THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 40 • NUMBER 1
SPRING 1997

LAW QUADRANGLE NOTES

Dollars as Discipline:
The U.S. and the U.N.

Going to Trial:
A Rare Throw
of the Die

Corporations,
Criminal Law
and the
Color of Money

UNIVERSITY OF MICHIGAN
LAW SCHOOL

Upcoming Events

April 4-5	Symposium: "Redefining Access to Information: Politics, Power, Law and the New Technology"
April 5	Butch Carpenter Dinner
April 10	Dean's Forum: James E. Crowther, J.D. '58 Campbell Moot Court Final Competition and Banquet
April 17	Dean's Forum: Robert P. Luciano, J.D. '58
April 24	Senior Celebration/Send-Off
May 9	Honors Convocation
May 10	Senior Day Advocacy Institute Conference
May 14	Alumni Spring Seminars
Sept. 12-14	Reunions: Classes of 1942, 1946/47, 1952, 1962 and 1967
Sept. 19-21	Reunions: Classes of 1972, 1977, 1982, 1987 and 1992
Sept. 25-26	Law School Campaign Celebration
Oct. 16-19	Committee of Visitors International Reunion
Oct. 24-25	Symposium: Equal Access to Justice
Oct. 31-Nov. 2	Reunion: Class of 1957
Nov. 6-9	Midwest Clinical Law Conference

NOTE: *This calendar is correct at deadline time and may be subject to change.*

Have you moved lately?

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

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

Non-alumni readers should write directly to:

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

Address all other news to:

Editor
LAW QUADRANGLE NOTES
1045 Legal Research Building
Ann Arbor, MI 48109-1215

Telephone (313) 647-3589

Facsimile (313) 764-8309

trogers@umich.edu

Cover:
Drawn by spring's warmth and sunshine, law students gather in front of the Reading Room.

CONTENTS

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 40, NUMBER 1
SPRING 1997

LAW QUADRANGLE NOTES

 Law Quadrangle Notes (USPS #144) is issued by the University of Michigan Law School. Postage paid at Ann Arbor, Michigan. Publication office: *Law Quadrangle Notes*, University of Michigan Law School, Ann Arbor, MI 48109-1215. Published three times a year.

POSTMASTER, send address changes to:
Editor, *Law Quadrangle Notes*,
University of Michigan Law School,
801 Monroe St.,
Ann Arbor, MI 48109-1215

FACULTY ADVISORS:
Yale Kamisar and Kent Syverud

EXECUTIVE EDITOR:
Catherine Cureton

WRITER/EDITOR: Tom Rogers

DESIGN AND PRODUCTION:
Linda Liske

PHOTO CREDITS: All photos by Gregory Fox except in Alumni, Class Notes and where otherwise noted.

http://www.law.umich.edu/

MESSAGE FROM DEAN LEHMAN

OVER THE COURSE OF THIS PAST YEAR, I have been reflecting on the ways that lawyers are called upon to teach others about the law. I have noted how the very best lawyers display a kind of intellectual solidarity with their putative students, be they clients, judges, friends, or adversaries. I would like to use my message in this issue of *Law Quadrangle Notes* to say a few words about one situation when lawyers are most frequently called upon to teach: when they work with a young, less experienced colleague.

Before I joined the Michigan faculty, I spent four years practicing law with a small Washington, D.C., law firm. I worked during that period with about ten different partners. And today, when I try to remember them, my mind invariably retrieves scenes where I was being patiently mentored.

I remember Ron Lewis talking through the way he would order the issues in a negotiation. I remember Pat Lewis talking through the way she would frame a set of facts for a revenue agent. I remember Ralph Muoio talking through why it made sense to cut an argument from a brief that I had drafted. I believe that, if pressed, each of them would confess to two motives for those conversations. One motive was client service: they had all internalized the discipline of describing and defending their judgements before putting them into practice. But the second, independently sufficient motive, was a desire to help me learn my craft.

