

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

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VOLUME 38 • NUMBER 3
FALL/WINTER 1995

LAW QUADRANGLE NOTES



Law Journals: Learning the Practical Side of Scholarship
The Question of Race and Voting Rights
The Majoritarian Difficulty

UNIVERSITY OF MICHIGAN
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UPCOMING EVENTS

- Jan. 4-5 American Association of Law Schools
 San Antonio
- Mar. 15-17 "Reflections on Development"
 symposium sponsored
 by the Michigan Law and
 Development Society
- Mar. 22-23 Journal of Law Reform Products
 Liability Law symposium
- May 11 Senior Day

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Cover —
Some of the students currently working
on University of Michigan law journals
(photo by Gregory Fox).

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MESSAGE FROM DEAN LEHMAN

THE PAST TEN DAYS have reminded me how much our life in the law and legal education revolve around different forms of conversation.

First the Law School welcomed hundreds of graduates of the Classes of '50, '55, '60, '65, and '70 back for a reunion weekend. Some saw their first law school classes in decades, others saw a faculty debate about the future of legal education, still others participated in an alumni roundtable on the profession. The Honigman Auditorium was jam-packed for a warm, funny, and thoughtful speech by Dick Gephardt '65. (If you have a computer with a sound card that is connected to the Worldwide Web, you may listen to his talk by pointing to <http://www.law.umich.edu/audio/>) A football game, walking tours, receptions, banquets — even an intimate Sunday brunch for 150 at our home — each setting encouraged a different style of conversation.


Then, the students took over and sponsored two nationally significant conferences. The Michigan Journal of Race and Law launched itself with a two-day symposium entitled *Toward a New Civil Rights Vision*. And the Michigan Law and Policy Review launched itself with equal panache, bringing together an equally prominent group of academic and nonacademic commentators to debate the complex problems of tort reform. Each symposium relied on panel debates to bring out the complexity of multifaceted social and legal issues.

These many different conversations — whether serious, frivolous, supportive, or fractious — shared to varying degrees a quality that bears on my theme for this year. As I indicated in my last Dean's Message, I am organizing the 1995-96 academic year around the character trait of "integrity." And as I suggested there, the integrity of the attorney is most often exemplified in communicative contexts, as we convey ideas to others through speeches, debates, negotiations, or other conversations.

The quality that I want to stress is the quality of trust. For at least one of the dimensions of integrity, as I understand it, concerns a person's ability to act in a way that elicits the trust of others. Two provocative recent books emphasize the critical role that trust plays in productive societies. In *Trust*, Francis Fukuyama argues that the most efficient economies are those where people can expect regular, honest, and cooperative behavior from one another, based on commonly shared norms. And in *Work and Integrity*, William Sullivan argues that the professions will only be able to thrive if their members commit themselves to promoting a climate of "positive interdependence," aligning the professions' norms and expectations with the promotion of social trust and mutual obligation.

The conversations in and around the Law School this fall have been successful to the extent they have been genuine. The integrity of the speakers has promoted an environment of mutual trust. It is the trust that comes when people are joined together in the pursuit of larger purposes.

And that may well be one of the best ways to think about the integrity of an institution such as the University of Michigan Law School. People gather here for a vast array of reasons. They may wish to understand tax doctrine, to develop a new vision of civil rights, to clarify the costs and benefits of changing our tort system, or to renew friendships with other members of the Class of 1965. I find satisfaction in the idea that the Law School adds value to society by bringing individuals together for a common purpose, in a spirit of mutual trust.



These many different conversations — whether serious, frivolous, supportive, or fractious — shared to varying degrees a quality that bears on my theme for this year. As I indicated in my last Dean's Message, I am organizing the 1995-96 academic year around the character trait of "integrity." And as I suggested there, the integrity of the attorney is most often exemplified in communicative contexts, as we convey ideas to others through speeches, debates, negotiations, or other conversations.

— DEAN LEHMAN

'95 a banner year for federal clerkships

A total of seventy-seven Michigan graduates will begin state and federal clerkships in 1995. Of those, twenty-three are in federal courts of appeal; 38 are in federal district courts; and two 1994 graduates are in the U.S. Supreme Court. Sean Gallagher is clerking for Justice Sandra Day O'Connor and Heather Gerken for Justice David Souter, who has never before hired from Michigan.

It was a terrific clerkship year for Michigan in the federal courts, with 22 percent more students winning posts with federal judges than ever before. What's more, of the sixty-one students clerking in federal appellate and district courts, thirty-seven are working for judges who haven't hired Michigan graduates before.

"We increased our federal clerkships from fifty to sixty-one this year. This year is the best we've done in the federal courts since we started keeping records in 1987," says Deborah Malamud, assistant professor and clerkship advisor to the class of 1995.

This year's clerkship tally includes a handful of graduates from 1991 and 1992 who decided to clerk after a few years of practice. Indeed, some judges express a preference for clerks with previous legal work experience, and in some instances Malamud has consulted with faculty members and the alumni office to identify Michigan graduates who might be interested in a specific clerkship. For example, a cold call to Nancy DeSantis, '91, a specialist in patent law, ultimately resulted in her

clerkship with the newly-appointed Hon. William Bryson of the U.S. Court of Appeals for the Federal Circuit, the court with jurisdiction over patent appeals.

Malamud is also seeing a trend toward "double-dipping" — students applying for and obtaining a second clerkship in a different court. One explanation for this trend is that these clerks are taking extra time to experience different areas of law before committing to a certain type of practice in a firm.

The number of clerks placed each year has more than doubled since 1987, in part because of the cooperative efforts of students, faculty, staff and alumni. Malamud credits faculty members for their support of students, and students for their talents, energy, and perseverance. Sometimes, the team effort leading to a clerkship can be extraordinary.

For example, when Judge Harold Fong, '63, of the U.S. District Court in Honolulu died unexpectedly in April, Malamud realized that Ian Anderson, '95, was scheduled to clerk for Fong the following year and therefore was about to become unemployed. Malamud tracked down Anderson while he was on a cross-country bike trip to tell him of Judge Fong's death, and tell him of another potential post. She had just learned from Cynthia Stroman, '94, then clerking for the Hon. Emilio Garza of the U.S. Court of Appeals for the Fifth Circuit, that Garza had a last-minute opening. Luckily, Anderson happened

to be in Texas, so (without a suit) he took a bus to San Antonio, interviewed with Judge Garza, and got the job.

Michigan students have also done well with newly-appointed federal judges. Students have shown a willingness "to keep an eye out for new nominees and apply to them quickly," Malamud said. Michigan faculty whose friends and former colleagues have become judges have helped

Michigan students secure these clerkships.

Even after a strong clerkship year, Malamud says, "There's plenty of room to increase our numbers and raise Michigan's profile in courts like the D.C. Circuit, which have a history of leading to Supreme Court clerkships and positions in public service and academia." After a banner year, the Michigan clerkship program is not resting on its laurels.

CLASS OF 98

The class of '98 comes to the Law School from all fifty states and the District of Columbia, as well as from thirty-seven foreign countries (including graduate students), and a wide range of personal and academic backgrounds. Two hundred and fourteen undergraduate schools are represented in the class.

Based on data gathered in late summer, here is a statistical snapshot of the University of Michigan Law School's 1998 entering class.

TOTAL (J.D.) STUDENTS	340
GRADUATE STUDENTS	37
STUDENTS OF COLOR	70
WOMEN	151
IN-STATE STUDENTS	120
AVERAGE AGE	24
YOUNGEST	21
OLDEST	48
MEDIAN LSAT	167
MEDIAN GPA	3.56

BRIEFS

UNLESS OTHERWISE NOTED, CLERKS ARE '95 GRADUATES

Sean W. Gallagher, '94
Hon. Sandra Day O'Connor
U.S. Supreme Court

Heather Gerken, '94
Hon. David Souter
U.S. Supreme Court

Linda L. Terry
Hon. Douglas Ginsburg
U.S. Court of Appeals
for the D.C. Circuit

Jonathan D. Hacker
Hon. Bruce M. Selya
U.S. Court of Appeals
for the First Circuit

David A. Luigs
Hon. Edward Lumbard
U.S. Court of Appeals
for the Second Circuit

Kristen A. Donoghue
Hon. Fred I. Parker
U.S. Court of Appeals
for the Second Circuit

Samuel L. Feder
Hon. Edward R. Becker
U.S. Court of Appeals
for the Third Circuit

David A. Sutphen
Hon. Timothy K. Lewis
U.S. Court of Appeals
for the Third Circuit

Michael A. Carrier
Hon. John D. Butzner, Jr.
U.S. Court of Appeals
for the Fourth Circuit

Gerald F. Leonard
Hon. James Dickson Phillips, Jr.
U.S. Court of Appeals
for the Fourth Circuit

Christopher Ian Anderson
Hon. Emilio M. Garza
U.S. Court of Appeals
for the Fifth Circuit

Daniel J. (Jim) Greiner
Hon. Patrick E. Higginbotham
U.S. Court of Appeals
for the Fifth Circuit

Marc Spindelman
Hon. Alice M. Batchelder
U.S. Court of Appeals for the
Sixth Circuit

Erik W. Scharf
Hon. Danny J. Boggs
U.S. Court of Appeals
for the Sixth Circuit

Seth Sergent-Leventhal
Hon. Cornelia G. Kennedy
U.S. Court of Appeals
for the Sixth Circuit

R. Patrick DeWine, '94
Hon. David A. Nelson
U.S. Court of Appeals
for the Sixth Circuit

Ana Merico-Stephens
Hon. James L. Ryan
U.S. Court of Appeals
for the Sixth Circuit

Marilla Ochis, '94
Hon. James L. Ryan
U.S. Court of Appeals
for the Sixth Circuit

Paul R. Bernard
Hon. Richard D. Cudahy
U.S. Court of Appeals
for the Seventh Circuit

James D. Humphrey
Hon. Harlington Wood Jr.
U.S. Court of Appeals
for the Seventh Circuit

Eugene E. Whitlock
Hon. Alfred T. Goodwin
U.S. Court of Appeals
for the Ninth Circuit

Robert Alexander
Hon. Carlos F. Lucero, US
Court of Appeals
for the Tenth Circuit

Robert Bronston
Hon. William C. Bryson
U.S. Court of Appeals
for the Federal Circuit

Nancy DeSantis '91
Hon. William C. Bryson
U.S. Court of Appeals
for the Federal Circuit

Martha Dye
Hon. Daniel M. Friedman
U.S. Court of Appeals
for the Federal Circuit

Laura A. Pagano
Hon. Earl H. Carroll
U.S. District Court
for the District of Arizona

Devon N. Alexander
Hon. Mariana R. Pfaelzer
U.S. District Court for the
Central District of California

Sean B. Hecht
Hon. Laughlin E. Waters
U.S. District Court for the
Central District of California

Steven J. Olson
Hon. Wm. Matthew Byrne
U.S. District Court for the
Central District of California

Bruce H. Searby
Hon. A. Wallace Tashima
U.S. District Court for the
Central District of California

Robert J. Wierenga
Hon. Vaughn R. Walker
U.S. District Court for the
Northern District of California

Stephen S. Chun
Hon. Richard P. Matsch
U.S. District Court for the
District of Colorado

Richard Hardaway
Hon. Richard P. Matsch
U.S. District Court
for the District of Colorado

Benjamin C. Bair
Hon. Roderick McKelvie
U.S. District Court
for the District of Delaware

Gina M. Roccanova
Hon. Sue L. Robinson
U.S. District Court
for the District of Delaware

Jeff Paul Ehrlich
Hon. James Lawrence King
U.S. District Court for the
Southern District of Florida

John B. Morris
Hon. Richard C. Freeman
U.S. District Court for the
Northern District of Georgia

Roopal R. Shah
Hon. David A. Ezra
U.S. District Court
for the District of Hawaii

Kathleen Kendall
Hon. John A. Nordberg
U.S. District Court for the
Northern District of Illinois

Tracy L. Prosser
Hon. John Philip Gilbert
U.S. District Court for the
Southern District of Illinois

Nina Y. Rivera
Hon. Rudy Lozano
U.S. District Court for the
Northern District of Indiana

Kirsten K. Solberg
Hon. David F. Hamilton
U.S. District Court for the
Southern District of Indiana

Natalie J. Spears
Hon. Michael J. Melloy
U.S. District Court
for the District of Iowa

Tracy D. Weaver
Hon. Julian A. Cook Jr.
U.S. District Court for the
Eastern District of Michigan

James F. Gehrke, '94
Hon. John Feikens
U.S. District Court for the
Eastern District of Michigan

Lynne M. Rekowski
Hon. John Feikens
U.S. District Court for the
Eastern District of Michigan

Julie Beck, '94
Hon. Horace W. Gilmore
U.S. District Court for the
Eastern District of Michigan

James D. Lewis
Hon. Gerald E. Rosen
U.S. District Court for the
Eastern District of Michigan

Noceeba D. Southern
Hon. Anna Diggs Taylor
U.S. District Court for the
Eastern District of Michigan

Scott L. Garland
Hon. Dean Whipple
U.S. District Court for the
Western District of Missouri

Timothy P. Harkness
Hon. Carol Bagely Amon
U.S. District Court for the
Eastern District of New York

Joshua Levine
Hon. Shira A. Scheindlin
U.S. District Court for the
Southern District of New York

Kevin T. Traskos
Hon. Louis L. Stanton
U.S. District Court for the
Southern District of New York

Craig Smith, '92
Hon. James G. Carr
U.S. District Court for the
Northern District of Ohio

Pamela R. Bell
Hon. Sandra Beckwith
U.S. District Court for the Southern
District of Ohio

Brian G. Selden
Hon. Joseph P. Kinneary
U.S. District Court
for the Southern District of Ohio

Diane L. Millar
Hon. Jay C. Waldman
U.S. District Court for the
Eastern District of Pennsylvania

Jared A. Goldstein
Hon. Louis H. Pollak
U.S. District Court for the
Eastern District of Pennsylvania

Katherine D. Ashley
Hon. Ernest C. Torres
U.S. District Court for the
District of Rhode Island

Audrey Richardson
Hon. Raymond J. Pettine
U.S. District Court for the
District of Rhode Island

India Henson
Hon. Curtis Collier
U.S. District Court for the
Eastern District of Tennessee

Steven C. Coberly
Hon. Thomas S. Ellis III
U.S. District Court for the
Eastern District of Virginia

Walter Lanier
Hon. John W. Reynolds
U.S. District Court for the Eastern
District of Wisconsin

Anthony R. Montero
Hon. John E. Ryan
U.S. Bankruptcy Court for the
Central District of California

Katherine Galvin
Hon. Robert Eastaugh
Alaska State Supreme Court

Blanche Cook
Hon. Gregory Scott
Colorado State Supreme Court

Benjamin Kahn
Hon. George E. Lohr
Colorado State Supreme Court

James P. Allen
Hon. James H. Brickley
Michigan State Supreme Court

Thomas Byrne, '92
Hon. Michael F. Cavanagh
Michigan State Supreme Court

Helen E. Melia
Hon. Conrad L. Mallett Jr.
Michigan State Supreme Court

Bentina D. Chisolm
Hon. Henry E. Frye
North Carolina State
Supreme Court

David P. Lyons
Hon. Craig Wright
Ohio State Supreme Court

Philip W. Dietrich
Michigan Court of Appeals

Alma L. Lowry
Michigan Court of Appeals

Sangeeta Patel
Michigan Court of Appeals

Robert V. Tuscano
Michigan Court of Appeals

Kris P. Vezner
Michigan Court of Appeals



Dykema Gossett Dedication —

The dedication of the Dykema Gossett classroom (also known as 250 Hutchins Hall) took place on September 19. Members of the firm on hand to celebrate the event along with the Dean (center) and to view the extensive renovations, including improvements in acoustics and sight lines, were, left to right: Lloyd Semple, J.D. '64; Laurence Connor, J.D. '65; J. Kay Felt, J.D. '67; and Frank Zinn, J.D. '59. Members of the firm, including John Dykema '47 who died in June, have long been supporters of the Law School.

Law Clinics busy with improvements

New staff, space, programs and publications are enhancing the activities of the Law School's clinical programs.

THE LAW SCHOOL'S CHILD WELFARE LAW RESOURCE CENTER, administered by the Child Advocacy Law Clinic, recently hired Kathryn O'Grady as program manager. O'Grady will support the center's mission of raising the standard of legal representation for children by providing training, practice manuals, networking opportunities, and technical assistance for professionals in the field. With twelve years' child welfare law experience first in private practice and then in the Wayne County Juvenile Defender's Office, she brings to the center first-hand knowledge of the need to better educate the lawyers handling children's cases.

In addition, Clinical Professors Donald Duquette and Suellyn Scarnecchia launched the center's summer fellowship program with a three-day training session in May.

Twenty law students — five from Michigan and fifteen from other schools — learned about children's legal status, practiced interviewing children, and conducted mock court cases. After the session, participants spread out across the country in ten-week fellowships with agencies, private attorneys, judges, public defenders, and others who represent children.



These Kellogg Child Law Fellows are just one component of the Child Welfare Law Resource Center, which is funded by a \$1.5 million grant from the W.K. Kellogg Foundation Families for Kids Initiative. The goal of the Kellogg initiative is to reform foster care, in the belief that too many children spend too long in such care. The law school's program aims to enhance the quality and availability of child welfare services in nine target communities selected by the Kellogg Foundation.

THE NATIONAL WILDLIFE FEDERATION ENVIRONMENTAL LAW CLINIC has started a newsletter for its alumni. The inaugural issue (Summer 1995) includes a report on the \$172 million settlement against the Ludington Pumped Storage Plant and a feature on 1987 graduate Celia Campbell-Mohn. The clinic now has thirteen full-time employees, and runs year-round, including a summer session for about five students. Naturally, the newsletter is printed on recycled, chlorine free paper with soy ink. For a paperless

source of information from the Great Lakes Natural Resource Center, try its World Wide Web home page at <http://www.great-lakes.net:2200/0/partners/NWF/glnrc.html>.

THE PROGRAM IN LEGAL ASSISTANCE FOR URBAN COMMUNITIES has enhanced its efforts by opening an office in downtown Detroit. The office, in the Book Tower Building, opened at the end of March, providing space for staff and students to meet

with the community development groups they assist, explained Rochelle Lento, director of the clinical program.

This summer, the clinic took advantage of the new space to hold meetings with several client groups at once — something they really couldn't do when operations were based in Ann Arbor. "The office makes us more accessible; since we've been here we've seen an increase in calls from new clients," Lento says.

The program also has hired Melissa Worden, a 1994 graduate and alumna of the program, as a staff attorney.

Clinical Professors Donald Duquette and Suellyn Scarnecchia and Valora Washington, vice-president for programs with the W.K. Kellogg Foundation, held a spring training session for the first Kellogg Child Law Fellows. After training, the twenty students spent the summer handling children's cases at firms and agencies around the country.

Greenwald Bequest endows scholarships

The University of Michigan Law School and the School of Music were honored to learn of the generous bequest of Dorothy Greenwald, whose estate provided for over \$800,000 in endowed scholarship funds at each School.

Greenwald, a longtime Ann Arbor resident who died in 1993, earned her A.B. at the University in 1924 and her A.M. in 1925, both in English; for her outstanding work she was awarded membership in Phi Beta Kappa. In 1933 she enrolled in a writing program, winning a Hopwood Award for a novel. She brought her writing skills to the School of Business Administration, joining the faculty in 1942 and establishing and running the program in written communications there until her retirement in 1970.

The designation of the scholarship to both the Law School and the School of Music reflects her wish to honor her parents: her father, Charles E. Greenwald, was an 1897 Law School graduate and a judge, and her mother, Christine M. Greenwald, was known for her singing voice and interest in music. Having no children of her own, Dorothy Greenwald elected to pass on her family's Michigan tradition to future generations of students at the University who will reap the benefits of her foresight and generosity.

BRIEFS



Another tradition continued when the residents of Martha Cook hosted Law School students at a tea in the Gold Room in September.



CORRECTIONS

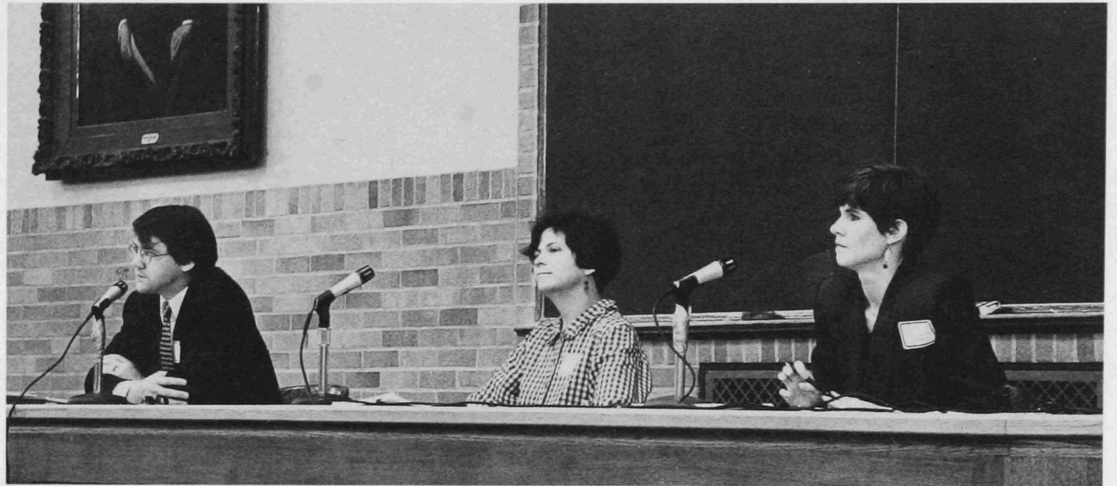
In the Summer 1995 LQN, the Hon. Shirley Abrahamson's name was misspelled in the Campbell Competition photo caption, and 1961 graduate Irvine Hockaday's was misspelled in the Dean's Forum caption. Also, the MacCrate Report was incorrectly identified as a 1979 report; it was published in 1989. LQN regrets these errors.

A United Kingdom gathering (above) —

London's Wig and Pen Club, the only building on the Strand to survive the Great Fire of 1666, was the site for a United Kingdom gathering of Dean Lehman and Law School graduates who were treated to dinner and a demonstration of the Law School's new site on the World Wide Web. Those in attendance included: Katherine Ward, J.D. '77; Jacob Werksman, J.D. '90; Hans Bagner, LL.M. '63; Clinton Elliott, '91; David Barker, QC, '55; John Toulmin, QC, LL.M. '63; Joseph Blum, J.D. '82; and Melanie Stein, J.D. '90. Also in attendance were two former graduate students, Hideo Nakamura and Lawrence Ziman. (For more information about the www site, see p. 10).

Student Orientation —

A number of student orientation activities this fall focused on the academic transition to Law School. From left to right, Professors Peter Hammer and Becky Eisenberg, and Faculty Fellow Sonia Suter debated Davis v. Davis.



Service Day (below) —

held during Law School orientation, involves scores of students and staff offering time and effort to volunteer organizations throughout Southeastern Michigan. Here, energetic students provide assistance to the Detroit chapter of Habitat for Humanity.



