions staff member, me, the dean, and four faculty members. There's a good chance we will see something that other schools will not.

"Asking students to write an essay gets them more actively engaged in considering Michigan. The visit gives them more information to base their decision on. It's also useful to get more of the faculty involved in the evaluation process, so that a larger share of the Law School community gets to know more about these students before they even get here," he added.

Dean Jeffrey S. Lehman commented, "We believe that the quality of this institution is obvious to those who come, visit, spend time here talking with students and faculty. Therefore, we worked hard to make sure that anyone offered a merit scholarship had a chance to get to know the school before deciding to accept admission. Not surprisingly, the percentage of students offered scholarships who chose to come to Michigan skyrocketed."

From about 5,000 applicants, the Admissions staff selected about 300 as possible merit scholars, based on test scores, academic achievement, and other outstanding experiences or accomplishments. Of those applicants, 100 were selected for faculty review. Ultimately, thirty applicants were offered merit scholarships; twenty accepted. "Most of those students were also receiving significant scholarship offers from competing schools. The new process had a remarkable impact on our ability to attract the best students," Shields said.

This was only possible because more resources were available for merit scholarships, Lehman said. "Several graduates in the past year have come forward and said that they felt merit scholarships were a priority for the school. They have made generous endowment gifts that made it possible for the school to increase scholarship support.

The dean noted that recently, Terrence Elkes, J.D. '58, agreed to endow two full-tuition merit scholarships that enable outstanding students to enjoy a Michigan education without plunging themselves into debt. And David Belin, J.D. '54, endowed a set of partial tuition merit scholarships that are designed to help Michigan attract the best and the brightest. For a second year, Jentes, J.D. '56, has funded several full-tuition scholarships.

These gifts move the Law School Campaign closer to its $15 million goal for scholarships. The aforementioned alumni are only three of many graduates who have, over the years, made it possible for talented students to pursue the finest legal education regardless of their financial resources. Thanks to such gifts, the Law School gave eight full-tuition merit scholarships to incoming students. "I hope to double that," Lehman said.

Jentes explained why he supports merit scholarships this way: "Everyone benefits from the presence of unusally talented students who make the Law School a more dynamic academic environment. Their intellectual curiosity and enthusiasm generate new ideas, stimulate better teaching and research, and enliven the Law School community."

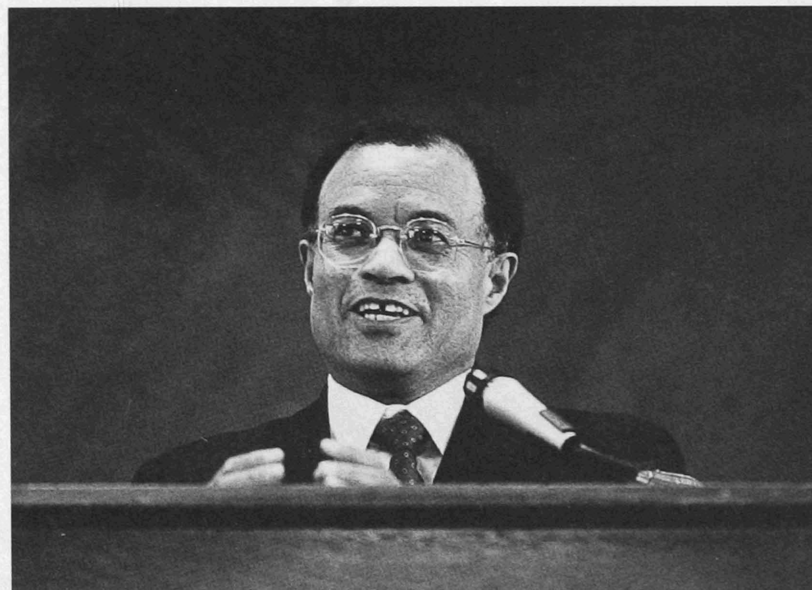
Belen gave three reasons why merit awards matter. First, he said, "Outstanding performance ought to be rewarded, regardless of financial abilities." Second, most merit scholars are going to need financial assistance, but even for the rare Rockefellers who have no

financial need, a merit scholarship is a good investment. "If that student were to receive a merit scholarship and go to the Law School, because of sentimental ties to the University, in future years she or he will probably give back tenfold or fiftyfold or a hundredfold. That's an awfully good investment."

Finally, Belin said, "In order to have a great law school, you need a great faculty, a great student body, and great facilities. Other top law schools are giving merit scholarships. If you want to have an outstanding student body, you must be able to compete on a recruiting basis for top students, just as in football you compete for the best athletes."

Said Lehman, "I believe that a significant aspect of Michigan's historic distinctiveness has always been that we educate the future leaders of the profession regardless of whether they grew up in a wealthy family. I would always like Michigan to stand for openness and opportunity."

Bates Scholars —
Jonathan Hacker, Gerald Leonard, and Daniel Greiner received the 1995 Henry M. Bates Memorial Scholarship Award at Honors Convocation. The award recognizes outstanding scholarship, personality, character, extracurricular interests, and promise of a distinguished career.



Balancing act —
Drew Days, Solicitor General of the United States, described the delicate balance of his duties as walking a tightrope. "I often have to make decisions deeply imbedded in policy or politics while remaining apolitical," he explained. Days visited the Law School while in Michigan to present the Wade H. McCree Award to Judge Damon Keith. Days acknowledged McCree, the first African American solicitor general and a former Law School professor, as a mentor and role model.

Two join faculty

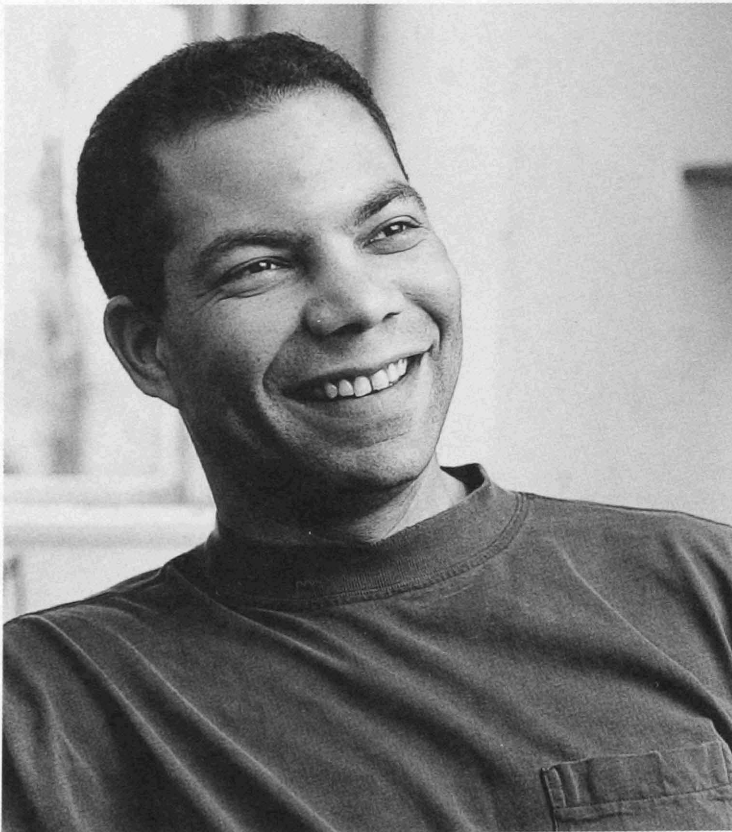
In 1995 the Law School welcomes two new assistant professors who bring a broad range of experience and skills to the faculty.

Sherman Clark comes to the Law School by way of Harvard University Law School and a litigation practice at Kirkland and Ellis in Washington, D.C. **Peter Hammer**, a graduate of the University of Michigan's law and economics joint degree program, practiced for two years at O'Melveny and Myers in Los Angeles. He focused on antitrust and health care law and assisted with expert economic analysis of cases. Both have interests that range well beyond their recent caseloads.

Clark is interested in democratic theory and political philosophy. He said he left a stimulating practice in product liability and contract litigation because the legal lifestyle was incompatible with both family life and intellectual life. "It was difficult to read de Tocqueville on the subway on the way home at midnight," said the father of three girls.

Clark's unusual academic career covers nine years and three schools, which is one reason why he now values time to read and think. He left home and family in Baltimore at 16 and enrolled at the University of Dallas, trying to work his way through school. He did well academically but not financially, so he left college and enlisted in the army for four years, serving in the Honor Guard at the Tomb of the Unknowns.

After the Army, Clark completed a bachelor's degree in English at Towson State University. Inspired by his mother, who earned a law



Sherman Clark

Peter Hammer

degree after raising four sons, he won admission to Harvard. "I loved it. I could not believe I was there, not too many years after mopping floors at the Radisson," he said. He soon noticed that he hadn't read or learned things his classmates mentioned, so he enthusiastically set out to fill in the gaps in his education, while working at a law firm to support his wife and daughters. Despite a nightmarish schedule, he did well in school; he credits that to his engagement with and love of the study of law.

Clark is spending the quiet summer months at the Law School researching an article, reading broadly in political theory, and preparing for his fall courses. He will teach Torts in the fall term and Evidence in the winter.

Peter Hammer holds a bachelor of science degree in mathematics and bachelor of arts degrees in economics and in speech communication from Gonzaga University in Spokane, where he was raised. An excellent math professor who was a strong role model inspired him to teach. "It's a wonderful way to devote your energy and make an impact on people's lives," he said. "You can't change people, but you can guide them to places of strength inside themselves."

With such broad background and interests, the hard part for Hammer was deciding what field to teach in. He considered graduate study in math and other fields before he opted for Michigan's combined law and economics program. He earned his law degree in 1990 and his doctorate in economics in 1993. While completing his dissertation, he clerked for the Hon. Alfred T. Goodwin at the U.S. Court of Appeals for the Ninth Circuit.

When he joined O'Melveny and Myers in 1993, he also joined the legal team defending Exxon in the civil trials resulting from the 1989 Valdez oil spill. "In two years of practice I lost a $5 billion verdict for my client, more than most people lose in a career," he joked.

Jokes aside, Hammer said he found the Exxon case intellectually satisfying in many ways. For him, it was an opportunity to work with top-notch attorneys on both sides of the case and to devote his time to a case where important issues were at stake.

"For most clients, your job is to tell them what the law is. It's not that often that you get to push the boundaries, to ask how strong a precedent is, can it be changed, and is it right — the same questions you ask in academics. The Exxon case involved such high stakes that nobody was taking the ground rules as given, and as a result, both sides made a lot of new law."

Even more rewarding than the Exxon trial was establishing a public defender program in Cambodia. Hammer helped win funding, establish comprehensive classroom training, and recruit a series of pro bono American attorneys who have gone to Cambodia to staff the project. Now a year and a half old, the program has offices in Phnom Penh and three provinces.

Hammer explains that Cambodia's legal system is a patchwork of remnants from former regimes that really form no system at all. Precisely because the legal process is so fluid, the project has been able to import and adapt some American defense techniques and put them to creative, effective use. Clients there are eager to have an advocate in an adversarial setting. "It's been incredibly rewarding because we really have had a significant impact," he said.

Hammer will teach Health Law, Antitrust Law, and Contracts. His research interest combines his expertise in law and economics: "My focus is on how health care markets work, how they should function and how they actually do function. Surprisingly, there are disturbing gaps in our knowledge of how different kinds of health care structures affect outcomes such as access to care and quality of care."

Faculty achievements

Professor Frank Kennedy has contributed an oral history to the Second Circuit History Project on Bankruptcy.

Kennedy, now the Thomas M. Cooley Professor Emeritus, has studied, influenced, and taught bankruptcy law for more than fifty-five years. He was executive director of the National Commission on Bankruptcy Laws appointed in 1970; his work helped shape the Bankruptcy Reform Act of 1978.

Harvey R. Miller, a leading bankruptcy practitioner and member of the National Bankruptcy Conference, decided that Kennedy's perspective should be part of a historical exhibit sponsored by the Second Circuit Committee on Historical and Commemorative Events and by the Federal Bar Council. Miller interviewed Kennedy in July 1994 about his life and career. The interview was published as "The Origins and Growth of Bankruptcy and Reorganization Laws in the 20th Century — An Oral History Perspective.

In the introduction to the oral history, Miller writes of Kennedy, "Bankruptcy jurisprudence would be all the poorer but for his efforts in revising and developing the bankruptcy law and improving the bankruptcy court."

Professor Mathias Reimann has been elected to the Académie Internationale de Droit Comparé of Paris. The academy honors the

world's most distinguished scholars in comparative law.

Three law professors were awarded fellowships from the University of Michigan's Institute of Humanities for 1995-96. They were among six faculty members and six graduate students selected to pursue diverse projects related to the general theme of emotion.

Phoebe Ellsworth, named the Helmut Stern Faculty Fellow, will examine "Cultural Similarities and Differences in Appraisals and Emotions." She will test the hypothesis that culture affects basic interpretations of social situations and appropriate behavior, but that the link between interpretation and emotion is universal. Ellsworth is also a professor in the Department of Psychology.

Don Herzog's project is called "Poisoning the Minds of the Lower Orders." He will be working on a book about conservatism and democratic theory, focusing on the English reaction to the French revolution. Herzog, an associate professor of political science and professor of law, will be the Hunting Family Faculty Fellow.

William Miller will work on "Emotion Talk, Emotion Display, and Social Order." One aspect of his inquiry will explore the emotional economy of revenge and the sense of satisfaction that drives the revenge genre in narratives and films. Another line of inquiry will focus on indifference as an emotional basis for democracy.

Seligman named dean at Arizona

After nine years, fourteen books, fifteen law review articles, and 3,000 students, Professor Joel Seligman is leaving to become dean of the University of Arizona College of Law.

Seligman is moving onward to seek new experiences and challenges, but says he will miss the Law School, and it will surely miss him. "This is a wonderful and richly deserved opportunity for Joel, and we are happy for him," said Dean Jeffrey S. Lehman. "It is also a significant loss of a great teacher, scholar, and colleague."

An authority in the field of securities regulation, Seligman is the coauthor with Louis Loss of an eleven-volume treatise on the subject. He has testified several times before Congressional committees about the effectiveness of existing regulations, arguing that proposed reforms were unneccessary. This year at the Law School he organized a conference called "Mergers and Acquisitions in the '90s." He also chaired the Ad Hoc Committee on Writing and Advocacy, which researched and recommended a better method of teaching legal writing.

He taught at Northeastern University and George Washington Law Center before joining the Michigan faculty in 1986. "I had the nine best years of my career here. I can't say emphatically enough that I think Michigan is the finest law school in the nation. I have loved the opportunity to teach and enjoyed my students," he told students and faculty who gathered at his final class to send him off with an ovation. "I have written and taught for 18 years; now I find that I need an opportunity to change, grow, and enjoy more people-oriented activities."

At Arizona, Seligman will replace Dean Thomas E. Sullivan. He will head a faculty of about thirty full-time equivalent professors and a student body of about 450.

Field pursues new opportunities

Julie Kunce Field, a clinical assistant professor for six years, is leaving to accept a position as director of the clinical program at Washburn University School of Law in Kansas.

As director of the Law School's Women and the Law Clinic, Field has supervised students working on cases related to domestic violence, gender discrimination, and reproductive rights. Last year, her students won an unprecedented sixty-year restraining order to protect a victim of severe, sustained domestic abuse.

In 1994-95, Field and her students represented University of Michigan student Jennifer Ireland, who lost custody of her four-year-old child in a decision based on her use of day care while she is in class. Field won a stay of that ruling; in early May, she argued the case before the Michigan Court of Appeals and is awaiting a decision.

Recently, Field won the Mary Foster Award from the Women Lawyer's Association of Michigan and a special achievement award from the Washtenaw County Bar Association.

Field was drawn to the opportunity to direct an entire clinical program at Washburn; an added advantage is that the school is not far from where her family lives. Still, she said, "This is the most difficult decision I have ever made, because of the regard with which we hold our friends and professional colleagues here and because of our love of Ann Arbor."

At the moment of constitutionalism

Israel is moving toward a constitutional system, and Professor Richard Pildes was among an international group of legal scholars who recently helped Israeli judges prepare for the transition.

Israel does not have a written constitution; until recently, judges operated on a British model in which acts of Parliament are sovereign and can be interpreted but not invalidated by courts. However, in an effort to move

toward a constitutional democracy, the Knesset, Israel's legislature, has just enacted two fundamental laws that set forth basic principles, rights, and liberties for the nation.

"These special 'basic laws' will have higher status than ordinary laws, and all other laws must comply with the principles they establish," Pildes explained. For the first time, judges will face the task of interpreting all laws in light of these untested basic principles.

To help prepare them for that task, the Israeli Supreme Court invited constitutional law experts from several nations to present a judicial conference near Jerusalem this spring. The speakers represented diverse forms of constitutional democracies. Justices from the Supreme Court as well as military, civil, labor, and other courts took part in the weeklong conference.

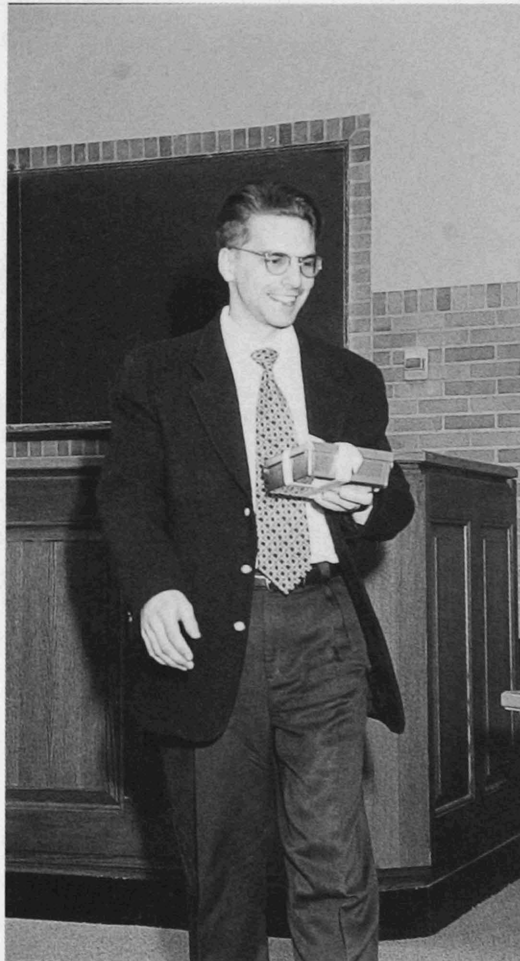
Pildes observed, "These judges have never operated in a universe where they assess ordinary acts of parliament in light of these newly defined rights. Through formal lectures and informal conversations, we were socializing them into a *Marbury v. Madison* conception of constitutional democracy."

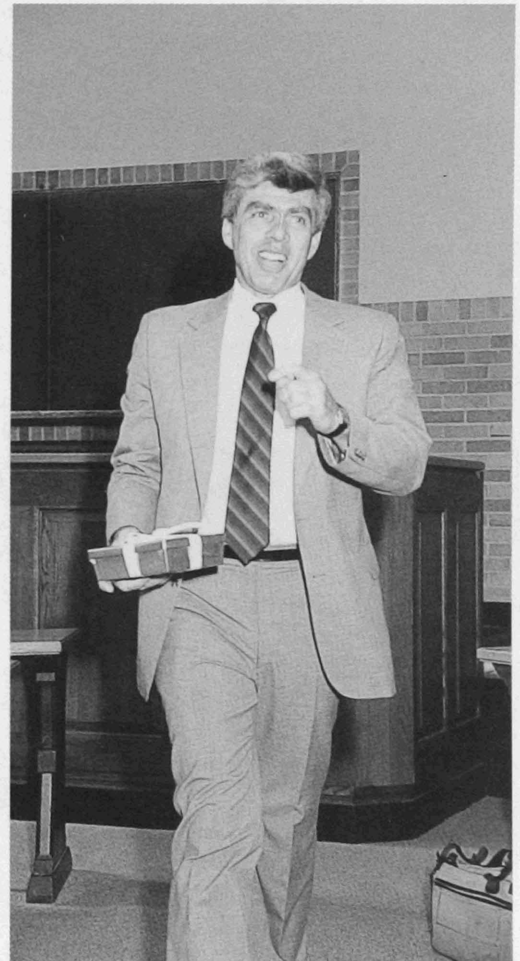
Pildes said the experience was exhilarating for everyone. "For the judges, constitutional interpretation is so foreign to their role that they were a little uncomfortable, yet very excited to discuss how they might consider applying these principles. Personally, one of the things I found most exciting is that this nation is at the start of a fundamentally different legal regime.

"We are at a moment of constitutionalism in world history when more constitutional democracies are being formed than at any previous single period. The experience of existing constitutional democracies, particularly the American one which has the deepest tradition of constitutionalism, provides insights that emerging democracies are eager to learn from."

Helping shape a new system gave him a fresh look at his own field of law.

By comparison, he says, "Our issues in American constitutional law are relatively marginal, at the borders of a mature constitutional democracy. This was an opportunity to step back from the internal debates in this field and look at the fundamental elements that recommend themselves to new and reforming democracies."





Top teachers —
Assistant Professor Steve Croley and Clinical Assistant Professor Nicholas Rine won the 1995 L. Hart Wright Awards for teaching excellence. Students selected Rine for "going out of his way to help students" and Croley for being "a fresh and eager source of knowledge and fun."

St. Antoine enjoys *unforgettable* Cambridge semester

Theodore and Lloyd St. Antoine enjoyed age-old pasttimes such as punting on the Cam during a semester at Cambridge University.

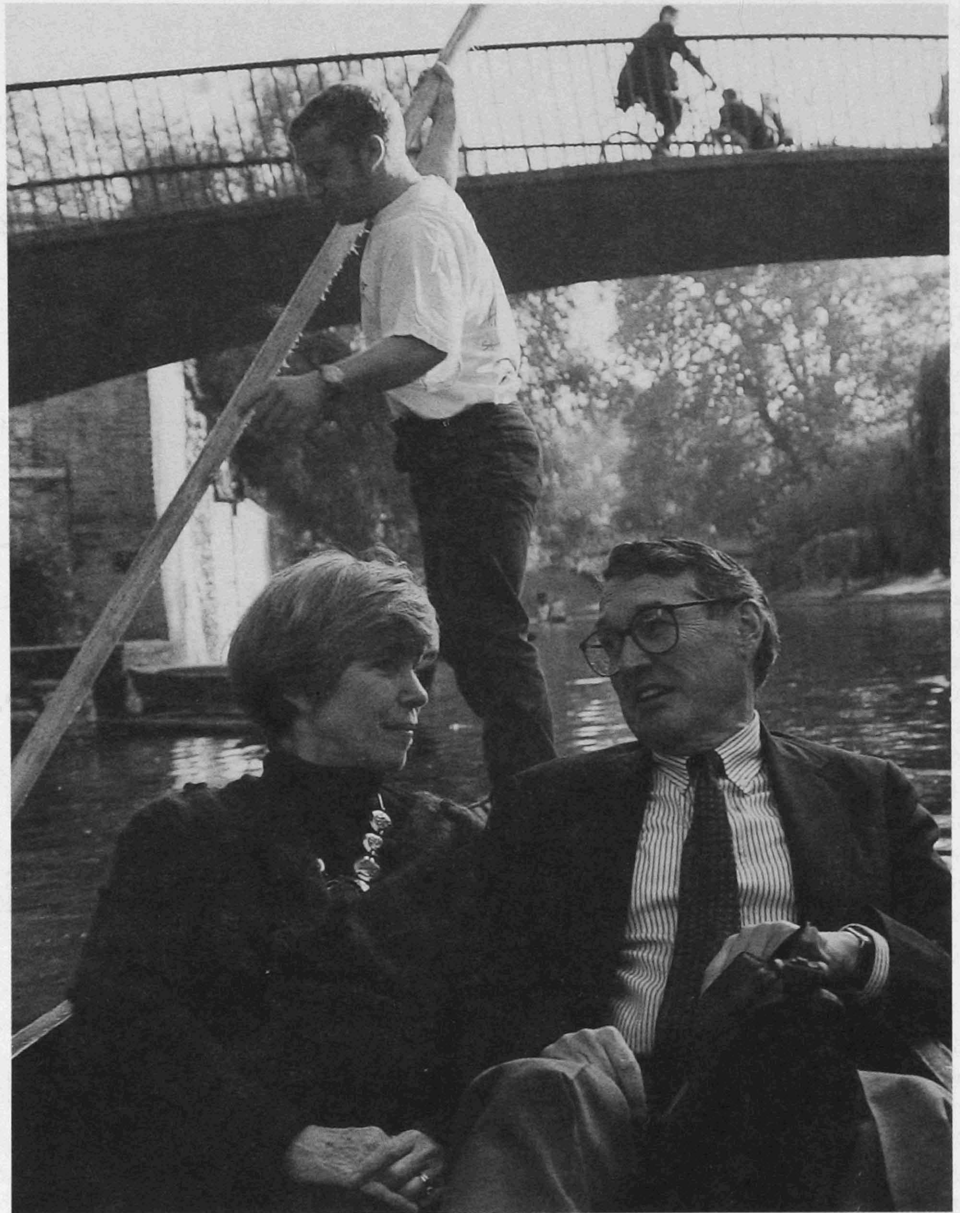


PHOTO COURTESY OF THEODORE ST. ANTOINE

IDYLLIC AND INSPIRATIONAL — that's how Professor Theodore J. St. Antoine describes his fall 1994 semester spent teaching at Cambridge University.

St. Antoine was the first faculty member to travel to England under the Law School's new exchange program with the fabled university. Former Dean Lee C. Bollinger arranged for a Michigan law professor to visit Cambridge each fall for three years. Professor Carl Schneider will be the next to go. In return, the Law School expects to host some British visitors.

For St. Antoine, the semester was an unforgettable opportunity for an enriching intellectual exchange with students and scholars from around the world in a beautiful setting redolent with history. "It was exhilarating to feel a part of the place where Francis Bacon and Sir Isaac Newton and Alfred Lord Tennyson studied and worked," he said. For his wife Lloyd, one of the great thrills of the trip was watching a sunset on a Trinity College rooftop at the exact spot where Newton conducted his atronomical observations.

St. Antoine held dual appointments at Cambridge. He was a visiting member of the Cambridge law faculty, teaching an introductory course in American Law to about two dozen students. He also was a visiting fellow at Clare Hall, a center for research established by Clare College.

"Clare Hall is famous for attracting visiting fellows from all over the world in all disciplines under the sun," St. Antoine explained. The Clare Hall program encouraged visitors and their families to gather informally for lunch and dinner. "You never knew who was going to sit down next to you. You were constantly meeting people with the most diverse interests," he recalled. For instance, he talked with one scholar who was studying how medieval convents developed an inheritance system among nuns, which was the forerunner of women's independent property rights.

St. Antoine enjoyed his teaching experiences as well. "I taught in a building literally in the shadow of King's College Chapel, which must be the most beautiful piece of architecture in all of England," he said, adding that it was a model for our own Lawyers Club Dining Hall.

In Britian, students study law at the undergraduate level. Accustomed to a lecture format, they participated in discussions only with a good deal of urging, but it was clear that they were "writing feverishly, absorbing information, and thinking about it," he said.

Students were very interested in the American concept of judicial review, which is largely unknown in England. With no written constitution, British courts have always granted primacy to law established by Parliament. "However, since Britian has ratified the Treaty of Rome and joined the European Union, there are times when provisions adopted under the treaty may take precedence over an action of Parliament," St. Antoine explained. "The British are beginning to test the validity of Parliament's actions. They are intrigued by the concept of judicial review, and there is a question of whether once the courts get a taste of it, they will expand the concept into other areas."

He and Lloyd had plenty of time to travel and enjoy the traditions of Cambridge: punting on the River Cam; the timeless views of the backs, the meadows behind several colleges, and of the chapels shrouded in morning mist; and high table. After one such traditional dinner at Magdalene College, he and Sir Derek Oulton found themselves in the library at midnight examining the original full report of *Hadley v. Baxendale,* the most famous case in contracts, trying to resolve a Michigan graduate student's contention that it is really a torts case. After reading the 140-year-old report of the Exchequer Court, they shared the fruits of their late-night research with three other contracts teachers at Cambridge. "We had a great discussion," St. Antoine said.

"Cambridge is just magical — one of the loveliest settings in England. To be present at Evensong in King's College Chapel is to be transported into another world. It was an extraordinary experience," he reflected.

IN PRINT

FROM NEWTON'S SLEEP
BY JOSEPH VINING
PRINCETON UNIVERSITY PRESS, 1995
398 PAGES

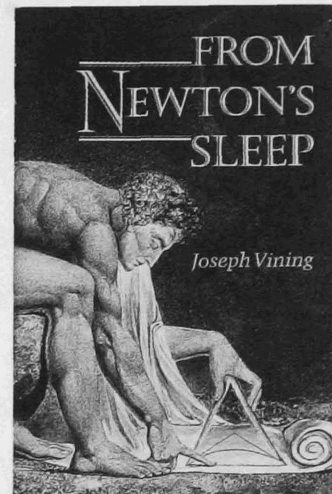
Law, like air, is essential to life but often absent from consciousness, Professor Joseph Vining maintains. All too often, law is left out of the discussion of the nature of things.

In his new book, *From Newton's Sleep,* Vining ambitiously reconnects law and legal thought to the whole of human thought and experience, to our search for identity, meaning and belief.

"Law connects language to person, and person to action, through a form of thought that is not reducible to any other," writes Vining, the Hutchins Professor of Law. With passion and conviction, he argues that legal thought will "take a place beside the forms of thought of other disciplines that are self-reflective, as something to be reckoned with in coming to any general understanding of the working of the world."

Vining explores the nature and value of legal thought by comparing and contrasting it with art, science, and religious and other forms of thought. Along the way, he ranges freely among a host of the world's great thinkers and systems of belief: Confucius, Shakespeare, Kafka, Dostoevski, and John Stuart Mill, as well as the Koran, the Torah, and the English Book of Common Prayer. He draws connections between law and the spirit of religion; he sees the same impulse to interpret the world in legal thought and in poetry and dance.

Science, he argues, in its grand claims today to explain all or reduce all to itself, is incompatible with human law and the legal form of thought, and in its picture of our own nature and the nature of the universe cannot be called empirical. When it relentlessly focuses



on the physical and the quantifiable it has nothing to say about entire realms of human experience. The book's title refers to becoming "wholly occupied with the form of thought of which Newton is celebrated as the great source," as imagined by William Blake who wrote, "May God us keep/ from single vision & Newton's sleep."

Vining is especially concerned with language. One whole section of the book focuses on literal meaning, the gap between what we say and what we mean, the distinction between speech and writing, metaphor, gesture, and other aspects of expression and interpretation.

The book's form invites sampling. Its consists of short studies, loosely grouped into eight thematic sections. Some are a few pages in length, some only a few sentences; many put forth a single idea, startling in clarity. These meditations are intended to be read in pieces, "as time and occasion allow," Vining suggests in an afterword. A reader can open the book at any place and discover a surprising insight or a thought-provoking question, or explore the recurring themes and subtle interconnections throughout an entire section.

In bits or as a whole, *From Newton's Sleep* inspires deep reflection on life's essentials: language, belief, meaning, action, beauty, and, inextricably entwined with all of these, law.

Vining's previous books are The Authoritative and the Authoritarian *(1986) and* Legal Identity *(1978). This year he has taught Corporate Criminality, Enterprise Organization, Legal Recognition of Evil, and The Problem of Legal Authority.*

Law School is part of new poverty research program

The University of Michigan's Law School, School of Social Work, and School of Public Policy Studies will establish the Michigan Program in Poverty and Social Welfare Policy.

The program proposal won $250,000 from University President James Duderstadt's Presidential Initiatives Fund, which is supported in turn by a grant from the W.K. Kellogg Foundation and matching funds from the University. Only four of seventy-nine proposals won Presidential Initiative funding. Grants went to innovative projects marked by high risk and high potential for intellectual gain.

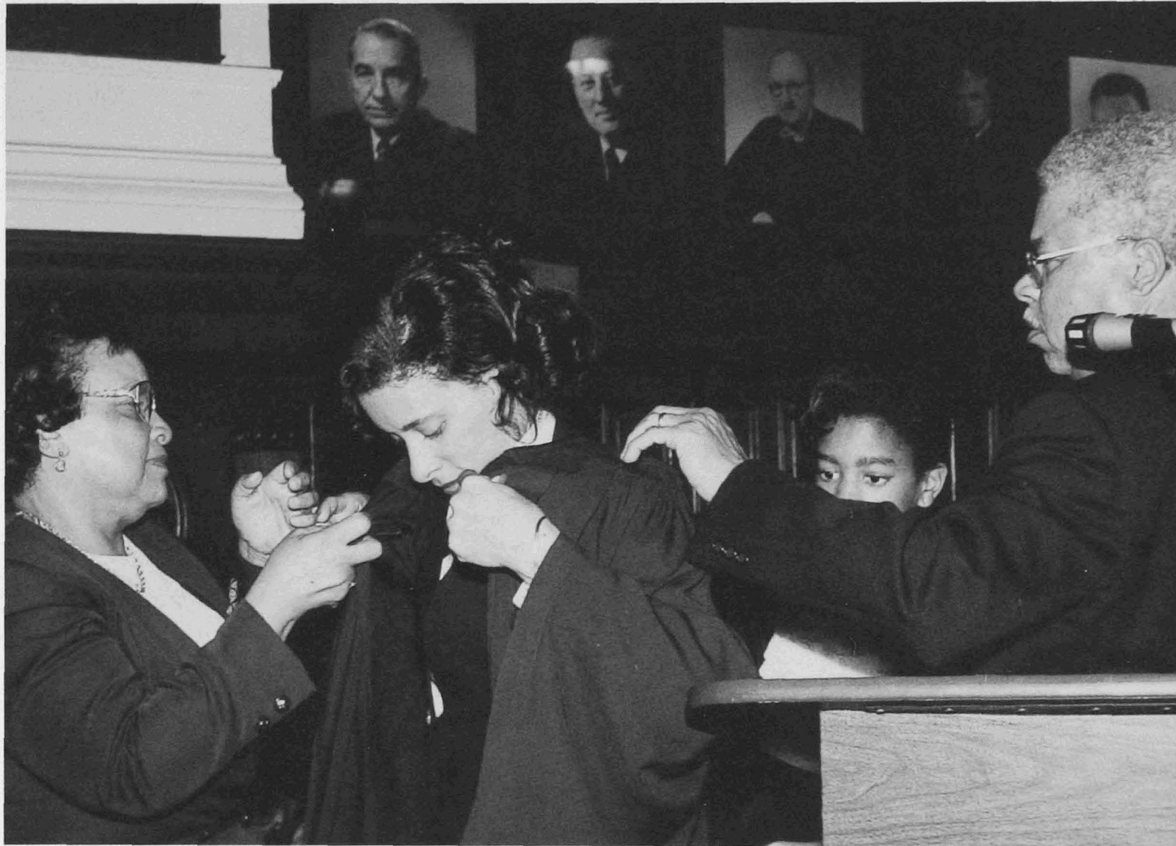
The interdisciplinary program will conduct applied research on issues related to the current welfare reform movement. Investigators will pursue poverty prevention research, explore ideal models of social service delivery, and implement a clinical trial of a welfare-to-work program in Michigan.

One possible role for the Law School would involve expanding its Program in Legal Assistance for Urban Communities. Through this program, students and faculty already are working closely with many Detroit area non-profit agencies and community leaders on issues related to community development. With this additional funding, the program might be able to provide additional consultation and support to groups that are addressing poverty problems and to conduct evaluation research on such programs. Another goal is to develop field internships with community groups for social work and public policy students as well as law students.

The poverty program was proposed by Edward M. Gramlich, dean of the School of Public Policy; Jeffrey S. Lehman, dean of the Law School; and Paula Allen-Meares, dean of the School of Social Work.

Faculty, staff, and students inspect recent publications at the grand opening of a new library display dedicated to faculty research.

Myra Selby, J.D. '80, dons the robes of an Indiana Supreme Court Justice with help from her mother and father, Archie and Ralph Selby, J.D. '54, and her daughter, Lauren.



SUSAN J. FERRER PHOTO - *RES GESTAE*, INDIANA BAR ASSOCIATION

Selby named to Indiana Supreme Court

— BY TONI SHEARS

MYRA SELBY HAS LEFT health care law for the high court in Indiana.

Selby, J.D. '80, was named the 103rd justice of the Indiana Supreme Court last fall. She is the first woman and first African American to hold that position. She fills the seat vacated by retiring Justice Richard M. Givan.

Selby served as Gov. Evan Bayh's director of health care policy for a year and a half before he appointed her to the state's high court. She previously practiced health care law with the Indianapolis firm of Ice Miller Donadio & Ryan from 1983-93. She was an associate with the Washington, D.C. firm of Seyfarth, Shaw, Fairweather & Geraldson from 1980-83.

The idea of a judgeship was always appealing to Selby, but it was not something she was actively working toward. "I was thrilled to be appointed and gratified that Governor Bayh and the people of Indiana had that kind of confidence in me," she told *Law Quadrangle Notes*.

That confidence is well-justified, according to the Hon. Harry T. Edwards, J.D. '65, the Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit. The former Law School professor has closely followed Selby's legal career since her student days, when she was one of his "first and best" student research assistants. "Myra is a terrific lawyer and a rare human being," Edwards attested in remarks at her robing ceremony Jan. 4. "She will bring an amazing blend of intellectual power, common sense, integrity, energy, and personality to her judicial duties. In all of her work, she has been highly principled, open-minded, and fair. Myra Selby has been a consummate professional, so we have every reason to know that she will be a brilliant justice."

Selby's historic role as the first female Black justice has attracted considerable notice. She finds that natural, but she hopes the day will soon come

"She will bring an amazing blend of intellectual power, common sense, integrity, energy, and personality to her judicial duties. In all of her work, she has been highly principled, open-minded, and fair. Myra Selby has been a consummate professional, so we have every reason to know that she will be a brilliant justice."

— HON. HARRY T. EDWARDS, J.D. '65

when minorities and women in positions of leadership are no longer noteworthy "firsts". "As for the way I would like to be regarded, I'd like to be considered just as my colleagues are, as an equal member of the court. I hope the work that I do will be the measure by which I will be judged," she says.

And Edwards noted, "For anyone to think of Myra in such limited terms as race and gender is to fail to comprehend the marvelous endowment that Governor Bayh has given the Court and the people of Indiana with this appointment. Myra is a person who has always believed that, in a decent society, the fellowship of human beings is more important than the fellowship of race and class and gender."

Edwards praised Selby's ability to synthesize and analyze legal issues, but also noted her humane style. "She acts with a heart of gold in her personal dealings: self-effacing, easy-going, kindly in word and deed, and never infected with fits of arrogance that often touch the star performers in our profession."

Selby displays those traits when she speaks of the important lessons she has learned in her legal career. One of the most useful things a partner taught her in her early days of practice was simply to stay in close contact with the people she works with and for.

"He told me that it's important to return your phone calls, return your messages, and just stay in touch, and that always stayed with me. You can write a brilliant brief or a stunning argument, but if you are not in close contact with your client, you are not doing your job. Likewise, if you do not have constant and vital communication with colleagues, you can be doing the best work on earth but you won't be serving others' needs and you won't be as effective. I bring that view with me to the court."

Another lesson Edwards taught her remains one of her most vivid memories of Law School. "I was writing something for him and having a really hard time producing something I was satisfied with. He sat me down and made me understand the importance of allowing the appropriate environment in which to write — a quiet place with no distractions. He helped me to understand that's not an option, it's a necessity in my particular case. I still carry that with me and still try to write in those conditions," she said, acknowledging with a laugh that in a firm or in state government, those quiet spaces have been scarce.

Still, she has found time and space to write several articles on health care legal issues, while remaining active in bar associations and community organizations. She serves on the boards of the Indianapolis Ballet Theater and Museum of Art, Indiana University/Purdue University at Indianapolis, the Visiting Nurse Service, Big Sisters of Central Indiana, Inc., and more. Topping her long list of professional and community roles are two more: wife and mother. Husband Bruce Curry and daughter Lauren, 9, were both on hand to proudly help her into her robes as she took on her newest role.

After a few months on the court, Selby is busily writing opinions and adjusting well to her new role. "Fundamentally, the life of a judge is different than that of a lawyer or someone serving in an executive role. I'm using many of the same skills, but they are brought to bear in a different way. Judging, as opposed to advocating, involves thinking in broader ways than if focusing on a client's needs," she says.

Selby is the third member of her family to earn a law degree at the University of Michigan; her father Ralph graduated in 1954 and her brother Earl in 1978. While in Law School, she was an instructor in the Writing and Oral Advocacy Program, and worked at the library; she also taught a course called Women and the Law in the College of Literature, Science and the Arts.