PHOTO BY THOMAS TREUTER

Link up to the Law School on the

World Wide Web

This October, the law school shifted into high gear on the information superhighway with the unveiling of its own site on the Internet's World Wide Web. The site is designed to provide a forum to meet the information needs of alumni, faculty, staff, current and prospective students, and the global legal community on the Internet.

Areas on the Michigan Law web site of particular interest to alumni include a calendar of events, a law school directory, faculty biographies, an Internet legal resources guide, and various publications, including Law Quadrangle Notes and student journals on-line.

The web site will also be the future home of AlumNet, an exclusive area for Michigan Law graduates to renew, maintain, and strengthen ties to their fellow classmates and alumni. Features planned include an on-line graduate directory, the Career Services job newsletter, and message conferences on a wide variety of topics.

For those already familiar with the World Wide Web, the law school's address is <http://www.law.umich.edu/>. If all of the preceding terminology is confusing, but you would like to find out more about this growing area of information technology, here are some basic definitions that may be of assistance:

Internet:

A collection of thousands of interconnected electronic networks which share a common protocol for sharing information. Enables you to use the services located on any of the other networks.

World Wide Web:

A global web of computer-accessible information that is interconnected at numerous points. Users can view documents, scanned images, audio and video clips on thousands of computers available on the web.

Browser:

The software program that enables a user to interact with the Web. Popular browsers include Netscape Navigator, NCSA Mosaic, Cello and Lynx.

URL:

Uniform Resource Locator. The "address" of a specific object on the Internet. The law school's URL is: <http://www.law.umich.edu/>

Home Page:

Initial screen seen by a user that serves as an entry point to a web site.

Links:

Objects that serve a navigational role on a web site. Links can be text or pictures that users can click on to move to another location.

For more information or to provide suggestions on the law school web site, or to add a link on our alumni page to your home page, please contact Frank Potter at (313) 998-7970 or via e-mail: potterf@umich.edu

Point your browser to:
<http://www.law.umich.edu/>

IN PRINT

Faculty books

Professor Carl E. Schneider and Professor Margaret F. Brinig of George Mason University School of Law have published a new casebook called *An Invitation to Family Law*. The book is organized in a way that encourages students to consider family law issues through the perspective of broader, universal legal problems.

"It's a bit different from other case books in family law because we use a much more highly organized pedagogical approach," says Schneider. "We explicitly ask students to think about five major functions that family law serves, which we think all law serves. We then focus on twelve principal themes which are recurring jurisprudential issues not just in family law, but all areas of law."

For example, the casebook considers the growing use of contracts in family law by examining some of the classic problems with contracts in more traditional business use. "One of the directions family law is moving is to organize relationships between individuals by contract," Schneider explains. "We point

out that there are recurring problems with contracts, and that we have a lot of information on how well they work in business settings. Then we can ask, 'If businesses have these problems with contracts, what might we expect with contracts used in family law?'"

Other themes explored include:

- Rights thinking - Now more than ever, Schneider contends, the language of social dispute is the language of rights. The casebook thus is an extended investigation of the aptness of rights thinking in family life and law.

- Privacy - "I suggest in the casebook that today we talk more about privacy but we value it less," Schneider says, offering as evidence all sorts of family troubles routinely aired on television talk shows.

- Tension between discretion and rules - "Do we write a rule that says we can never take children away from a biological parent? Most people would say no, but when we give discretion to judges on these issues, we end up with decisions we don't like. How do we balance these competing considerations?"

Brinig, who holds a doctorate in economics, brings insights of economic analysis as well as those of the social sciences to the subject. Schneider suggests that the book could be used in first-year courses to introduce general issues and conflicts that occur throughout law in the context of a fascinating specialty field.

John H. Jackson and co-authors William J. Davey and Alan O. Sykes have published the third edition of *Legal Problems of International Economic Relations: Cases, Materials and Texts* (West Publishing, 1995).

The casebook was updated to include the results of the Uruguay Round, including the creation of the World Trade Organization. It covers services and intellectual property — two new areas incorporated in the General Agreement on Tariffs and Trade in the Uruguay Round.

Jackson, the Hessel Yntema Professor of Law, says his co-authors convinced the publishers to literally hold the presses when Congress stalled legislation approving the Uruguay Round last fall. "We were ready to go to press in the fall, but we held up printing until the final Senate vote on Dec. 1. We were worried that the Uruguay Round might not be approved, and the manuscript would be out of date before it was even printed!" In the end, the book was printed and distributed quickly so it was available for use in Winter Term 1995 courses.

Brian Simpson's new book, *Leading Cases in the Common Law* (Oxford, 1995), addresses the phenomenon of the leading case — the judicial decision which acquires a timeless quality, coming to stand for some legal idea, principle, or doctrine thought to be central to the casuistic tradition of the common law.

In the book, Simpson, the Charles F. and Edith J. Clyne Professor of Law, explores how such cases arise in the first place, why they were decided as they were and how such cases come to achieve their special status. By incorporating detailed and meticulous investigation of their original historical context, and by tracing their strange intellectual histories, he also explores the cultural and social history of the law and of legal thought.

"This book offers at one level a criticism of the deeply anti-empirical tradition of the world of academic law and legal theory," says Simpson. "And, at a less solemn level, I hope it may show that we can obtain greater enjoyment and instruction from the study of cases if we discover more about them than is provided by law reports."

LQN

LEGAL WRITING TAKES CENTER STAGE

Grace Tonner believes lawyers are really professional writers. As the Law School's new director of legal practice skills, her challenge is to develop a program that will train law students to excel in this essential skill.



PHOTO BY THOMAS TREUTER

The process of writing “helps them learn to analyze issues and organize ideas, and it enhances what’s covered in doctrinal classes. Over time, I really see improvement in their legal writing, and that’s quite gratifying.”

— GRACE TONNER

“Lawyers write all the time,” Tonner observes. “It’s important that lawyers become well-trained writers in law school because often they don’t have much time in practice to learn legal writing for the first time.” She joined the faculty this summer to begin building a comprehensive course in Legal Practice skills that will replace the case club course for legal research and writing for the 1996-97 term.

Tonner, formerly the director of Loyola Law School’s legal writing program, has a dozen year’s experience teaching both students and lawyers to write clearly. She has taught legal writing and research as an independent year-long course and as a component of Civil Procedure and Contracts. She also conducted writing workshops for practicing attorneys. She has practiced insurance law and taught commercial law, sales, contracts, and insurance law courses.

In her experience, the problems most students encounter in learning legal writing are problems with the analysis of legal issues and the organization of those issues, not with the mechanics of language. She stresses that analytical skills will be a key component of the new program. “I believe research, writing, and analysis should be integrated and should be taught simultaneously” says Tonner.

Ultimately, Tonner will hire seven full-time legal practice faculty to replace the student senior judges who have served as instructors in

the traditional case club system. In the meantime, “I’ll provide more instruction for the senior judges, spending more time teaching them how to teach,” she says.

She finds it most satisfying to teach first-year students and watch them gain skills and confidence. Brand-new students are enthusiastic, but they are also often uncomfortable with legal terminology and issues and unaccustomed to analytical thinking. If they haven’t been asked to write much in high school or college, they may freeze in front of a blank page or computer screen, she explains. The process of writing “helps them learn to analyze issues and organize ideas, and it enhances what’s covered in doctrinal classes. Over time, I really see improvement in their legal writing, and that’s quite gratifying.”

The legal practice course will serve as a “lab component” of law school. “Students will learn to research and to write memos, briefs, and client letters — the building blocks for most of the legal writing they will do in practice. Additionally they will learn to edit their own work. They will come to understand that good writing must support their goal. They should be aware of their goal or goals for a document, memo or brief and to write with that goal in mind. We are going to do what lawyers do.”

LQN

LYON JOINS CLINICAL STAFF

Andrea D. Lyon, a nationally recognized expert in death penalty defense and a public defender with extensive experience in homicide and capital cases, has joined the Michigan Clinical Law Program as an assistant clinical professor.

She will renew the clinic's involvement in criminal cases. "We'll handle a combination of simple misdemeanors that students will try on their own with me as a back-up, and more complicated felonies that I will handle with the students as a back-up," she explains.

After earning her law degree at Antioch School of Law, Lyon joined the Office of the Cook County Public Defender. Ultimately, she became chief of the Homicide Task Force, a unit of twenty-two attorneys within the Public Defender's office. In eighteen years, she tried more than 130 homicide cases, including forty capital cases. Her expertise in death penalty defense led her to begin the Capital Resource Center in Chicago in 1990. The center, which she directed, selects, trains, and supervises attorneys representing death row inmates on collateral review.

She also has taught Appellate Advocacy as an adjunct professor at Loyola Law School in Chicago and has taught numerous continuing legal education courses on trial advocacy and the death penalty. "I love teaching. I was drawn to Michigan by the opportunity to teach and the stupendous quality of the clinical faculty. I'm really excited to be here," she says.

Lyon's experience leaves her well-equipped to train students in the trial process. She chose to focus her career on homicides in part because in public defenders' offices, "it's the only area with vertical representation, where attorneys are assigned to clients at the first court appearance and follow them through to trial." In all other areas, public defenders are typically assigned to a courtroom where they handle any client that appears. "That means a defendant has at least three and as many as six lawyers along the way, which does not promote good relationships in which you can gain a client's trust and confidence," she says.

In past years, the Clinical Law Program handled a fair amount of criminal law work, but changes in state laws and local courts reduced the caseload, explained Professor Paul Reingold, clinic director. However, there are still plenty of clients who need representation, and Lyon is beginning to work with area courts and public defenders to identify potential cases.

LQN



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— ANDREA D. LYON

As LQN went to press, the National Legal Aid and Defender Association announced that Professor Andrea Lyon has been selected to receive the 1995 Reginald Heber Smith Award. The award, which honors dedicated service and outstanding achievements of a lawyer working in legal services or indigent defense, is widely considered to be the highest honor in the United States for a public defender.

Terrance Sandalow

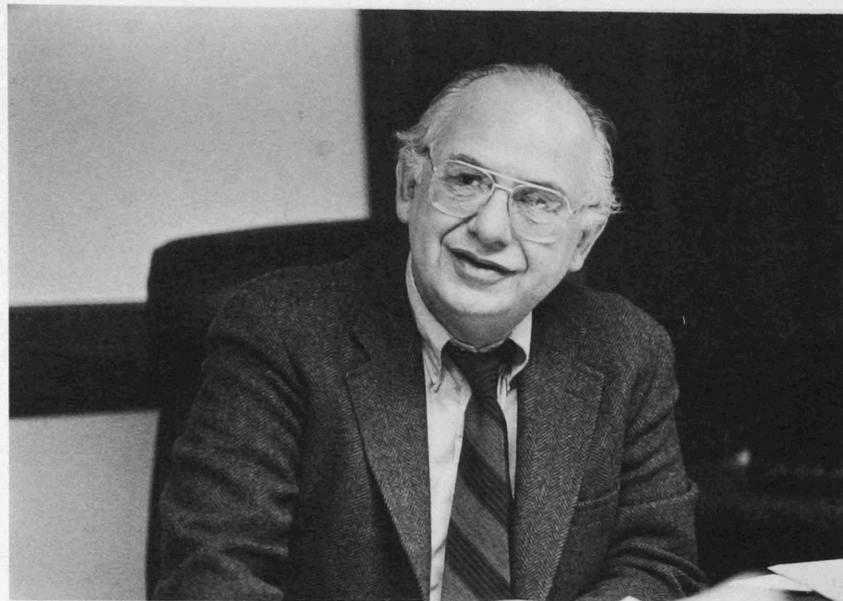


PHOTO BY THOMAS TREUTER

Faculty accomplishments



Rebecca Eisenberg

Professor Rebecca Eisenberg recently was appointed to the Working Group on Ethical, Legal and Social Implications of the Human Genome Project and to the Advisory Committee to the Director of the National Institutes of Health. She will also chair a Committee on Intellectual Property Rights and Research Tools in Molecular Biology for the National Research Council.

Professor T. Alexander Aleinikoff, on leave to serve as general counsel to the Immigration and Naturalization Service, has been promoted to a new position. He is now executive associate commissioner for programs, with responsibility for INS examination and enforcement policies.

Professor Terrance Sandalow recently received the Professional Achievement Citation from the University of Chicago. This award honors alumni whose achievements in their professions have brought distinction to themselves, credit to the university, and true benefit to their communities. Sandalow, who earned a bachelor's degree in 1954 and a law degree in 1957 from Chicago, was recognized for his impact on legal education. As a distinguished faculty member and former dean at the University of Michigan Law School, he has "refined, developed and expanded the school's programs, keeping to the highest standards while strengthening and broadening the interdisciplinary character of the faculty and the school's approach to legal studies," the citation stated.

Professor Richard Lempert spent the 1994-95 year at the Center for Advanced Study in the Behavioral Sciences at Stanford University. He also presented papers at two international meetings in Japan and gave a lecture on jury trials to the Osaka Bar Association. In 1995-96, he will be chairing the University's Department of Sociology.

Advising Israel's judges —

Professor Richard Pildes (right) is part of an international team of constitutional law scholars who have been advising Israel's judges as the nation shifts toward a form of constitutionalism. Pictured from left are Georg Nolte of the Max Planck Institute for Comparative Public Law and International Law; Lorraine Weinrib of the University of Toronto Law School; and Meir Shamgar and Aharon Barak, president and deputy president of the Supreme Court of Israel. Weinrib and Barak have both taught courses at the Law School.



Visiting European alumni —

On a European trip this summer, Hessel E. Yntema Professor Emeritus Eric Stein enjoyed a visit with two distinguished European alumni. On the left is Jochen A. Frowein, LL.M. '58, director of the Max Planck Institute for International and Foreign Public Law and professor at the University of Heidelberg; at right is Dr. Peter E. Ulmer, M.C.L. '59, of the Faculty of Law at the University of Heidelberg.



Meinhard A. Hilf (*left*) is professor for Public, European and Public International Law and Director of the Department for European Law at the University of Hamburg. Prior to that he held a similar position at the University of Bielefeld for nine years. He has been a research fellow at the Max-Planck Institute for foreign public law and public international law and a member of legal service of the Commission of the European Communities in Brussels. He has been on the roster of panelists for the settlement of disputes in GATT since 1988. In Germany, he currently teaches German Constitutional Law, European Law, Public International Law and International Economic Law and is researching Constitutional Issues of the European Union, Implementation of the Results of the Uruguay Round (WTO), and National Constitutions and International Economic Organizations. He taught Litigation under European Union Law.

Visitors enrich teaching

This fall, the Law School once again welcomed a wide variety of visitors with an impressive breadth of experience.

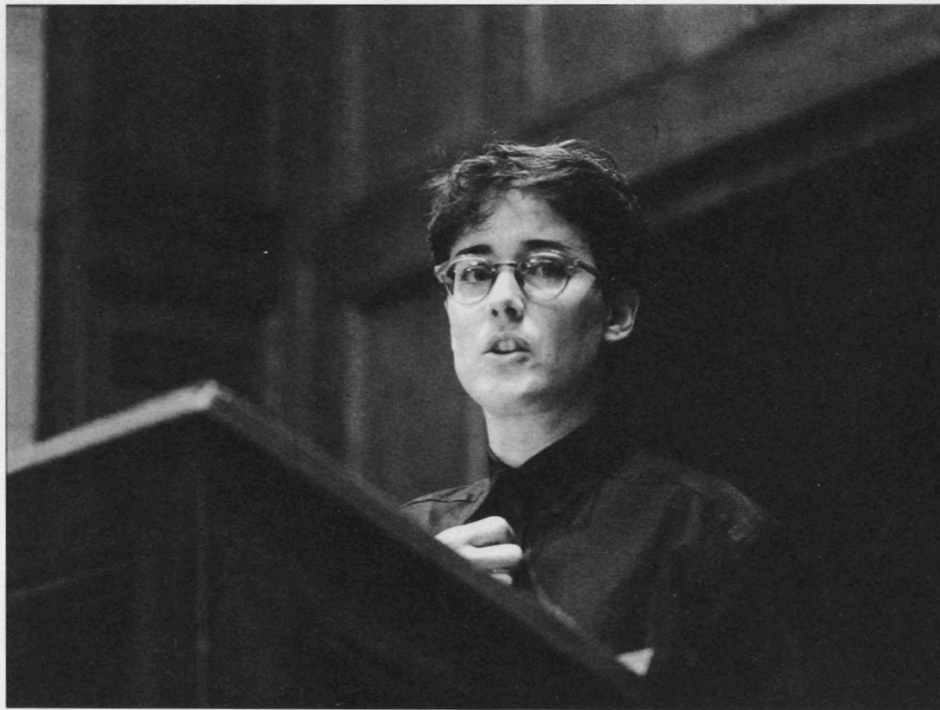
Steven L. Harris (*right*) is professor of law at the University of Illinois Law School. He received his J.D. from the University of Chicago in 1973 and practiced for several years at Levy & Erens before beginning his academic career at the University of Detroit. He moved to Wayne State University where he taught for five years before joining the faculty at Illinois. He has taught advanced bankruptcy, advanced problems in commercial law and real estate financing. His fall courses were Commercial Transactions and a seminar on Reforming Commercial Law: 1997 Article 9.





Renaud Dehousse (*left*) graduated in law in 1982 from the University of Liege. He holds a Ph.D. from the European University Institute where, from 1985 to 1990, he was a research fellow and administrator of the European Policy Unit. Since 1989 he has also been editor-in-chief of the *European Journal of International Law*, edited at the Institute. His current research pursues the development of economic and social regulation in the single market and the implementation of a common foreign and security policy. He taught a seminar on Comparative Federalism: Old and New.

Norio Higuchi has been a professor of law at the University of Tokyo since 1992. Longtime editor and former editor-in-chief of *Amerika-Ho*, Journal of the Japanese American Society for Legal Studies, he is himself the author of numerous articles. He has toured the United Kingdom and the U.S. several times researching child protective services, children's rights and tort reform and other procedural reforms in the American court system. He taught Current Issues in Japanese Law.



Paula L. Ettelbrick (*above*) is legislative counsel for the Empire State Pride Agenda in New York City, where she directs statewide lobbying, legislative, and policy efforts on behalf of the New York State lesbian and gay community. She was formerly director of public policy for the National Center for Lesbian Rights and also served as a staff attorney and then legal director for the Lambda Legal Defense and Education fund. A cum laude graduate of Wayne State University Law School in 1984, she served on the *Wayne Law Review* and was an associate at Miller Canfield Paddock & Stone for two years. She taught a course on Sexuality and the Law.

FACULTY

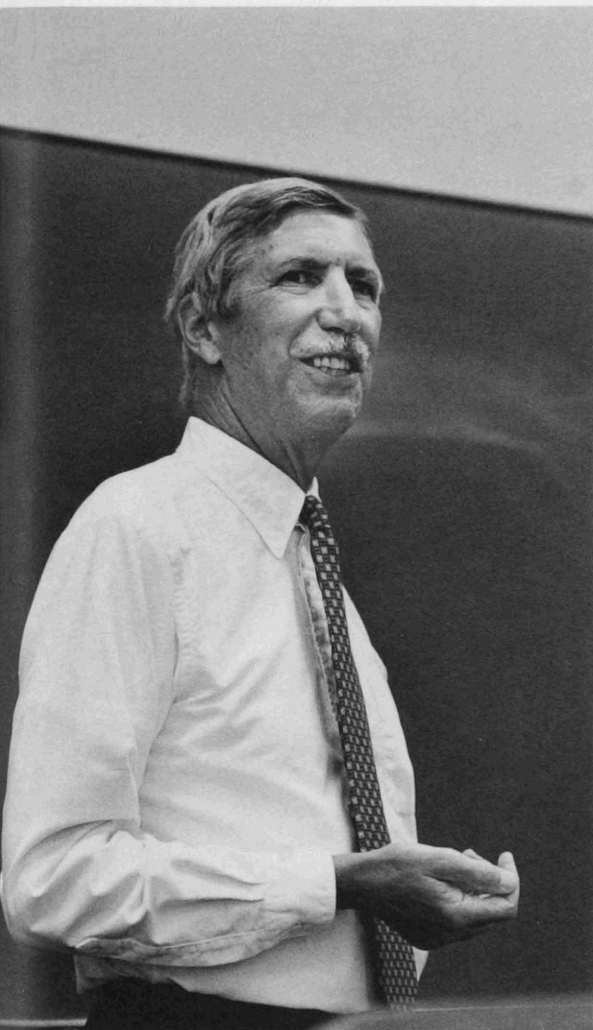
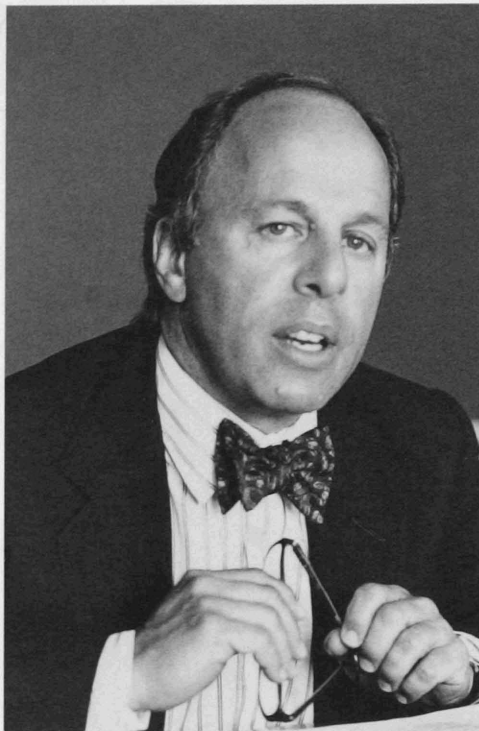
Brian O'Neill (*right*), J.D. '74, is a partner at Faegre & Benson in Minneapolis where he has spent about 35 percent of his time on pro bono cases involving preservation of endangered species or their habitats. He spent five-and-a-half years in Alaska as head of the plaintiff's legal team in the Exxon-Valdez trial. He co-taught a bridge week on the Exxon-Valdez oil spill from October 23-28.



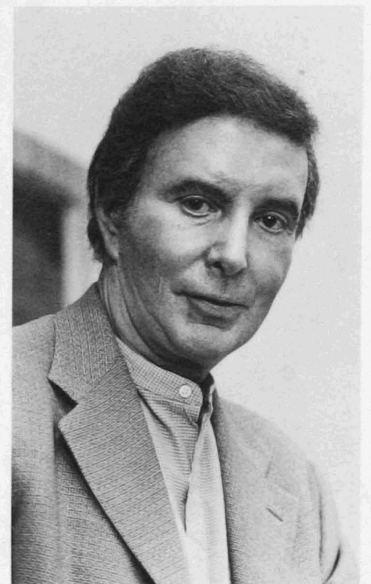
Jozef Moravcik (*left*) is the former Prime Minister of Slovakia. Former dean of the law faculty of Comenius University in Bratislava, he left that position in 1991 to become Slovak National Council deputy for Public Against Violence (VPN) and then for Movement for Democratic Slovakia (HZDS). In 1992 he was elected to the Federal Assembly House of People for the Movement of Democratic Slovakia. He became the senior minister of foreign affairs in 1993 and prime minister in 1994, serving until December of that year. He is now chairman of a parliamentary political party, the Democratic Union, and a member of the Slovak parliament. He taught *The Political and Economic Transformation of Post-Communist Eastern Europe*.



Jeffrey H. Miro (*right*), J.D. '67, is chairman of Miro, Miro & Weiner in Bloorfield Hills, Michigan. He holds a bachelor's degree from Cornell University, a J.D. from Michigan, and an LL.M. from Harvard. He has previously been a lecturer on taxation at the Detroit College of Law and an adjunct professor of law at Wayne State University from 1969-89. He taught a seminar on Selected Problems in Real Estate, which he also taught as a visitor last year.



William R. Jentes (*left*), J.D. '56, is a partner at Kirkland & Ellis in Chicago, Illinois. He earned both his bachelor's and law degrees at Michigan. He has served as lead counsel on cases involving a number of the nation's largest corporations and has been a lecturer at the University of Chicago Law School and for the American, Federal, Texas, Illinois, and Chicago bar associations. He taught Complex Litigation here in 1991, 1994, and again this fall.



Stanley S. Schwartz (*above*), J.D. '55, is a shareholder in the firm of Sommers, Schwartz, Silver & Schwartz, P.C. in Southfield, Michigan. He is a nationally renowned trial lawyer, with particular expertise in law and medicine and medical malpractice. This is his fourth year as a visitor; this term he taught Law and Medicine: Trial Advocacy.

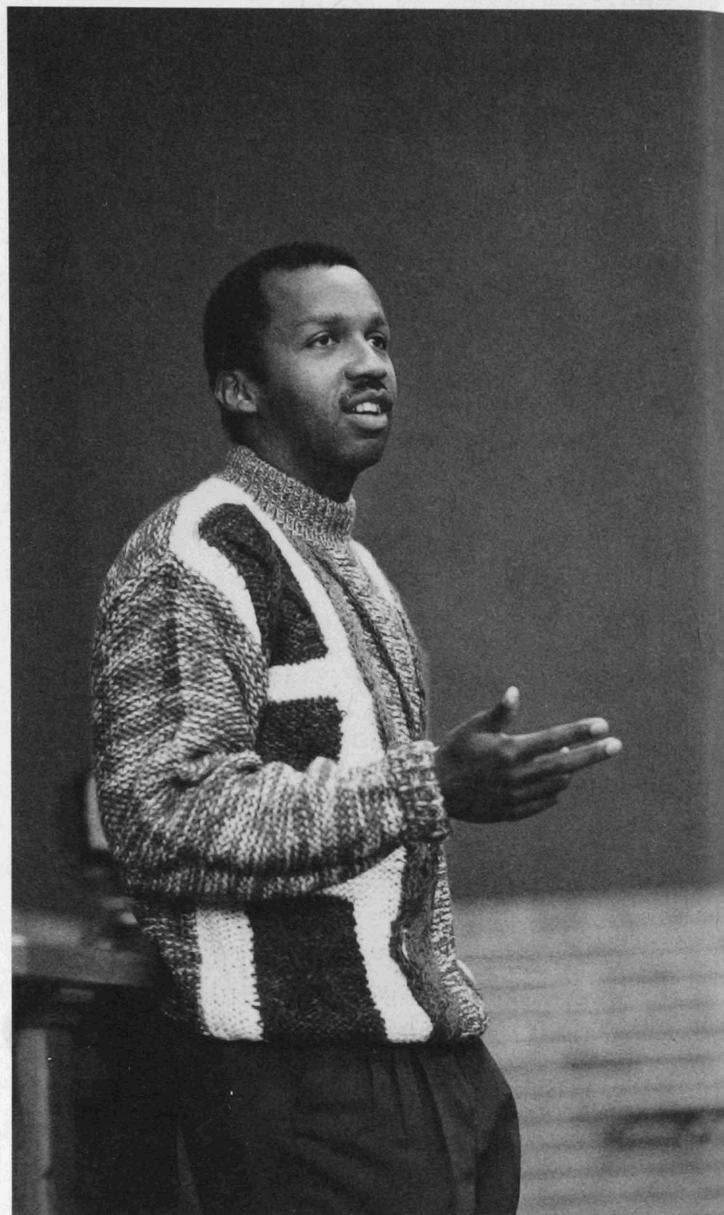
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PHOTO COURTESY OF MAX KOOT STUDIO

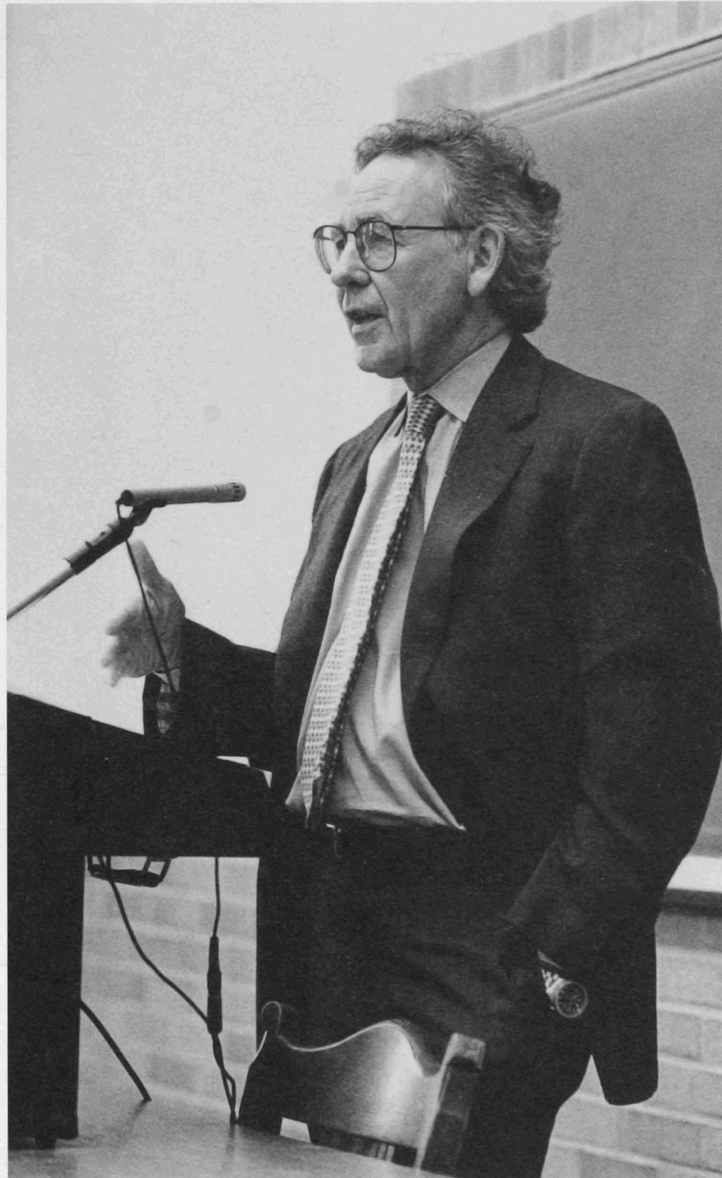
Bruno E. Simma (above) is professor of law at the University of Munich. He is a frequent visitor to Ann Arbor, and he taught regularly here from 1987-92. Since 1994 he has been counsel for Cameroon in a case concerning land and maritime boundaries between Cameroon and Nigeria before the International Court of Justice. He is also an expert for conflict-prevention activities of the United Nations Secretary General and for the CSCE. In addition, he is a member of the Court of Arbitration in Sports (CAS) of the International Olympic Committee and a member of the U.N. Committee on Economic, Social and Cultural Rights. Co-founder and co-editor of the *European Journal of International Law*, he has served as vice-president of the Council of the German Society of International Law. His seminar was on International Protection of Human Rights.

Theodore Sims has been a professor of law at George Washington University since 1992. He received his J.D. in 1970 from the University of Chicago, clerked for Judge John C. Godbold of the Fifth Circuit, then practiced at Wilmer, Cutler & Pickering for five years. In 1977 he became counsel for the U.S. Treasury Department's Office of Tax Legislation. He moved from there to the law faculty at George Washington. He teaches federal income taxation and federal tax policy. In the fall term, Professor Sims conducted research; in the winter he will be teaching Tax I and Economic Analysis.



Bryan A. Stevenson (above) has been executive director of the Alabama Capital Resource Center since 1989. He received both a J.D. from Harvard Law School and a Master's in Public Policy from the Kennedy School of Government at Harvard in 1985. He served as a staff attorney for the Southern Center for Human Rights from 1985-90. He was a 1993 "Lawyer of the Year" nominee of the American Trial Lawyers Association. In 1994, he received an Honorary Fellow Award from the University of Pennsylvania Law School and the Thurgood Marshall Medal of Justice from Georgetown Law School. In 1995 he received a MacArthur Award. He taught Race, Poverty, and Criminal Justice.

Phillip R. Trimble (*right*) is visiting from UCLA, where he is professor of law, teaching international law, conflicts of law, international economic law, arms control and legal process, and related subjects. Before joining the faculty at UCLA, he served as the American ambassador to Nepal during the Carter administration and as assistant legal adviser for economic and business affairs to the Department of State from 1973-1978. Prior to that, he was on the staff of the Senate Foreign Relations Committee, with responsibility for Asia and also for arms control. At UCLA he has been a member of the executive committee of the Center for International and Strategic Affairs and the Institute on Global Conflict and Cooperation. He is on the board of editors of the *American Journal of International Law* and is on the U.S. roster of panelists for dispute settlement panels under NAFTA. He has served on a panel settling a dispute under the U.S.-Canada Free Trade Agreement, as well as serving as a consultant to the Arms Control and Disarmament Agency. In the fall term he taught Jurisdiction and Choice of Law and co-taught a seminar on Foreign Affairs Powers under the United States Constitution with John Jackson. In the winter, he is teaching International Law.



Sonia Mateu Suter, J.D. '94, is a faculty fellow this year. She has a masters degree from the University of Michigan in human genetics and was a genetic counselor at Henry Ford Hospital from 1989-91. She has published "Whose Genes Are These Anyway," in the *Michigan Law Review* as well as several papers in the basic sciences. She will be teaching a seminar in winter term.

FACULTY

Paul Borman, J.D. '62, is a judge of the U.S. District Court for the Eastern District of Michigan. He was formerly chief of the Federal Defender's Office in Detroit. He has previously been a visitor; this term he co-taught a seminar on White Collar Crime with Jerry Israel.



Susan Gzesh (right), J.D. '77, is of counsel to Gessler Flynn Fleischmann Hughes and Socol in Chicago, where she represents clients in immigration matters. She has previously been an adjunct teaching Immigration Law and Policy, and Immigration and Nationality, the latter of which she taught this fall.



Cyril Moscow (left), J.D. '57, has been an adjunct since 1973. He is a partner at Honigman, Miller, Schwartz & Cohn in Detroit, where he practices corporation and securities law. He is the co-author of texts on Michigan corporate law and securities regulation, and is chair of the State Bar subcommittee on the revision of the Business Corporation Act. He previously taught Business Combinations and Corporate Governance and this term taught Business Planning for Closely Held Corporations.

Roberta Morris received a law degree from Harvard and a doctorate in physics from Columbia University. She practiced at White & Case, at Mount Sinai Medical Center in New York, and as an associate at Fish & Neave, a patent firm, following completion of her doctorate. She has been a frequent adjunct, teaching Copyright this fall.

Robert Harris received an LL.B. from Yale Law School. He is a shareholder in the firm of Harris, Guenzel, Meier, and Nichols, P.C. In addition to his Law School role, he has also held an appointment with the U-M School of Public Policy. He served as mayor of Ann Arbor from 1969-73. He taught Legal Profession and Legal Ethics.

STRONG CRITICISM OF THE AMERICAN SYSTEM OF TRIAL BY JURY

— BY YALE KAMISAR

I GRIEVE FOR MY COUNTRY to say that the administration of the criminal law in all the states in the Union (there may be one or two exceptions) is a disgrace to our civilization.

What makes the difference between the administration of the criminal law in England and in this country? In the first place, the English judges have retained the complete control over the method by which counsel try the case, restraining them to the points at issue and preventing them from diverting the minds of the jury to inconsequential and irrelevant circumstances and considerations.

Second, the English judges have reserved the power to aid the jury by advising them how to consider the evidence and expressing an opinion upon it. In this way the sophistical rhetoric and sentimental appeals of counsel are made to lose their misleading effect, and the jurors are brought to a sense of their responsibility in deciding the actual issues of fact as to the guilt or innocence of the defendant upon the evidence before them.

The institution of trial by jury has come to be regarded as such a fetish in our country that state legislatures have

So jealous have legislatures become of the influence of the court upon the jury that it is now an error of law for the court to express his opinion upon the facts, although he leaves the ultimate decision, of course, to the jury.

exalted the power of the jury and diminished the power of the court. Legislatures have seemed to resent any intervention by the judge in the trial of a criminal case beyond a very colorless and abstract statement of the law to be applied to the case. So jealous have legislatures become of the influence of the court upon the jury that it is now an error of law for the court to express his opinion upon the facts, although he leaves the ultimate decision, of course, to the jury. The opportunity which this gives defense counsel to pervert the law, and the wide scope which the system in restricting the judge gives to the jury of following its own sweet will, of course, doubles the opportunity for miscarriages of justice. The function of the judge is limited to that of the moderator in a religious assembly.

The counsel for the defense, relying on the diminished power of the court, creates, by dramatic art and by harping on the importance of unimportant details, a false atmosphere in the courtroom which the judge is powerless to dispel, and under the hypnotic influence of which the counsel is able to lead the jurors to vote as jurors for a verdict which, after all the excitement of the trial has passed away, they are unable to support as men and women.

Another problem is the difficulty of securing jurors properly sensible of the duty which they are summoned to perform. In the extreme tenderness the state legislatures exhibit toward persons accused as criminals, and especially as murderers, they allow peremptory challenges to the defendant far in excess of those allowed to the state. This very great discrepancy between the two sides of the case allows defense counsel to eliminate from all panels every person of force and character and standing in the community, and to assemble a collection in the jury box of nondescripts of no character, weak and amenable to every breeze of emotion, however maudlin or irrelevant to the issue.

If the power of the court by statute to advise the jury to comment and express its opinion to the jury upon the facts in every criminal case could be restored, and if the state and the defendant were deprived of peremptory challenges in the selection of a jury, 25 percent of those trials which are now miscarriages of justice would result in the conviction of the guilty defendant, and that which has become a mere game in which the defendant's counsel play with loaded dice, would resume its office of a serious judicial investigation into the guilt or innocence of the defendant.

Some people may consider the preceding remarks a gross overreaction to the "not guilty" verdict in the O. J. Simpson case. Others may think these remarks are right on the money. In any event, they were made long before defense lawyers had the assistance of any experts in selecting a jury and long before anybody accused defense lawyers of "playing the race card."

Every word of attack on the American system of criminal justice and trial by jury, in particular, that appears in this piece, was uttered in a commencement address at the Yale Law School on June 26, 1905. (I have only substituted "men and women" for "men.") The speaker on that occasion some 90 years ago was a lawyer who had already acquired considerable stature — and was to achieve a good deal more. His name was William Howard Taft, a future President and a future Chief Justice of the United States.

(The full text of Taft's remarks appear in volume 15 of the Yale Law Journal at pp. 1-17.)

This piece also appeared in the Los Angeles Daily Journal and the Detroit News, Oct. 16, 1995. Yale Kamisar is the Clarence Darrow Distinguished University Professor of Law.

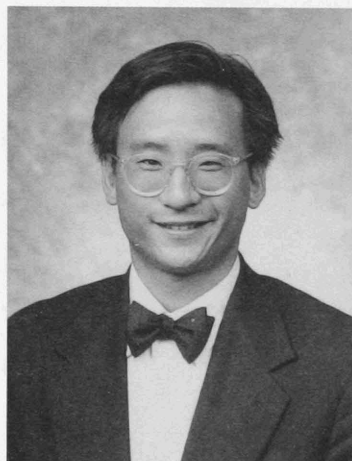
The newest professors

In law schools and other classrooms all across the country, Michigan graduates are training the next generation of lawyers, entrepreneurs, and public servants.

The Law School has long been well-represented among legal academics, and that tradition continues. The group of graduates who have most recently joined faculties are enthusiastic about their students and about pursuing research related to some of society's most pressing issues: race, affirmative action, the environment, welfare, and more.

Frank Wu, '91, joined the Howard University School of Law faculty in July 1995, becoming the first Asian-American professor there. He holds a unique half-time clinical, half-time substantive tenure-track position that is part of a new model teaching program.

Wu explained that the Howard program and two others won Congressional funding to test some current ideas about bridging the gap between law schools and law



Frank Wu

practice. "Our idea is that we will bring in new teaching methods that marry theory and practice." He is staffing Howard's general civil law clinic, supervising students who will handle legal problems of the elderly. At the same time, he will teach civil procedure. In the future he will teach advanced civil procedure, conflict of laws, and federal courts.

A former associate at the San Francisco firm of Morrison and Foerster, Wu knew he wanted to teach since he was a 1L. He's pleased to have a position that combines the best of practice

and academics: "I was attracted not only by the uniqueness of Howard, but of this particular program. I have an opportunity to practice by supervising students, to teach in the classroom, and to work on scholarship."

Before coming east to Howard, Wu spent the summer of 1994 working as a grassroots campaign organizer for Californians United Against Proposition 187. He spent 1994-95 as a teaching fellow at Stanford Law School, teaching legal research and writing.

While at Stanford, he wrote and published an article called "Neither Black Nor White: Asian Americans and Affirmative Action" that has attracted considerable attention, including a mention in Clarence Page's nationally syndicated column. He has since written a half-dozen spin-off articles based on the piece and became a regular columnist for the national newspaper *Asian Week*.

Currently he is working on three research projects related to the civil rights of gays and lesbians, Americans With Disabilities Act, and immigration. Noting with a laugh that he has chosen hot-button issues, he adds, "I hope to be the voice of reason on trendy topics." Still, he sticks with traditional solid scholarship; his first article included 252 footnotes.

Wu feels privileged to be at Howard because "it has had not only a mission of historical importance but has a vital role to play today. It's important that there be some environments where racial minorities can be in the majority." He's often asked how it feels to be the first Asian American there: "I see this as a wonderful opportunity to demonstrate that civil rights are a universal cause, to enrich my own experiences personally, and to attempt to bridge gaps between communities that have common interests, but that, unfortunately, have not recognized those interests."

Also at Howard University is Lisa Crooms, '91. She knew back in Law School that she wanted to teach, specifically at Howard, where she earned her undergraduate degree. Previously an associate at Crosby, Heafey, Roach & May in Oakland, California, she is now in her third year as a visiting professor at Howard's School of Law. She teaches contracts, gender and law, and equal employment opportunity law. She is planning to teach critical race theory in 1996.

"The most rewarding part of teaching is seeing people get really excited about ideas, when they find themselves thinking about the law in a way that they hadn't thought about it before," she says.

Her research has focused on welfare reform. "I had good timing; it's now a hot issue that I can't get away from," she says. Her article entitled "Single Motherhood,

the Rhetoric of Poverty, & Welfare Reform: A Case of Gender Discrimination in the United States" appeared in the Institute for Women, Law and Development's From Basic Needs to Basic Rights: Women's Claim to Human Rights in September. "Don't Believe the Hype: Black Women, Patriarchy & the New Welfarism" will be published in the Howard Law Journal Vol. 38 No. 3. She's also interested in the broader issues of urban policy and is working on an article on the thirteenth amendment from a gender perspective.

Trina Jones, '91, joined the Duke Law School faculty July 1, 1995. She will be teaching civil procedure in the fall and employment discrimination in the spring. In the future, she'll also teach a seminar focusing on the interplay — the intersectionality — of race and gender.

The former general litigation associate at Wilmer, Cutler & Pickering in Washington, D.C., says, "I enjoyed practicing, but I've always wanted to teach. I'm really excited about this opportunity. It's really challenging, but also a lot of fun." She chose to teach civil procedure in the hope that her litigation experience will enhance the material. "One thing I bring with me from the firm is a real appreciation for the rules of civil procedure and the complexity and limitations of our adversary system," she says. "I sense a need to develop alternatives to traditional ways of resolving



Trina Jones

disputes and a need for renewed emphasis on ethical training. My challenge will be to bring those insights from practice into the classroom in a way that's meaningful for students."

Cary Coglianese, '91, is teaching and writing in the areas of environmental law and public policy at the John F. Kennedy School of Government at Harvard University. After finishing a doctorate in political science at the University of Michigan in 1994, he was named an assistant professor of public policy at the Kennedy School and an affiliated scholar at Harvard Law School. He teaches law and public policy and administrative law to government professionals who come to the Kennedy School for specific

retraining. He also teaches a seminar on energy and environmental policy, and "The Responsibilities of Public Action," a required course in the Master of Public Policy Program.

Coglianese, who earned a master's degree in public policy along with his law degree, finds the Kennedy School "an exciting place to explore the intersections of law, politics, and public policy," he says. "It was my long-standing interest in environmental law that drove me to this interdisciplinary approach, because it's an area that implicates a wide range of legal issues from property to tax to administrative law, and integrates other fields such as economics, science, and technology.

"The chief challenge I face teaching at the Kennedy School (and also a great reward) is that the audience in class is incredibly diverse. I have students from the U.S. and professionals from all over the world. Some are



Cary Coglianese

lawyers; some are not. There's also a tremendous amount of diversity in where they plan to go in their careers and what they seek from class." He enjoys teaching in the relatively new disciplines of public policy and management because the scholarly canon is less fully developed than in law or political science. "That forces me to create new ways to look at things," he says.

He is currently revising his dissertation, a study of environmental litigation, into a book manuscript. It examines and overturns the common notion that the environmental policy-making process is extraordinarily litigious. "There has been a widespread belief that 80 percent of all Environmental Protection Agency rules are challenged in court. I found that the rate of litigation is exactly opposite of what people think: nearly 80 percent of the rules don't get challenged, and when litigation does take place, it's often not an adversarial process but a forum for outside interest groups to continue to bargain with the EPA over administration of the rules," he explains. The dissertation won the American Political Science Association's Edward S. Corwin Award.

A year as a visitor at the University of Chicago Law School solidified the desire to teach for **Marcella David, '89**. This summer, she joined the University of Iowa College of Law as an associate professor,

ALUMNI



Marcella David

where she is affiliated with the International and Comparative Legal Studies Program. She most recently was a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison of New York.

David will teach a seminar on international human rights in the fall; in the spring she'll teach civil procedure with a writing component to a small section of about twenty students. Her research will build on work she started in Iraq on a Law School Bates Travel Fellowship, and in South Africa as a Ford Foundation Fellow in Public International Law at Harvard Law School. In Iraq in 1991, she served on an independent commission investigating the impact of the Gulf War bombardment and international sanctions on the civilian population. In 1992, she

traveled in South Africa to research the human rights implications of international economic sanctions.

A desire to think more deeply about legal questions of world trade and international law led **Frank Garcia, '89**, to become an assistant professor at Florida State University College of Law Faculty in 1993. He formerly practiced business law at Stoel Rives Boley Jones & Grey in Portland, Oregon. Now he teaches international trade, international business transactions, international law, and European Union law. "I'm very lucky to be able to walk in and teach a whole slate of classes in international law," he says. He also enjoys working with students outside of the classroom as advisor for the international law society and the *Transnational Law Journal*.