At an alumni luncheon in Indianapolis with Dean Jeffrey Lehman this spring, a video-inspired flashback reminded Selby of how her Law School experiences have served her. When the Dean showed a video of the school that includes scenes from Professor Yale Kamisar's class today, "I felt like I was right back there in his class again," she said. "I remembered thinking even at the time what an important experience it was to be able to be part of this great thinker's class, as tough as it might have been. I always thought the experience gave me some added measure of confidence in constitutional analysis. The thought process we learned then is always fresh, and many of the same questions we addressed then are debated today."

LQN

Dubin analyzes O.J. case

Larry Dubin

Lawrence Dubin, J.D. '66, a professor of law at University of Detroit-Mercy School of Law, has been serving as an on-air analyst for the O.J. Simpson homicide trial for WJBK–TV 2 in Detroit.

He watches the majority of the live trial coverage, often from the TV2 studio, and goes on air during breaks in the trial to give his impressions. "That's more TV than I usually generally advocate watching, but part of analyzing the trial is to be able to watch closely enough that you're not merely commenting on other news reports," he says. "I attempt to view the evidence as it is admitted and to analyze the legal issues that come forth, recognizing that the outcome is still uncertain. I'm hoping that the jury makes the most rational decision based on the evidence."

Dubin has been a legal analyst for Detroit television stations since 1978. He also has produced a number of documentaries on legal topics for public television. He fears that the O.J. trial is making people cynical about the criminal justice system, and that the media coverage isn't helping. "The media has perhaps not done a good enough job in educating people about the realities of the criminal justice system. Instead of encouraging people to arrive at premature conclusions by publishing the results from various opinion polls, the media should be helping viewers and readers understand that the purpose of the trial is to wait until the evidence is presented before reaching judgment."

Dubin, who has taught evidence, trial practice, legal ethics, and civil procedure for twenty years, says the case is serving up plenty of issues he can use instead of hypotheticals in the classroom, because students are somewhat familiar with them.

Lewises receive Learned Hand Award

Kathleen McCree Lewis and David Baker Lewis have won the Learned Hand Award in Human Relations.

The award, presented by the American Jewish Committee's Institute of Human Relations, honors these two individuals for their demonstrated commitment to preserving human rights and our democratic heritage.

The couple was honored at a dinner May 22 featuring keynote speaker Cornell West, a noted author, philosopher, and Harvard University professor of religion and Afro-American studies.

Kathleen McCree Lewis, J.D. '73, is a partner in the Detroit office of Dykema Gossett specializing in appellate litigation. She also is co-chair of the American Bar Association Section of Litigation Appellate Practice Committee and recipient of the Wayne County Neighborhood Legal Services Pro Bono Award. She is the daughter of Wade McCree, a former U.S. Solicitor General and Law School professor, and Dores McCree, a student services associate at the Law School.

David Baker Lewis, J.D. '70, is the founding shareholder and chairman of the board of the law firm of Lewis, White and Clay. He specializes in municipal bond law. A member of several corporate boards, he is a life member of the Judicial Conference of the U.S. Court of Appeals for the Sixth Circuit. Lewis is a third-generation graduate of the Law School.

The couple shares an active involvement in both community and legal organizations. Both are trustees for Detroit's Center for Creative Studies, fellows of the American Bar Foundation, and lifetime members of the NAACP.

Kathleen is a trustee of Greening of Detroit and a past trustee of Children's Hospital of Michigan. Since 1991, she has been a commissioner of the City of Detroit Civic Center Commission.

David is a trustee of the Michigan Opera Theater and a member of the board of directors for Music Hall Center for the Performing Arts and the Detroit Symphony Orchestra, Inc. He also is an active member of the boards of the National Conference of Christians and Jews and the SEMCOG - Regional Development Initiative Oversight Committee.

PHOTO COURTESY OF AMERICAN JEWISH COMMITTEE

Kathleen McCree and David Baker Lewis

Barrie Loeks' crazy career

— BY TONI SHEARS

Barrie Lawson Loeks' career is a testimony to the idea that being nice pays off.

IN THE LATE 1980S, BARRIE LAWSON LOEKS, J.D. '79, and her husband Jim built a theater chain in Detroit that featured "Star" service for every customer. At their Star Theaters, the Loeks insisted that each moviegoer was welcomed and thanked. They paid employees more than average and made sure staff was well-trained. They instituted a "next-in-line" policy that guaranteed no one would wait for more than three minutes at the box office or the concession stand. They gave free drink refills, and after the show, they gave each customer a free mint.

In short, they made going to the movies a nice experience. Not surprisingly, customers came back. "We saw attendance in the Detroit movie market increase about 30 percent — at a time when nationally, attendance was very flat and at a time when Detroit was not a growth market *at all*," Loeks says.

Their customer-first philosophy was so successful that late in 1992, Sony Corp. made them co-chairpersons of Loews Theatres, the 900-screen chain now called Sony Theatres. "Here we were in a company with 500 employees and eight locations, and Sony wanted us to come run a company with 5,000 employees and 200 locations. They made us the proverbial offer we could not refuse, so we moved to New York."

Loeks is now the highest-ranking female executive in the theatrical exhibition industry and the top woman in the executive ranks of Sony. She handles legal and financial issues, budgeting, media and public relations, real estate development, and strategic planning. "I spend a lot of time on where to develop theaters, what to develop, how to structure it financially, and how to cull theaters from our circuit when they don't fit our strategic plan," she explains. "Jim handles theatre operations, film buying, and theater design."

While visiting the University to discuss her career and the future of movies with film students, Loeks told *LQN* about her unplanned trip to the top of the theater exhibition industry. Jim's father, Jack Loeks, pioneered drive-in movies in Grand Rapids, Michigan, but Barrie never intended to go into the family theater business. After graduating near the top of her law class, she clerked for Judge Engel in the Sixth Circuit, then practiced at Warner, Norcross and Judd in Grand Rapids. Before long, she says, Jim asked her to take a leave of absence to help build theaters for his family's company.

"After a couple of years, Jim and I branched out on our own. We took a third mortgage on the house, sold stock to all my ex-associates in the law firm, pledged my dog and my first-born child to the bank to raise money, and built our first theater all by ourselves with a lot of help from our friends. Thank God it was successful or I would have no friends and no place to go," she said with a laugh.

That first theater opened in Rochester Hills, Michigan, in 1985. A second one soon followed in Lincoln Park. Both were thriving when the Loews chain, then owned by Columbia Pictures Entertainment, started to look at expanding into the Detroit market. Columbia, in turn, was owned by Coca-Cola Co. "We weren't happy about Loews competing

Barrie Lawson Loeks, shown with movie equipment of the past, is building theatres of the future.

with us, and we sold Coke in our theaters. So we explained to Coca Cola how we just couldn't see fit to sell Coke when their company was about to build across the street from us," she says. This planted the seed that ultimately blossomed into a fifty-fifty joint venture with Columbia. "This venture we cooked up was a crazy idea because one half was Jim and me, and the other half was Columbia Picture Entertainment, this huge multi-billion dollar conglomerate, and we both had to agree on major decisions. Every lawyer and business advisor I talked to told me I was out of my mind," she recalls.

Nonetheless, with Columbia's capital, the Loeks built more theaters in Detroit and West Michigan. "We had a tremendous amount of success. Our theaters became famous in the industry, for a couple of reasons. One is that we were doing things everyone else thought were crazy: above market wages and percentage pay for the theatre staff, free refills, free mints and free Cokes when we failed to deliver next-in-line service. More important, people really took notice of the kinds of grosses we were generating in Detroit. Our Detroit-area Star Theatres are among the top-performing theatres in the entire country, which attracts a great deal of notice.

"So we built a lot of theaters and we had a lot of fun, and life was very good," she recalls. Coca Cola sold Columbia Pictures, and suddenly Sony owned half their chain, but still life was good, and the Loeks continued to build more theatres for their joint venture. Then

"This venture we cooked up was a crazy idea because one half was Jim and me, and the other half was Columbia Picture Entertainment, this huge multi-billion dollar conglomerate, and we both had to agree on major decisions. Every lawyer and business advisor I talked to told me I was out of my mind."

— BARRIE LAWSON LOEKS

Sony decided that this talented, successful team should run the entire national theater chain.

Clearly, Sony wasn't crazy. Loeks uses that word often when describing her unexpected career path, but she talks sane, sensible business when discussing her industry. She quickly rattles off statistics to prove that despite competing new entertainment options like the home video rental market, cable television, and on-demand in home movies, the theater business continues to grow. Those media won't kill the movies, she explains; rather, they provide an aftermarket for movies, and their success depends on how well a film does in the theaters.

Moreover, Loeks points out, "We're catering to the people who want to go out. One reason they go out is that they want to see the film first. But I think a more important reason is what I call the 'tribal campfire' phenomenon. Since the dawn of man, people have been coming together in a dark place to share stories. The sharing element of that experience is absolutely key."

Although (ideally) people in the theater aren't talking, they are sharing belly laughs or tense gasps which enrich the experience. "Try watching *Dumb and Dumber* in a screening room versus a packed house. In a crowded theater, there is a lot of laughter and it's infectious. In a screening room alone, you just aren't going to laugh at that stuff. It's a different experience."

At Sony, as in their own chain, the Loeks are making sure people have a good time when they go to the movies. The first thing they did at Sony was write money into the budget for the "mint man," the wooden figure that holds the candy bowls at each theater. Then they visited each location and put in place their famous, specific service goals.

They also are building more deluxe theaters, including a dazzling new flagship for the chain on Broadway. The elaborate twelve-screen complex boasts the only 3-D IMAX screen anywhere in the country. "This is the theme park of theaters," Loeks says proudly. "This is the theater that everybody in the business wants to build and I got to build it."

The decor — all gilt and exotic carvings and hundred-foot murals — is a tribute to the great Loews theaters of the past, but the theater boasts the technology of the future. Every auditorium has digital sound and rocking seats. The premier auditorium features a balcony, gilded elephants, and a light show as the Austrian curtain rises above the sixty-five foot curved screen. In the IMAX theater with its eight-story high screen, viewers wear liquid crystal headsets operated by infrared signals transmitted from the projector. The 3-D effects work so well that in a film about life under the sea, "it looks like the fish are literally swimming around your head. You go in to the auditorium and there are 500 people in there with these goofy headsets on, all doing this," she says, reaching out to touch the invisible fish. "I've taken Steven Spielberg, Michael Eisner, everybody in the industry through this and they all do it."

The IMAX theater is usually sold out, and Loeks is looking forward to building more in other cities; meanwhile, Sony is building six to ten more conventional complexes a year.

When she joined Sony, Loeks noticed immediately that she was almost always the only woman in the room. That doesn't bother her because that's often been the case throughout her career. "In our business in theater exhibition, there really have been very few women, other than the ones I've hired, in senior positions. I can't say, however, that I've made a conscious effort to hire women. I'm a great believer in meritocracy and I certainly believe that the two very senior women I've hired were without question the best candidates for the job."

Loeks also never consciously planned to be a business partner with her spouse of nineteen years. "That was his plan, not mine," she smiles. Both work tremendous hours under tremendous pressure, but the partnership works because "we have totally opposite, complementary skills, so there is no competition, and we happen to love each other," she says.

She admits that their jet-set life at this level in the entertainment industry can be rather bizarre. For instance, Sony Theatres has formed a partnership to develop theatres in minority communities with Magic Johnson. The former Los Angeles Laker insisted the Loeks bring their 9-year-old daughter Jamie to a dinner party he was hosting with another basketball great, Patrick Ewing. "Now Magic is promising Jamie that he's going to come and coach her basketball team someday, and she's telling all her friends this!" Loeks says, bemused.

All this seems a long way from their former home in a small town outside Grand Rapids. Loeks says quite frankly that when Sony approached them with the co-chairmanship, she saw the offer as a disruption to their wonderful life, but they decided to take the risk. "I've found out that making such a radical change isn't such a terrible thing. We had a wonderful time running our own company in Detroit. Now we're running Sony Theatres and having fun. I've met a lot of very interesting people and, much to our surprise, our whole family absolutely loves living in New York. Jim and I get to bring our vision of what movie-going should be to the whole country and really affect significant change in an industry we love, which is really gratifying."

LQN

TOM MATTHEWS PHOTOGRAPHY

Meeting the dean — *Graduates from all around the nation had an opportunity to meet Jeffrey S. Lehman at a series of events designed to introduce the new dean. Since October, more than 500 graduates attended events held in Chicago, Los Angeles, Washington, Birmingham (Michigan), Detroit, Cleveland, New York, Indianapolis, San Francisco, Milwaukee, and Honolulu. At each event, Lehman shared the Law School's current agenda for growth and renewal. He also listened and learned from alumni as they discussed how the practice of law has changed during the last decade and how legal education might evolve in the next decade. Here, he is shown chatting with William C. Pelster, J.D. '67, left, and Jeffry N. Grabel, J.D. '71, right.*

Argentine ambassador — *Emilio J. Cardenas, M.C. L. '66, the Argentine Permanent Representative to the United Nations, chatted with students after his talk on U.N. peacekeeping and human rights intervention. Cardenas said he was "a standard lawyer, not a career diplomat" who was surprised and honored to be named ambassador for his country.*

Class *notes*

1941

Ralph C. Wilson, owner of the Buffalo Bills, permanently endowed a sports scholarship at Canisius College with a $500,000 gift.

1951

George Bushnell received the Thomas M. Cooley Law School's Louis A. Smith Distinguished Jurist Award.

George J. Slykhouse now is of counsel to the Grand Rapids, Michigan firm of Miller, Johnson, Snell & Cummiskey, P.L.C. Formerly with Miller, Canfield, Paddock & Stone, he brings to the firm forty years of experience in the areas of corporate law, estate planning, and real estate.

1952

George Skestos was appointed to the board of directors of the Midland Life Insurance Co. and Huntington Bancshares Inc., and reelected to the board of trustees of the Wexner Foundation.

1953

James W. Callison was elected to the board of Allied Life Financial Corp. He also was named trustee of the Atlanta Historical Society.

Judge Warren K. Urbom, a U.S. senior district judge for the District of Nebraska, has received the annual Lewis F. Powell Jr. Award for Professionalism and Ethics. The award is bestowed by the American Inns of Court Foundation for exemplary service in the areas of legal excellence, professionalism, and ethics.

1957

Livingstone M. Johnston was honored as the third recipient of the Susan B. Anthony Award, presented by the Women's Bar Association of Western Pennsylvania.

Friedrich K. Juenger gave an Eason-Weinmann Lecture entitled "Comparative Law for the Twenty-First Century: The Need for a Comparative Approach to Transnational Problems" at Tulane University in April. Juenger was a visiting professor of law at the University of Michigan Law School in the fall 1994 term.

1958

Bernard J. Kennedy was named this year's winner of the Service to Mankind Award of the Western New York Chapter of the Leukemia Society of America.

Robert Luciano was reelected to the board of Merill Lynch.

1959

Alan J. Flink has been named chair of the New York State Bar Association's 1,000-member Corporate Counsel Section. He is operating vice-president and assistant general counsel of Federated Department Stores, Inc.

Wolfgang Hoppe, a former senior partner of Miller, Canfield, Paddock and Stone in Detroit, is now a U.S. Foreign Service officer stationed in Abidjan, Cote d'Ivoire. He serves there as one of two U.S. Agency for International Development regional legal advisers at the Regional Economic Development Services Office for West and Central Africa. His client USAID missions include those in Benin, Burkina Faso, Ghana, Guinea and Liberia.

Louis Perlmutter received an honorary degree from Brandeis University in honor of his service as chairman of its board of trustees.

1961

Calvin A. Campbell Jr. of Illinois recently was named director of Acheson Industries Inc. in Port Huron, Michigan, and of Eastman Chemical Co. in Kingsport, Tennessee.

Lewis G. Gatch has opened an estate planning law practice in Traverse City, Michigan. He also hosts a call-in radio show called "Everybody's Planning Hour" on Saturday mornings on WTCM-AM, and maintains an estate planning practice in Cincinnati.

Linscott R. Hanson published his third book, *The Illinois Limited Liability Company System*, in both electronic and printed forms in October 1994. The publication includes a computer diskette which enables lawyers to generate automatically all the forms needed to organize and operate a limited liability company in Illinois. In addition to his practice as a partner in the firm of Di Monte Schostok & Lizak, Hanson is Chief of the Illinois Nation and a member of the Shawnee Tribe of YMCA Indian Guides.

Jack D. Hunter, LL.B., was recently elected president of the Association of Life Insurance Counsel. He is executive-vice president and general counsel of Lincoln National Corp.

Robert L. Jillson has left Squire, Sanders & Dempsey, where he was managing partner of the Brussels office for twelve years, to establish his own firm with offices in Brussels and Bratislava, Slovakia.

1962

Morrison L. Heth of Loveland, Colorado, retired in 1993 after twenty-three years as head of the trust department of a local bank. He has opened a law office concentrating on wills, trusts, estate planning, and taxes. He also is governor of the Rotary District 5440, which includes Wyoming, northern Colorado, and western Nebraska.

1963

Stuart T. K. Ho was reelected to the Gannett board of directors.

D. Michael Kratchman has joined the firm of Rubenstein Plotkin, P.C., as of counsel. He also has founded Woodward Mediation, Inc., a company specializing in valuation mediation.

1964

J. Theodore Everingham recently established a corporate, finance, and business law practice in Grosse Pointe Woods, Michigan. He previously was a partner at Dykema Gossett PLLC in Detroit.

William Hutton joined the firm of Coblentz, Cahen, McCabe & Breyer after a twelve-year partnership at Howard, Rice, Nemerovski, Canady, Robertson, Falk & Rabkin.

1965

Jon Henry Kouba, appointed a commissioner of the San Francisco Redevelopment Agency in 1993, was recently elected to his second term as president of the agency.

Mark E. Schlussel, a general commercial and transactional lawyer formerly with Miller, Canfield, Paddock and Stone, has joined the firm of Pepper, Hamilton & Scheetz.

John J. Ursu, vice-president for legal affairs and general counsel at 3M, has been elected to the board of trustees at William Mitchell College of Law. He taught antitrust law as an adjunct faculty member at the college from 1978-82.

1966

Eugene F. Dattore now is senior vice-president and assistant general counsel for Bank of America. He is responsible for the bank's legal matters in Nevada.

Barbara E. Handschu was elected the first woman president of the New York Chapter of the American Academy of Matrimonial Lawyers. She has almost thirty years' experience in all aspects of family law, and is a past chair of the New York State Bar Association's Family Law Section.

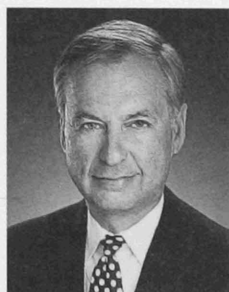
Jimmy Hoffa Jr. was selected by Teamsters Union dissidents to run for president of the union against incumbent Ron Carey in the 1996 election.

Robert M. McSweeny has been appointed executive director of Senior Peer Counselors, a national nonprofit organization that recruits and trains senior volunteers to help their peers deal with the problems of aging that are not always addressed by medical and social service agencies. The organization is headquartered in Tigard, Oregon.

Ronald Olson was elected to the board of SCEcorp and its subsidiary, Southern California Edison. He also was named chairman of the board of overseers of Rand's Institute for Civil Justice.

Sam Zell was named chairman and chief executive officer of Manufactured Home Communities, Inc. He replaced **Randall Rowe, '82.**

1967



A. Vincent Buzard of Rochester, New York, has been elected to the New York State Bar Association's executive committee. As the immediate past president of the Monroe County Bar Association, he was awarded its Adolph J. Rodenbeck Award in May. The award recognizes his efforts as president to implement programs that would improve the understanding of the legal system and lawyers' role in it.

Frank Grossi, formerly the chairman of the Litigation, Labor and Regulatory Practice Group at Katten Muchin & Zavis, has left the firm after eighteen years to join the of Bates Meckler Bulger & Tilson as a partner in its expanding litigation area. He practices general litigation, labor, intellectual property, environmental, customs, and international trade law.

Richard McLellan will serve as president of the board of directors of the Library of Michigan Foundation in 1995. He is the managing partner of Dykema Gossett's Lansing office. **Hicks Griffiths, '40,** recently was reelected vice-president of the board. He is a former judge.

Ronald A. Rispo has been elected director of the Defense Research Institute, the nation's largest association of civil litigation defense lawyers. Rispo is a partner at the Cleveland law firm of Weston, Hurd, Fallon, Paisley & Howley. He specializes in insurance, general negligence, medical malpractice, and product liability law.

1968

David J. Callies, a professor at the University of Hawaii William S. Richardson School of Law, was appointed to the school's newly established Benjamin J. Kudo Chair of Law. The chair supports a scholar in land use, environmental, or administrative law. Callies, an expert in land use planning, was the unanimous choice after a national search to fill the chair.