He is writing a series of articles on the development of free trade in the American hemisphere. "Currently free trade in the Americas is a real patchwork of agreements and programs, yet we've promised to build a free trade area throughout the entire hemisphere by the year 2005. My interest is in how we get there from here. It's fun to sit down and imagine how to sort it out," he says.

"I'd really like to credit (Associate Dean for Academic Affairs) Kent Syverud and (Assistant Dean) Virginia Gordan for their huge support and encouragement to get into teaching. I wouldn't be teaching if it wasn't for them. I feel lucky to be doing this."

Eric W. Orts, '88, is exploring his interests in corporate governance and environmental law as the Nelson Peltz Term Assistant Professor of Legal Studies at the University of Pennsylvania's Wharton School of Business. Now in his fifth year at Wharton, Orts was also appointed adjunct assistant professor of law at the University of Pennsylvania Law School this year.

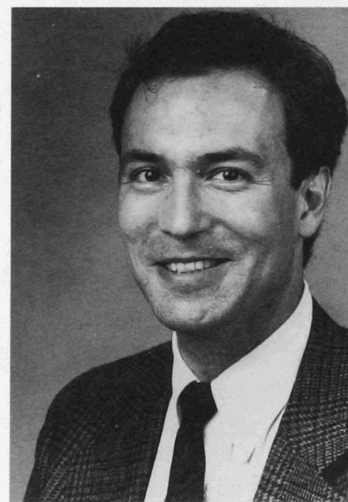
Interested in academia since Law School, Orts decided to pursue a scholarly career when a major case raised issues he wanted to explore. As an associate at Paul Weiss, Rifkind, Wharton & Garrison in New York, he helped litigate *Air Line Pilots Association, Int. v. UAL Corp.*, in which the employees won their bid to take over ownership of United Airlines. "This was a rare situation where employees were trying

to seek control. It was extremely exciting; it got me thinking again about corporate governance problems and raised issues about the ethical responsibilities of corporate management that I remember thinking about when I first took *Enterprise Organization* with Professor Joel Seligman."

Orts left the firm for a fellowship in corporate social responsibility at Columbia Law School, where he earned an LL.M. and an S.J.D. Since 1991, he has taught corporate law to Wharton's business students. His course differs little from the way the material is taught in law schools; the key difference is that he tends to take a more prophylactic approach. "My focus is, 'this is how you stay out of trouble. This is an area of law that is dangerous. When you see a situation that looks like this, start thinking about hiring a lawyer now, not later,'" he explains.

Orts' interest in corporate responsibility led him into teaching and research in environmental law. His course is part of the core curriculum for a new major in environment and management at Wharton. His article entitled "Reflexive Environmental Law" was published in the Summer 1995 issue of the *Northwestern University Law Review*.

He is working on another article about the extent of privilege for internal environmental audits as an evidentiary matter. He has found that when companies wishing to be good corporate citizens try to monitor and correct their environmental problems, they create a paper



Eric W. Orts,

PHOTO BY JOE CIACILIA

Gabriel Chin

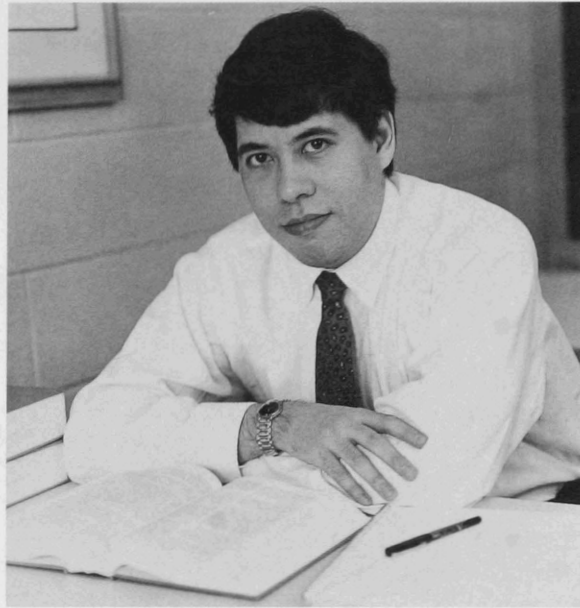


PHOTO BY LIONEL DELEVINIGNE

trail that leaves them vulnerable to sanctions, while those who intentionally disregard their environmental performance may violate regulations unnoticed. Orts argues in favor of establishing privilege for internal audits only to firms who agree to disclose an accurate annual report on environmental performance.

Orts also has a book chapter, "The Legitimacy of Multinational Corporations," forthcoming in *Progressive Corporate Law: Issues for a New Century* (Lawrence E. Mitchell, ed., Westview Press 1995).

Gabriel Chin, '88, is teaching criminal law in his first semester as an assistant professor at Western New England College School of Law. In the winter of 1996, he will be teaching appellate advocacy and a course on ethics and the legal profession.

Chin's background is in criminal appellate work. After graduation, he clerked for Richard Matsch, '53, a U.S. District Judge in Denver, Colorado. He then worked at Skadden, Arps, Slate, Meagher & Flom, where he handled commercial litigation and maintained a pro bono criminal appellate practice. In 1992, he moved to the Criminal Appeals Bureau of the Legal Aid Society of New York, leaving that post in 1994 to pursue an LL.M. degree at Yale Law School. He says the year of study and reflection at Yale provided an important transition from practice to teaching.

"I've practiced in a number of different contexts, and I think that there are a lot of unprepared lawyers out there who are providing only the minimum level of competent service to clients. I want to help train the next generation of lawyers and help them avoid the mistakes I've made and seen," Chin says.

His research includes both criminal procedure and race issues. He recently published an article on double jeopardy in *Pepperdine Law Review*, and another on sentencing credits has been accepted for publication (journal not certain yet). He is writing an article that criticizes the Bakke affirmative action decision and the way it has been implemented in higher education and a second on the process by which immigration restrictions on Asians were eliminated in the 1940s, '50s and '60s.

Ellen Deason, '85, brings broad and unusual experience to the classroom at the University of Illinois College of Law. She clerked for Judge Harry T. Edwards, '65, on the U.S. Court of Appeals for the D.C. Circuit, then for U.S. Supreme Court Justice Harry Blackmun. Then she spent a year at the Hague working with an arbitrator on the Iran-United States Claims Tribunal, resolving claims over assets frozen or confiscated during the Iranian hostage crisis.

She returned to the U.S. in 1989 to become an associate at Morrison & Foerster's Washington, D.C. office. There she represented the State of Alaska in Federal

Energy Regulatory Commission cases over the Trans-Alaskan Pipeline. After five years at the firm, she knew she wanted to return to academic life, so she joined the Illinois faculty in 1994, where she teaches civil procedure, alternative dispute resolution, and a seminar in law and science.

She says that alternative dispute resolution, touted as a growing area of law for about a decade, hasn't caught on in practice as rapidly as expected, in part because the techniques are not always matched appropriately with disputes. "Arbitration clauses have been added to contracts but clients don't always understand the process, so they are not necessarily happy to find they have lost their right of appeal in exchange for a slightly cheaper, somewhat faster decision. However, studies show clients are generally pleased with mediation and some of the procedures designed to encourage settlement show great promise." In her class, she is using simulation exercises to give students enough exposure to the basic techniques of mediation that they can present it as an option to clients.

Deason conducted research in oceanography before enrolling in the Law School, and she has returned to that interest with legal research that crosses over into scientific areas.

LQN

Tax lawyer goes to bat to keep **baseball team**

Imagine your client tells you he wants you to find a way to keep his baseball team in his hometown after he dies and do it without paying additional taxes.

That's the challenge that has kept Stan Weiner, '67, phoning, faxing and meeting with the IRS for the last two years. Ultimately, in May the IRS approved Weiner's unique plan to donate the Kansas City Royals to the Kansas City Community Foundation — a gift valued at more than \$100 million.

In the last years of his life, Royals owner Ewing M. Kauffman was worried that upon his death, his team would be sold, and the new owners would move it to a larger, more profitable market. Kauffman approached Weiner, a tax attorney at Shook Hardy & Bacon, about three years ago to set up a procedure to take effect after his death that would satisfy his two goals: first, he wanted the team to be sold at the highest price to a new owner that would keep the team in Kansas City; second, he wanted any proceeds from the ultimate sale of the team to go to charity. However, Kauffman did not want his estate to have to pay estate taxes to accomplish this.

It took Weiner nine months to craft a plan he hoped would fit the IRS definition of a charitable donation, yet meet Major League Baseball's ownership rules and restrictions. A key condition of the plan was that the team may be sold only to a buyer who agrees to keep the team in

Kansas City. If a buyer is not found within six years, the team may be sold to anyone with no restrictions. In either event, the sales proceeds will go to charity. With Major League Baseball's preliminary approval, Weiner submitted the plan to the IRS in March 1993. For the next two years, "we were dealing with the IRS constantly. They would raise issues, ask questions, and want more facts. They would find a problem and we would say, 'What if we structured it this way?'"

His toughest challenge was convincing the IRS that funneling cash through the foundation into a for-profit baseball team was still a charitable activity. He argued that transferring support of the Royals to the foundation would significantly reduce the burdens of the city, county, and state governments, which had been actively working to retain the team. In its precedent-setting ruling, the IRS agreed.

The baseball owners recently gave the plan their blessing as well. "The vote was unanimous, and it's almost impossible to get unanimous approval on anything in baseball," says Weiner.

Kauffman, a noted philanthropist, died in 1993 before he could see his remarkable gift come to fruition. As a sports fan who shared his late client's dedication to the city, Weiner and his firm donated a good part of the time spent on the matter. "It was a fun project — a once in a lifetime deal. It took a lot of time and emotional energy. What was so gratifying was that everybody in Kansas City pulled together to do this." Now off on a hard-earned sabbatical, he says he might even have time to catch a ballgame.

LQN



The baseball owners recently gave the plan their blessing as well.

"The vote was unanimous, and it's almost impossible to get unanimous approval on anything in baseball."

— STAN WEINER, '67

Two take top spots at World Trade Organization

The new World Trade Organization (WTO) is described by some officials and scholars as the most important development for international economic institutions since the 1944 Bretton Woods Agreement launched the World Bank and the International Monetary Fund. Established as the successor organization to the General Agreement on Tariffs and Trade, it is one of the most significant results of the massive, eight-year Uruguay Round trade negotiations.

The Law School is proud to learn that two of its graduates have been named to the top legal positions in the WTO. William Davey, '74, has been named director of the WTO's Legal Affairs Division, and Debra Steger, LL.M. '83, is director of the new Appellate Body in the dispute settlement system. Both are very senior posts in the WTO, which was officially established Jan. 1, 1995, in Geneva, Switzerland.

Davey is a professor of law at the University of Illinois College of Law, where he teaches Corporate Law, European Community law, and International Trade Law. An editor of the Michigan Law Review and a clerk for U.S. Supreme Court Justice Potter Stewart, he practiced with the firm of Cleary, Gottlieb, Steen and Hamilton in the firm's Brussels office before he joined the Illinois faculty in 1984. He recently co-authored the third edition of a casebook on international trade law with U-M Law Professor John H. Jackson and

Professor Alan Sykes of the University of Chicago.

The WTO provides GATT with an improved organizational structure and new dispute resolution systems. With more than 100 member nations, it is a relatively small organization with enormous responsibilities, particularly after the Uruguay Round added the new areas of services and intellectual properties.

In his new role, Davey will provide legal advice to the WTO, its members, and the dispute resolution process. "The biggest challenge will be making the changes in the dispute settlement system work; we'll need to establish that the system is fair, impar-

tial and workable," he says.

Steger most recently was the Hyman Soloway Professor of Business and Trade Law at the University of Ottawa in Canada. She has been an adjunct professor there since 1987, teaching senior courses in international trade regulation. From 1991-94, she was general counsel of the Canadian International Trade Tribunal, which is responsible for domestic administration of trade remedy, customs, and government procurement laws in Canada. In the Uruguay Round negotiations from 1987-1993, she was senior negotiator for institutional issues such as the establishment of the WTO and dispute settlement, and

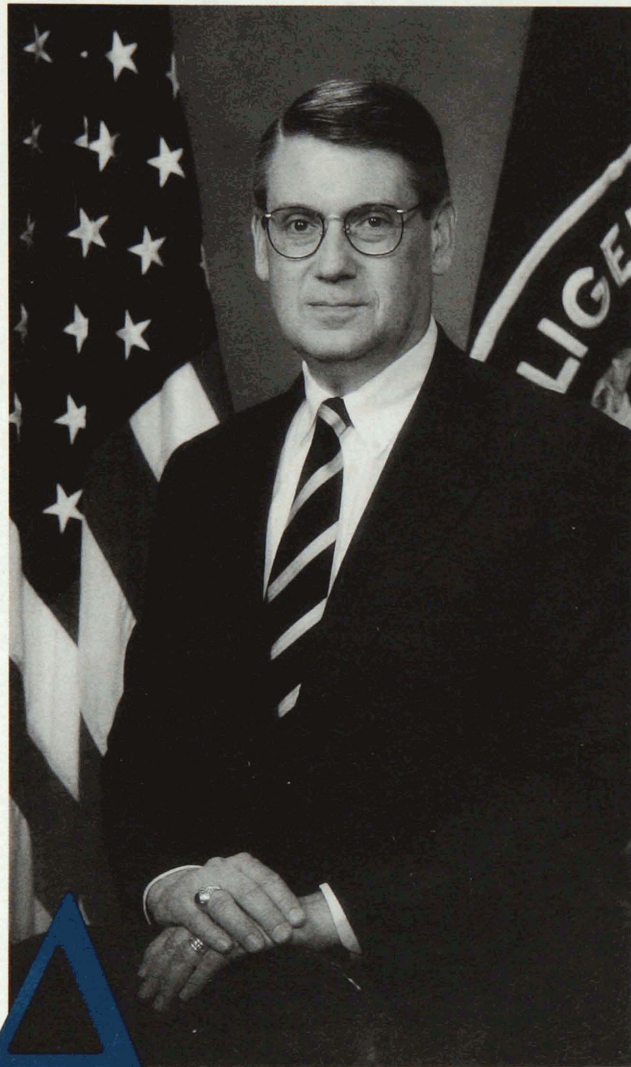
head counsel for the government of Canada. She also practiced law with the firm of Fraser & Beatty in Ottawa and with McCarthy & McCarthy in Toronto. She has written or co-authored a number of books and articles, including publications with Professor Jackson.

Jackson expressed his delight that his outstanding colleagues were named to these positions. "This is remarkable news. These are extraordinarily challenging posts, particularly during the formative years of the new organization. I've worked with both Bill and Debra for years, and I'm pleased that such talented people were chosen to meet those challenges." **LON**



Dean's Forum —

Walter Weiner, J.D. '53, chairman and CEO of Republic National Bank of New York, talked with students and faculty on September 21. He spoke about his undergraduate and Law School days at Michigan and about the various paths his career has followed. The Dean's Forum series joins small groups of students with outstanding graduates who have achieved professional distinction outside large law firms.



Jeffrey H. Smith

Reinventing the CIA

BY TONI SHEARS

When John Deutch was named director of the Central Intelligence Agency, he called Jeffrey H. Smith, '71, and said, "If I'm going to take this job, you're going with me." That's how, in May, Smith became general counsel of the CIA — a post he calls "one of the most difficult lawyer's jobs in Washington."

“As the world gets more complicated, the task of the U.S. intelligence community grows.”

— JEFFREY H. SMITH

“What made me take the job is the challenge,” explained Smith, previously a partner at the firm of Arnold & Porter. It’s difficult not only because of the sensitive nature of the CIA’s routine activities, but because of recent controversial incidents: Aldrich Ames selling secrets to the Soviets, sexual discrimination law suits, and agents accused of human rights abuses in Guatemala. Deutch and Smith are committed to overcoming these problems. “We’re in a time of reinvention of intelligence. We’re asking questions about our mission that have not been asked since 1947 when the agency was established.”

Smith is the second consecutive Michigan Law School graduate to serve as CIA general counsel. He succeeds Elizabeth Rindskopf, ‘68, now at the firm of Bryan Cave. While she came to the CIA on a career path that led from civil rights law to administrative law, Smith comes from an extensive background in military affairs, security, and intelligence.

A 1966 West Point graduate and army infantry officer, he served in the Judge Advocate General Corps for four years after Law School. In 1975, he became assistant legal advisor for law enforcement and intelligence at the Department of State. Among other roles there, he became a spy trader, negotiating with Soviet bloc nations to return imprisoned intelligence agents. “In 1978, we had an opportunity to do a spy exchange, but no one had done one since 1963 and nobody knew how to do it,” he recalls. He figured out how to get a spy out of an American jail and reopened channels of communication to Wolfgang Vogel, an well-connected East German lawyer who brokered such deals between the East and West.

Before long, Smith and Vogel were conducting “very civilized” negotiations, swapping spies at Checkpoint Charlie or Bravo, and then going to lunch. His most memorable swap was for Natan Sharansky, a Soviet dissident who had been arrested as a CIA spy in Moscow in

1975. Smith still enjoys the irony of meeting Vogel at a Washington bar called the Spy’s Eye to hash out the basics of the deal that ultimately freed Sharansky in 1986.

Smith left the Department of State in 1984 to become general counsel of the Senate Armed Services Committee. He also was Sen. Sam Nunn’s designee to the Senate Select Committee on Intelligence and to the Iran/contra investigation committee. The latter he remembers with frustration because the committee worked under deadlines that made it impossible to prepare for witnesses. “I don’t think we got to the bottom of the case. When you operate in the white heat of publicity and are driven by the daily drumbeat of headlines that morning, you don’t do a very good job of investigation.

“Oliver North was put on the stand before we had a chance to conduct any real depositions, so we were asking questions on the stand that had never been asked before. I remember suggesting that we ask North if he had ever been offered a bribe. He answered that yes, in fact, the Iranians had offered him a \$1 million bribe. No one was ever able to follow that up!” Smith recalls.

In 1988, he joined Arnold & Porter, handling cases related to national security or defense for clients doing business with the government. In 1992, the Clinton administration tapped Smith to head its transition team at the Department of Defense. He took a leave of absence from his firm and spent two months defining important issues the administration would face, suggesting policy positions on current situations such as Iraq and the Balkans, and identifying individuals to occupy every post up to the Secretary of Defense. “It was a wonderful experience, if exhausting,” he says.

By the time he joined the CIA, he was familiar with its operations because he’d just chaired the Joint Security Commission charged with reviewing security policy and practices throughout the entire defense and intelligence communities. The commission found “fifty years of encrustations of security rules; we were

paying a huge price, both financially and in lost opportunity costs, by antiquated procedures,” Smith told the National Law Journal. “We must spend more time worrying about the disgruntled employee who stuffs things in his briefcase and walks out the front door. On the other hand, we’re spending way too much time protecting materials that are already behind fences and locked doors against the possibility that a Russian secret agent will come through the roof at 2 a.m.,” he explained in a *Philadelphia Inquirer* story.

In addition to security problems, the agency is facing criticism over Col. Julio Alpirez, the Guatemalan officer accused of killing an American innkeeper. While the agency must at times rely on some unsavory characters to gather information on terrorists, drug runners, and repressive regimes, the case has caused the agency to look more carefully at its paid informants. Deutch charged Smith with making sure the agency “lives within the law,” so his first task at the agency is to develop guidelines for recruiting “human assets,” and dealing with their criminal activity.

Another priority is improving the CIA’s relationship with law enforcement. “Increasingly, we’re involved in counterterrorism, anti-narcotics, and figuring out who’s building nuclear or biological weapons. We find ourselves involved in prosecutions all over the world,” Smith explains. He’s involved in determining how the agency will work with the FBI and foreign intelligence services.

Smith is enjoying the challenge of reshaping the agency’s practices to fit today’s world. While the traditional threat of Soviet spying is less important, the CIA still has a role to play. “James Woolsey had a great line: ‘We may have slain a dragon, but the forest is still full of poisonous snakes, and they’re much harder to find.’ As the world gets more complicated, the task of the U.S. intelligence community grows.” **LON**

CLASS notes

1940

John H. Pickering, senior counsel to the firm of Wilmer, Cutler & Pickering, Washington, D.C., was named chair-elect of the American Bar Association's Senior Lawyers Division. He also was reappointed as chair of the Commission on Legal Problems of the Elderly of the American Bar Association.

1951

George Bushnell has relinquished his role as president of the American Bar Association to Roberta Cooper Ramo.

Harold G. Christensen, a partner in the Salt Lake City law firm Snow, Christensen & Martineau, was selected as a trustee emeritus of the American Inns of Court Foundation. He is the charter president of the first American Inn of Court, founded in 1980 in Salt Lake City. American Inns of Court are local legal organizations dedicated to improving the skills, professionalism, civility, and ethics of the bench and bar.

1952

Dudley Godfrey was elected to the board of directors of Fort Howard Corporation, a manufacturer, converter and marketer of sanitary tissue products. He is a partner at the Milwaukee law firm Godfrey & Kahn.

Hardin A. Whitney, president of the Salt Lake City firm Moyle & Draper, PC, was appointed to the Professional Conduct Committee of the National Council of Architectural Registration Boards. The committee studies the board's responsibilities relating to the conduct and professional development of registered architects.

1953

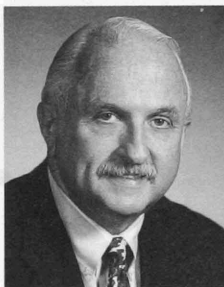
Cassius Street Jr., of Street & Grua of Lansing, was awarded the 1994 Leo A. Farhat Outstanding Attorney Award by the Ingham County Bar Association. The award recognizes achievements during a lifetime career in law, and contributions to the administration of justice.

1954

Richard B. Baxter received the 1995 Donald R. Worsfold Distinguished Service Award from the Grand Rapids Bar Association.

Col. H.W.C. Furman has set an international record in Myanmar (formerly known as Burma). At the age of 73, Furman became the oldest man ever to make a parachute jump in that country.

1955



Leland B. Cross Jr., a partner in the law firm Ice Miller Donadio & Ryan, was awarded an honorary doctor's degree in public service during the 19th commencement exercises of Vincennes University. Cross is a 40-year veteran in labor and entertainment law.

Alan Z. Lefkowitz is an adjunct professor in the Carnegie Mellon University, Heinz School of Public Policy and Administration, teaching in the Arts Management Program. He specializes in corporate, securities and art law, and practices with the Pittsburgh firm of Kabala & Geeseman.

1956

William R. Jentes is a member of the Chicago Symphony Orchestra's executive board and chairs the Orchestra Hall renovation committee.

Myron J. Resnick has retired after 36 years with Allstate, most recently having served as its treasurer. He was honored recently with a leadership award for his part in a neighborhood reinvestment project.

Thomas Ricketts was elected vice chairman of the Greater Detroit Chamber of Commerce's Member Services.

1957

David F. Cargo was selected as chair of the board of the Albuquerque Technical Vocational Institute, which has a student population of 21,000.

1958

Peter Hay is the chair for civil law, foreign and international private law, and comparative law at the University of Dresden, Germany, and a professor at Emory University School of Law, Atlanta, Georgia. He divides his time between the two universities.

John H. Morrow and **Bobby C. Underwood**, J.D. '80, partners with Bradley, Arant, Rose and White of Birmingham, Alabama, were featured in the 1995-96 edition of *Best Lawyers in America*. Morrow is listed among the nation's best in personal injury litigation, business litigation and First Amendment practice; Underwood is listed among the best in real estate law practice.

1959

David C. Coey received the third annual Excellence in Defense Award from the Michigan Defense Trial Counsel.

Scott Hodes and his client, Christo, the artist who recently wrapped the Reichstag in miles of fabric, are working on ways to protect intellectual property rights for what Hodes calls "ephemeral art."



Hilary F. Snell has been inducted as a Fellow in the College of Law Practice Management. He is a managing partner of Varnum, Riddering, Schmidt and Howlett in Grand Rapids.

1961

James N. Adler, a labor specialist at Irell & Manela, was named to the board of directors of the Office of Compliance, created by Congress to enforce federal workplace protections for Congressional employees.

Calvin Campbell has resigned as director of the firm Champion Parts, Inc., which is undergoing restructuring.

Richard Odgers, general counsel at Pacific Telesis Group, instituted a plan that makes the firm's in-house lawyers compete for business with law firms. The law department will now pay its own way by tracking its time and billing "clients" — subsidiaries such as Pacific Bell, the Yellow Pages directory, and the video

services unit — for time. The subsidiaries can choose to use the company lawyers or look elsewhere for more economical services. "I wanted to create a legal organization that's just as entrepreneurial and competitive as the business they are serving," Odgers told the *Wall Street Journal*. In other news, Odgers will serve as a vice president for the Legal Aid Society of San Francisco in 1995-96.

U.S. Rep. John Edward Porter is pushing the Senate Appropriations Subcommittee he heads to enlarge the funding and powers of the surgeon general's office.

Lloyd E. Williams Jr. manages Williams & Montgomery, an Illinois firm.

1962



Edward F. Langs has joined the Detroit office of the law firm Miller, Canfield, Paddock and Stone, PLC, where he will specialize in law relating to computers, robotics, and high-technology. He was previously with the law firm Brooks & Kushman.

1963



Robert Z. Feldstein has become of counsel to the firm Kemp, Klein, Umphrey & Endelman, which has offices in Lansing and Troy, Michigan, and in Washington, D.C. He concentrates his practice in the area of family law.

John A. Krsul Jr. is treasurer-elect of the American Bar Association and will serve a three-year term as treasurer beginning next year. He is director of business practice for the law firm Dickinson, Wright, Moon, Van Dusen & Freeman, where he is liaison partner to the U.S. Law Firm Group, practicing in the areas of general business and corporate law, commercial litigation, and antitrust litigation and counseling.

Lawrence R. Velvel was featured in the *Boston Globe* as a "founder, dean and guiding light" of the Massachusetts School of Law.

Kathryn Wriston is one of eight trustees on the Financial Accounting Foundation's selection committee, which will begin a search for two new members. The trustees oversee and fund the Governmental Accounting Standards Board.

1964

J. Theodore Everingham was named vice president, general counsel, and secretary of both General Host Corporation, a NYSE-listed company headquartered in Stamford, Connecticut,

and its principal subsidiary, Detroit-based Frank's Nursery & Crafts, Inc. He plans to remain in Detroit, where he was previously a partner at Dykema Gossett PLLC.

Joseph T. Klempner has launched a second career as a novelist. Drawing on thirty years' experience in criminal defense work, he has published his first novel, *Felony Murder*. He lives in Manhattan with his wife, Sandy.

Ben S. Stefanski II was elected president and chief executive officer of Guardian Title Insurance Company, a domestic title insurer in the state of Ohio with headquarters in Cleveland, Ohio.

John D. Tully of Warner, Norcross & Judd, was elected vice president of the Grand Rapids Bar Association. He is chair of the association's Judicial Evaluation Committee and vice chair of the Judicial Review Committee.

1965

Harry T. Edwards, chief judge of the U.S. Court of Appeals for the D.C. Circuit, recently spoke to graduates of the Georgetown University Law Center, telling them they "can overcome the negative image many Americans have about lawyers," according to a *National Law Journal* article.

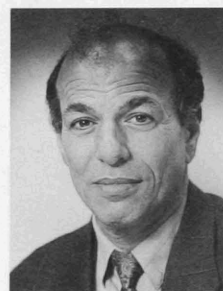
Robert H. Holmes has become of counsel to Giroir & Gregory, a Little Rock, Arkansas, securities practice firm. He will continue his tax practice with emphasis on estate planning and employee benefit matters.

Daniel F. Kolb was appointed by the New York City Bar as chairman of its Committee on the Judiciary.

1966

Kenneth F. Snyder was named firmwide head of the Tax and Personal Planning Group of the national law firm Baker & Hostetler. A resident in the firm's Cleveland, Ohio, office, he focuses his practice on tax, corporate and personal planning issues for business owners.

1967



Frank Grossi has left Katten Muchin & Zavis to join the Chicago law firm Bates Meckler Bulger & Tilson.

E. Miles Prentice III, a partner at Piper & Marbury of New York, was named a member of the board of National Life of Vermont.

Barry L. Springel and **Richard H. Sayler**, J.D. '69, prevailed in a recent case defending Alplex Computer Corporation against Nintendo Company, Inc.

1968

Bruce P. Bickner is chairman and chief executive officer of DEKALB Genetics Corp.

Lester L. Coleman is executive vice president and general counsel for the Halliburton Company of Dallas, and has been elected to the board of the auto insurance firm Integon Corporation.

Michael Cotter was nominated by President Clinton as U.S. Ambassador to the Republic of Turkmenistan.

CLASS notes

George K. Crozer III, White & Case's senior partner for Asia, works out of the law firm's Hong Kong office.

Stephen Glasser and his wife, Lynn, have formed a new information publishing venture, Glasser LegalWorks. The Glassers, former co-presidents of Prentice Hall Law & Business, have been involved in legal publishing for more than two decades.

Stephen Hrones recently published a book for attorneys called *Criminal Practice Handbook*.

Jean Ledwith King is co-chair of the Subcommittee for Research and Final Report of the Federal Glass Ceiling Commission, now in its fourth and final year. She recently received a Friend of Education Award from Delta Kappa Gamma, an Ann Arbor professional education sorority.

1969

Essel W. Bailey Jr. was appointed chairman of the board of Omega Healthcare Investors, Inc., a real estate investment trust which invests in and provides financing to the long-term care industry.

M. Bruce McCullough, a partner in the Pittsburgh firm Buchanan Ingersoll, has been appointed a judge in Bankruptcy Court for the Western District of Pennsylvania.

Robert M. Meisner was one of eight lawyers throughout the country inducted into the College of Community Association Lawyers, sponsored by the Community Associations Institute. He is a founding member of Meisner & Associates, PC, of Bingham Farms, Michigan, and has concentrated in the areas of real estate, condominium and community association law for 25 years.

Robert L. Rose has been named vice president-strategic growth and development for CIGNA Corporation, Philadelphia, Pennsylvania. He joined the company in 1977 as tax counsel and over the years has held various legal and financial positions.

Steven Y. Winnick received the 1995 Justice Tom C. Clark Outstanding Lawyer Award from the District of Columbia Chapter of the Federal Bar Association. The award cited Winnick for his service as deputy general counsel and agency ethics official of the U.S. Department of Education.

1970

Richard J. Erickson has been appointed senior attorney-advisor (international) and deputy director of the International and Operations Law Division of the U.S. Air Force at the Pentagon.

Michael Grebe, president of the University of Wisconsin Board of Regents, is spearheading a study of the university system from enrollment to academic programs.

After 23 years with Orrick, Herrington & Sutcliffe in San Francisco, **Edward B. Rogin** has joined Watanabe, Ing & Kawashima in Honolulu. He will continue to focus on public finance, project finance, leasing, and other finance matters.

1971

Jens Drolshammer was named professor of law at the University of St. Gallen, where he teaches American legal culture and the planning and structuring of international transactions.

1972

Stephen S. Eberly has joined Vorys, Sater, Seymour and Pease in Cincinnati.

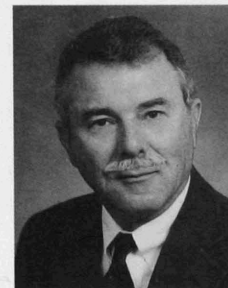
Michael D. Mulcahy, along with **Curtis J. Mann**, J.D. '77, and six other former partners at Clark, Klein & Beaumont, have opened a new firm: Dawda, Mann, Mulcahy & Sadler, PLC. **Todd A. Schafer**, J.D. '92, and **Daniel Halprin**, J.D. '93, are among the firm's associates.

J. Mark Smith of Denver, Colorado, has started a new firm, Pittenger & Smith, PC, which specializes in patents, trademarks and copyrights, and licensing and litigation of these matters in the areas of biotechnology, electronics and mechanics. Smith primarily practices in the areas of mechanical arts, computer technology, and insurance coverage for intellectual property rights disputes. He also chairs the Intellectual Property Committee of the Federation of Insurance & Corporate Counsel.

1973

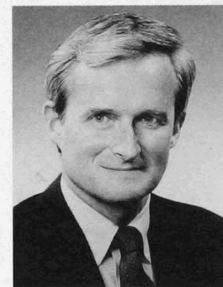
Kathleen M. Lewis, an attorney and appellate specialist with Dykema Gossett, Detroit, was elected a member of the American Academy of Appellate Lawyers.

Charles S. DeRousie was elected president of the Children's Hospital Development Board in Columbus. He is a partner with Columbus-based Vorys, Sater, Seymour and Pease, which has offices in Cleveland, Cincinnati, and Washington, D.C.



Michael F. Nuechterlein, a shareholder in the law firm Carlton, Fields, Ward, Emmanuel, Smith & Cutler, PA, was installed as chairman of the Governing Committee of the American Bar Association's Forum on the Construction Industry. Nuechterlein is head of Carlton Fields' Construction Law Department and is experienced in the field of construction law, having represented owners, contractors, subcontractors, and design professionals in all stages of the construction process.

1974



David C. Patterson, a partner with Arter and Hadden, was appointed to the Columbus Bar Association's 1995-96 board of governors. He is the author of "Ten Critical Steps in Defending Product Liability Cases" for the Defense Council Journal.

Larry D. Thompson has been appointed independent prosecutor to investigate allegations of influence-buying at the U.S. Department of Housing and Urban Development during Ronald Reagan's presidency.

1975

Stanley Grayson was nominated to the New York City Independent Police Investigation and Audit Board, which is being opposed in court by Mayor Rudolph Giuliani. Grayson previously was deputy mayor of finance under Ed Koch.



Marquette County Judge **Patricia L. Micklow** has received the President's Award for Distinguished Citizenship at Northwestern Michigan University. Recognized nationwide as a leading authority on the legal aspects of domestic violence, Judge Micklow pioneered research on spouse abuse which led directly to passage of Michigan's spouse abuse legislation, among the first in the nation. She also co-authored the first legal study on domestic violence in the U.S.

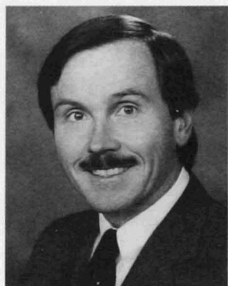


Douglas M. Tisdale, shareholder in the Denver office of the law firm Popham Haik Schnobrich & Kaufman, Ltd., was elected to the firm's 16-member board of directors. The 230-lawyer firm has four U.S. offices, as well as affiliations in Germany and China. Tisdale, the only board

member from the firm's Denver office, will place a special emphasis toward developing and marketing the firm's worldwide activities.

1976

G. Burgess Allison has written *The Lawyer's Guide to the Internet*, recently published by the American Bar Association. Allison, the former Weekly Personal Foul columnist for *Res Gestae*, now writes *Law Practice Management* magazine's "Technology Update" column.



Patrick E. Mears, a senior member in the law firm Dykema Gossett PLLC, was appointed vice-chairperson of the Workouts, Enforcement of Creditor's Rights and Bankruptcy Committee of the American Bar Association's Real Property Division. He specializes in bankruptcy, insolvency, and creditors' rights law.

Michael Snow was appointed to the board of directors of Navarre Corp., a national distributor of music, computer software and interactive CD-ROM products.

1977



Anthony J. Kolenic Jr. has joined the Muskegon office of the law firm Warner Norcross & Judd LLP. He practices primarily in the area of employee benefits law, but also has experience in administrative and appellate tax law.

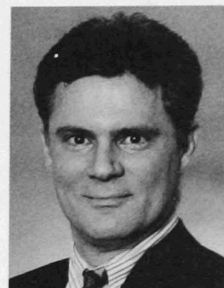
George A. Vinyard is the first in-house attorney for U.S. Robotics, a computer systems maker, where he will serve as vice president and general counsel. Vinyard leaves the Chicago partnership of Sachnoff & Weaver.

1979

Jeffrey T. Johnson was named head of the 20-member Labor and Employment Practice Group at Holland & Hart in its Denver, Colorado, office. He has been a partner in the firm since 1985, representing and counselling employers in labor and employment matters.

Ruth Brammer Johnson has returned to the Law Department in the Denver, Colorado, office of Amoco Corporation. She was previously vice president and general counsel to Ecova Corporation, an Amoco subsidiary in Golden, Colorado.

Bill Klein is serving a two-year term as treasurer of the board of directors of the Minneapolis law firm Gray Plant Mooty.

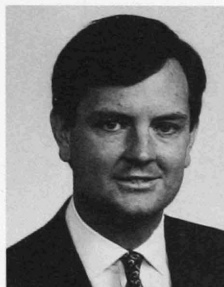


Brad S. Rutledge has joined the Lansing office of Howard & Howard Attorneys, PC, where he concentrates his practice in public finance.



Susan Segal, a principal with Gray Plant Mooty law firm, Minneapolis, has been appointed to the Minnesota Supreme Court Task Force on Civil Commitments, which will consider changes in the treatment of mentally ill persons in the judicial process, funding of services for mentally ill patients and mental health systems, and patient rights issues.

1980



Todd J. Anson a partner in Brobeck, Phleger & Harrison, has been named group leader for the firmwide Real Estate Resources Group.

CLASS notes



G.A. Finch was appointed head of the corporate/general practice group at Querrey & Harrow in Chicago.

Lenell Nussbaum is president-elect of the Washington Association of Criminal Defense Lawyers.

Thomas C. Richardson has formed a new professional corporation, Deming, Hughey, Chapman, Richardson & Bosch, PC. He resides in Kalamazoo, Michigan.

Bruce A. Templeton has become a partner in the Washington, D.C., office of Houston-based Andrews & Kurth, LLP. He will continue his practice in the areas of energy project development finance, acquisition and privatization. He formerly was a partner with New York-based Reid & Priest.

1981

Kevin Anderson is an attorney advisor in the U.S. Department of the Treasury's Office of Tax Policy in Washington, D.C.

Ken Salazar was named a director at the Denver law firm Parcel, Mauro, Hultin & Spaanstra.

Mark E. Taylor has left the New York office of Skadden, Arps, Slate, Meagher & Flom to become senior counsel of Enron Capital & Trade Resources Corp. in Houston, Texas.

1982

Stephen E. Crofton has helped found the Phoenix law firm Salmon, Lewis & Weldon, PLC. He practices in the areas of insurance coverage, professional liability, commercial litigation, Indian law, and water law.

Paul M. Hoffmann has become a partner in the Kansas City-based firm of Morrison & Hecker, where he will concentrate on business bankruptcy law, commercial transactions and business litigation.

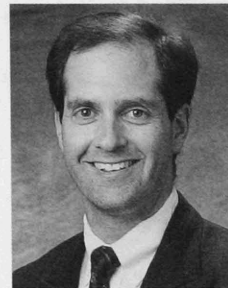
Myint Zan, now a lecturer in the University of New England School of Law in New South Wales, Australia, gave a talk here at the law school on "Burma's Constitution-Making Process," and was a judge at the finals of the Jessup International Law Moot Competition in Philadelphia.

1983



Francis C. Flood has become a shareholder of the law firm Kemp, Klein, Umphrey & Endelman, which has offices in Lansing and Troy, Michigan, and in Washington, D.C. He concentrates his practice in the areas of commercial law with emphases in enterprise organization, real estate, commercial lending, insurance, debtor/creditor matters, securities, business litigation, and health care.

Jamil Nasir has published his first novel, *Quasar*, a far-future science fiction adventure. The book is being published by Bantam Books' science fiction imprint, Bantam Spectra.



Justin Perl has been reelected to the Governance Committee of the law firm Maslon Edelman Borman & Brand. The committee is the firm's highest governing body.

Michael Pfau has become an associate in the Tacoma office of the law firm Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, PLLC, where he will focus on trial law.

Marc Wertheimer has opened his own law firm in Bethesda, Maryland, and has become of counsel to a friend's firm with which he shares office space.

1984

Gregory K. Frizzell was named general counsel of the Oklahoma Tax Commission, where he manages a 50-person legal staff for processing all aspects of tax litigation, collections, bankruptcy, administrative proceedings, and appeals.

James N. Humphries was named attorney for the Detroit Board of Education. He previously was employed by the City of Dearborn Law Department.

Leonard M. Niehoff, a shareholder at Butzel Long, has been nominated as a Fellow of the Michigan State Bar Foundation, has been appointed to the executive board of the Federal Bar Association for the Eastern District of Michigan, and has been appointed chairperson of the Trial Practice Section of the Washtenaw County Bar Association.

Walter S. Page III, formerly senior counsel for Securities & Finance at TRW Inc., is now senior counsel for TRW Steering, Suspension & Engine — Europe.

Jacob C. Reinbolt has joined the San Diego law firm of Procopio, Cory, Hargreaves and Savitch.

Walter E. Spiegel recently completed a four-month appointment as resident advisor on international trade to the Romanian Ministry of Commerce, and has returned to the Washington, D.C., office of Kilpatrick & Cody, where he is a partner. His practice focuses on international trade and customs law, trade regulation, and commercial litigation.

Rose Ann Sullivan has left National Public Radio and joined Hogan & Hartson's Colorado Springs office as a counsel. She practices primarily in the areas of intellectual property, technology licensing, and television broadcasting.

1985

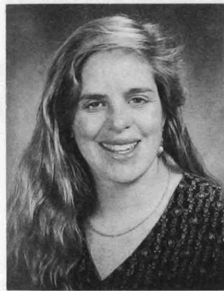
Colleen Broaddus (formerly Dykstra) was promoted to vice president of SAFECO Properties, Inc., the real estate investment subsidiary of SAFECO Corporation.

Richard Gwizdz has been promoted to counsel-general litigation in the office of the general counsel at Ford Motor Co.

Paul Pirog has been reassigned from the U.S. Air Force General Counsel's Office (Pentagon) to be the staff judge advocate for the 16th Special Operations Wing in Hurlburt Field, Florida. He was promoted to lieutenant colonel in the Air Force in 1993.

Laura Kelsey Rhodes was named director of training and continuing legal education for the Maryland Public Defender Office. She is responsible for trial advocacy and legal training for 350 attorneys.

1986



Alexandra K. Callam has become an associate in the law firm Hinckley, Allen & Snyder, Providence, Rhode Island, where she practices environmental law with concentration in compliance and enforcement issues under the Clean Air Act.

William J. Kohler has accepted a business position on the mergers and acquisitions staff of the Treasurer's Office of Chrysler Corporation. He previously was in Chrysler's Office of the General Counsel, where he was responsible for legal matters in Latin America, the Middle East, and Africa.

Mark A. Limardo and Dr. Valerie Alley were married in Berwick, Pennsylvania.

Lynda Oswald was promoted to associate professor of business law, with tenure, at the University of Michigan Business School.

Bruce Wobeck has become a partner in the firm of Morris Manning & Martin in Atlanta, where he practices in the area of commercial real estate and finance.

1987

Andrew D. Crain has become a partner in Ross & Hardies.

James J. Davis Jr., supervisor at Alaska Legal Services' Bethel office for the past several years, was named supervising attorney of ALSC's Juneau office. His practice focuses on public housing litigation, Native law, and the rights of the poor.

Todd G. Frank has been promoted to a senior attorney in the Walgreen Co. Law Department. He joined Walgreens in April 1994 from the Chicago law firm Gardner, Carton & Douglas.

Marla J. Kreindler has become a partner at Katten Muchin & Zavis, where she specializes in employee benefits.

John T. Kuzmik has become a partner in the Hong Kong law firm White & Case. He will continue to focus on trade, investment and finance transactions in the People's Republic of China. He lives in Hong Kong with his wife, Judy, and two children.

Dave Trask is a first officer with Comair, a regional airline serving as a Delta Connection based in Cincinnati. After graduation he initially worked for a law firm in Atlanta, Georgia, but quit law practice in 1990 to become a student pilot, flight instructor and later a charter pilot.

Joyce A. Vigil was appointed to the Colorado State Board of Marriage and Family Therapist Examiners.

Jianyang Yu, LL.M., was elected to the board of directors of the All-China Lawyers Association, China's national bar association. He is a partner at the law firm of Liu, Shen & Associates in Beijing, where he practices in the area of intellectual property and related laws.

1988



Martin R. Castro, Midwestern president of the Hispanic National Bar Association, has been appointed director of the Chicago Public Library, one of the largest library systems in the nation. The U.S. District Court for the Northern District of Illinois also appointed him to its Federal Magistrate Judge Merit Selection Panel.

Bruce A. Courtade has become a shareholder of the firm Law Weathers & Richardson, Grand Rapids.

Olena Kalytiak Davis' poem, "Thirty Years Rising," which originally appeared in the *Michigan Quarterly Review*, was selected for inclusion in *Best American Poetry 1995*. She resides in Juneau.

Richard G. Ziegler has joined Mayer, Brown & Platt in Chicago. He is an associate in the bankruptcy group.

1989

William Bock III and his wife, Tracy Heslin Bock, announce the July 14 birth of their first child, William Bock IV. Mr. Bock has joined the Indianapolis law firm Kroger, Gardis & Regas, where he concentrates in environmental, employment, and municipal litigation.

Darleen Darnall has joined the Portland, Oregon, office of Davis Wright Tremaine, where she focuses on appellate work, and general and tort litigation. She previously was an associate with the law firm Bullivant, Houser, Bailey, Pendergrass & Hoffman.



David J. Gaskey has joined the Bloomfield Hills, Michigan, office of Howard & Howard Attorneys, PC. He specializes in patent, trademark, trade secret and copyright law, and is registered to practice before the U.S. Patent and Trademark Office.

Robert P. Hanson left his position as Senate Finance Committee Minority Tax Counsel to join the firm Ivins, Phillips & Barker in Washington.

Barron F. Wallace has joined the firm Wickliff & Hall, PC, of Houston, Texas, in the Public Law Section.

CLASS notes

1990

David J. Kaufman was appointed to another three-year term on the editorial board of *Business Law Today*, a magazine of the Business Law Section of the American Bar Association. He is a corporate department associate at Katten Muchin & Zavis.