Robert M. Dubbs has been appointed vice-president and general counsel for Albert Einstein Healthcare Network. He will be responsible for the oversight of all legal affairs for the network, a 1,000-bed system and an associated 200-member provider group across Pennsylvania, New Jersey, and Delaware.

Patrick Becherer has left Crosby, Heafey, Roach & May after twenty-two years to open a new firm called Becherer, Beers, Murphy, Kannett & Schweitzer.

1969

Arnold Nemirow was elected chief executive officer of Bowater Inc. He has been president and chief operating officer of Bowater since joining the company in September 1994.

Jerry Singer has been named the first general counsel of the American Museum of Natural History in New York City. He is an authority on the law of antiquities.

1970

Michael Grebe is chairing a committee that will manage operations at the 1996 Republican Convention in San Diego. He also is president of the University of Wisconsin Board of Regents.

CLASS *notes*

David C. Nicholson, a partner in the Atlanta-based firm of Powell, Goldstein, Frazer & Murphy, has been named chairman of the firm's Commercial Real Estate Group. He has practiced continuously with the firm since graduation from Law School.

1971

Frederick L. Feldkamp has joined the firm of Butzel Long as of counsel. His primary areas of practice include financial services, mergers and acquisitions, bankruptcy, securities, and general corporate law. He will be working with the firm's Transactions and Finance Group. He will also continue to serve as president and principal consultant for Bay Consulting, Inc., a firm he formed to advise clients on financial structuring.

David LeFevre is governor of the Tampa Bay Lightning, a National Hockey League team. Among sports franchises nationally, the team is second only to the Phoenix Suns in growth of its value.

Robert E. McFarland has been elected treasurer of the executive committee at the Lansing, Michigan firm of Foster, Swift, Collins & Smith, P.C. **Gary J. McRay**, '72, has been reelected president.

1972

Martin Fleisher joined the firm of Rubinstein & Perry. He formerly was a senior partner at Keck, Mahin & Kate.

Chuck Ludlam is now vice-president for government relations of the Biotechnology Industry Organization, the trade association that represents biotechnology companies. He is responsible for legislative and regulatory policy issues. He joined the organization after twenty-two years in government, including sixteen years on Capitol Hill and two on the Carter White House staff. He is married to a fellow former Peace Corps volunteer, Jill Hirschoff.

Joseph Norton, a professor of business and banking law at Southern Methodist University, now holds a chair at Queen Mary's College in London. He also is head of the Banking Law Unit at the Centre for Commercial Law Studies there. He is the author of numerous publications on international banking; most recently, he published *NAFTA: A New Framework for Doing Business in the Americas.*

Barbara Rom has been elected president of the Detroit Bar Association. During her tenure, she plans to lead the group in efforts to address the public's concerns with and distrust of the American judicial system.

William B. Wilson has been appointed chair of the Florida Property and Casualty Joint Underwriting Associations. These "last resort" property insurance pools, created in the wake of massive hurricane damage, are now the third-largest provider of property policies in the state. Wilson also is president of Maguire, Voorhis & Wells, one of the largest law firms in Orlando.

1973

Timothy T. Fryhoff recently published an article in *Laches,* the journal of Michigan's Oakland County Bar Association, warning that business lawyers face several hazards if they assist their clients in divorce cases, most notably the loss of the client. Fryhoff is a shareholder of Buesser, Buesser, Black, Lynch, Fryhoff & Graham, P.C. in Bloomfield Hills, Michigan.

Donald Hubert was elected to the post of first vice-president of the Chicago Bar Association. When he automatically becomes president in June 1996, he will become the second African American to head the association.

Nicholas Sokolow has left Coudert Brothers to open a new nineteen-attorney office in Paris associated with Arent, Fox, Kintner, Plotkin & Kahn's office there.

1974

Norma Ann Dawson has opened a business, corporate, personal injury, and real estate practice in Los Angeles. She is a judge pro tem for the Culver City Municipal Court and the Los Angeles Superior Court Small Claims Appeals.

Richard A. Polk has become a partner in the firm of Mason, Steinhardt, Jacobs & Perlman in Southfield, Michigan.

1975

Diane L. Kaye has been named vice-president, general counsel, and secretary of Federal-Mogul Corp., a manufacturer and global distributor of precision parts for passenger, freight, farm, and construction vehicles. Kaye will be responsible for the corporation's legal activities as well as environmental, safety and health, and governmental affairs. She previously was divisional counsel for General Motors' Buick and Cadillac divisions.

Jonathan Raven will be president of the new company formed by the merger of NuVision Inc. and American Vision Centers Inc.

1976

Gregory Anderson was appointed district judge of the Seventh Judicial District of Bonnevile County, Idaho.

Stephen L. Burlingame has been elected to the board of directors and to the office of vice- president at the Lansing law firm of Fraser Trebilcock Davis & Foster, P.C. He practices in the areas of health care, real estate, and business law.

Maryjo Cohen was ranked forty-first in Working Woman magazine's "Fifty Top Women Business Owners" list. She is president and chief executive officer of National Presto Industries and owns 22 percent of the company.

Patrick E. Mears has authored the second edition of *Bankruptcy Law and Practice in Michigan*, published by the University of Michigan's Institute of Continuing Legal Education. He has updated this practice manual to reflect major amendments to the federal bankruptcy code.

Pamela L. Gellen left Johnson & Bell to form Lowis & Gellen, Chicago's first majority woman-owned defense litigation firm. The firm defends hospitals, physicians, and other public and private entities in medical malpractice, personal injury, product liability, and commercial litigation.

1977

Larry Elder hosts a conservative radio talk show on KABC–AM in Los Angeles that is now L.A.'s highest-rated program in its time slot.

Susan Gerrits has been appointed general counsel and secretary to the Oakland University Board of Trustees.

Charles F. Timms Jr. has left the firm of Heller, Ehrman, White & McAuliffe to join LeBoeuf, Lamb, Green & MacRae. He will continue his practice in environmental regulation matters at the firm's Los Angeles office.

Katherine Ward, formerly of the London office of Pepper, Hamilton & Scheetz, has formed a new firm of McFadden, Pilkington & Ward, with offices at the same location in London.

David Westin, president of the ABC Television Network Group, was recently profiled in the Detroit Free Press as "one of the most powerful executives in television." He also was profiled in the *Pittsburgh Post-Gazette.*

1978

Carol Grant was appointed by the governor of Rhode Island to a board charged with developing strategies for statewide economic growth. She is vice-president of NYNEX Rhode Island.

Darrell A. Lindman has been elected to the board of directors and the office of president at the Lansing law firm Fraser Trebilcock Davis & Foster, P.C. He practices in the area of employee benefits.

Former Law School Assistant Professor **Dennis E. Ross** was elected chief tax officer of Ford Motor Co. He previously was at Davis Polk & Wardwell.

1979

Among the alumni transforming telecommunications are **John McCullough III** and **Samuel Press**. Press represented the Department of Public Service in negotiation and approval of the Vermont Telecommunications Agreement with NYNEX. This agreement capped local service prices and allowed limited deregulation of toll. McCullough represented the Vermont Low Income Advocacy Council in proceedings which rejected the extended version of the agreement. **Richard Saudek, '62,** represented the public in both cases. McCullough and Press have since been named to the Vermont Workgroup on Competition and the Electric Industry.

Charles A. Janssen has been elected chairman of the Labor & Employment Law Department at the Lansing, Michigan firm of Foster, Swift, Collins & Smith, P.C.

Paul Pratt of Lansing, Michigan was elected to the Ingham County Board of Commissioners in November 1994 in his first try for public office.

William Weintraub left the firm of Murphy,Weir & Butler to join the San Francisco-based firm of Reuben, Weintraub & Cera as a name partner. He continues to specialize in business reorganizations, bankruptcy, and general commercial litigation. He also is the chair of the California State Bar Committee on Debtor/Creditor Relations and Bankruptcy.

1980

Todd Anson was appointed head of the twenty-two attorney real estate practice at the firm of Brobeck, Phleger & Harrison in San Diego, California.

Janet R. Davis has joined the Chicago law firm of Bates Meckler Bulger & Tilson as a partner in its Professional Liability Department. She specializes in insurance coverage and architect and engineer liability.

Iris K. Socolofsky-Linder has been elected to the Board of Trustees and to the office of secretary for the Lansing law firm of Fraser Trebilcock Davis & Foster, P.C. She practices in the areas of business and corporate planning, franchise law, and securities law.

1981

Mikel R. Bistrow, a partner at Luce, Forward, Hamilton and Scripps in San Diego, has been elected to the firm's executive committee.

Bonnie Dixon was named partner at Schulte Roth & Zabel, where she practices in the areas of finance and equipment leasing.

1982

Thomas Albin was featured in a September 1994 *New York Times* article about raising bilingual children. Albin speaks only French at home to his daughter Margot, 4, and son Phillippe, 2. He is a partner at the firm of Embry & Neusner in Groton, Connecticut.

Kirk D. Messmer has become of counsel at the Chicago firm of Matkov, Salzman, Madoff & Gunn.

Randall Rowe left Manufactured Home Communities Inc. to become managing director and chief executive officer of Equity Merchant Banking Partners Inc.

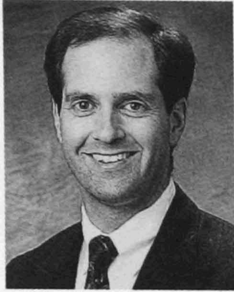
Lawrence Savell was awarded a 1994 Certificate of Merit by the American Bar Association's Standing Committee on Gavel Awards for his "Old Cars in Law" legal column in *Car Collector* magazine. Savell, who practices with Chadbourne & Parke in New York City, also is the legal columnist for *Golf for Women* magazine. He also published a humorous article in the *National Law Journal* in April advocating simplification of rules in the Bluebook, *The Uniform System of Citation.*

David Tachau and two partners have formed a new civil litigation firm, Tachau Maddox & Hovious PLC, in Louisville, Kentucky. In 1994, he sat as a special justice on a case before the Kentucky Supreme Court. He and his wife, Susannah Woodcock, have a daughter, Anna, 4, and a son, Will, 3.

1983

Donna L. Bacon has been elected vice-president, general counsel, and secretary for JPE Inc., an Ann Arbor-based manufactureer and distributor of automotive and truck components. Formerly, she was general counsel and secretary for the MEDSTAT Group, a health care information company.

Class *notes*



Justin H. Perl has been appointed to the governance committee of the Minneapolis firm of Maslon Edelman Borman & Brand. Perl is a partner focusing his practice in the areas of general commercial litigation, complex transactional disputes, business torts, and family law.

Melissa B. Rasman has been named senior vice-president of the Philiadelphia office of Hay/Huggins Co., the benefits and actuarial division of the Hay Group, one of the world's largest human resources management consulting firms. She will manage the technical research department.

1984

James M. Loots has joined the firm of Levi Perry Simmons & Loots, P.C., as a principal. The Washington, D.C. firm concentrates on small business, franchise, and employment law. Loots recently was a featured speaker at the International Franchise Seminar in Dubai, United Arab Emirates.

David L. Marshall has been elected to the partnership of the firm of Baker & Hostetler. He concentrates his practice in tax and personal planning in the firm's Washington, D.C. office.

Rob Portman, U.S. Representative for the Second District of Ohio, was named Legislator of the Year by the National Association of Counties. He was one of two Congressmen so honored for their efforts leading to Congress' passage of unfunded mandate reform.

Wayne M. Smith was elected a partner in the Los Angeles office of Graham & James. His practice is devoted primarily to intellectual property litigation.

Paul Weber became counsel to the firm of Chadbourne & Parke. He concentrates his practice in project finance and corporate law.

1985

Steven L. Brenneman has become a partner at the Chicago firm of Matkov, Salzman, Madoff & Gunn.

Norman Hawker has accepted a tenure track position as an assistant professor of commercial law at Western Michigan University's Haworth College of Business.

Barbara A. Kaye was elected to the senior membership at Dykema Gossett PLLC. She specializes in mergers, acquisitions, joint ventures, and securities work in the firm's Detroit office.

1986

Richard N. Drake has been elected partner at the Cleveland firm of Hahn Loeser & Parks. He focuses his practice on business and corporate law, financial services, and banking law. Since January 1994 he has been co-chair of the firm's Middle Market Business Practice Group.

Megan P. Norris has become a principal of the firm of Miller, Canfield, Paddock and Stone, P.L.C. She practices employment litigation and labor law at the firm's Detroit office.

David Purcell will earn a doctoral degree in clinical psychology from Emory University this summer. He recently won an award for distinguished contributions to community service from the American Psychological Association. He was honored for founding a nonprofit organization that provides free mental health counseling to HIV-positive individuals. Last year he served as president of the organization, which now has five employees and a budget of $200,000. Purcell credits his legal experience from three years with an Atlanta law firm for helping him in both the formation of the organization and the pursuit of his psychology degree.

Wade W. Parrish recently was promoted to the rank of lieutenant commander in the U.S. Naval Reserve Judge Advocate General's Corps. Out of uniform, he serves as a trial attorney with the U.S. Department of Justice, Tax Division, Criminal Enforcement Section.

Howard Charles Yourow, LL.M. '86, S.J.D. '93, recently published *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence* (Nijhoff, Spring 1995).

1987

David C. Berry has been named a partner in the Boston firm of Testa, Hurwitz & Thibeault. He concentrates his litigation practice on intellectual property, environmental law, and commercial disputes.

Susan Bragdon is the legal advisor for the Convention on Biological Diversity in Geneva, where she works with **David Downes, '88**. The convention explores how governments can regulate access to genetic resources and share benefits that derive from their use.

Howard M. Camerik has become shareholder of the Miami/Fort Lauderdale firm of Ruden, Barnett, McClosky, Smith, Schuster & Russell, P.A.

Sally J. Churchill was named partner at Honigman Miller Schwartz and Cohn. She practices environmental law at the firm's Detroit office.

James Dworman now is a shareholder in the firm of Dean & Fulkerson, P.C. in Troy, Michigan. He practices commercial law.

Carol Shuman Portman has joined WMX Technologies Inc. in Oak Brook, Illinois, as tax counsel. She and her husband **Chris**, also an '87 graduate, have a 2-year-old daughter, Erin.

Bruce E. Rothstein now is of counsel to the law firm of Braumiller & Rodriguez, L.C., in Dallas. Two of the three other attorneys in the firm are also Law School graduates from the class of 1988: **Jose Oscar Gonzalez** and **Ruth R. Rodriquez.** The firm practices customs and international litigation law.

1988

Gabriel J. Chin received his Master of Laws degree from Yale Law School in May 1995. He now is an assistant professor on the faculty of Western New England College School of Law where five other Law School graduates teach: **Denis Binder, S.J.D. '73; Richard P. Cole, '69; Scott W. Howe, '81; Donald R. Korobkin, '83;** and **Barry Jeffrey Stern, '75.**

Ann Coulter was among thirteen conservative congressional staffers under age 40 named by the National Journal as "stars of tomorrow" likely to have future impact in Washington.

Maureen Darmanin was named partner at Clark Klein & Beaumont.

Carol A. Jizmejian was elected secretary of the Armenian-American Bar Association.

Crane Kennedy was named senior counsel of Tribune, the Chicago-based information and entertainment company.

Thomas H. Keyse has become a partner of the firm of Moye, Giles, O'Keefe, Vermeire & Gorrell. He practices in the areas of bankruptcy, banking and commercial law, and litigation.

1989

Martin B. Carroll has been named partner at the firm of Hefter & Radke in Chicago. His practice focuses on commercial litigation.

Randolph DelFranco is among the attorneys representing Orange County in the largest municipal bankruptcy in history.

Charles Vigil was made a partner at the firm of Rodey, Dickason, Sloan, Akin & Rob of Albuquerque, New Mexico. His practice focuses on commercial litigation, employment and labor law, and professional liability.

1990

Raymond E. Beckering III has joined the office of Larry C. Willey in Grand Rapids, Michigan, where he continues to practice criminal defense.

Laura Cook recently has been appointed deputy children's ombudsman for the state of Michigan. Previously, she was a governor's appointee to the Michigan Department of Social Services; one of her roles there was to work with the Governor's Task Force on Children's Justice.

Anthony J. Ettore and **Robert M. Goldberg** have left their respective firms and relocated to Atlanta, where they have formed their own practice specializing in small business law, environmental law, litigation, and general individual practice. They also started a company called KidSpeak, L.C. The only American franchise of an English company, KidSpeak teaches foreign languages to children ages 3-11 in extracurricular language clubs.

Jerry Gidiver is a senior attorney in the Toxics and Pesticides Enforcement Division of the U.S. Environmental Protection Agency. He is responsible for enforcing various federal laws controlling the use of these substances.

Charles McPhedran, an attorney with the U.S. Environmental Protection Agency in Philadelphia, has moved to Washington for a year to work for a judge specializing in environmental cases.

Matthew V. Piwowar has coauthored an article called "Commercial Paper Market Emerges in Poland" in the January 1995 *International Financial Law Review.* Piwowar lives in Warsaw with his wife Pam and daughters Amy and Julia. He practices in the Warsaw office of Dickinson, Wright, Moon, Van Dusen & Freeman, where he concentrates on international law, capital privatization, general corporate law, and commercial paper.

1991

Andrew M. Cohen has joined the Boston firm of Goodwing Procter & Hoar, where he will focus his litigation practice in the area of labor and employment law.

Robert Ellmann is completing his third and final year of his contract with Civic Education Project, a Yale University-based program which sends instructors to Central and Eastern Europe. He has been teaching the history of monetary standards and other economic courses in Lithuania, Hungary, and Slovakia. He also has lectured in Russia and Romania. He reports that he can be reached by electronic mail at this address: robert.ellmann@fm.uniba.sk

Karen J. Fellows has joined the Chicago firm of Matkov, Salzman, Madoff & Gunn as an associate.

Lawrence S. Gadd recently was appointed to the National Council of the Federal Bar Association. He is an associate at the firm of Harnisch & Associates P.C. in Bingham Farms, Michigan. He specializes in commercial litigation and white-collar criminal defense.

CLASS *notes*

Frank H. Wu worked as a campaign organizer for Californians United Against Proposition 187 and was a teaching fellow at Stanford University in 1994-95. This summer, he will join the Howard University faculty.

1992

Caran L. Joseph left the firm of Murphy, Smith & Polk to join Coffield Ungaretti & Harris. She practices in the labor and employment department.

Margaret B. McLean has been named the managing attorney for the Moscow office of the law firm of Holme Roberts & Owen LLC. She will manage four Russian attorneys and several expatriate attorneys from the United States and England.

Michael Mishlove served as a clerk for Judge Reuben Castillo, the first Hispanic federal judge in the state of Illinois, last summer. He is now clerking for Judge Walter J. Cummings of the U.S. Court of Appeals for the Seventh Circuit.

J. Daniel Plants has left the law firm of Sullivan & Cromwell to join Goldman, Sachs & Co. as a member of its mergers and acquisitions department in New York.

Stefan J. Scholl, formerly with the Bloomfield Hills firm of Beier Howlett, has opened his own law practice in Petoskey, Michigan.

Michael D. Warren Jr. joined the firm of Honigman Miller Schwartz & Cohn as a litigation associate. He joined the firm after a clerkship with Justice Dorothy Comstock Riley of the Michigan Supreme Court and an unsuccessful bid for the Michigan State Senate on the Republican ticket.

1993

Kristen M. Buchholz and **Lisa A. Dunsky** have joined the Chicago firm of Blatt, Hammesfahr & Eaton as associates. The firm specializes in representing insurers and reinsurers worldwide. Dunsky previously practiced at Shiff, Hardin & Waite and concentrates her practice in the areas of insurance coverage litigation and reinsurance matters.

Stephen T. Falk has joined the Ohio firm of Baker & Hostetler at its Columbus office.

Barry Y. Freeman has joined the Cleveland office of Ulmer & Berne. As an associate in the Property Group of the Litigation Department, he will be involved in insurance matters. He and his wife Karen are expecting their first child in July.

Dawn E. Gard has joined the Chicago firm of Jenner & Block as an associate.

Louis Orbach has joined the firm of Bond, Schoeneck & King, LLP as an associate in the firm's Syracuse, New York office. He is a member of the firm's litigation department. He previously was associated with Kirkland & Ellis in Washington, D.C.

1994

David A. Breach, J. Thomas Ferries, Steven E. Mellen, and **Erica Powers** all have joined the firm of Honigman Miller Schwartz and Cohn as associates.

Andrea L. Caplan recently joined the Chicago firm of Blatt, Hammesfahr & Eaton as an associate. Her practice focuses on environmental insurance coverage matters.

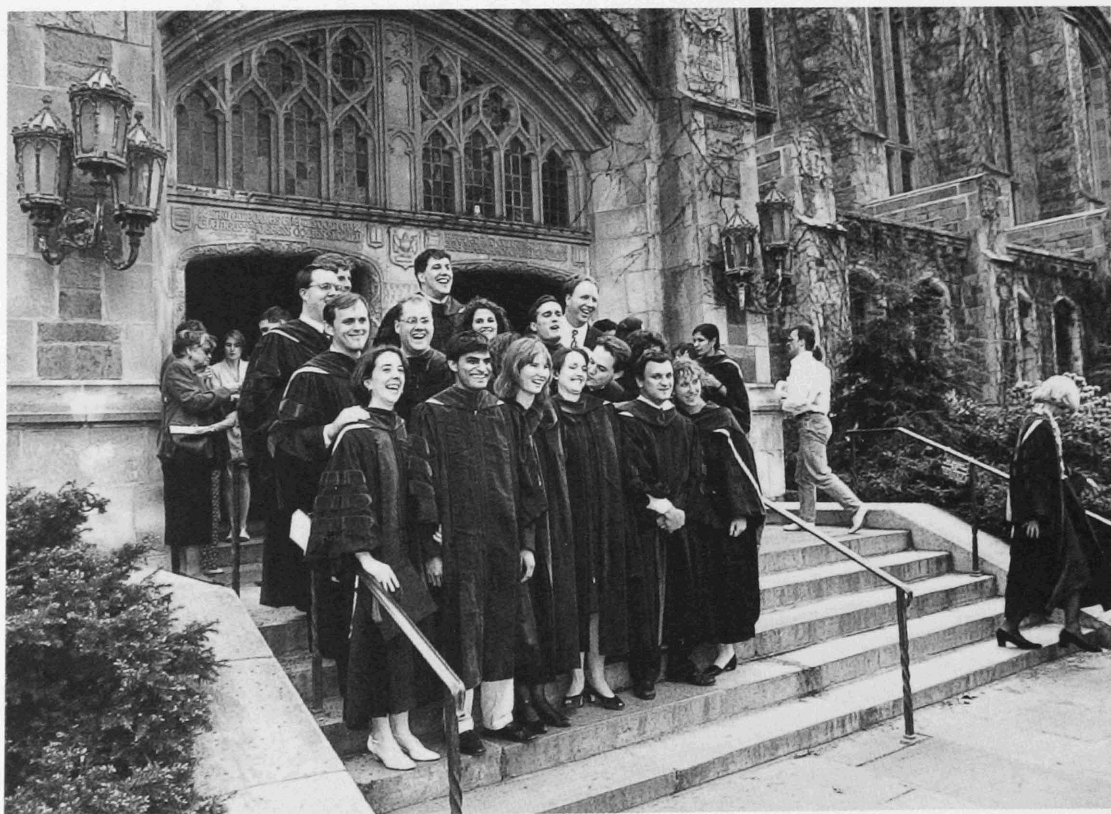
John Erthein has joined the law offices of Thomas E. Marshall, a small firm specializing in employment discrimination and municipal liability defense.

Jennifer T. Gilhool and **David A. Schwartz** have joined the Chicago firm of Jenner & Block as associates.

Pia Norman joined the firm of Holleb & Coff as an associate.

1995

Eric J. Gorman was awarded first-place honors and a cash prize in the State Bar of Michigan's Labor and Employment Law Section Law Student Writing Competition.



IN *memoriam*

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

'22	Edward J. Fletcher	Feb. 4, 1995
'25	Clarence M. Mulholland	Oct. 27, 1994
'26	Clifford A. Pedderson	March 1, 1995
'27	Leslie C. Putnam	Feb. 12, 1995
'28	Charles S. Bishop	Jan. 29, 1995
	John A. Spaeder	Aug. 31, 1994
'31	Paul H. Karr	Feb. 9, 1995
	Robert B. Romweber	April 21, 1994
'32	M. Robert Deo	Jan. 26, 1995
	Francis W. Kamman	
	Henry H. Nowicki	Dec. 1, 1994
'33	A. Lucius Hubbard Jr.	Dec. 21, 1995
	Homer Kripke	Jan. 26, 1995
	Albert L. Mathers	March 26, 1995
'34	William L. Humbarger	Oct. 3, 1995
'35	Robert N. Fauver	March 31, 1995
	James F. Preston	April 13, 1995
'36	L. Byron Cherry	Nov. 4, 1994
'37	The Hon. Dunbar Davis	Dec. 22, 1994
	Jack W. Korn	Dec. 19, 1994
'38	The Hon. Leland J. Propp	Sept. 4, 1994
	Gerald L. Stoetzer	March 5, 1995
'39	Philip McCallum	March 6, 1995
'40	Ira W. Butterfield	
	Robert A. Elliott	
	James Ritchie	Jan. 11, 1995
	George D. Thomson	March 5, 1995
	Leonard J. Wingert	
	G. Gordon Wood	Feb. 9, 1995
'41	Thomas W. Finucan	Jan. 3, 1995
	Alfred W. Hewitt	
'42	Ben J. Glasgow	Feb. 12, 1995
'46	Lewis M. Slater	Feb. 20, 1995
	John B. Stoddart Jr.	
'48	Henry A. Burgess	April 4, 1995
	William B. Whitlow	March 10, 1995
	John S. Winder	Dec. 16, 1994
'49	Vernon M. Fitch	March 10, 1995
	C. Richard Ford	Dec. 13, 1995
	William H. Gracely	March 7, 1994
	Frank E. Spencer	April 23, 1993
'51	Arnold Bunge Jr.	March 1, 1995
'52	Hon. John R. Milligan	Jan. 1, 1994
'54	Morton G. Gottesman	April 2, 1995
'55	Herbert Drucker	Feb. 21, 1995
'56	Paul A. Heinen	Feb. 26, 1995
'57	Gerald A. Fix	July 18, 1994
	Herbert J. Rusing	
'61	David C. Dethmers	May 1, 1995
	Hon. George N. Diamantis	March 12, 1995
	George E. Norman	Oct. 25, 1994
'62	John E. Hart	Jan. 29, 1995
'69	Hon. John W. Davis	Feb. 18, 1995
'75	Douglas A. Watkins	Dec. 3, 1994

U.S. District Court Judge Fong remembered

The Hon. Harold M. Fong, 56, chief judge of U.S. District Court in Honolulu, Hawaii, died April 20 from complications following emergency heart surgery. He was a 1963 Law School graduate.

A former U.S. attorney appointed during the Nixon administration, Fong was chief federal prosecutor in Hawaii from 1973 to 1978. He also served in the Honolulu city prosecutor's office and practiced in a private firm briefly early in his career.

A classmate, Stuart Ho, chairman and president of Capital Investment, said Fong made a significant impact in legal circles and would be missed: "In this day of cynicsm about lawyers and judges, this town — this state, I should say — genuinely mourned his passing. He was in every sense highly respected, enormously popular, and really set the standard for the bench.

Fong is survived by his wife Judy, and two sons, Michael and Terrence.

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 48109-1215. Send items by Internet e-mail to tshears@umich.edu

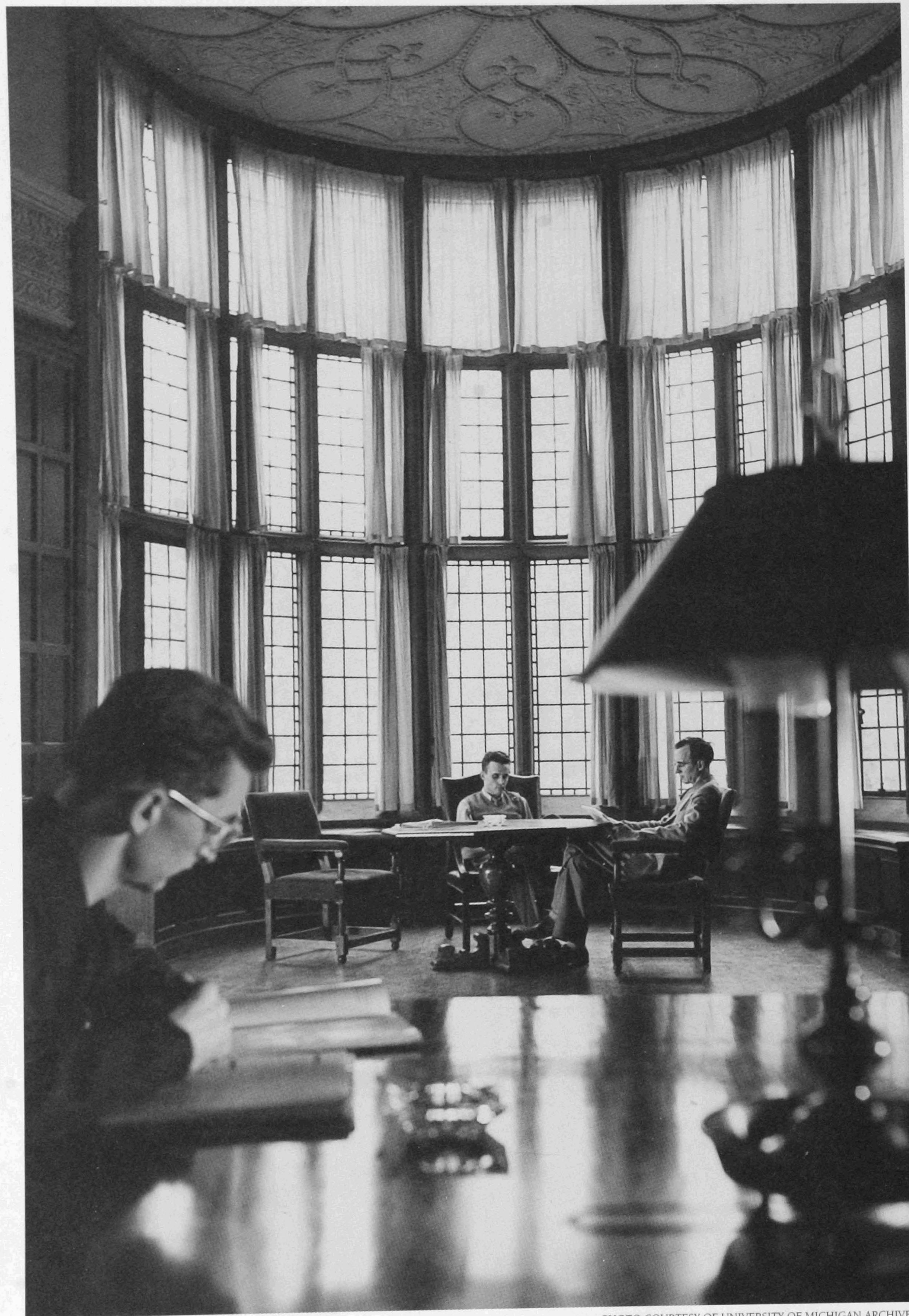


PHOTO COURTESY OF UNIVERSITY OF MICHIGAN ARCHIVES

PHOTO BY THOMAS TREUTER

THE LAWYER'S CLUB

More than a dorm

— BY TONI SHEARS

"When the University graduates law students unsurpassed anywhere in character and scholarship, the effect on the bar and the country will be very great ... The Lawyers Club building now finished is of no consequence except to forward that purpose."

— DONOR WILLIAM W. COOK,
IN A LETTER READ AT THE DEDICATION OF THE LAWYERS CLUB, JUNE 1925.

The gentlemanly coats and ties once worn to the dining hall have been replaced by sweatshirts and baseball caps. The ping pong table in the basement has given way to video games. The quadrangle lawns once so carefully manicured that students didn't dare tread on them now invite Frisbee™ and football tossing.

The Lawyers Club at the University of Michigan Law School has seen many changes since it opened seventy years ago, but its beauty and its *raison d'etre* remain essentially unchanged. William W. Cook intended the first of the four Law School buildings he donated to be not merely a dormitory, but a beautiful, inspiring intellectual home for serious

Sheri Hurbanis

One of the most obvious changes former graduates find when they return to the club is that, often as not, women are occupying their rooms. "Indeed, the presence of women in the wrong hours once was grounds for University discipline."

— Professor Emeritus John Reed

PHOTOS BY THOMAS TREUTER

Reagan Robbins

Laurel Queeno

reflection upon the law. It still fulfills that function for students today.

"I remember when we were discussing affirmative action in class, we talked and talked about the issues after class, at lunch, and at dinner. I learned at least as much in the dining hall as in the classroom," says Moushumi Khan, a 2L who lived in the club her first year.

"The thing I really liked about the experience was that the students living there were so diverse. Some were older and had done a lot of things. I felt like I could talk with them and explore different views."

"It's a good first-year experience. You are in such close proximity that you automatically get to know people in your class," Khan adds. For her second year of school, she moved out of the club but not far away. From her apartment directly across the street from the Law Quadrangle, she can easily eat meals in the dining hall and take aerobics in the lounge.

The aerobics classes are one sign of how the Lawyers Club has remained at the center of Law School life by evolving with the times. The gracious and lovely building accommodates all types of student needs and activities, says Diane Nafranowicz, director of the club for fifteen years.

"We have exercise classes, karate classes, study groups, seminars, journal groups, and Head Notes practices meeting here. Our services and spaces are open to students regardless of whether they live here," she says. The club even provides free beverages to brown-bagging nonresident students who want to stop in and have lunch with their friends. Faculty lunches, formal dinners, memorial services, and even weddings are held there.

The club is unique among law school dormitories both for its beauty and its convenience. Students love it for both features: after a late night of studying, they can roll out of bed and be in class in minutes. Reagan Robbins, a 1L from Illinois, says she valued that advantage and the convenience of not having to hunt for an apartment. Laurel Queeno,

PHOTO COURTESY OF UNIVERSITY OF MICHIGAN ARCHIVES

"Lunch and dinner were served by waiters, and we wore coats and ties for dinner. No one dared walk on the grass; the Japanese gardener had the grass looking like a golf course fairway."

— Professor Theodore J. St. Antoine

a 3L from Buffalo, observes, "It's always been important to me that my physical surroundings not annoy me. The Gothic architecture really does give you more of a sense of peace."

For many residents, not having to cook their own meals is a valuable time-saver. Sheri Hurbanis, a 3L who has lived in the club all three years, appreciated that in her first year. "Before you've learned how to study and how to do what you need to do, everything takes so much time," she observes. Looking back on to those days on her very last day of Law School, she adds with a laugh, "I wish I had as much time as I did then."

By design, the Lawyers Club fosters a supportive sense of community that makes it "more than an apartment complex in a great location with a pretty facade," Nafranowicz says. "In the dining room, people are talking about issues of adjustment to Law School. In the laundry room, people are talking about legal issues. At the mailboxes, you'll hear talk about how it feels to get a ding (rejection) letter, and in the lobby you'll witness the abject joy when a job offer comes through. It's a like living in a small town. To some people, that feels supportive and warm and comforting."

Said 1L Patrick Curley, "One of the reasons I came to Michigan was the sense of community that revolves around the Lawyer's Club. I went to a small private college where that feeling meant a lot to me." Although he and the friends he made weren't inclined to talk about law all the time, he found it was easy to meet classmates and study with them. Khan found her classmates' presence reassuring: "There is always someone around going through what you are going through. If it's 2 a.m. the night before an exam and you suddenly panic because you're not sure you understand something, there's always someone around to ask." Most students said that advantage outweighs the drawbacks of being under stress and in close quarters during exams.

In addition, the staff is specially trained to support students facing the stresses of law school. Nafranowicz, who has a master's degree in social work and years of experience in academic environments, offers student counseling and problem-resolution. "In the first year, students can face a lot of adjustment issues. They are in a new environment, dealing with time management and a new way of thinking, reading, teaching, and learning. These pressures are exacerbated by the cost of school and the pressure to do well and find a job," she says. "In addition to the rigors of academic life, they may be facing any of the whole range of personal life issues involving relationships, alcohol use, eating disorders, depression, family difficulties, and so on." Friendly, warm, and understanding, Nafranowicz is a welcoming person to turn to for help with such issues.

Hurbanis and Khan both express gratitude for Nafranowicz and her staff. As the night manager responsible for locking the clubs doors and handling emergency calls after hours in her second and third years, Hurbanis worked closely with the staff and came to respect each and every employee. Alert to the pressures students face in a new academic environment, the staff tries to help ease the transition. "They are really aware of student issues and try to help; it's not like this is just a motel," Khan says. "They try to create a sense of family, a sense of belonging here. They ask for recipes from your family and will cook them."

Women and computers

One of the most obvious changes former graduates find when they return to the club is that, often as not, women are occupying their rooms. "Indeed, the presence of women in the wrong hours once was grounds for University discipline," recalls Professor Emeritus John Reed, who was in charge of the club from 1950-63.

Women weren't part of William Cook's plan in 1922 when he offered to build the club as a cornerstone of a quadrangle of law buildings. It's clear from his proposals that he intended the club to house 151 gentlemen "of a superior class," in quarters modeled on the English Inns of Court. The original blueprints reflect Cook's class views. They show no laundry rooms, but there was a tailor in the basement, to whom men could take their shirts to have their collars turned. Likewise, there were no kitchenettes to prepare a quick snack; these men were accustomed to having others cook for them. Until some time in the 1950s, there was maid service.

Suites were designed for gracious living, with attractive bedrooms and sitting rooms with fireplaces where students could entertain others and discuss the legal problems under study. More than ninety percent of the suites offer a private bedroom and fifty still have working fireplaces.

Cook also intended that the club would attract judges, attorneys, and scholars, so that students could mingle freely with the finest legal minds. To that end, the club includes the grand dining hall which seats 300, a huge and elegant lounge, and guest quarters which are still in demand, particularly by families and graduates on reunion and graduation weekends, Nafranowicz says.

Every year about half of the first-year class elects to live in the club. A fair share stay on for all three years. Occupancy, once at a high of 316, is now at 269. "Every year, we're full," Nafranowicz says.

Despite heavy use, the building has been amazingly durable: its first major renovation was in 1965, forty years after it opened. While the walls were meant to last a thousand years, the plumbing and heating weren't. The utilities have been upgraded again more recently, to keep up with the power demands of students who arrive equipped with a stereo, a computer, a microwave, an answering machine, a refrigerator, and more.

Another unique feature of the club is that it is financially self-supporting. Nafranowicz notes with pride that the facility's $1.8 million budget comes entirely from resident fees. (Rent, meals,

utilities, and basic phone service cost $5,900 in 1994-95.)

Cook also stipulated that a Board of Governors would oversee the club. Although the University's Housing Division took over the day-to-day operations in the late 1960s, the Board of Governors still exercises its oversight. Consisting of faculty, graduates, associate deans, and student representatives, the board preserves the building as a living heirloom. Khan, the student representative to the board, says that decisions like selecting new furnishings involve balancing the interests of nostalgic graduates who wish to maintain the club's traditional beauty, and those of current students who want to put the space to practical use.

"The concern of alumni who had fond recollections of living in the Lawyers Club have been very much a factor in maintaining the building," says Professor Theodore J. St. Antoine. "The momentum behind the very first capital campaign in the law school's history, which led to the construction of the library addition, was an outgrowth of alumni determination to mount a campaign to refurbish the club."

Myths and memories

Students come to the Lawyers Club for its convenience. What they remember thirty years afterward is the lively discussions, the friendships, the high jinks, and the camaraderie that marked daily life in the club and enriched their law school experience. Graduates who return for reunions frequently share those memories with Nafranowicz. "It's a real joy to hear them recounting how significant their time here has been," she says. They remember dramatic moments: gathering around a radio to hear reports of the bombing of Pearl Harbor, or at the television to hear Lyndon Johnson announce that he would not seek reelection.

Today, students like Mou Khan are making the same indelible impressions: "One of my first memories of Law School is of running out of Civil Procedure to get to a television to see the signing of the Palestinian-Israeli peace treaty on the White House lawn. It was an incredible moment. Then I looked around and I noticed that the guys watching were crying. I didn't know any of them, but I felt really close to them. I felt like we had been through something important together."

Others remember the rituals and institutions of life in the Lawyer's Club. Among those memorable institutions is the late Inez Bozorth, a formidable director of the club from 1924-54 whose portrait now hangs in the lounge. A strict enforcer of gentlemanly conduct, Bozarth would stand in the dining hall entrance as students entered to make sure they were properly suited and clean-shaven. Nafranowicz has heard tales of students who competed to see how many days they could pass her inspection by shaving only the half of their faces she would see when they filed by.

St. Antoine, a 1954 graduate, remembers those more formal days: "Lunch and dinner were served by waiters, and we wore coats and ties for dinner. No one dared walk on the grass; the Japanese gardener had the grass looking like a golf course fairway."