Kandra Kazantzis has been named directing attorney at the Mental Health Advocacy Project in San Jose, California, where she was hired in 1992 as a staff attorney. Kazantzis manages a staff of nine attorneys and advocates for mentally and developmentally disabled persons.

Kenneth R. Perry has opened his own law practice in Portland, Oregon, where he focuses upon criminal defense, personal injury, employment, and commercial litigation. He previously was associated with the New Jersey law firm Lowenstein, Sandler, et al.

Dora Rose has become associated with the firm of David Lockard & Associates. She formerly was an associate with Schnager Harrison Segal & Lewis.

Colin Zick has joined the Boston firm of Foley, Hoag & Eliot as an associate, where he will continue his civil litigation practice. He also authored the article "Legal Aspects of Medical Records Confidentiality" for the May 1995 *Journal of the American Health Information Management Association*, and co-authored a chapter on Massachusetts product liability law for the *Product Liability Desk Reference* published by Little, Brown & Co.

1991

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

Joseph Kowalksy of Oak Park, Michigan, operates a law practice directed at helping people cut through red tape in business and government. He previously worked on several federal-level election campaigns, including one for Senator Spence Abraham.

Christine A. Pagachas joined the Encino, California firm of Horvitz & Levy, where she will concentrate on appellate litigation.

1992

Eric A. Bochner left the law firm of Fenwick & West to join Network General Corp. of Menlo Park, California, as legal counsel.

Thomas P. Howard has left an associate position with the Grand Rapids law firm Law, Weathers & Richardson, PC, to become associate international tax counsel for S.C. Johnson Wax in Racine, Wisconsin.

Patrick Kitchin has joined the law firm Hovey, Kirvy, Thornton & Hahn in San Diego, California. His practice focuses on general business law, real property disputes, and products liability law. He also is active in community development along the U.S.-Mexico border.

Mary M. Leichter has joined the firm Van Bourg, Weinberg, Roger and Rosenfeld, a practice specializing in union-oriented labor and employment law.

Margaret B. McLean was named managing attorney for the Moscow office of the Denver-based law firm Holme Roberts & Owen.

Suzanne Pierce has completed a two-year judicial clerkship with Judge Alan A. McDonald, Eastern District of Washington, and will be re-joining the litigation department of Foster Pepper & Shefelman, Seattle.

Michael K. Ross has completed a clerkship with Judge Jerome Farris of the U.S. Court of Appeals for the Ninth Circuit. He will be working at Williams & Connolly in Washington, D.C.

Michael Warren Jr. was appointed administrative assistant for school code reform to the Michigan State Board of Education.

1993

Cheryl Takacs Bell has completed a clerkship for U.S. Magistrate Marc L. Goldman in the U.S. District Court for the Eastern District of Michigan., and has joined the Lansing firm of Thrun, Maatsch and Nordberg, PC. She practices in the area of school law, labor and employment law, and general civil litigation.

Sandra K. Bostow-Lauro has joined the Dallas office of the firm Akin, Gump, Strauss, Hauer & Feld, LLP, where she continues to practice in the field of labor and employment law. She previously was associated with the firm of McKenna & Cuneo.

Melissa Malkin has completed her masters in public health at the University of North Carolina Chapel Hill. She is employed in the Pollution Prevention Program at the non-profit Research Triangle Institute, where she works on promoting pollution prevention through technical and regulatory tools and incentives.

Jeff Sherman and Terri (Schmidt) Sherman were married Aug. 12 in Milwaukee, Wisconsin. Mrs. Sherman is an assistant district attorney in the Manhattan District Attorney's office, while Mr. Sherman is an associate with Thacher Proffitt & Wood in New York City.

Timothy L. Williams has finished a one-year clerkship in the U.S. District Court for the Northern District of Alabama in Birmingham. He currently practices labor and employment law with the firm Constangy, Brooks & Smith in Atlanta, Georgia.

1994

Karima Bennoune has joined Amnesty International, London, England, as legal advisor in the Middle East and North Africa regions. She also was sent to the U.N. Women's Conference in Beijing, China, by the Center for Women's Global Leadership.

John Erthein is practicing at the law firm of Thomas E. Marshall, which handles mostly plaintiff-oriented employment discrimination cases as well as some employment discrimination defense and municipal liability defense for the city of Detroit.

I N M E M O R I A M

Tina Marie Lessani has joined Fenwick & West of Palo Alto, California.

Beth Caryn Manes is a new associate at Dwyer, Kinburn and Hall.

1995

Elizabeth Feeney has joined the Philadelphia firm of Obermayer, Rebmann, Maxwell & Hippel. She was recently featured in a *Detroit Free Press* article entitled, "A Degree of Debt; Law School Graduate Faces the Challenge of Repaying College Loans."

Carole Trepeck was featured in a *Detroit News* article describing how she and her husband plan to reopen the Birmingham Theatre by Christmas as a "first-class movie theater."

'24	Oneita Emmons Smith		'48	William E. Fowler Jr.	October 17, 1993
'26	Charles J. Munz Jr.			Edmund J. Jones	April 27, 1995
'28	Harvey B. Greene	September 1, 1991		William D. Macdonald	April 15, 1994
	Morris W. Stein	March 22, 1995		Wilfred W. Trovillion	April 1, 1994
'29	Fermon C. Sewell	March 3, 1993	'49	John W. Bell	August 23, 1995
'30	W. Brace Krag	March 30, 1995		Hon. Robert Crary Jr.	June 25, 1995
	J. Miller Leavy	January 1, 1995	'50	Clark J. Bisbee	January 19, 1995
'31	George J. Bowers	February 24, 1994		Charles W. Elicker	August 12, 1995
	Dan Youngs Burrill	December 1, 1993		John Thomas Kenney	
	Samuel E. Gawne	February 14, 1995		William L. McKinley	July 17, 1995
	John H. Moor	February 7, 1994	'51	Erwin K. Johnson	July 23, 1995
'32	David J. Blumenstein			Carl L. Reagh	April 24, 1995
	Arden E. Firestone			Robert J. Swan	July 4, 1995
'33	Morris Alexander	November 11, 1994	'52	Edward J. Fletcher	February 4, 1995
'34	William L. Humbarger	October 3, 1993		Robert W. Hansley	July 30, 1995
	George T. Roderick	February 14, 1994		Morton B. Marcus	March 20, 1995
'35	Charles A. Sanford	October 13, 1994	'54	Richard E. Goodman	
'36	Erle A. Kightlinger	June 19, 1995		Morton G. Gottesman	April 2, 1995
'37	Albert D. Thomas Jr.	July 18, 1994	'55	Herbert Drucker	
'38	Milton L. Davidson	June 4, 1995		Lawrence N. Ravick	January 22, 1994
'39	John B. Brattin	May 6, 1995	'56	Dennis Aaron	
	Robert C. Keck			David C. McGarvey	April 19, 1995
	Philip McCallum	March 6, 1995	'59	Hon. John H. Shepherd	August 12, 1995
'40	Elmer Cerin	July 24, 1995	'64	John A. Shrank	July 29, 1995
	William M. Clement	May 12, 1995	'65	A. James Donohue	July 23, 1995
	George D. Thomson	May 5, 1995	'67	Ira B. Rose	January 30, 1995
	Stanley Zimmerman	May 22, 1995		Charles W. Stage III	
'41	Robert H. Clark	April 12, 1995	'69	William H. Price II	April 15, 1995
	Hon. Sherman J. Bellwood	August 14, 1995	'75	John T. Sherwood Jr.	March 10, 1995
'42	William H. Kinsey	April 26, 1995	'87	Benjamin J. Brownfain	April 10, 1995
	Hart B. Pierce Jr.	February 23, 1995	'95	Gunnar M. O'Neill	August 10, 1995
'43	Abner V. McCall	June 11, 1995			
'47	John R. Dykema	June 2, 1995			
	Robert K. Eifler	July 9, 1995			
	Shubrick T. Kothe	July 23, 1995			

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 ccureton@umich.edu

Learning the practical side of Scholarship

For generations, law students have enhanced their education by working on a law journal.

In addition to honing their writing, research, and analytical skills, they learn valuable life lessons about working with all kinds of people, motivating others, meeting deadlines, and handling the details involved with printing and mailing a tangible product. Of course, as a sign of good grades, hard work, and strong writing ability, journal experience gives students a leg up in the job market, and it's a critical first step to a scholarly career.

All these advantages are now more widely available because in 1994-95, ambitious University of Michigan Law School students have established three new law journals. With a total of seven journals publishing general scholarship and specific fields of law, students can find a research experience to match their own interests.

The two newest journals are the *Michigan Journal of Race & Law*, which will focus on critical race theory and similar areas of scholarship, and the *Michigan Law & Policy Review*, which will publish articles with a conservative outlook. Although the journals appear to be at opposite ends of the ideological spectrum, they are cooperating closely with one another, sharing space and a symposium date.

At press time, both journals were scheduled to hold events Oct. 13-14, the *Law & Policy Review's* symposium focusing on "Tort Reform: Legislative, Academic & Practitioner Solutions," and *The Race & Law's* looking "Toward a New Civil Rights Vision." The topics were selected so that both the events and the resulting inaugural issues would address timely topics important to the legal profession, according to the editors in chief.

Guy Charles, a third-year student, explains, "We started our journal, *Race & Law*, because some of the students of color realized two things. One, that students of color at the Law School were getting very little journal experience; and, two, that race issues were dealt with, at best, as special issues, and often they were not dealt with at all."

Their first issue, drawn from the symposium presentations, will feature debate on affirmative action, welfare reform, voting rights, criminal justice, and immigration policy. Future issues will continue to explore "the impact of



Stephanie Gold

contemporary legal and social issues on civil rights jurisprudence, and attempt to provide a framework within which the evolution of civil rights jurisprudence can be discussed."

Jeffrey Pombert, editor in chief of *Law & Policy Review*, was among a group of 1994 summer starters who came up with a proposal for a conservative journal in the spring of 1995. "We wanted to deal more directly with policy issues Congress takes up, and how the actions of Congress and the Supreme Court interact," explains the third-year student from Illinois. "Also, we wanted to present more conservative scholarship because we think most of the major law reviews just don't cover that outlook and philosophy as we think they should."



Guy Charles

While preparing their proposal for journal funding, the would-be editors researched journals publishing conservative work and found only the *Harvard Journal of Law & Public Policy* exclusively devoted to that viewpoint. "We think there is more of a market for this. We also wanted to do something to make the school better," Pombert adds. "We think we can do this by turning out a quality journal with articles by leading scholars and by showing that even with Michigan's reputation as a bastion of political correctness, the conservative viewpoint is represented."

About twenty students are working on the policy review journal this fall. The journal, which is philosophically aligned with the Federalist Society and the speakers it presents, cosponsored a debate on affirmative action with the society on Sept. 28. Forty people are currently working on the race and law journal; 17 are editorial board members and 23 are associate editors.

A third journal launched in 1994 offers a completely different, technology-based experience for students. The *Michigan Telecommunication and Technology Law Review (MTTLR)* debuted in 1994 as one of the nation's first entirely electronic online journals. It is dedicated to exploring the complex issues sur-



Deborah Hamilton

rounding the regulation of ever-changing communication technology. "This is an incredibly exciting project; it's infinitely more interesting than the routine cite-checking that most people associate with law reviews," says Andrew Boer. Adds editor in chief Gil Raviv, "Publishing articles is only one aspect of what we do. We place a lot of emphasis on conferences; we see ourselves as more than just a journal, but a place in the University to connect all the schools with an interest in technology and inter-related legal and policy questions."

MTTLR won financial support from Lexis last year, and hosted a symposium on competition in telecommunications featuring leaders in the industry and regulatory agencies. Four articles comprising the first issue were uploaded on Lexis this summer. The second issue will follow by January. The articles also are available on the journal's World Wide Web home page (<http://www.umich.edu/~umlaw>).

The twenty-seven associate editors and twenty-four senior editors don't face the complexities of getting articles on the presses as their colleagues do, yet their paper-free publishing venture presents some challenges. The technology is so new and changes so fast that the editors find themselves working out glitches to upload articles in an attractive, readable manner. "Our goal is to post an exceptional journal with a presence and image on line that does justice to the quality of the articles that we're publishing," Raviv says.

Scholarship in the multidisciplinary field of "net law" is exploding, as scholars, practitioners, and users work out how traditional concepts of intellectual property, corporate law, telecommunications law, and entertainment law might apply to new forms of communication, if they do at all. Because the journal covers such a broad range of law and issues, it has attracted an equally diverse group of students, only half of whom could be considered technophiles, Raviv says. "We're exposing them to the technology that will give them an advantage in practice. What we're doing is so unique, it's an opportunity to have a taste of the future."

These new journals have offered the senior editors who launched them unparalleled organizational experience, while expanding the opportunities for junior staff to conduct research in areas of interest and develop professional legal writing skills.

"I believe that the student-edited law journal is a brilliant pedagogical tool, the perfect bridge to carry students from an undergraduate writing style to a lawyer's writing style," says Dean Jeffrey Lehman. "On a law journal, the second-year student author is compelled to write to please a third-year student editor. After an initial phase of blaming miscommunication on the reader's weaknesses, the student writer learns to take responsibility for getting his or her message across. And that is precisely the temperament required for a lawyer to be effective with busy clients, judges, and professional colleagues."

While the journal experience is valuable, it is also resource-intensive in terms of money, staff support and space. Editorial boards alone include as many as twenty people per journal. While the students do most of the work themselves, the Law School's Publications Center, headed by Maureen Bishop, provides word-processing and typesetting services, as well as business services related to subscriptions, printing and mailing for most of the journals. (The *Michigan Law Review*, which comes closest to being self-supporting financially, has its own staff; the *Michigan Journal of Law Reform*, the *Michigan Journal of International Law*, and the *Michigan Journal of Gender & Law* are doing their own word processing and desktop editing.)

"I believe that the student-edited law journal is a brilliant pedagogical tool, the perfect bridge to carry students from an undergraduate writing style to a lawyer's writing style..."

— DEAN JEFFREY LEHMAN

To ensure that new journals don't jeopardize the quality of established, flourishing publications, a committee was formed last year to consider how to evaluate and fund journal proposals. The committee recommended approving strong, well-researched proposals on a provisional basis. For two years, such journals would receive start-up funding to produce one issue a year. "We felt that we could provide a valuable journal experience with relatively low funding, while giving students a chance to prove that there is a need for the research they wish to publish and that they can maintain the quality of the research," explained Professor Christina Whitman, who chaired the committee. A former *Law Review* editor-in-chief herself, Whitman believes in journals: "It was the most time-consuming thing I've ever done in my life, but it was one of the most valuable things I've ever done."

Current editors of Michigan's established journals agree. Says Stephanie Gold, editor in chief of the *University of Michigan Journal of Law Reform*, "I've improved my writing skills a lot, although I now can't read a newspaper without editing it." More important to her, however, was "learning how to work together to meet a deadline and put out an issue. It takes a lot of work and patience with one another, but it's a great feeling when you do get it done."

"We gain such a wide variety of experience, from the nuts-and-bolts of cite-checking and editing to motivating people. We have the satisfaction of putting out something tangible of interest to all of us and our readers," says Michelle Motowski, publication manager of the three-year-old *Michigan Journal of Gender & Law*.

Deborah Hamilton, editor-in-chief of the *Michigan Law Review*, says: "It's an opportunity to be treated as a professional. All of a sudden we are forced to work with all sorts of people: professors, practitioners, administrators, and staff members. It's a great intellectual challenge, but also a great practical challenge. It's not enough to be able to read a piece



Michelle Motowski

and say this is a great article or a terrific student note; you have to know how to take the steps to make that article become a real printed piece."

Amit Shashank, a student from India who is editor-in-chief of the *Michigan Journal of International Law*, tells incoming associate editors that their involvement will "open up whole new worlds that will be necessary to them in practice. They will work side by side with students who freely share their wide-ranging international experiences, and review cutting-edge scholarship on timely legal topics." Shashank adds that "academically and socially, it's an environment that would keep anyone stimulated."



Amit Shashank

Shashank says the most important skill he has learned on the review is "to be able to extract the best from a team of highly motivated people." He sees his role as editor-in-chief as steering different kinds of people — professors, students, administrators, staff — toward a common goal, "like a laser that takes particles moving in all directions and aligns them in a unified direction."

"I see journals bridging the gap between law school and the practical world. They give students the advantage of learning to use legal analysis and knowing what it is to deal with real life matters, like making sure that there is chalk on hand and water at the podium during a symposium."

Meanwhile, like their classmates on the new journals, the staff of the existing reviews are tackling new challenges and projects themselves. The *Law Review* is looking at ways to use technology to improve the production process. "We've set up a technology committee to look at issues such as how online services can help us make people's work more interesting," says Hamilton. The *Law Review* considers about a thousand

articles annually for its eight issues, accepting up to thirty. To speed cite-checking, they are experimenting with software that lets you pop a disk into a computer with WestLaw® access and automatically check articles. "Of course, we've found that there is no substitute for people sitting down and going over cites with a fine-tooth comb," she says.

The *Journal of International Law* also is interested in technological upgrades that will help them handle word processing and typesetting tasks better. The staff is also preparing to publish the first edition of an international Blue Book that aims to establish worldwide standards for legal citations. In addition, it will publish a symposium issue on the changing functions and roles of the United Nations Security Council.

With its second issue off the presses in March, *The Journal of Gender & Law* recently won approval to increase publication from one to two issues a year. "We're very excited. This will help us maintain our subscription base and to attract even better articles," says Motowski. About twenty-five students work on the publication, which is one of about eight journals in the country focused on gender issues.

The Michigan Journal of Law Reform is busy planning a symposium which will be held in March (tentative dates March 22, 23). The symposium is on products liability and the revisions being made to the Restatement (third) Torts. The Journal has had an excellent response from those they have invited to participate.

Few, if any, other professions put the responsibility for editing and publishing scholarship in the hands of students. While this unique relationship seems ripe for conflict, Michigan's editors report that they have little trouble with professors — even their own — over the editorial changes they suggest. Shashank explains that the system works because journals

need professors' articles, and professors need quality journals that can publish their articles. Adds Hamilton, "The more professional we are, then the more professionally we are treated. If we put the time in and show we are taking this very seriously, we're treated with respect."

Participating on the journals "opens so many doors, not just careerwise, but in the degree of seriousness with which you are taken. I feel really lucky to be doing this. At the *Law Review*, we're happy that new journals will make this opportunity available for even more students. I've learned such a tremendous amount that I think students and the school can only benefit from this experience."

LQN

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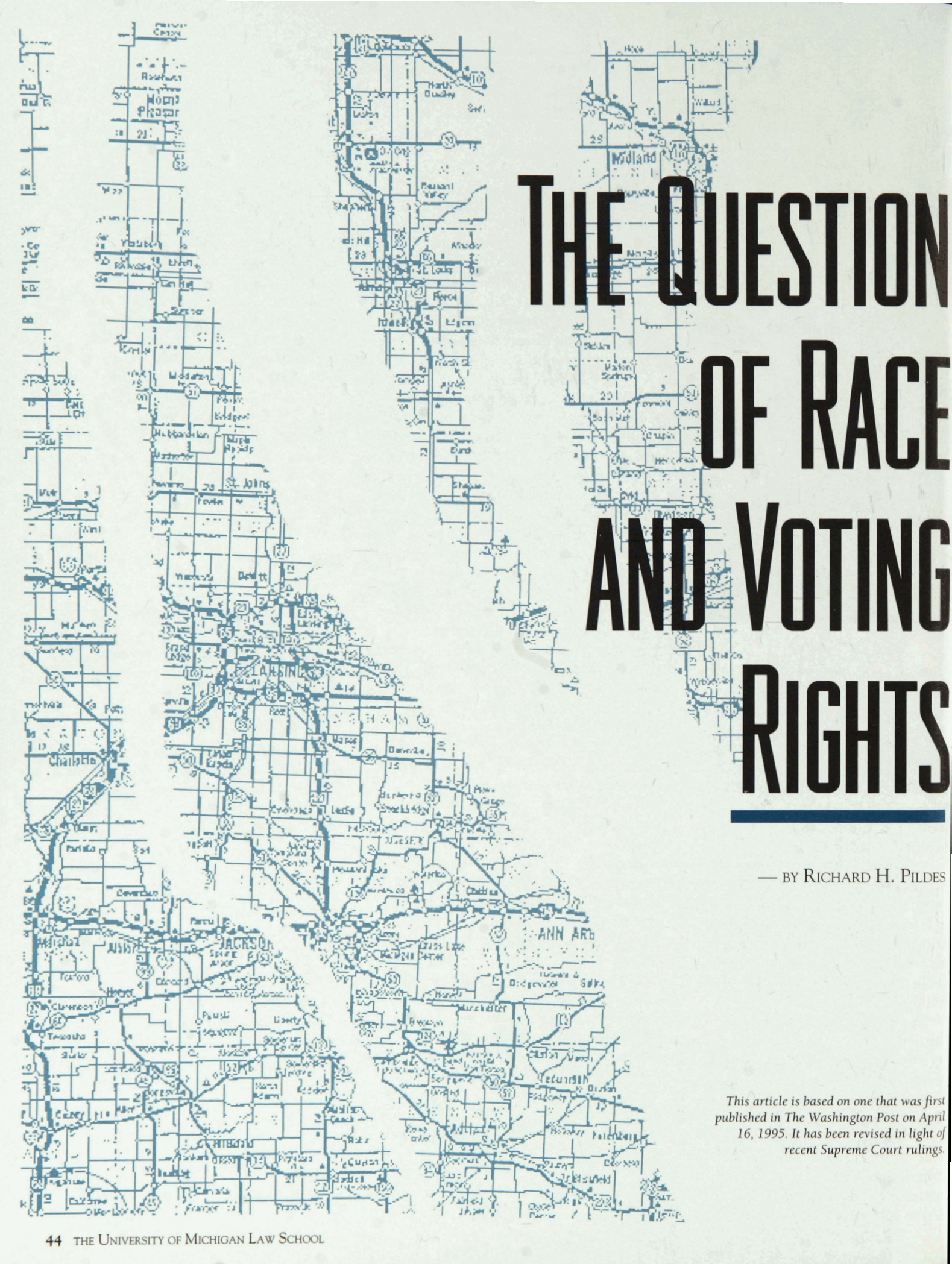
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THE QUESTION OF RACE AND VOTING RIGHTS

— BY RICHARD H. PILDES

This article is based on one that was first published in The Washington Post on April 16, 1995. It has been revised in light of recent Supreme Court rulings.

While President Clinton, Congress, and the public reconsider the merits and politics of affirmative action, the Supreme Court is grasping the nettle of race-conscious public policies in the most charged setting of all. In the term that just ended, the Supreme Court decided cases from Louisiana and Georgia in which white and black voters challenged congressional districts that were intentionally designed — some would say racially gerrymandered — to have black majorities. In the current term, the Court will hear similar cases from North Carolina and Texas as it continues to struggle with establishing a constitutional framework for race-conscious districting. The exceptionally explosive mix of race and politics requires particularly careful thought.