Naturally, he says, the serious, scholarly life had its silly side as well: "I remember some poor guy returned from a weekend at home to discover his room had been so filled with scrap paper that he couldn't open the door. Also, Michigan lays claim to staging the first American university panty raid, which was perpetrated on the Martha Cook dormitory across the street and witnessed from the Lawyers Club."

Columbia University disputes Michigan's claim to that dubious honor, and St. Antoine says he can't prove who pulled the prank first or whether law students were actually involved. However, he can remember Bozorth, "small but sturdy and extraordinarily dictatorial," ordering the eager onlookers from the club back inside, because gentlemen didn't participate in such events.

Years later, as dean, St. Antoine found that having a club full of bright, energetic students surrounding the school could be a bit of a trial. He remembers one particular fuss in which current Dean Jeffrey S. Lehman played a prominent role. When construction crews were driving the pilings for the underground library, the noise disturbed Lawyers Club residents. "Jeff and several of his colleagues marched into my office and insisted that construction was violating their covenant of quiet enjoyment, and, by gum, they felt they were entitled to a refund on their rent because they couldn't sleep." St. Antoine recalls that eventually his administration did provide some compensation.

St. Antoine reflects: "I greatly enjoyed being in the club. I formed a lot of very warm personal associations that continue to the present day, with my roommate and with others." So did Professor Larry Waggoner, J.D. '63. "I wouldn't have met my wife if I hadn't lived there," he smiles. One weeknight when he wanted to study, a friend from his entry dragged him to a sorority sister's birthday party at the Pretzel Bell, and there was Lynne, now his wife of nearly thirty-two years.

Residents today are still forming those deep friendships. That was an unexpected pleasure for Mou Khan, who found herself becoming very close to a roommate with whom she first thought she had little in common.

Seventy-three years ago, William Cook wrote to his architects, "Surroundings count for much ... and should be stately." Unconsciously, Khan echoes Cook as she stands on the stone steps of his impressive dining hall in 1995. "Surroundings make a difference. The buildings are so beautiful, they set a tone. The physical structure sets a tone. It's a square; it shapes our community. That first year, my whole life was within these walls."

THE LAWYERS CLUB

Facts and myths

PROPOSED BY MR. COOK	1922
COMPLETED	1925
COST	$1.44 MILLION
ORIGINAL OCCUPANCY	151
OCCUPANCY TODAY	269
ORIGINAL FEES (avg.)	$350
ROOM & BOARD TODAY	$5,900

MYTH: Cook believed that fees would generate sufficient income to endow research. That turned out to be false and never occurred. Another great myth held that Cook specified that ice cream would be served at every meal. Although ice cream is, in fact, almost always available, Cook made no such requirement.

PHOTO BY THOMAS TREUTER

THINKING TO BE PAID.

— BY MERRITT B. FOX

This essay is based on a speech delivered to The Journal of Corporation Law annual banquet in Iowa City on March 4, 1994.

In the first chapter of *The Economic Structure of Corporate Law*, Frank Easterbrook and Daniel Fischel make an arresting statement:

> ... [P]eople who are backing their beliefs with cash are correct; they have every reason to avoid mistakes, while critics (be they academics or regulators) are rewarded for novel rather than accurate beliefs. Market professionals who estimate these things wrongly suffer directly; academics and regulators who estimate wrongly do not pay a similar penalty. Persons who wager with their own money may be wrong, but they are less likely to be wrong than are academics and regulators, who are wagering with other peoples' money.[1]

In other words, society should trust decisions to people who put their money where their mouths are.

When I first read this passage, I was a bit perturbed. Now that Easterbrook and Fischel had published the book that pulled together their many important contributions to corporate law, it looked like they wanted to put the rest of academia out of business. More dispassionate reflection, however, reveals that there is something to what they have to say.

To start, Easterbrook and Fischel certainly raise a critical issue: what is the proper allocation of responsibility for making economic decisions in a world where the future is uncertain and knowledge is dispersed unevenly? In essence, they are asking how much deference should be given to the views of those who back up their views with cash — the persons who think to be paid — and how much to regulators and academics — those who are paid to think.

Regulators have well-catalogued vices. Academics — the source of many regulator ideas — have their faults as well. During Robert Bork's ill-starred Supreme Court confirmation hearings, Senator Orin Hatch, asserting that Bork did not fully believe some of the more unpopular things that he put in his academic writings, argued that Bork, as a professor, "was paid to be provocative."[2]

The anger that this alliterative phrase aroused among academics suggests that it hit the raw nerve of ambivalence between their roles as direct seekers of truth and as stimulators of intellect. Moreover, while it may be more a product of temperament and impecuniosity, academics do seem shy about testing out their theories with their own money. It is significant that John Kenneth Galbraith, a man famous for believing in the frequent foolishness of businessmen and the wisdom of at least one academic, chose fiction as his way of exploring the possibility of such a test. The protagonist in Galbraith's 1990 novel, *A Tenured Professor*, is a professor who makes a fortune testing his contrarian predictive model of the economy by using it as a guide to investing in the stock market. No evidence exists that Galbraith has taken his fantasy to heart yet and tried to do the same in his own life.

V. Being Paid to Think.

Nevertheless, Easterbrook and Fischel's quoted passage requires more critical examination. Their breezy style, while promoting clarity and impact, masks a number of assumptions, and we need to exercise care in where we apply their advice. The specific context in which Easterbrook and Fischel make their statement is as part of an argument that legislatures and courts should give great deference to the language of articles of incorporation. An extensive amount of literature suggests that the application of their statement even to this issue needs substantial qualification.[3]

But the statement is more broad reaching than that and represents a core element in their overall pro-market, anti-regulatory philosophy; it obviously invites rigorous theoretical analysis. In this discussion, however, I am going to examine its limitations in a more concrete way by relating it to three events that have been in the financial news over the last two years: (1) the allegations against Prudential Securities in connection with the sale of limited partnerships to the public in the 1980s; (2) the conversion of mutual savings and loans into banking corporations; and (3) market makers' short sales of the stocks of bankrupt firms at prices well above what any informed observer possibly could consider they were worth.

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1. Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure of Corporate Law*, 31 (1991).

2. Linda Greenhouse, "Stakes of the Bork Fight: With Senate Hearings Starting Tomorrow, Both Sides Have Much to Gain or Lose," *New York Times*, Sept. 14, 1987, at Al.

3. This argument was originally offered by Michael Jensen & William Meckling in "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," 3 *Journal of Financial Economics*, 305, 312-19 (1976). They argue that a corporation's articles of incorporation will represent the best available set of constraints for minimizing the agency costs of management. This view is based on the idea that when a firm's entrepreneurs initially offer shares to others, their sale price accurately reflects the expected agency costs implied in the terms chosen. I have questioned elsewhere whether the market actually takes note of such terms and accurately reflects their implications, and even if it does, whether articles of the corporations that dominate the industrial sector (most of which issued the bulk of their stock between 50 and 100 years ago), are still agency cost–minimizing today. See Merritt B. Fox, "The Role of the Market Model in Corporate Law Analysis: A Comment on Weiss and White," 76 *California Law Review* 1015, 1041-42 (1988); Merritt B. Fox, *Finance and Industrial Performance in a Dynamic Economy: Theory, Practice and Policy* 140-143 (1987).

THREE CASE STUDIES

A. Prudential Securities Limited Partnerships

During the 1980s, Prudential Securities sold about $8 billion worth of limited partnership interests to the public through their brokers. Many of these securities subsequently lost much or all of their value. Prudential agreed with the Securities and Exchange Commission (SEC) to pay an initial "down payment" of $330 million into a settlement fund. Some (perhaps optimistic) plaintiffs' lawyers predict that Prudential ultimately will have to pay as much as $3 billion into this fund.[4] The crux of the complaint against Prudential is that for a large number of the purchasers, these investments were unsuitable.[5]

The story has a couple of interesting aspects. First, the whole idea of regulating the relationship between brokers and customers with rules about suitability is the very antithesis of respecting the decisions of people who put their money where their mouths are. Does that mean that the suitability doctrine should be eliminated? I suspect not, at least not in a case like this. Based on reports in the financial press, it appears that billions of dollars of securities came into the hands of people who, even viewed from the *ex ante* perspective of the time of purchase, would have been better off if they had not bought the securities. Based upon the best knowledge available at the time of purchase, these securities had questionable expected rates of return. And, in any event, there was a mismatch between the purchasers' low risk preferences and the securities' high risk characteristics. These did not just turn out to be bad deals in the end; for these purchasers, they were bad deals from the beginning.

The other point of interest relates to the role of reputation in the models which find unregulated markets make superior decisions even in a world with unequal distribution of information. Somehow Prudential allowed the use of its rock solid trade name in a massive way that gave customers confidence in brokers who, in pursuit of high up-front commissions, were pushing purchases of securities quite contrary to the customers' interests. As a result, "Prudential", as a name for a securities company, has been sufficiently sullied to become a bit of an oxymoron.

Persons who worship market solutions tend to assume that reputation-sullying of this kind will rarely, if ever, occur. These worshippers believe companies are rational maximizers of share value. Except in endgame situations, it is irrational for a company to let such sullying occur. Here, though, we have an example of just that kind of irrationality on a massive scale. Surely Prudential's loss in reputational capital in the 1990s greatly exceeds its additional profits from pushing these securities in the 1980s.

Proponents of the market superiority models underestimate the degree to which intraorganizational dynamics lead to this kind of irrationality and consequent social damage. Some businesses, such as financial firms and law firms, are based particularly on trust and cannot operate successfully on a large scale without substantial reputational capital. One of the most difficult things for a business of this sort to do is to set up a system that creates incentives for its individual members both to add to the organization's profits and to act in a way that preserves its reputation. The potential for failure in industries of this kind creates a strong case for regulation.

B. Mutual Savings and Loan Conversions

Now consider the conversions of mutual savings and loans into banking corporations that have been sweeping the country for the last three or four years. The mutual form of doing business — where the institution is "owned" by its depositors — appears to be outmoded. Without shares, the organization lacks both the carrots and the sticks necessary to attain good managerial performance: incentive plans are hard to design, and ousting management for lax performance is virtually impossible. It is also hard for mutuals to raise new capital or arrange mergers — serious problems in an era when banking is showing sharply increasing economies of scale.

Eliminating these problems by converting to institutions with stock can lead to significant increases in value. The typical transaction involves an initial offering of shares at a deep discount. The average increase in price in the first few weeks after the offering is somewhere between 33 and 50 percent.[6] The opportunity and ability to participate in an initial offering can, therefore, produce riches.

The charters of these mutuals and the statutes under which they operate appear to give management enormous discretion in determining who participates in the offering, and, at least until recently, regulators have taken a relatively hands-off approach. As a result, management structured some deals so that only members of management and employees participate, thereby resembling the most criticized Eastern European privatizations. Others are designed to permit depositors to participate. In many of these cases, however, a large portion of the shares go to "professional" depositors. Professional depositors are persons who, sensing the trend, travel around the country placing small deposits in every mutual they can find. When the deals are announced, these city slicker depositors have the knowledge and resources to grab a big hunk of the shares. How the gains from these conversions should most appropriately be split up among managers, long-term local depositors, and recent out-of-town city slicker depositors is not immediately obvious. I am confident, however, that solid academic analysis using the best theoretical tools available could significantly illuminate this question.

Surely, the long-term local depositors were not consciously affirming an arrangement which permitted conversion gains to benefit others when they put their money where their mouths were. Nor has such an arrangement really proven to be the best structure by any other market test. The impression of unfairness is great, particularly in deals where all or a substantial portion of the discount shares are given to the managers. The managers' laxness under the mutual arrangement, after all, created much of the opportunity for gain from the conversion. The public views these deals as leftovers from the greed decade of the 1980s, and the economy is not well-served by this perception. A more thoughtful approach to regulation would either give local, long-time depositors more of the gains, or provide a convincing, understandable rationale as to why failing to develop such a plan is not unfair.

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4. See Scott J. Paltrow, "Prudential to Pay at least $371 Million in Fraud Settlement," *Los Angeles Times*, Oct. 22, 1993, at D1.

5. Id. See also Sharon Walsh, "At Prudential, the Fraud Case that Won't Die: Investigations of Partnership Sales Continue Despite Huge Settlements," *Washington Post*, Feb. 13, 1994, at H1.

6. Michael Quint, "Mutual Banks Moving to Shareholder Owners," *New York Times*, June 1, 1993, at D1.

C. Short Sales of Bankrupt Firm Equities

Finally, consider the trading of the shares of bankrupt companies such as LTV after court confirmation of reorganization plans that provided the old equity holders with nothing but a very small tidbit. In the LTV case, a market maker in the stock sold it short in an amount so large that the short sales exceeded the total number of outstanding shares.[7]

Despite this massive short selling, the price stayed several times higher than what any well-informed investor would pay. There were clearly a lot of willing buyers — persons who put their money where their mouths were — who thought a possibility of a turnaround at LTV still existed. Obviously, they were either unaware of the confirmation of the bankruptcy plan or could not understand its significance. In this situation, where the short selling market maker was sure to win and the buyers sure to lose, the Exchange, while grumbling and wringing its hands, refused to act. It let trading continue.

Again, a minimally diligent regulator would know enough to see that stopping trading would be a superior result for the buyers, even if that meant overruling the judgment of those who were backing their beliefs with cash. The president of the market maker, when asked why he thought there was such a hue and cry about his practices, answered "jealousy;" he suggested that it was not too late for others to become members of the Chicago exchange so that they could follow his example, after judicial confirmation of the next major bankrupt company's reorganization plan.[8] Events like these erode confidence in the market bit by bit, as an increasing number of people, either through direct experience or observing others, conclude that the market is nothing more than a place where sharp traders separate the perpetually hopeful from their money.

GENERALIZATIONS

These events suggest that situations exist where academics and regulators have a comparative advantage over people willing to put their money where their mouths are. The advice of academics is valuable especially in situations where private arrangements were set up at a time when no one contemplated the current state of affairs. The conversion of mutual savings and loans is an excellent example.

Additionally, academics, as the people paid to be provocative, are society's bulwark against its common tendency to engage in "group think." Group think afflicts markets just as it does any other social institution. Many situations exist where people figure out that a particular group thought is wrong and are not able to trade profitably on that discovery or, even if they can, are not able to fully correct the market price through their actions. Prices are set by speculators. Successful speculation is the result of outguessing the competition on what the market will think next. The best guide to that may or may not be economic fundamentals. Obviously, economic fundamentals were not the best guide in the case of LTV stock.[9]

Regulators have a comparative advantage over market participants with decisions involving the following, not uncommon, collective action problems: (1) for many individual private transactors, more work than they find worthwhile is required to be sufficiently informed to have a reasonably accurate view of the future, (2) there is reason to think that this work either will not be done privately by anyone or, if it is, that the results will not be fully and rapidly incorporated into market price (full and rapid incorporation protects the uninformed and informed alike), and (3) everyone's preferences and circumstances are sufficiently similar that, if in fact they all were informed, most people would decide the same way.

The continued trading of the LTV shares is again a good example. It took work to figure out the true value of these shares, work that many investors did not find worthwhile to undertake. The true value was not reflected in price, and no one would have wanted these shares at anything approaching the price paid if they had done the work to figure out their true value.

7. See Kurt Eichenhold, "Stock Strategy Under Scrutiny," *New York Times*, Aug. 26. 1993, at D1; Thomas Gerdel, "New LTV Stock Drawing Investor Interest," *Cleveland Plain Dealer*, June 19, 1993, at D2; and Tom Petruno, Market Beat: Market Watch; "Gambling on the Bankrupt Bound," *Los Angeles Times*, Feb. 11, 1991, at D5.

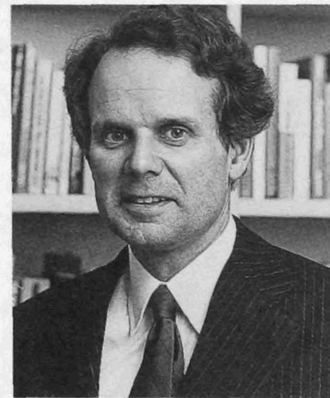
8. Eichenhold, supra note 7.

9. The reader might sensibly ask why there were not so many short sellers of LTV stock that the price was forced down to the value of the tidbit. The answer appears to be that legal and ethical concerns apparently constrained others from acting. (Eichenhold, supra note 7.) It might be argued that these concerns are the real source of the problem and that their elimination is a better solution than the regulatory response of suspending trading. The story, however, suggests that there is a sufficient reservoir of poorly informed optimists that a large number of investors would suffer in the process of such a price adjustment.

RELEVANCE TO CORPORATE LAWYERS

The ideas discussed here have, by way of analogy, significance to the editors and staff of the *Journal of Corporation Law* and others who will become the next generation of corporate lawyers. Easterbrook and Fischel's statement represents an overly cynical view of the personal and social value of professionalism. You, too, will be paid to think. You, too, will be doing something positive by being provocative. You have been trained with analytical skills and a certain questioning kind of skepticism that can be the bulwark against your client's tendency to engage in group think. Just because something is done some particular way by everybody doing deals, do not hold back from taking a fresh look and do not be afraid to ask questions.

The assumption that all the people who are putting their money where their mouths are necessarily know what they are doing can be grossly misleading. You are far more valuable to your client if you play the more proactive role suggested here, instead of just sitting back and being a mere scrivener. You will help your client both to seize opportunities missed by others and to avoid previously unseen pitfalls. And you will have a lot more fun. LQN



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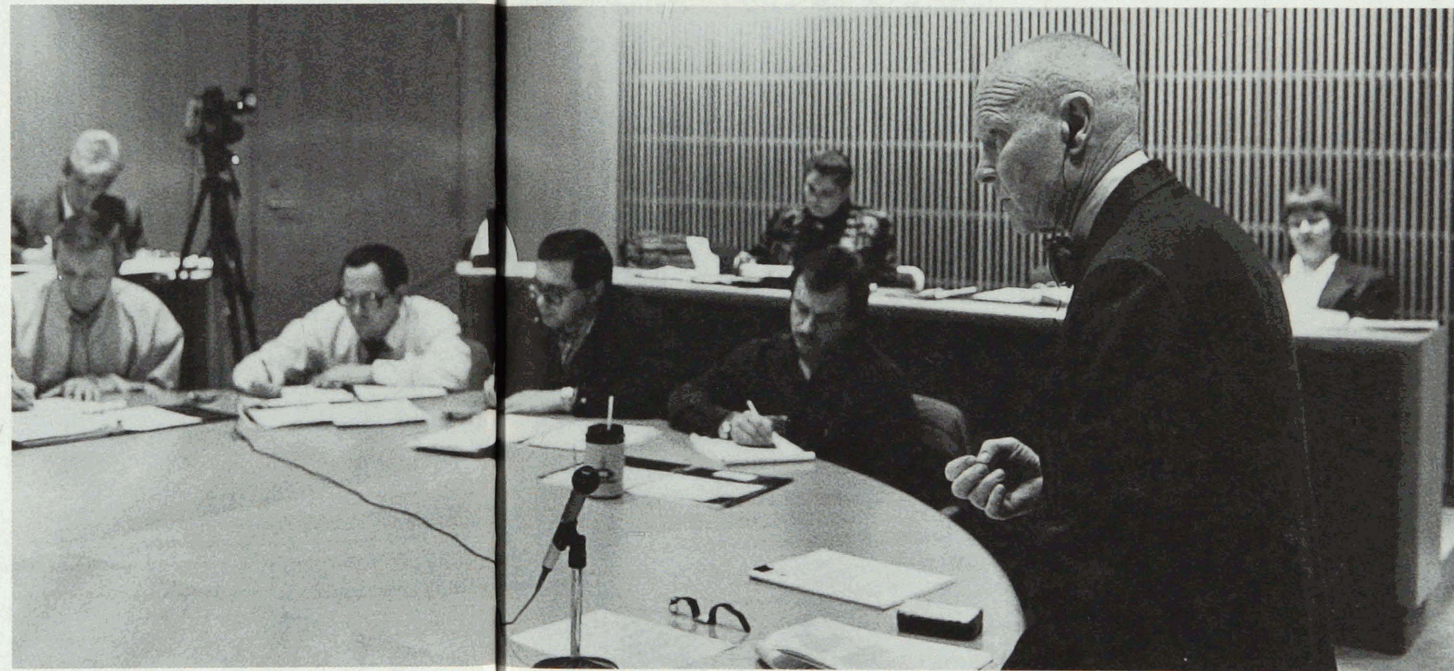
ADVISNG THE NEO Captalists

— BY JAMES J. WHITE

IN THE EARLY 1920S, ANGELICA BALABANOFF, SECRETARY OF THE SOVIET COMINTERN, WROTE THAT ALL OF THE LEFT-WING WESTERNERS WHO HAD COME TO THE SOVIET UNION AFTER THE REVOLUTION OF 1917 FELL INTO ONE OF FOUR CATEGORIES: "SUPERFICIAL, NAIVE, AMBITIOUS OR VENAL." THE FALL OF COMMUNISM HAS BROUGHT A NEW GROUP OF WESTERNERS TO RUSSIA. UNLIKE THE VISITORS OF 1922 THESE ARE FROM THE RIGHT, NOT THE LEFT, BUT THEY MAY STILL FALL INTO COMRADE BALABANOFF'S FOUR CATEGORIES.

Professor White lectures a group of twenty-two Russian judges who visited the Law School last fall.



I AM ONE OF THE NEW RIGHT-WING VISITORS TO RUSSIA who have gone there to advise on drafting free market law, and I am not unique. Eastern Europe, Russia, and other countries that were formerly Soviet Republics are crawling with Western Europeans and Americans with advice about western commercial, constitutional, and other law. I write to reflect on what American lawyers can and will do for these emerging free market economies. I am more skeptical than most.

With the destruction of the Berlin Wall and the decline and ultimate dissolution of the Soviet Union, free enterprise has spread eastward across eastern Europe and into Asia, to Kazakhstan and beyond. China has seen a similar but more covert rise in capitalism. This rise of the free market has brought a call for free-market law. Laws on contract, sale of goods, negotiable instruments, mortgages, personal property security, and a variety of other things are needed of a kind never required in the controlled economies which formerly existed in Eastern Europe, the Soviet Union, and China.

Americans, British and Western Europeans have offered their laws as models. Organizations such as the American Bar Association, the United States Agency for International Development, and the Ford Foundation have held out helping hands to these countries. As an American expert on commercial law I have participated in these efforts. In 1993, Deborah Prutzman, a New York lawyer, and I spent a week in Beijing with Chinese drafters of the law on negotiable instruments. In a series of meetings since 1993 held in Ithaca, New York, and Moscow, Cornell University Law Professor Bob Summers and I have worked with the drafters of the Russian Civil Code. We worked under the auspices of the Institutional Reform and the Informal Sector program (IRIS) of the University of Maryland and at the invitation of one of its directors, David Fagelson, J.D. '85.

CHAUVINISM IS A PROBLEM, BUT THERE IS A FINE LINE BETWEEN ODIOUS CHAUVINISM AND APPROPRIATE FORCEFULNESS. FACED WITH CONSERVATIVE DRAFTERS WHO DO NOT FULLY EMBRACE THE FREE MARKET, ONE MAY NEED TO PUSH HARD TO ACCOMPLISH EVEN A LITTLE.

I write not to praise the work of Americans abroad but to note some of the difficulties I see for a "helper" who comes to a distant Asian or European country armed with experience about American law. While I have considerable optimism about the quality of law that will grow up in many of these societies, my work with the Russians and Chinese makes me skeptical about the benefits that Westerners provide.

Consider the barriers that face an American who would help another country revise its laws. A first problem is well known. It is the explosion that can occur when American chauvinism and arrogance is mixed with home country pride and defensiveness. It is a serious mistake to think the Chinese or Russians are ill informed about traditional law, and it is easy for an American commercial lawyer to exaggerate our law's influence on the success of our mercantile economy. (I suspect assertions about the influence of our law have it backward — in fact, our law is probably successful because of the mercantile economy and because of our stable and effective judicial system, not vice versa.)

Chauvinism is a problem, but there is a fine line between odious chauvinism and appropriate forcefulness. Faced with conservative drafters who do not fully embrace the free market, one may need to push hard to accomplish even a little. Home-grown drafters may simultaneously feel defensive about and superior to Americans — defensive because of the success of our commerce but superior

because of our ignorance of their language, laws, and history. I naively assumed that the Russians would base their new sales law on the United Nations Convention on the International Sale of Goods or on an American or Western European model. Not so; they started with the pre-Revolutionary Russian civil law! So the advisor must push — but not too hard.

A second challenge for a foreigner is to understand the experience, authority, and motivation of the local drafters. In Moscow, Bob Summers and I dealt with a committee that was composed mostly of people with professorial titles. Several members of the committee were also arbitrators or judges and some might be called research scholars. There were no business people, nor anyone who was or had been a private practitioner. In China, on the other hand, the committee was composed of professional drafters who worked for the legislature, but also of bankers from the central bank and from commercial banks. In both cases, I was impressed with the doctrinal knowledge of the legally trained persons.

The Russians reminded me of nineteenth-century American law professors; they had deep understanding of legal doctrine but no association with and limited concern for commercial transactions that were to be governed by the doctrine. For example, the Russians could easily hold their own on doctrinal debate on matters such as whether the perfect tender rule or the substantial performance rule should apply in performance of a sales contract. But they were not much interested in how that rule of law might affect the behavior of business people, nor were they much concerned with lawyers' manipulation of their rules. As Americans — deeply affected by legal realism — we instinctively ask: How will a lawyer attempt to manipulate this rule? To what transactions should this be applied? To what transactions will it be applied that I do not now contemplate? How might lawyers and business people modify their behavior in response to this law? Our Russian drafters might reply that those issues are not legal questions. Children of a communistic society and quite removed from commerce, the Russian drafters focus on doctrine. For them, it is business' job to conform.

A third problem for an American advisor is his ignorance of local business practice. For example, a large part of Articles 3 and 4 of the Uniform Commercial Code are devoted to the allocation of risk arising upon theft by check. Many of the most interesting American cases under those articles and much of what is taught in law school about them arise out of embezzlements in which corporate employees steal money by forging drawers' signatures, forging endorsements, and altering instruments. American experience is an artifact of the prevalence of checks in American commerce. We pay and get paid by checks; in most American companies, checks are everywhere. In Russia and China checks are rarely used. Detailed rules on allocation of risk from embezzlement by check are probably not necessary in those countries. Thus, Article 3 and Article 4 are not particularly good models for either of those societies.

Consider another example: it may make sense for the Russians to jump from a cash payment system directly to electronic payments and to bypass checks. The absence of roads, trucks and airplanes to carry checks around the Russian and Chinese countryside make paper transactions particularly unsuited for Russia and China.

Local conditions, such as persistently high inflation, may also intrude; inflation in Russia is a barrier to any system of speeded payments, electronic or otherwise. One of the reasons commonly given for the persistence of checks in the American economy is that drawers like the float conferred by the use of checks — float that is not available if payment is electronic and therefore nearly instantaneous.

The Russians know float. Not only private individuals and private banks enjoy float, but we were told that the central bank itself regards float as a source of income. Far be it for some foreign law professors to change Russian ideas about float if even the central bank lives on it. Thus, a law of the kind that the American Federal Reserve would indorse and support to reduce float by various methods is one that might be resisted by all but the purest idealist in Russia. So a big problem for an American advisor is ignorance of existing and emerging business practice and lack of appreciation of business actors' incentives and motivation.

Visiting Russian judges learned about juries by playing the role of one in a moot court session at the Law School.

These, of course, are obvious examples, but there are hundreds of others where the local practice differs from the American practice and where the law should differ too. Ignorant of those business practices and *a fortiori* ignorant of practice that is likely to develop coincidentally with the free market, an American has trouble advising a Russian or a Chinese.

A fourth problem in drafting abroad is the same here. It is often observed that someone who would influence a law that is being drafted by someone else is either too early or too late. When one comes with an earnest proposal for change in a draft, he is sometimes told he is too early: the drafter has not got to that part yet and it is not time to talk about it. When the earnest pleader returns five months or a year later, he may be told that the issue has been resolved and cannot be reopened. I have observed the problem — and even used the "early" or "late" excuse — as the reporter for the Revision of Article 5 of the Uniform Commercial Code.

That same problem exists abroad. For example, the Russians had done at least two drafts of Part One of the Civil Code before Bob Summers and I ever saw it in the fall of 1993. Apparently they had already redrafted Part One in conjunction with the Dutch in the summer of 1993. So most of our proposals were too late. As to Part Two of the Civil Code, he and I were too early in the fall of 1993. Part Two had not been written or at least was not yet ready for foreign critics.

A final problem for a foreign advisor arises from the nature of his relation to the advisees. Like a psychiatrist hired by parents to treat a reluctant child, the advisor is sponsored and paid by a foreign government or foundation. In all cases that I know of, the sending country pays the advisor; no fees are paid by the Chinese, the Russians, or other advisees. This means, of course, that advisors are guests, not employees. If advisors are not too troublesome, they may be nice to have around. But one gets his money's worth whether he listens to them or not, since he has paid nothing for the advice. I suspect that this is inevitable, but in Valhalla the host would pay and, having paid, would be more likely to listen.

In sum, I do not want to suggest that American lawyers' time and effort spent with the Russians, Eastern Europeans or Chinese has been wasted. I believe that some of the ideas that Bob Summers, Debbie Prutzman, and I have taken to them will be useful and will be incorporated in their laws. But it is far easier to exaggerate one's influence than to underestimate it. There are many good reasons why a foreigner's advice might be wrong or unhelpful and should command only one ear. There are also bad reasons why that will happen — not the least of which are local sensitivity and chauvinism, and the inherent conservatism of the drafters and of the local parliament.

Believing that commercial law follows commerce, and not the reverse, I am not pessimistic about the state of law in China and Russia. Adverse tax or intellectual property laws may forestall foreign investment and a corrupt or ineffective judicial system may inhibit it, but I doubt that mediocre commercial law will seriously restrict investment. As commercial transactions grow and expand, I expect commercial law to accommodate to practice through legislative amendment, court decision and private law (such as arbitration). When business people seek "good" commercial law, they are not speaking as much about the substance of that law as about the stability and reliability of the judicial system.

Perhaps, of course, I am just confessing that commercial law is not too important, a dismal thought.

AS AMERICANS — DEEPLY AFFECTED BY LEGAL REALISM — WE INSTINCTIVELY ASK: HOW WILL A LAWYER ATTEMPT TO MANIPULATE THIS RULE? TO WHAT TRANSACTIONS SHOULD THIS BE APPLIED? TO WHAT TRANSACTIONS WILL IT BE APPLIED THAT I DO NOT NOW CONTEMPLATE? HOW MIGHT LAWYERS AND BUSINESS PEOPLE MODIFY THEIR BEHAVIOR IN RESPONSE TO THIS LAW?

LQN

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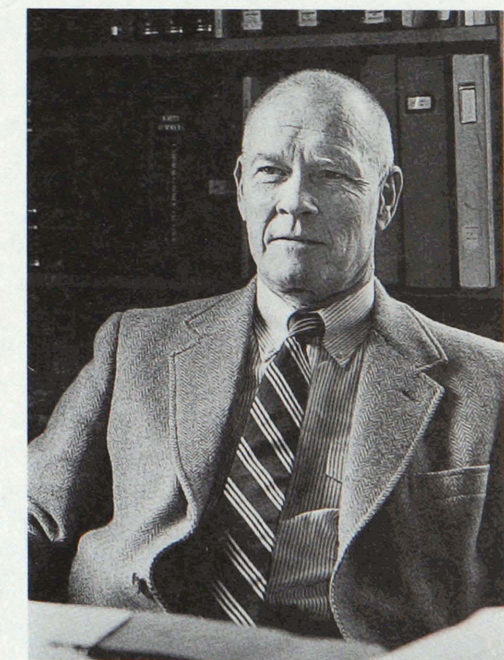

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Are 12 HEADS

— BY PHOEBE C. ELLSWORTH

Few advocates of the jury system would argue that the average juror is as competent a tribunal as the average judge. Whatever competence the jury has is a function of two of its attributes:

its number and its interaction.

The fact that a jury must be composed of at least six people, with different backgrounds, experiences, and perspectives, provides protection against decisions based on an idiosyncratic view of the facts. In addition, the jury must be chosen in a manner that reflects a representative cross-section of community opinion. The jury's competence, unlike that of the judge, rests partly on its ability to reflect the perspectives, experiences, and values of the ordinary people in the community — not just the most common or typical community perspective, but the whole range of viewpoints.

Representativeness is important not only for ensuring "the essential nature of the jury as a tribunal embodying a broad democratic ideal,"[1] but because it affects the jury's competence directly. Failure to assure that any given group has a fair chance of participation "deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented."[2]

A jury decision, however, is more than an average of the verdict preferences of six or twelve citizens who represent a variety of experiences. Ideally, the knowledge, perspectives, and memories of the individual members are compared and combined, and individual errors and biases are discovered and discarded, so that the final verdict is forged from a shared understanding of the case. This understanding is more complete and more accurate than any of the separate versions that contributed to it, or indeed than their average. This transcendent understanding is the putative benefit of the deliberation process.

better than

If it does nothing else, group deliberation (except in extraordinarily one-sided cases) forces people to realize that there are different ways of interpreting the same facts. While this rarely provokes a prompt revision of their own views, it necessarily reminds the jury members that their perceptions are partly conjectural — an obvious truth, but one that is otherwise unlikely to occur to them.

A judge does not have this vivid reminder that alternative construals are possible. A judge, however, has experience on the bench and training in the law. Critics of the jury often focus on the incompetence of people chosen as jurors, compared to that of the judge. At best, the venire consists of a representative sample of the community, with a few members having genuine expertise, a large number who are simply average citizens, and a few others who are distinctly below average. In practice, many of the better-educated jurors are excused from service, and others who show knowledge or ability relevant to the particular case at trial may be challenged during the voir dire. Attorneys sometimes select jurors for incompetence.[3] Thus, some have argued that the average jury is not only less competent than the average judge, but is also less competent than a random sample of twelve citizens from the community.

Historically, the debate over the competence of juries has been less than enlightening. In particular, there are two conspicuous omissions.

First, there is a great reluctance to define competent decision-making. Social scientists who turn to the legal literature in search of criteria by which to evaluate the jury are likely to find it a frustrating experience. It is extremely difficult to design research that will contribute useful information to the debate on competence when the concept of competence is not defined.

Second, most of the social science research and much of the legal debate has focused primarily on the jury's verdict, an extremely crude measure of competence, and one that tells us very little about what juries actually do.

One way to look at jury functioning is to break down the jury's task into components, and look at the way the jury deals with each one. Pennington and Hastie[4] have provided a useful list:

1) The jury members must "encode" the information they get at trial. A competent jury must pay attention to the testimony and remember it.

2) The jury must define the legal categories. A competent jury should define these categories as they are presented in the judges' instructions.

1. Ellsworth & Getman, "Social Science in Legal Decision-Making," in *Law and the Social Sciences* 596 (L. Lipson & S. Wheeler eds. 1986).
2. *Peters v. Kiff*, 407 U.S. 493, 503-04 (1972) (plurality opinion of Marshall, J., joined by Douglas and Stewart, JJ.)
3. See J. Van Dyke, *Jury Selection Procedures* (1977); V. Hans & N. Vidmar, *Judging the Jury* 63-78 (1986).

3) The jury must select the admissible evidence and ignore evidence that is inadmissible.

4) The jury must construct the sequence of events.

5) The jury must evaluate the credibility of the witnesses.

6) The jury must evaluate the evidence in relation to the legal categories provided in the instructions. That is, certain elements of the story the jury constructs are particularly important in determining the appropriate verdict. The jury must identify these elements and understand how differences in the interpretation of the facts translate into differences in the appropriate verdict choice.

7) The jury must test its interpretation of the facts and the implied verdict choice against the standard of proof: preponderance of evidence, clear and convincing evidence, or beyond a reasonable doubt.

8) The jury must decide on the verdict.

In discussing my research on jury deliberations, I present data and some impressions of how the jury performs these tasks; I also discuss some other aspects of jury deliberation.

The research itself involved close analysis of eighteen mock juries in the first hour of deliberation. Because of the small sample size, statistical analysis of the data generally would be misguided. The study is most usefully considered as an intensive case study of the process of jury deliberation. However, the fact that there are eighteen cases rather than one makes it considerably more useful than the usual case study, because it allows for some assessment of the variability of juries exposed to the same stimulus.

A major drawback is that none of the juries reached a verdict in the hour allotted to them. Thus, the study is most useful as an exploration of how juries structure their task, how well they deal with the facts and the law, and what things they discuss. It is very likely that at some point juries move into an "endgame" that may differ substantially from the phases preceding it.

Ideally, the knowledge, perspectives, and memories of the individual members are compared and combined, and individual errors and biases are discovered and discarded, so that the final verdict is forged from a shared understanding of the case.

Method

Two hundred and sixteen adults eligible for jury service in Santa Clara or San Mateo County, California, participated in the deliberation study and provided usable data. Thirty-three of them were recruited from the venire lists of the Santa Clara County Superior Court after completing their terms as jurors. The remainder had responded to a classified advertisement in local newspapers asking for volunteers for a study of "how jurors make decisions," or were referred by friends aware of or participating in the study. Each subject was paid ten dollars for participation.

The sample was fairly representative of the suburban upper-middle-class community surrounding Stanford University, except that males and minorities were underrepresented. The sample was 93 percent white and 65.3 percent female. The average age of the subjects was 43, and 63 percent of the sample was employed outside the home. The median educational level was slightly less than a college degree. Finally, 46 percent of the sample had previously performed jury duty, while 37 percent had actually served on juries.

Subjects watched a videotape of a simulated homicide trial that represented all major aspects of an actual criminal trial. After hearing the evidence, arguments, and instructions, the jurors gave an initial verdict. Jurors were then assigned to twelve-person juries and allowed to deliberate for one hour.

We chose to use a videotape prepared by Reid Hastie for use in his research on jury unanimity.[5] This tape is representative of the procedures, setting, style, and issues that commonly occur in actual homicide trials. The case was complex enough to afford several plausible interpretations and verdict preferences. It resembled most real murder trials in that there was no question that the defendant had killed the victim; rather, the evidence centered on the precise sequence of events preceding the killing and on the defendant's state of mind at the time. Finally, the tape was far more vivid and realistic than any other simu-

lated trial materials we have encountered. It was highly unlikely that we could have constructed a better tape with our resources.

Hastie's videotape is a reenactment of an actual homicide case based on a complete transcript of the original trial, with a judge and experienced criminal attorneys playing roles based on the actual judge's instructions and lawyers' arguments. We modified the tape in two ways for the present research. First, we shortened it slightly by deleting one defense witness whose testimony added little. Second, we replaced the segment of the original tape containing the original instructions, which had been based on Massachusetts law, with a new sequence in which the applicable California law was given. Pretesting indicated that the tape was regarded as convincing and realistic.

In the trial videotape, the defendant, Frank Johnson, is charged with first-degree murder for the stabbing of Alan Caldwell outside a neighborhood bar. The prosecution brings evidence that the defendant and victim had argued in the bar earlier that day, and that Caldwell had threatened the defendant with a straight razor. Johnson had left after the argument, but had returned with a friend that evening. Caldwell later came into the bar, and he and the defendant went outside and began to argue loudly. Two witnesses testify that they saw Johnson stab down into Caldwell's body. The victim's razor was subsequently found, folded, in his left rear pocket.

For the defense, Johnson testifies that he had returned to the bar that evening on the invitation of his friend and had entered only after ascertaining that Caldwell was not there. Caldwell had come in later and had asked Johnson to step outside, presumably for the purpose of patching up their quarrel. Once outside, Caldwell had hit him and come at him with a razor. Johnson had pulled out a fishing knife which he often carried in his pocket and Caldwell had run onto the knife. In cross-examination, the defense attorney cast doubt on the ability of the prosecution's eye witness to see the scuffle, and showed that medical evidence cannot establish whether the defendant stabbed down into the victim or whether the victim ran onto the knife.

Four verdicts are possible in this case, depending upon the jury's findings of facts. The defendant may be guilty of first-degree murder, of second-degree murder, or of voluntary manslaughter, or he may be not guilty for reason of self-defense or accidental homicide.

The study was conducted on weekend afternoons at Stanford University. Each subject group consisted of twelve to thirty-six subjects. Upon arrival, all subjects were given a brief overview of the study and asked to fill out an informed consent form and a preliminary questionnaire focusing on demographic characteristics, general attitudes toward the death penalty and toward criminal defendants, and general attitudes with respect to crime control and due process. The experimenter then introduced the videotape and instructed subjects to pay close attention because afterwards, they would be asked to deliberate to reach a verdict based on the facts of the case and the judge's instructions, just as if they were actual jurors.