The Court's decision in the Georgia case, *Miller v. Johnson*, handed down on June 29, 1995, was a fractured one but portends dramatic changes in the drawing of black and Hispanic majority districts. (The Louisiana case was dismissed after the Court found the plaintiffs lacked standing.) Writing for the Court, Justice Kennedy announced that whenever race was "the predominant factor" in the design of election districts, such districts would survive constitutional review only if they met the most exacting standards of justification and proof. But what kind of proof and

precisely what sort of justification would be sufficient remained only vaguely suggested. Meanwhile, Justice O'Connor, the crucial swing vote in this area and in so many areas involving race and the Constitution, wrote an enigmatic separate concurring opinion that further clouds the permissible extent of race-conscious districting.

The stakes in the jurisprudential struggle are exceptionally high. For the principles the Court settles on ultimately will not just determine the constitutionality of race-conscious districts for congressional elections, but for elections at all levels of national, state, and local government: city councils, school boards, county commissions, state legislatures, and judiciaries. The Court opened the door to the questions it now confronts in 1993, in a now-famous case from North Carolina called *Shaw v. Reno*. In that case, the Court declared that the snake-like Twelfth Congressional District, which wound 160 miles through ten counties along a corridor often no wider than an interstate highway — and which had elected one of the state's first black congresspersons since Reconstruction — might violate the Constitution. Whether that district is, indeed, unconstitutional will be decided on the merits this coming year.

All this controversy traces to the Voting Rights Act, enacted in 1965 and significantly amended in 1982. Before the flourish of recent attention, the Voting Rights Act had been quietly but dramatically revolutionizing American political institutions for nearly thirty years. While the act has received less media notice than other national civil rights policies, it is widely considered the most effective legislative legacy of the civil rights era.

The clearest measure of the act's success is the number of minorities elected to public office. In 1970, for example, fewer than 1,500 blacks nationwide held public office; by 1990, that number had soared nearly 400 percent, to more than 7,300.

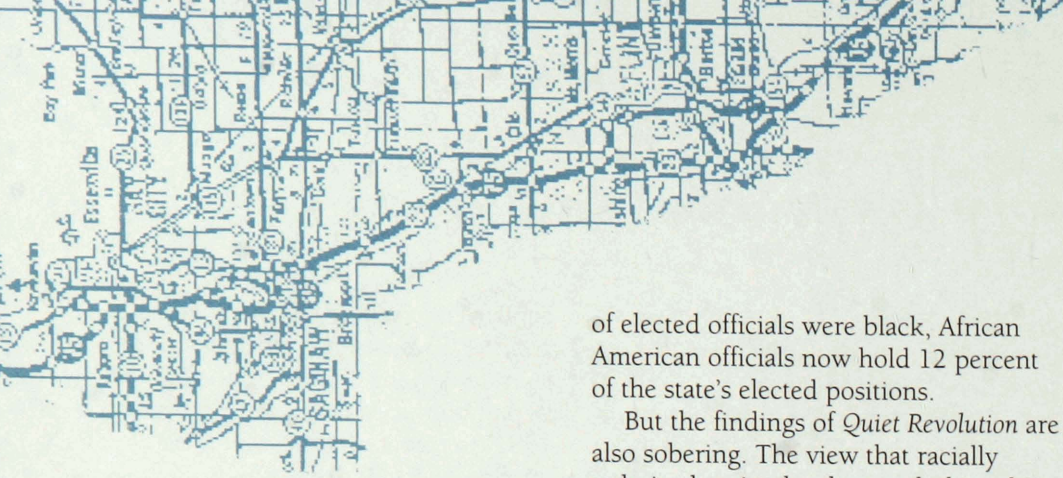
But the means the act uses to bring about these results is now the source of

controversy. Where racially polarized voting is present, the principal enforcement tool of the courts and the Justice Department has been (particularly since 1982) the creation of so-called "safe" minority election districts.

These districts reject any pretense of colorblindness. They are intentionally designed to group enough minority residents together to ensure that they can control election outcomes. For example, if a city with a sizable black minority is divided into five election districts, the intentional creation of one "black district" guarantees that there will be at least one city council member — typically black — directly responsive to the minority community. Where racially polarized voting is present, these safe districts make possible the election of black office-holders.

Conventional wisdom increasingly considered such districts unnecessary or, worse, counterproductive to the emergence of healthy interracial politics. In *Holder v. Hall*, for example, Justice Clarence Thomas, joined by Justice Antonin Scalia, passionately argued that the Voting Rights Act is having "disastrous implications" with "political homelands" being created that can only "deepen racial divisions" by suggestion that blacks "all think alike on important matters of public policy." Similarly, in *Johnson v. De Grandy*, Justice Anthony Kennedy declared that the "assumption that majority-minority districts elect only minority representatives, or that majority-white districts elect only white representatives, is false as an empirical matter."

Kennedy's confident assertion echoes that of several prominent academic commentators. Prof. Carol Swain, a political scientist at Princeton, argues that "black politicians are already elected from districts of widely varying racial composition." Swain, who is black, says that



enforcement of the act should instead focus on electing “blacks in districts without black majorities.”

As evidence, critics of racial gerrymandering point to several highly visible black politicians elected from majority-white electorates: Sen. Carol Mosley Braun in Illinois; former governor Douglas Wilder in Virginia; Rep. J.C. Watts in Oklahoma and recent mayors in cities such as New York, Seattle, and Denver.

But general inference from a few easily recalled examples are notoriously hazardous guides to the truth. And now, for the first time, the effects of the Voting Rights Act on city councils, county governments, state legislatures, and the U.S. Congress have been studied in systematic detail. The book *Quiet Revolution in the South*, published by editors Chandler Davidson and Bernard Grofman in 1994, brings together the work of dozens of social scientists and others. It is the most comprehensive study of the act ever.

From one perspective, its findings are encouraging. In the eight Southern states that have been the primary focus of the act (Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia), black office-holding has soared. In Alabama, blacks sit on city councils throughout the state in numbers that mirror their share of the local population. Louisiana, the home of David Duke, now has the third largest number of black elected officials of the fifty states. Even in Mississippi, where into the 1970s less than 1 percent

of elected officials were black, African American officials now hold 12 percent of the state's elected positions.

But the findings of *Quiet Revolution* are also sobering. The view that racially polarized voting has lessened, that white voters are increasingly willing to support black politicians, and that blacks need not run in “safe” minority districts to be elected — all these claims turn out to be unfounded, at least in the South as of 1990.

As *Quiet Revolution* convincingly demonstrates, the increase in black office-holding is not the result of changing attitudes or voluntary reforms. It is the product of obligations that federal officials, using the Voting Rights Act, have forced on recalcitrant jurisdictions. Absent the race-conscious requirements of the Voting Rights Act, black political representation in the South would be nearly invisible.

One key development has been the federal government's insistence that at-large elections (in which candidates must win in a city or county as a whole) be replaced with individual districts. When this shift was made in cities in the South, the transformation in black political representation was immediate and dramatic: City councils went from being 3 percent black to 55 percent black in majority-black cities.

Cities with mixed electoral systems — with both at-large and individual districts — provide an ideal test of the role of “safe” districts. In Southern cities whose black population was 30 to 50 percent, black candidates won 41 percent of the districted seats but only 4 percent of the at-large ones. In cities with 10 to 30 percent black population, blacks won 23 percent of the districted seats but only 2 percent of the at-large ones. In Alabama, Mississippi, and South Carolina, no black official was elected to a city council from an at-large seat in any majority white city. Thus any assertion that whites are increasingly willing to support black

candidates remains, at least in the South, fanciful. (The facts elsewhere in the country have not yet been studied as thoroughly.)

In the face of such racially polarized voting, the absence of “safe” minority districts translates directly into the absence of black officeholders. Racially-polarized voting patterns have changed little in the past twenty years. In the 1980s, as in the 1970s, only 1 percent of all Southern state legislative districts with white majorities elected a black legislator. Indeed, in the majority of Southern states, not a single black legislator was elected from any majority-white district. In Georgia, for example, 86 percent of whites voted for the white opponent of a black candidate in all state and local elections during the 1980s.

Wishful thinking is no basis for dismantling the Voting Rights Act. Whatever role race might play in employment or contracting decisions, we now know that in the voting booth, racially polarized voting remains pervasive.

If racial gerrymandering is to be criticized, by courts or others, it must be on grounds other than misguided assumptions about the decline of polarized voting. Some argue that creating safe minority districts is counterproductive, for it drains the surrounding districts of black voters and makes those districts more conservative. More black political representatives might be elected, but they will find themselves in legislatures increasingly unwilling to enact the substantive policies black representatives favor.

Critics point to the decimation of moderate white Democrats in the South in recent congressional elections as evidence that this is precisely what is happening. While the issue is controver-

One alternative that might be thought to represent the middle ground in these struggles, is to move away from territorial election districts altogether. In their place, we might use alternative voting systems such as cumulative voting.

sial, the most thorough studies to date (such as those by University of South Carolina political scientist David Dublin and by the Joint Center for Political and Economic Studies) suggest that between six and nine House seats shifted from Democratic to Republican control since 1990 as a result of the creation of safe minority districts nearby.

In addition, some argue that even if safe districts are necessary to minority representation, they come at a significant cost: Politics becomes even more racially defined and hence divisive. An even more profound question is whether race-conscious policies like the Voting Rights Act undermine the possibility of successful progressive political coalitions. In this view, prominently expressed in Mary and Thomas Edsall's book *Chain Reaction*, such coalitions can only be sustained if organized around economic lines, as in the New Deal. Policies organized around race alienate enough white voters to destroy these potential coalitions.

The dilemma of the Voting Rights Act and the creation of safe minority districts is stark: Given the continuing reality of racially polarized voting, these districts remain necessary if significant numbers of black officeholders are going to be elected to city councils, state legislatures, the United States Congress, and other elected bodies. Yet even so, these districts may be politically counterproductive or divisive.

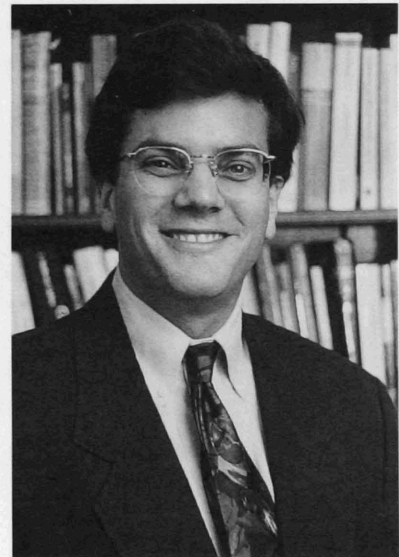
One alternative that might be thought to represent the middle ground in these struggles is to move away from territorial election districts altogether. In their place, we might use alternative voting systems such as cumulative voting. These systems enable large minority groups to exercise effective control over some seats on a representative body even in the face of a hostile, bloc-voting majority. But these systems have the advantage of not requiring that districts be drawn along racial lines.

Instead, each voter gets as many votes to cast as there are seats to fill. Voters can distribute these votes among candidates in any way they choose. Thus, if candidates are vying for seven seats on a city council, each voter would get seven votes to distribute as he or she chose. These systems enable a cohesive minority with intense preferences for particular candidates to have some influence over at least one seat. For example, with seven seats to fill and seven votes to cast, a minority that is 12.5 percent or larger and that concentrates all its votes on one candidate can ensure that candidate's election.

The system empowers all cohesive minority groups equally: any voting group, be it defined in racial, partisan, or ideological terms, can use the system in the same way. Although these systems might sound exotic to many readers, they are increasingly prevalent. I have just completed a detailed field study of one such system in use since 1988 in Chilton County, Alabama, to elect the local county commission and school board. The system is not without some costs, but, by and large, it is working very much in accord with advance predictions for its success. For the first time, the monopoly of white, Democratic males on these bodies has been broken; blacks, Republicans, and women have been elected since the system went into effect.

The constitutional debate over race-conscious election districts, which will dominate the Supreme Court agenda again this coming year, does not reach the full range of policy disputes about the VRA, "safe districts," and alternative voting systems. But misguided assumptions about empirical facts — such as whether racially-polarized voting continues and whether black candidates are being elected in significant numbers from white-majority districts — do continue to play a role in public debates and even Supreme Court opinions. In light of the recent publication of a magisterial study like *Quiet Revolution in the South*, it is no longer responsible to

indulge in wishful thinking or factual fallacy. It remains true today, as in the past, that black political representation will not rise above nearly invisible levels where white voters are in the majority. Until racially-polarized voting diminishes, there are two means to ensuring some meaningful degree of black representation. One, the conscious creation of "safe" black-majority districts, is currently being criticized on constitutional and policy grounds. The other, alternative voting systems, offers considerable promise but is still relatively novel. As the Supreme Court continues to struggle over the constitutionality of race-conscious districtings, these remain the uncomfortable facts. **LQN**



Professor Richard H. Pildes teaches Constitutional Law, Democratic Rights, Public Law, and Legal Theory. He recently published "The Politics of Race" in the April 1995 Harvard Law Review, and his study of Chilton County, Alabama is forthcoming in a fall 1995 symposium issue of University of Chicago Legal Forum. His scholarship was cited in the Supreme Court's recent decision involving Georgia's redistricting, Miller v. Johnson (June 29, 1995).

This article is excerpted and adapted with permission from "The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law" (University of Chicago Law Review, Vol. 62 No. 2, 1995). All references have been omitted. Readers who wish to obtain a copy of the original should contact the LQN editor.

T H E MAJORITARIAN



D I F F I C U L T Y

Legal academicians are typically preoccupied with the work product of judges appointed for life. While the preoccupation may be understandable, it clouds a fact that may be surprising: A majority of all cases in the United States are decided by judges whose continued tenure is contingent upon elections. This fact is attributable to another: Most judgeships in the United States are elective offices. More than surprising, these two facts are curious, even anomalous, for judges are elected on a similar scale in no other constitutional democracy in the world.

Notwithstanding the prevalence of elective judiciaries and the enormous influence that elected judges exercise on the daily operation of the United States justice system, the institution has received scant theoretical attention. This is not to say that no one has ever thought about the desirability of elective judiciaries. To the contrary, the debate about "getting judges out of politics" emerges almost perennially, fueled in large part by controversies surrounding elected state judges. But that debate (whose participants, incidentally, often are sitting or former state judges or justices themselves) is confined largely to issues such as the propriety of judicial

campaigning and the effects of attorney expenditures on judicial objectivity.

Yet none of the arguments proposing to do away with the institution, by itself, leads to its conclusion. Other, less sweeping corrections — public financing of judicial campaigns, for example — would avoid the types of problems precipitating those reforms. Why dismantle the institution rather than remove its warts? On the other hand, if elective judiciaries are otherwise undesirable, why resist reforms that would eliminate them? Why is the institution worth preserving? The debate about judicial politics does not often address these larger normative questions.

This article begins to confront such questions. It asks whether any compelling theoretical justification — specifically, one compatible with any of several prominent models of judicial review — can be given in defense of elective judiciaries. It asks whether and how elective judiciaries advance or undermine some of the fundamental principles of constitutional democracy. And unlike past criticisms of elective judiciaries, it exposes one danger the institution poses, even assuming that judicial elections are entirely free of corruption and that campaign contributors do not enjoy illicit influence with their elected judges.

It does so by presenting and examining a puzzle inverse to the one Alexander Bickel articulated, for which he coined the phrase “the countermajoritarian difficulty.” The countermajoritarian difficulty concerns judges’ power to invalidate majoritarian policies when they are neither placed in office by the majority nor directly accountable to the majority. Bickel asked, in effect: “How can a nonelective judiciary be justified in a democratic regime?” He and others have provided several different answers to that question, many of which in one way or another attempt to reconcile the institution of a nonelective federal judiciary with democracy.

This article considers the opposite problem — call it the “majoritarian difficulty” — a problem so far largely overlooked. The majoritarian difficulty asks not how unelected/unaccountable judges can be justified in a regime committed to democracy, but rather how elected/accountable judges can be justified in a regime committed to constitutionalism. For constitutionalism entails, among other important things, protection of the individual and of minorities from democratic governance over certain spheres. When those charged with checking the majority are themselves answerable to, and thus influenced by, the majority, we may question how individual and minority protection is secured. Judges who safeguard a minority contrary to the

wishes of a majority, for example, can be defeated in the next election and replaced by judges more attuned to majoritarian will.

And, according to several sources, judicial elections have become increasingly salient in recent years, and judicial candidates have consequently been subject to increasing electoral-political pressures. Thus, former Justice Otto Kaus of the California Supreme Court ex-

posed judges to political pressures. According to Hamilton, an independent judiciary constituted the “citadel of the public justice and the public security.” His argument is uncompromising: “Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to [the judiciary’s] necessary independence.”

Half of a century later, Alexis de Tocqueville joined Hamilton by suggest-

IT DOES SO BY PRESENTING AND EXAMINING A PUZZLE INVERSE TO THE ONE ALEXANDER BICKEL ARTICULATED, FOR WHICH HE COINED THE PHRASE “THE COUNTERMAJORITARIAN DIFFICULTY.” THE COUNTERMAJORITARIAN DIFFICULTY CONCERNS JUDGES’ POWER TO INVALIDATE MAJORITARIAN POLICIES WHEN THEY ARE NEITHER PLACED IN OFFICE BY THE MAJORITY NOR DIRECTLY ACCOUNTABLE TO THE MAJORITY. BICKEL ASKED, IN EFFECT:

“HOW CAN A NONELECTIVE JUDICIARY BE JUSTIFIED IN A DEMOCRATIC REGIME?”

plained in an April 1987 ABA Journal article called “The Politics of Judging”:

“I’m afraid the era of retaining judges on the basis of their character, without tallying up their votes, is a thing of the past. There’s no way a judge is going to be able to ignore the political consequences of certain decisions, especially if he or she has to make them near election time.”

Justice Kaus might overstate the matter, but perhaps by not as much as many might expect. While democratic values may be advanced by subjecting judges to increased electoral scrutiny, certain constitutionalist values may be compromised at the same time.

In Federalist 78, Alexander Hamilton argued that permanence of tenure, which he considered to be a great virtue of the proposed federal judiciary, would avoid many ills associated with subjecting

ing that some states’ then-emergent practice of subjecting judges to periodic elections was tantamount to an attack on “the democratic republic itself.” But can Hamilton and Tocqueville possibly be right? Do we really believe that periodic appointments for judges — specifically, “appointments” by election — are fatal to their independence and, thus, to democracy itself?

This article argues that Hamilton’s and Tocqueville’s claims are, though perhaps hyperbolic, not ill-conceived: At least for contemporary constitutional democrats, elective judiciaries pose certain conceptual problems. Of course, unless Justice Kaus is right that elected judges are in fact responsive to electoral pressures, the majoritarian difficulty remains “only” a theoretical problem. While there are reasons to think that voters in judicial elections might be typically less informed

THE MAJORITARIAN DIFFICULTY

about judicial candidates' positions on salient legal and constitutional questions than about other political candidates' positions, nevertheless the electorate's response (actual or expected) to judicial candidates' legal positions and past rulings sometimes shapes judicial behavior significantly. Furthermore, when the majoritarian difficulty is understood broadly to include voters' influence not merely on judges' positions on particular constitutional questions but also on their legal positions and judicial predispositions, the problem, though very difficult to measure empirically, might be very real indeed.

A few important caveats are in order at the outset. First, the analysis that follows depends upon the assumption that contemporary constitutionalism entails a commitment to the protection of individual and group rights from political majorities. Second, this article focuses only on judiciaries in which judges are subject to periodic election. Systems of judicial selection according to which judges are elected for life terms may not pose the same problem as those identified here, certainly not to the same degree. Third, this article assumes that the recent increased salience of judicial elections is not entirely attributable to increased voter interest in the integrity and competence of judicial candidates. It assumes, in other words, that many voters in salient judicial elections vote not simply for the most honest and able candidate, but on the basis of candidates' ideological identities, attitudes toward criminal defendants, and views or rulings on capital punishment, abortion rights, pornography, and so on. Finally, although the primary aim here is to show that elective judiciaries seem at odds with certain constitutionalist commitments, one cannot conclude that elective judiciaries are therefore illegitimate or undesirable. Elective judiciaries may come with certain advantages that outweigh the disadvantages identified here, and alternative systems no doubt come with their own sets of problems.

The countermajoritarian difficulty begins with the observation that judges are not electorally accountable. When judges are electorally accountable, however, that difficulty fades away and a new one appears. Yet, somehow the new difficulty has received no attention. Some have rightly noted that elective judiciaries might avoid the countermajoritarian difficulty, but scholars have failed to consider the majoritarian difficulty which is implicated whenever judges are influenced by democratic pressures.

But the problem presented by assigning the task of constraining the majority to the unelected judge, daunting as it may be to the democrat, may be no more daunting to the constitutionalist than the problem presented by assigning the task of constraining the majority to the judge whose faces reelection. Indeed, if Hamilton and Tocqueville were right that electorally independent judiciaries are "indispensable" to the public justice and the preservation of the "democratic republic itself," then the problem may be insoluble.

■ Elective judiciaries pose two problems for the constitutional democrat. First, the rights of individuals and unpopular minority groups may be compromised by an elective judiciary. Second, and more mundane but no less important, the impartial administration of "day-to-day" justice may be compromised.

Insofar as the outcomes of judicial elections are dependent on majoritarian attitudes concerning individual or minority constitutional rights, these rights may be compromised. An elected judge may perceive that a majority of the judicial electorate opposes vindicating some (federal or state) constitutional right when its violation is suffered by some disfavored minority group. Vindicating individual or minority constitutional rights might prove too much for

judges for whom reelection is important. Unscrupulous judges seeking reelection would have an incentive to compromise the constitutional rights of subsets of their judicial electorate who are unpopular, unorganized, or otherwise outvoted. Scrupulous judges who refuse to respond to majoritarian pressures may as a result be removed from office and replaced with unscrupulous judges. Over time, this phenomenon would create a systemic bias in favor of judges most responsive to majoritarian pressures.

Examples are easy to imagine. A judge perceived by an electorate to be too vigilant in the protection of constitutional procedural rights of accused criminals may be targeted for electoral replacement by a majority of the judicial electorate. Particularly when the problem of crime is considered to constitute a crisis, as it seems to be at present, judges may feel significant pressure not to safeguard all constitutional protections. The protection of abortion rights in judicial districts where abortion is disfavored by a majority is another example where the protection of constitutional rights may be threatened by electoral accountability.

Yet the majoritarian difficulty extends beyond core constitutional interests of disenfranchised groups. In Federalist 78, Hamilton explained two functions that the federal judiciary would serve. As well as protecting against "ill humors," the federal judiciary would also ensure the unbiased administration of day-to-day justice. An elective judiciary threatens this second role as well. For one example, a judge given discretion by law to sentence convicted criminals by considering such factors such as the number and type of past convictions, the severity of the way the particular offense was committed, the character of the convicted, and so on, may exercise that discretion not with reference to these factors alone, but instead to demonstrate her tough posture toward crime and thus to win continued favor from a majority necessary for reelection. This is not to say that if the majority legislatively removed the judge's discretion or even imposed

penalties as harsh as the reelection-minded judge would have imposed, such an exercise of majoritarian power would be illegitimate. It is rather to say that electoral pressures that lead the judiciary — the very institution charged with reviewing majoritarian responses to “crises” and preserving the rule of law — to sentence convicted criminals according to criteria not prescribed by law compromise commitments to the rule of law. In nonconstitutional cases, the rule of law is compromised whenever a judge rules differently from the way she would have had electoral considerations not been taken into account.