Deliberations

As soon as the videotape was over, the experimenter asked the subjects to indicate their verdict preferences on an initial verdict questionnaire by checking one of four choices: first-degree murder, second-degree murder, manslaughter, or not guilty. After collecting the questionnaires, the experimenter announced assignments to jury panels and directed each jury to a separate room for deliberation. These were seminar rooms equipped with a long table and a video camera and two ceiling microphones to record deliberations for later analysis. The equipment also allowed the experimenters to view the deliberations on a monitor outside the room, in order to detect problems that might jeopardize the validity of the study.

Once the subjects were settled in the jury room, the experimenter told them that their next task was to discuss the case and try to reach a verdict. They were assured that their immediate postvideotape verdict was confidential and that they need not feel committed to it. They were also told that most juries begin by taking a straw vote, and that in any case they should choose a foreman before beginning their deliberation. The experimenter continued as follows:

> As you discuss the case, it is important to put yourselves into the role of jurors. Imagine that you are a real jury and that your verdict will actually determine the fate of the defendant you saw on the tape. We want you to make your decision only on the basis of what you saw on the tape. Although the characters in the trial you saw were actors, we want you to treat them as if they were real. In short, we want you to make the decision you would make if you were a real jury and if you had seen in court exactly what you saw on the tape.

The experimenter closed by informing the subjects that they had one hour in which to deliberate, and that they should try to reach a decision in that time, although quite possibly one hour would not be long enough to reach a consensus. The purpose of this instruction was simply to assure that the subjects worked on their deliberation seriously and tried to reconcile their differences of opinion. We did not ask them to take a vote at the end of the hour, and we did not expect them to reach a verdict.

Subjects were then left to discuss the case. Although they appeared to be slightly self-conscious in the presence of the recording equipment for the first minute or two, the jurors became highly involved in the discussion and seemed to forget about the camera as soon as the deliberations revealed disagreements

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4. Pennington & Hastie, "Juror Decision Making Models: The Generalization Gap," 89 *Psychological Bulletin* 246, 249-55 (1981).
5. R. Hastie, S. Penrod, & N. Pennington, *Inside the Jury* (1983).

among the members, which occurred almost immediately for each jury. After an hour the experimenter returned, stopped the deliberation, and handed out the postexperiment questionnaires.

The videotaped jury deliberations were transcribed, and the transcripts were divided into units. In devising the coding scheme, I identified thirty major issues in the case. A unit, by definition, could contain no more than one of these issues. Short utterances occasionally contained none; long utterances were divided into units corresponding to the number of issues. Each transcript was coded by one or more of three trained coders. Coders were given lists of 100 case facts, 18 major issues, and 60 legal instructions; at various points, two coders were asked to code the same jury in order to calculate inter-coder reliability. Each unit was coded for the general nature of the statement (issue, fact, law, vote, procedural comment, and so on), correctness, pro defense or pro prosecution position, and the particular fact, issue, or point of law that was mentioned. Coders met weekly with me to resolve questions and settle differences.

Choosing a foreman

All juries began by choosing a foreman, not surprisingly, since the experimenter had instructed them to do so. The foreman was always chosen very quickly, with a minimum of discussion.

The process of foreman selection can be summed up by the phrase "choose a man who says he has experience." Although 65 percent of the jurors were female, sixteen of the eighteen foremen were male.[6] On the jury composed of eleven women and one man, the man was chosen. When the jurors had arrived in the room and settled in their seats, someone would point out that their first job was to chose a foreman, and then typically someone would ask, "Has anybody had any experience with this sort of thing?" A man would claim experience, and the other jurors would agree that he should take the job. Occasionally two men would claim experience and a brief "after you, Alphonse" discussion would ensue until one of them said, "all right, I'll do it." These two scenarios account for foreman selection in ten of the eighteen juries.

Since we knew which of our subjects had actually served on real juries, we were able to find out whether the people chosen as foreman were actually more likely to have had prior jury experience than the other jurors. They were not more experienced: 39 percent of the foremen had served on juries, as compared with 36 percent of the other jurors, an insignificant difference. Thus, a foreman is someone who claims experience, not necessarily someone who has it.

On the remaining eight juries, five foremen (four male, one female) were chosen because they were sitting in one of the seats on the ends of the table, and three (two male, one female) were individuals who had opened the discussion by volunteering for the position. Altogether, nine of the foremen were sitting at the head of the table, and four others were sitting in the chair right next to the head. Table position is by no means a subtle proxemic cue that exerts an unconscious influence on the jurors; in the majority of cases the jurors explicitly gave table position as their reason for their choice — "you should do it, you're sitting in the right place."

These data suggest that jurors give little consideration to their selection of foremen. They are generally given no information on what qualifications to look for, so they have little to guide them but their background knowledge and stereotypes of the jury, gained from the media and other sources. In the movies, the foreman sits at the head of the table.

In addition, at the time that the foreman is chosen, most jurors may still regard their task as a relatively simple one, because the extent of disagreement on the jury has not yet been revealed. They may not think it makes much difference who is chosen foreman, because they see the case as straightforward and do not anticipate serious disputes. Finally, since no disagreements have yet been revealed, it is likely that strong norms of courtesy prevail at the time that the foreman is selected. Once someone has been suggested, the others may think it is impolite to question his or her ability.

Taking the task seriously

Once the foreman was selected, the juries took one of two approaches to their task. One-half of the juries began by taking a vote, roughly evenly divided among show-of-hands, secret ballot, and a go-around procedure in which each juror states a position and says a little about his or her reasons for taking that position. The other half of the juries began by discussing the facts and issues in the case. The judge's instructions contained a caution to the jurors not to become unduly committed to their position but to remain open-minded. A few jurors interpreted these instructions to mean that they should not begin deliberations with a vote.

Hastie and his colleagues[7] have proposed that when a jury postpones a formal vote, it is freer to raise issues and discuss them open-mindedly. When a jury begins by voting, people feel committed to the position they have publicly expressed, and spend their time defending their position rather than trying to understand the facts and the law. Our data generally support Hastie's findings. Juries that postponed voting spent more time talking about the important issues in the case, and brought out more facts. One might hypothesize that juries that voted early would spend more time discussing the relevant law, because they

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6. This gender bias in choice of a foreperson has changed little over the last forty years. See Strodtbeck, James, & Hawkins, "Social Status in Jury Deliberations," 22 *Amer. Soc. Rev.* 713 (1957). It occurs not only in mock jury research but in real trials. See Kerr, Harmon & Graves, "Independence of Multiple Verdicts by Jurors and Juries," 12 *J. Applied Soc. Psychology* 12, 24-25 (1982); Note, "Gender Dynamics and Jury Deliberations," 96 *Yale Law Journal* 593 (1987).
7. See Hastie, Penrod, & Pennington, *supra* note 5; see also Hawkins, "Interaction Rates of Jurors Aligned in Factions," 27 *Am. Soc. Rev.* 689 (1962).
8. See H. Kalven & H. Zeisel, *The American Jury* 486 (1966).

would need to define the legal verdict categories before they could vote. This, however, was not the case. Early versus late voting did not predict the amount of time spent discussing the law.

Whether or not a jury began by voting, it was quickly apparent to members of the jury that they disagreed about the appropriate verdict. As soon as these disagreements emerged, the character of the deliberation changed. During foreman selection there was an atmosphere of convivality in the jury room, along with some degree of self-consciousness. A few jurors joked about the videotape camera. Once the discussion or an early vote revealed differences of opinion, there were no more references to the camera and few jokes of any sort. They kept their attention focused on the case.

On the average, 47 percent of their utterances concerned the facts of the case; 32 percent addressed the important contested issues (for example, the defendant's state of mind, provocation, angle of the knife thrust, ability of witnesses to see the crime); 21 percent dealt with the law and the judge's instructions; and 7 percent were votes or discussions about calling for a vote. (A given utterance could involve both a fact and an issue, or a fact and a point of law, so the percentages do not add to 100 percent.) These proportions are quite comparable to those found by Hastie and colleagues, whose juries saw the same case but deliberated to a final verdict. The criticism that juries approach their task in a frivolous manner receives no support from this study or from any other serious empirical research on the jury.

Discussing facts and issues

Whether or not the jury began with a vote, the general progression of the deliberation moved from an emphasis on facts toward an emphasis on law. In juries that did not begin by voting, the initial discussion resembled a random walk through the facts and issues. A topic would be raised, discussed briefly, and replaced by a totally different topic, with little attempt to organize the discussion and no attempt to resolve the issues.

When a jury begins by voting, people feel committed to the position they have publicly expressed, and spend their time defending their position rather than trying to understand the facts and the law.

These juries conformed very closely to Kalven and Zeisel's observation that "the talk moves in small bursts of coherence, shifting from topic to topic with remarkable flexibility. It touches an issue, leaves it, and returns again."[8] During the hour of deliberation, the important facts and issues would come up again and again, while trivial issues would be dropped, and new issues added. Typically, as an issue was examined and re-examined, there would be movement toward consensus.For example, one of the most important pieces of evidence in the trial was the coroner's statement that he found the victim's razor folded up in his back left pocket. Had the victim been coming at the defendant with the razor, a self-defense scenario would have been very plausible. The defendant and his friend claimed to have seen the razor drawn; two other witnesses testified that they did not see the razor. Most juries raised this issue early and dropped it without fully considering the implications.

In subsequent discussions, someone would raise the possibility that the victim somehow, in a reflex-like action, could have folded up the razor and pocketed it after he was stabbed, or that someone else (the policeman, the ambulance doctor, or a passer-by) might have picked it up and put it in the dead man's pocket. The jury would eventually conclude that these possibilities were farfetched, and agree that the victim never pulled the razor during the fatal confrontation. As a consequence, some juries would reject the possibility of self-defense and a few would turn their attention to the relevant question of the defendant's possible *belief* that the razor was drawn. In general, over the course of deliberation, jurors appear to focus more on the important facts and issues, come to a clearer understanding of them, and approach consensus on the facts.

In juries that began with a vote, the discussion tended to be slightly more organized. The average distribution of verdicts prior to deliberation was one for first-degree murder, two for second-degree murder, six for manslaughter, and two for not guilty. Although none of the juries showed exactly this pattern, most

of them had a majority of votes in the two middle categories with outliers for not guilty or for both not guilty and first-degree murder. A common tactic was for the middle jurors to begin by asking the outliers to explain their deviant position, typically starting with the proponents of first-degree murder. Whether or not the jury began with a vote, however, issues were raised and dropped fairly unsystematically, then raised again; slowly, progress was made. Little by little, most juries resolved the issues of fact and spent an increasing proportion of their time on the central issue: the defendant's state of mind.

Dealing with the facts

Kalven and Zeisel conclude that "the jury does by and large understand the facts and get the case straight." [9] On the whole, the data from this study support that conclusion. The juries in our study spent more time discussing the facts of the case (47 percent of the units included references to facts brought out in testimony) than anything else. These were rarely purely factual statements. Most of the time facts were raised in connection with a contested issue, a reference to common sense or knowledge, a hypothetical scenario, or a reference to the law.

Most of the juries managed to sort out the factual issues fairly well during the process of deliberation. Conflicting testimony (for example, about the angle of the knife thrust) was recognized as such, so that juries ended up correctly attributing different versions of the story to different witnesses. Questions regarding the distance and angle of vision of the various witnesses were generally resolved correctly, and errors of fact generally were corrected. None of the juries maintained an erroneous perception of an important fact after the hour of deliberation. Implausible suggestions generally were discussed and rejected, as in the case of someone putting the razor in the victim's pocket after he was stabbed.

Jurors tended to focus on testimony that favored their initial verdict preferences: Testimony about the previous confrontation between the two men was generally raised by jurors who favored a murder verdict, whereas testimony that the victim punched the defendant immediately before the killing was generally raised by jurors who favored manslaughter or self-defense. This tendency is not a weakness, but rather a benefit of the deliberation process — the opportunity it affords for comparing several different interpretations of the events along with the supporting factual evidence.

For most of the juries in this study, discussion of the facts and issues dominated the first part of the hour. Among the juries that voted early, there was usually some discussion of the judge's instructions in order to arrive at the verdict categories, but the discussion was generally quite superficial. During the course of the factual discussions, the central issues of disagreement emerged, and jurors attempted to persuade each other. Agreement on the facts, however, did not lead to substantial agreement on the central issue of the case: the defendant's state of mind. Jurors tried to persuade each other that their construals of the facts made sense. The discussions often became heated, few opinions were changed, and at some point (often, but not necessarily in connection with a vote), the jurors would turn to the legal definitions of the verdict choices for guidance.

Dealing with the law

Juries worked hard to understand the law. They spent an average of 21 percent of their time discussing the judge's instructions. Following the hour of deliberation, jurors were given an eighteen-question true-false test on elements of the judge's instructions. On average, the jurors answered 11.7 of the questions correctly, a result not significantly different from random guessing. On a postdeliberation multiple-choice test of factual issues, however, jurors performed quite well, answering correctly an average of 8.8 out of 14 questions (since there were four response alternatives, 3.5 correct answers would be expected by chance). These results suggest that the deliberation process works well in correcting errors of fact but not in correcting errors of law.

An examination of the statements jurors made about the law during the course of their deliberations provides further gloomy detail. We coded all statements jurors made about the law as correct, incorrect, or unclear. Remarks were coded as correct even if they were incomplete. For example, the statement "first-degree murder involves premeditation" would be scored as correct. Statements were scored as incorrect if they were unambiguously wrong; for example, "second-degree murder involves premeditation."

Statements that were coded as unclear were usually statements about verdict-evidence relationships; for example, "If Johnson knew that Caldwell would be there, it's premeditation." While this statement is technically false, because returning to a bar knowing that one's enemy is there does not necessarily imply intent to kill, it was scored as unclear, because the juror could have meant that Johnson's knowledge was a relevant consideration in determining premeditation. Thus, we did not code statements as incorrect unless there was no plausibly correct construal.

Given this rather lenient coding, we found that only half of the references to the law (631) were accurate, even when credit was given for partial accuracy. We found that 609 were not correct (28 percent unclear; 21 percent definitely incorrect). Whereas factual errors tended to be corrected during deliberation, errors of law were not corrected. Considering instances where the jury changed its position, 52 percent of them involved replacing an erroneous response with a correct one, and 48 percent involved replacing a correct response with an erroneous one.

9. Id. at 149.

These results are quite distressing, since they mean that the jury does not recognize the right answer when it hears it. Juries who have heard the right definition are as likely to reject it as juries who have heard the wrong one. The jury as a whole does not profit from the abilities of its best members when it comes to questions of law.

During the course of deliberation, jurors generally fought to defend their correct opinions of the facts but not their correct versions of the legal standards. Typically the most forcefully expressed position prevailed, whether or not it was correct. Most of the jurors' discussions of substantive law (that is, the definitions of the verdict categories) conveyed an impression of considerable uncertainty ("Was it . . . I think it was something about passion?"), and jurors who seemed confident about the law were often believed, whether or not their statements corresponded to the judge's instructions.

Of the 1,752 units across all juries that referred to the law, only seventy-five (4 percent) were error corrections. Only 12 percent of the 609 incorrect and unclear statements were corrected. Only 10 percent of the 1,285 references to the verdict choices addressed the distinctions between them. Of these, 26 percent were correct statements, 11 percent were definitely incorrect, 42 percent were unclear, and 21 percent were questions. Examining each jury's last definition of the four verdict choices during the course of the hour, we found that no jury was correct on all four of them. It appears that most jurors failed to absorb a great many of the judge's instructions and that the process of deliberation did not correct this problem.

Further evidence that the jurors learned less than they should have from the judge's instructions comes from examinating the frequency with which different aspects of the law were discussed during deliberation. The instructions most often discussed involved points of law that the jurors were very likely to have heard about before they heard the case; thus, there is a strong possibility that much of their discussion of the law was based not on the instructions they had heard from the judge but on prior knowledge.

For example, the element of the judge's instructions discussed most frequently was the definition of first-degree murder requiring premeditation and deliberation. Jurors were usually correct in their definitions (sixty-five correct statements, five incorrect, thirty-seven unclear). They very rarely went any further, however, in trying to define first-degree murder. There were only thirteen mentions of the definition of premeditation and deliberation, and only thirty-eight attempts to distinguish first-degree from second-degree murder (eight correct, four incorrect, twenty unclear, four questions, and two error corrections).

These results suggest that much of the jurors' discussion of the law on first-degree murder may have been based on the well-known phrase "premeditation and deliberation," and did not benefit from the new information provided by the judge's instructions. In addition, one might argue that the disproportionate amount of time spent discussing premeditation was inappropriate in this case, since fewer jurors favored first-degree murder than any other verdict choice.

Likewise, the familiar phrase "heat of passion" was the most commonly discussed element of manslaughter and accounted for 125 units, of which a third were incorrect or unclear statements. Interestingly, "involuntary manslaughter" was raised in ninety-three units, of which fifty-one were clearly incorrect. It is not surprising that most of the references were incorrect, since the judge had stated that the verdict category "involuntary manslaughter" was not relevant to this case. The fact that "involuntary manslaughter" was discussed almost as much as "heat of passion" in relation to the manslaughter verdict provides further evidence that juries rely at least as much on legal knowledge gained outside the courtroom as they do on the judge's instructions.

Although most of the law discussed by the jurors involved the substance of the verdict categories, jurors devoted 7 percent of their discussion of the law to the reasonable doubt standard, and 10 percent to the judge's instructions about

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the jurors' duties. The juries' understanding of reasonable doubt and how they must rule in the face of reasonable doubt was extremely accurate. Not one person on any jury, however, raised the question of the definition of reasonable doubt.

Like "premeditated murder," the phrase "beyond a reasonable doubt" is one that is likely to be familiar to jurors from prior experience, so we cannot conclude that they learned this standard from the judge's instructions. Attempts to apply the reasonable doubt standard to the facts of the case were evenly divided between correct and incorrect/unclear applications. The reasonable doubt standard was almost always raised by jurors who were trying to persuade a harsher faction to move toward their position.

Procedural instructions were also used as arguing tactics. Of the 172 remarks made about jurors' duties, 114 were devoted to three of the eleven instructions given by the judge: that jurors should only be influenced by the evidence and law presented in court (forty-nine remarks); that jurors should not speculate about sustained objections (twenty-two); and that jurors should not consider the penalty or consequences of the verdict (forty-three).

These comments were also used primarily as a weapon to close off lines of argument that a juror disagreed with, and generally took the form, "We can't speculate about that," or "We're not allowed to consider that." Jurors applied these rules incorrectly thirty-nine times and were clearly incorrect forty-five times; only fifteen of these forty-five errors were corrected. A great deal of concern has been expressed about jurors' inability to disregard extra-evidentiary factors; our data suggest that this concern is appropriate. However, jurors may also use the judge's cautionary instructions to stifle discussion of unpalatable, but clearly relevant, evidence.

Conclusion

In summary, the process of deliberation seems to work quite well in bringing out the facts and arriving at a consensus about their sequence. Errors are corrected, and irrelevant facts and implausible scenarios are generally weeded out, at least in deliberations over this relatively simple homicide. The juries also do a good job of gradually narrowing down discussion to the important issues. On the whole, however, the discussion of the facts does not produce changes in votes, since jurors' verdict preferences in the case were rarely a function of a clear mistake on the facts.

Unfortunately, the jurors' understanding of the law was substantially inferior to their understanding of the facts and issues.The judge's instructions were not very effective in educating them in new areas, or even in focusing their attention on the meaning of the familiar terms. This failure to apply the law correctly was by no means a failure to take the law seriously. Discussions of the law took up one-fifth of the deliberation time and were carried out with great intensity, frequently with an apparent sense of frustration. The jurors understood that a key aspect of their task was to interpret the evidence in terms of the appropriate legal categories. They struggled to do so, but often failed.

There is no reason to believe that the jurors' misunderstanding of the law is a function of their mental capacities. It seems more plausible that the system is set up to promote misunderstanding. Factors blockading the serious jury trying to perform its task include: the convoluted, technical language; the dry and abstract presentation of the law following the vivid, concrete, and often lengthy presentation of evidence; the requirement that jurors interpret the evidence before they know what their verdict choices are; the fact that juries usually do not get copies of the instructions to take with them into the jury room; the lack of training in the law for jurors as part of their jury duty; the general failure to discover and correct jurors' preconceptions about the law; the failure to inform jurors that they are allowed to ask for help with the instructions; and the fact that those who do ask for help are often disappointed by a simple repetition of the incomprehensible paragraph.

Research on jurors' comprehension of judge's instructions is increasing, but there is still very little. We do not even know whether juries that ask for help with the instructions do better than juries that try to muddle through on their own. Research on specific techniques for improving juror comprehension indicates that improvement is possible. At any rate, it seems profoundly unfair to criticize juries for failing to perform well a task that, by all the usual educational criteria, has been stacked against them.

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