In two ways, then, elective judiciaries threaten the rule of law, sometimes the rule of supreme law. When a court is influenced by majoritarian political pressures incident to reelection, it exercises judicial power, not to protect the litigant, but against him or her. That, without mystic overtones, is what actually happens. It is an altogether different kettle of fish, and it is the reason the charge can be made that judicial review by elective judiciaries threatens the rule of law.

SIGNIFICANCE OF THE MAJORITARIAN DIFFICULTY

One might fairly question whether the majoritarian difficulty is of any practical significance. To what extent are elected judges really influenced by the immediate majority? Answering that question is very difficult, given that the consequences of the majoritarian influence seem likely to take ulterior forms, making its measurement problematic if not impossible.

It seems safe to say that elected judges typically have not been highly responsive to the electorate. To the contrary, there are compelling reasons to believe that judges’ constituents often have known little about the individuals for whom they have voted. Judicial elections, in other words, have often been democratic only in a sterile, formalistic sense. At times,

however, highly salient issues do come to dominate judicial elections. Moreover, judges who are candidates in low-salience elections are likely to be influenced by political pressures generated by high-salience elections. Both phenomena advance democracy, but they raise new questions concerning constitutionalism.



TO WHAT EXTENT ARE ELECTED JUDGES REALLY INFLUENCED BY THE IMMEDIATE MAJORITY? . . .

■ Open elections and universal suffrage against a background of freedom of speech and freedom of the press are at the core of any democratic system. On these criteria, judicial elections have long been formally democratic. Judicial elections are open, suffrage is nearly universal, and candidates, supporters, and detractors enjoy the freedom to vocalize and print their views. In practice, however, lack of information about judicial candidates has seriously complicated the connection between voter preferences and judicial candidates’ positions.

Two sets of constraints explain this lack of voter information. On the “supply side,” legal constraints, ethical obligations, and professional norms restrict the extent to which judicial candidates can supply potential voters with information about themselves. Judicial candidates are discouraged from communicating to potential voters how they would decide particular legal questions. Although these prohibitions do not always prevent judicial candidates from disclosing their views on salient issues, presumably they have some effect.

On the “demand side,” voters have traditionally had very little incentive to gather information about judicial candidates. First of all, as compared to candidates for legislative or executive office, the “policy” jurisdiction of judges has traditionally been relatively limited. Consequently, the likelihood that a given judicial candidate would render a decision affecting any given voter is small. Thus, even a voter who might anticipate being a party to a future case would have little incentive to vote for a judicial candidate. This holds true even for judges in the lowest tier of a state judicial system, since trial courts often have several judges and a voter would thus have to discount her vote by the probability that she would appear before the judicial candidate and not some other judge on that court. While the policy jurisdiction of candidates to appellate courts is greater, the voter must still

discount the impact of her vote by the probability that the candidate's presence will be decisive on a particular appellate panel.

It seems highly likely that most voters in judicial elections are not self-interested in the sense that they vote in anticipation of appearing before a winning candidate, however. Rather, like voters in other types of elections, they vote to fulfill their duties of citizenship, to participate in the making of history, and to express their philosophical commitments and policy preferences. Still, even ideologically committed voters have probably had less incentive to participate in judicial elections than in other elections, as long as judges' policy jurisdictions remained small and insofar as supply-side constraints restricted voter access to information about judicial candidates.

At least until recently, empirical observation seemed to corroborate these expectations about voter participation in judicial elections. Potential judicial voters in fact seemed to have little inclination to vote. Empirical work revealed that actual voter turnout was often modest. In the rare states where judicial elections are not contemporaneous with elections for legislative and executive officers, voter turnout was smaller still.

It is worth noting, however, that in all judicial elections some voters have shown up at the polls. This raises the question whether those who vote in judicial elections are, with respect to their preferences among judicial candidates, representative of citizens generally. If so, then most citizens might benefit from the heightened sense of civic responsibility or greater ideological commitment of those who vote, in which case the outcomes of judicial elections cannot necessarily be considered undemocratic, no matter how low voter turnout might be; only those judges who would be elected if all citizens voted would in fact be elected by a representative subset of citizens.

Moreover, while the constraints described above may severely limit the availability of information about judicial candidates in the typical judicial election, not all judicial elections are in fact typical. To the contrary, judicial elections occasionally are highly salient, sometimes focusing on a single issue or small set of issues and mobilizing large segments of the citizenry.

Much more important, there are indications that judicial elections simply are not the dreary events they used to be. According to several former or sitting state judges and many commentators, judicial elections are more and more often high-salience events that mobilize large portions of the citizenry. The incidence of judicial incumbent electoral defeats has increased, while the electoral victory margins of judicial winners have decreased. In the recent words of one student of judicial elections: "Judicial races used to be quiet or not even races, but more states are seeing them become nosier, nastier, and costlier."

The 1986 electoral defeat of three justices of the California Supreme Court, largely in response to their positions on the constitutionality of the death penalty, is a clear example of how elected judges are increasingly accountable to electoral majorities. One might object that California's 1986 judicial elections constitute an extreme case from which generalizations cannot be easily drawn, but the example is by no means unique. In that same year, chief justices of the North Carolina Supreme Court and of the Ohio Supreme Court also lost elections. Incumbent supreme court justices in other states — New Mexico, West Virginia, and Wyoming, for example — have also been defeated in recent elections. In still other states, incumbent justices have been reelected only after highly contested races. A Florida chief justice, for instance, recently defeated a challenger in a salient retention election in which he was opposed by groups such as the Florida Right to Life, Citizens for a Responsible Judiciary, and the American Family

Association, groups which vowed to participate actively in future judicial elections in that state.

Media coverage of lower court elections is often limited, which makes estimating the salience of lower court elections and thus the effects of electoral considerations on lower court judges difficult, but one would expect electoral pressures to operate there too. Recently in Texas, for example, two incumbent lower court judges lost elections following a write-in campaign initiated to unseat a judge who had ordered restrictions on antiabortion protests at clinics. The threat of majoritarian influence also manifested itself in the widely publicized "Korean grocer case" in Los Angeles. In that case, Soon Ja Du was convicted of voluntary manslaughter for fatally shooting Latasha Harlins, a fifteen-year-old black youth accused of shoplifting from Du's store and assaulting Du. Judge Joyce A. Karlin of the Los Angeles County Superior Court sentenced Du to five years' probation. The sentence was considered unusually lenient by segments of the public, who had seen televised portions of the grocery store's videotape showing Harlins beating Du and Du shooting Harlins as Harlins walked away. Public outcry at Judge Karlin's sentence, sparked in part by comparisons to the then-recent Rodney King case, led to a campaign to defeat Judge Karlin in her impending reelection bid.

In the end, Judge Karlin was reelected. But the example illustrates the political pressures to which lower court judges are sometimes subjected. And the effects of such pressures seem likely to be significant systematically — that is, not just for those judges directly involved in salient elections. Thus, when Judge Karlin's reelection was still in doubt, one of her judicial colleagues reportedly remarked off the record: "There is no way I can give straight probation because I don't want to be the next Joyce Karlin."

Some scholars have inferred from the fact that incumbent judges are rarely defeated that majoritarian influences on elective judiciaries must be negligible. Such an inference is precipitous. It rests on the faulty premise that majoritarian pressures would manifest themselves only in the form of electoral defeats, and it overlooks the possibility that high reelection percentages may be the result of significant majoritarian pressure. One can conclude from a high reelection rate that judges are insulated from majoritarian pressures no more than one can make the same conclusion about members of Congress who rarely lose reelection bids. Incumbent legislators typically lose only a small percentage of elections, but majoritarian influences on their decision is not only real, but significant, as much research shows. Because majoritarian influences on the judiciary are likely to be at least partially concealed, high reelection rates do not demonstrate the insignificance of the majoritarian difficulty.

■ Some scholars hold strong to traditional liberal models of judicial review according to which the judiciary advances, not impedes, the majoritarian principle. As mentioned, arguments that seek to reconcile judicial review with the majoritarian principle often take one of three paths. The principal alternatives are representation-oriented, participation-oriented, and rights-oriented models.

Bickel's own resolution of the difficulty was rooted in the idea that the federal judiciary is, fundamentally, a representative institution. He begins with the distinction between expediency, which implicates the majority's interests, and principle, which implicates its values. The function of the federal judiciary is to protect principle against expediency's attacks. The judiciary, in contradistinction to the other two branches, is to "be the pronouncer and guardian of ... values." In this role, the judiciary represents the majority.

But this is not the end of Bickel's argument. To explain why the judiciary's representative claims should trump the other two branches' representative claims, he ultimately turns back to his fundamental premise that political legitimacy is grounded solely in majoritarian consent. The judiciary, that is, invokes principle as a constraint on majoritarian sentiment where, but only where, in the foreseeable future, principle will gain majoritarian support. In short, the federal judiciary negotiates the tension between the majority's short-sighted preferences, represented by the legislative and executive branches, and those principles the majority will come to embrace in the longer term. The countermajoritarian difficulty is overcome, then, since majoritarianism is ultimately preserved, protected by an unaccountable judiciary.

Bruce Ackerman offers a somewhat different solution, also grounded in the representatives of the judiciary. Ackerman argues that the countermajoritarian difficulty is overcome by rejecting its implicit "leveling" premise. According to the leveling premise, one political decision commands no more normative weight than another, no matter the context or institutional structure through which that decision is made. A decision reached by an impassioned legislature is no more or less legitimate than one reached by a court or a referendum.

But, Ackerman argues, such a conflation misunderstands the nature of a constitution and fails to appreciate important differences across democratic institutions. Constitutional decision making must be distinguished from the decision making performed by "everyday" political institutions. Whereas everyday politics involves adjudication among private (selfish) interests, "higher" politics — the politics of constitutional

decision making — involves instead the dialog creation of the citizenry's political identity, including the principles that are to guide public life. As such, its importance trumps that of everyday politics.

Ackerman overcomes the countermajoritarian difficulty by arguing that it is the judiciary which, in times of everyday politics, preserves the political identity the majority forged for itself in past times of high politics. In this sense, the judiciary represents the majority's better self, a self too easily lost in the throes of everyday politics. Whereas Bickel characterizes the judiciary as the institution that represents the identity the majority will come to have, the principles it will in time embrace, Ackerman's judiciary represents the identity the majority has already forged, the principles to which it has previously committed. As representative of the citizenry's enduring principles and, thus, of its identity, the judiciary is in fact a democratic institution.

Notwithstanding their important differences, Bickel's and Ackerman's resolutions of the countermajoritarian difficulty thus both involve reconciliation of constitutionalism with democracy on the grounds that judicial review advances democracy by ensuring that the majority's long-term, constitutive values are represented in the heat of the moment. This model leaves no room for elective judiciaries, however. According to Bickel and Ackerman, the judiciary's closer connection to the higher will of the majority legitimates the exercise of judicial power. Where judges are themselves products of electoral politics, they are no longer specially attuned to the majority's higher will. More important, the representation-oriented model of judicial review precludes any resolution of the majoritarian difficulty. This is true because that model distinguishes between higher/more authoritative and lower/less authoritative majoritarian will. Elective judiciaries erode that distinction, with devastating consequences. Where



UNLESS THE MAJORITARIAN DIFFICULTY IS NOT RESOLVABLE, EFFORTS TO MAKE JUDICIAL ELECTIONS MORE DEMOCRATIC SHOULD MEET LITTLE RESISTANCE.

judicial power is contingent on low-level majoritarian will, individual and minority rights are no longer secured against the momentary throes of everyday politics. Thus, according to the model's premises, there simply can be no resolution of the majoritarian difficulty. Because the original justification for the protection principle is fidelity to high-politics majoritarian will, subordinating that will to low-politics majoritarian will undermines majoritarian democracy as well as constitutionalism.

In contrast to representation-based accounts of judicial review, others resolve the countermajoritarian difficulty by arguing that the judiciary safeguards the principle of democracy by ensuring that democratic decision-making processes are in some sense truly democratic. On this view, there is nothing countermajoritarian about an institution that insists that legislative outcomes reflect the will of a majority of all citizens. Without such an institution, some citizens may successfully exclude others from decision-making processes. Unchecked democrats, in other words, may threaten democracy. The judiciary's role is to guard against such threats by ensuring that policy decisions are arrived at through democratic processes, as set forth in the Constitution.

This account of judicial review is commonly associated with its chief proponent, John Hart Ely. Ely analogizes judicial review to antitrust law. Antitrust principles interfere with the market when some market participants have an unfair advantage. So too with the judiciary, on Ely's account. The judiciary monitors the political "market" to ensure not that its allocations are fair or just, but that those allocations were arrived at fairly and justly, with no market distortions.

The judiciary alone, Ely argues, is the proper institution to assume this role. Other branches cannot be trusted to safeguard the democratic processes, since they might profit from distortions of those processes. Thus the unelected judiciary is uniquely qualified to safeguard democratic decision-making. Judicial review, thus understood, easily comports with democracy's majoritarian principle. Once again, the countermajoritarian difficulty is resolved.

This participation-oriented model of judicial review offers no promise of resolving the majoritarian difficulty either. According to this model, the exercise of judicial power is legitimate precisely because judges are not electorally accountable. Where judges themselves are answerable to majorities, there is no longer any institution positioned to provide a check on majoritarian will. This means that democratic majorities may compromise democratic political processes by disenfranchising political minorities. Without an institution to safeguard political participation rights, democracy can unravel. Thus, as with the representation-oriented model, here an elective judiciary is not only irreconcilable with constitutionalism, but seriously threatens genuine majoritarianism as well.

Whereas Ely's account of judicial review would have the judiciary protect democratic processes, others would have the judiciary also review the substance of democratic decisions. According to adherents of this position, the judiciary should not be understood to be merely a referee, but should sometimes invalidate legislative outcomes on grounds independent of the processes by which those outcomes were reached. Specifically, the judiciary can and must invalidate legislation in violation of individuals' moral rights as embedded in the Constitution.

Ronald Dworkin represents this school. Dworkin rejects the argument that the federal judiciary should defer to the electorally accountable branches on questions of political morality, on the grounds that such a view is predicated either on the misguided belief that “decisions about rights against the majority ... ought to be left to the majority,” or on a profound and untenable skepticism toward the existence of rights against the state. Neither of these, according to Dworkin, is faithful to the premises underlying the majoritarian principle or, indeed, to the form of democracy established by the Constitution.

According to Dworkin, the American conception of democracy presupposes that individuals have moral rights against the government, which is to say, against the majority. Judicial protection of those moral rights is not troubling, Dworkin argues. In fairness, decisions about what rights the individual possesses against the majority should not be left to the majority. Thus, the judiciary, which is not accountable to the majority in the same way that elected officials are, should not simply defer to the other branches about the scope of protected constitutional rights. Instead, adherence to the Constitution requires that the judiciary enforce constitutional protections against the majority by explicating the scope of those rights based on reasons of principle and according to the judiciary’s own moral insight, even against competing explications of those rights by the more accountable branches.

Once again, the countermajoritarian difficulty is resolved, at least indirectly. Where democratic processes produce results that violate the protection principle, it is not illegitimate for judges to invalidate those results, because what makes democracy normatively appealing in the first place is that it treats people as moral and political equals. Can this model resolve the majoritarian difficulty? The introduction of an elective judiciary transforms it into a majoritarian institution, so putting the task of interpreting

individuals’ constitutional rights to the judiciary is in effect putting the majority in charge of deciding what rights are possessed against it, which according to the argument is unfair. Here once again, then, the protection principle is irreparably compromised by an elective judiciary, so the majoritarian difficulty is unresolvable by the model. What is more, an elective judiciary also threatens democracy, in the specific sense that it divests democracy of its normative appeal. Because democracy is desirable only insofar as it preserves moral equality among individuals, and because such preservation is possible only insofar as some institution not directly accountable to the majority can protect the individual from the majoritarian threats to moral equality, an elective judiciary clips democracy from its normative roots. A democracy that cannot preserve the moral rights of its citizens is no longer entirely appealing.

CONCLUSION

This article has sought to accomplish two primary and two incidental goals. Above all else, it has sought simply to identify the majoritarian difficulty. Following what many consider to be the increased politicization of the selection of judges, recent years seem to have seen increasing salience in the selection of state judges as well in those many states where judges are elected. Judicial elections are no longer always formalities. Judicial incumbents in many states can no longer count on electoral victories. Consequently, it seems that at least some judges in elective states are beginning to respond to majoritarian political pressures. To the extent that judges are sensitive to such pressures, commitments to constitutionalism and, more generally, to the rule of law may be jeopardized. Critics as well as supporters of elective judiciaries have overlooked this fact: the institution is

problematic even if, indeed especially if, election results smoothly reflect majoritarian will.

Second, this article has argued that the majoritarian difficulty is not easily resolvable. The logic of antidemocratic models suggests that increased judicial accountability is desirable. They seem to overlook the majoritarian difficulty, however, which, this article has further argued, suggests that something important is missing from them. Other models recognize the difficulty, but their logic suggests that accountable judiciaries undermine commitments not only to judicial constitutionalism but to majoritarian democracy as well. According to these models of judicial review, the unelected status of the judiciary is exactly what preserves their legitimacy in a democratic regime. Thus, all leading models of judicial review considered here either fail to recognize the difficulty, or suggest that the difficulty is insoluble.

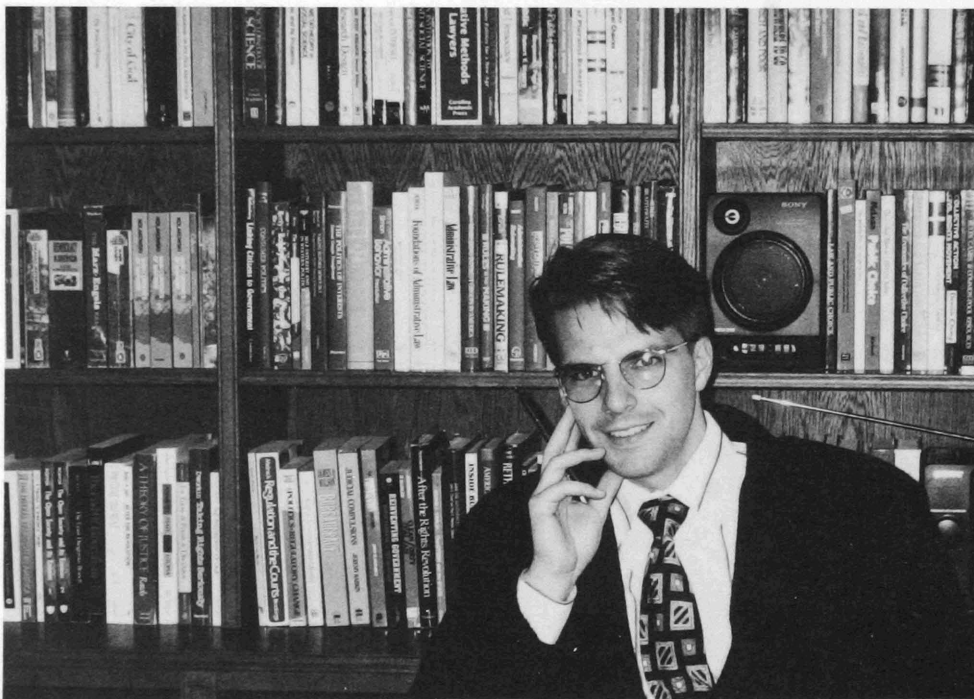
The desirability of elective judiciaries is therefore open to serious question. How elective judiciaries advance both the majoritarian principle and the protection principle simultaneously is unclear. This is true even in low-salience elections where elected judges are, as a practical matter, unaccountable to majorities. For in such instances, the institution advances the majoritarian principle only in a very formal and attenuated sense. Unless the majoritarian difficulty is not resolvable, efforts to make judicial elections more democratic should meet little resistance.

Nor does the institution seem desirable on the grounds that it produces more capable judges; or that it adds democratic legitimacy by creating the exaggerated perception that “the people” really control those who exercise judicial power over them; or that it provides better access to members of groups historically underrepresented in the judiciary. Each of these justifications is either theoretically dubious or empirically groundless, or both.

Elective judiciaries are illegitimate and should be dismantled forthwith.

Such unambivalent conclusions are always tempting, but the temptation must be resisted here. Perhaps one who would preserve the institution can now step forward and explain how electorally accountable judiciaries really advance constitutionalist commitments — how, in short, the majoritarian difficulty may be resolved. After all, although this article has considered important representatives from conservative, liberal, and progressive camps, it has not considered every model of judicial review. Maybe some model not considered here could make more sense of elective judiciaries vis-à-vis constitutional democracy's fundamental principles. Alternatively, perhaps a defender of the institution can explain how state judiciaries function within state systems in ways fundamentally different from their federal counterpart — how, that is, state constitutional democracies are different from the federal constitutional democracy in ways that implicate the function of state judiciaries and that argue

in favor of electorally accountable judiciaries. Or, perhaps a defender can explain how elective judiciaries, though historically designed to extend the people's control over those who wield political power, today bring unanticipated benefits, other than superior judges or a more diverse judiciary. Or, perhaps it can be shown that by and large voters in judicial elections behave quite differently from voters in other elections in that they select candidates based on assessments of their integrity and ability alone. Finally, it might be that while this article's analysis is entirely sound, lifetime appointment (or lifetime election) of judges poses problems more serious than the majoritarian difficulty, such that, all things considered, elective systems are best. At least until these or similar arguments are made, however, judicial reform movements already underway, as in Georgia, Ohio, Pennsylvania, and Texas, now have one new argument to commend them. **LQN**



Professor Steven P. Croley, a graduate of Michigan, Yale, and Princeton, teaches and writes in the areas of Administrative Law, Torts, and related subjects. His other recent publications appear in the latest issues of the Harvard Law Review (vol. 108 no. 8, with Jon Hanson) and the Michigan Law Review (vol. 93 no. 6). He joined the Law School faculty in 1993.

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A gardener's glory —

Much of the credit for the Law Quadrangle's natural beauty goes to Dale Laughner, a horticulturist who has tended the surrounding gardens for seven years. He has made lavish use of perennials in beds that offer a colorful, ever-changing display to catch the eye throughout the growing season.

Laughner enjoys the freedom to make use of his favorite plants. "I change things around a lot whenever a plant doesn't do well or something isn't right," he says. "I've spent the last seven years refining it to suit my taste." He has no design concept; he favors a natural style, guided only by his love of plants. For instance, trillium, usually found only in the woods, blooms in the peaceful courtyard within Hutchins Hall in the spring. It's there because Laughner rescued plants displaced by North Campus construction and transplanted them in the courtyard.

Many of the lush rhododendrons in the quadrangle are the largess of George Sperling, '40, who made a gift of more than \$20,000 in 1987 to landscape and beautify the grounds. Thanks to this gift, support from the University Grounds Department, and Laughner's loving attention, the Law School gardens are more resplendent than many other areas on campus.

This fall, Laughner is giving up the gardens because it's time for him to grow into a new career. He left the University to pursue a degree in elementary education. He'll miss the gardens he's grown to love, but he'll know that he's left his mark in the blooms that will delight passers-by for seasons to come.

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