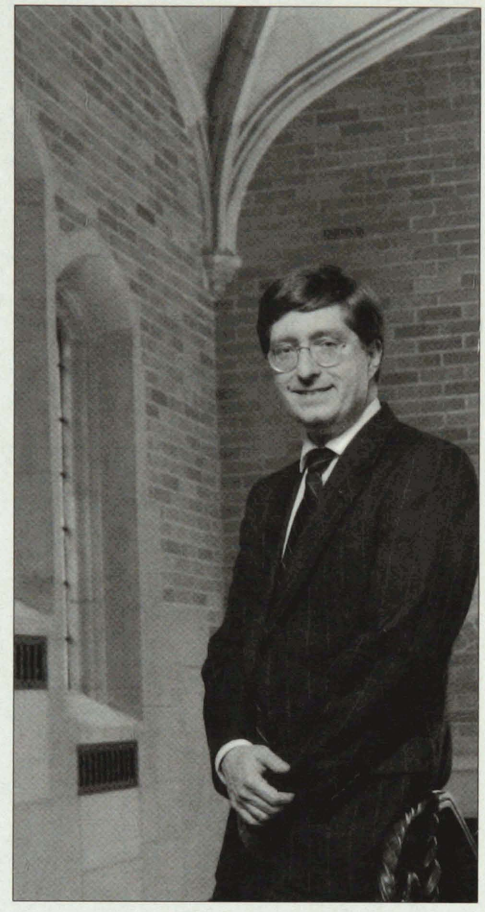
In recent years, I have frequently heard the concern that mentoring relationships within firms are suffering a kind of collateral damage. I am told that many corporate middle managers who hire lawyers are suffering from a truncated time horizon — a shortsightedness that undervalues investment in long-term lawyer-client relationships. And, the argument goes, that undervaluation has made it less profitable for firms to invest in the development of young attorneys.

While there is force to this concern, I think we must take care not to overstate it.

I do not believe that the partners I worked with were choosing a particular work style in order to maximize profits; I think they would have spoken with me in exactly the same way if we had been working on those projects *pro bono*. Nor do I believe my colleagues were always trying to maximize the quality of their immediate work product; I think they would have spoken with me in exactly the same way even if they had been morally certain that our conversations would not change the product at all. Nor do I believe they were investing in the long-term profitability of the firm; they knew that I would soon be leaving to become a law professor.

I suspect that these lawyers simply could not have done their work in any other way. They had, over years of experience, come to know and expect a recurring pleasure: seeing the spark of a new associate's dawning comprehension. The role of teacher was reflexive, a natural and automatic feature of their professional lives.

Have things changed so much in the ten years since I left practice? Have the new financial pressures totally overwhelmed the pleasures of colleagueship? My conversations with our graduates give me the impression that the changes have been real but they have not been devastating; most of them still enjoy frequent chances to help a younger colleague learn his or her craft. As a teacher of future lawyers, I take great comfort from that impression.



I do not believe that the partners I worked with were choosing a particular work style in order to maximize profits; I think they would have spoken with me in exactly the same way if we had been working on those projects *pro bono*.

Jeffrey S. Lehman

Building a legal system **in the land of the 'Killing Fields'**

Students from the University of Michigan Law School are helping to rebuild the Cambodian legal system, destroyed by the Khmer Rouge beginning in 1975.

Three students already have spent three months working in Cambodia as part of the Law School's new Cambodian Law and Development Program and another team is working there this spring. The students are placed with groups such as Legal Aid of Cambodia, an organization that provides free legal assistance to Cambodia's rural poor. The students also work on specific projects, such as developing international law standards for national elections.

The Cambodian Law and Development Program provides basic legal assistance through legal research and pro bono efforts. It is also developing and maintaining an inventory of legal work now being undertaken in Cambodia and is creating a collection of Cambodian legal resources and an archive of legal materials for scholars working on Cambodian law and development issues.

Under the Khmer Rouge, libraries were destroyed and Cambodian legislators, judges, lawyers and law professors were killed or forced to flee the country. There are still fewer than 50 lawyers in Cambodia.

According to Assistant Professor of Law Peter Hammer, director of the new program, there is a desperate need for basic legal assistance in Cambodia as well as an opportunity to examine important legal questions relating to development. Hammer himself worked for three years in Cambodia helping to establish a public defender system.

"The nation is undergoing a transition from a command to a market economy, and the judicial system is undergoing a transition from a unitary party structure to a model of checks and balaces," he explains. "The current government is the product of one of the most ambitious international peace keeping efforts ever undertaken."

In addition to an emerging legal profession, Cambodia has a number of active human rights organizations, national development-oriented nongovernment organizations (NGOs) and international NGOs providing legal and economic development assistance.

"This program builds on the Law School's long tradition in international law and in public service," says Rob Precht, director of the Office of Public Service. "The pro bono component will provide pragmatic assistance to groups working in Cambodia and afford a unique opportunity for law students to engage in development work and to obtain practical, supervised work experience."

Several of the law students who have traveled to Cambodia, working in public defender offices in Kompong Cham, Battambong, and Siem Reap, note that every effort toward improving the legal system counts. "We were able to meet with our clients and improve prison conditions in some cases," says Myriam Jaïdi. "We talked to prison directors and were able to document prison conditions by photography. You also see the way

Assistant Professor of Law Peter J. Hammer, director of the Cambodian Law and Development Program, outlines opportunities for Law School students to work on projects involving Cambodia during a reception/information session in January on Pro Bono Cambodia and related programs. Hammer explained how students can work on projects at the Law School and also in Cambodia, which is rebuilding its legal system and government after the devastation of the Khmer Rouge period. In the background, at left, are law students Myriam Jaïdi and Sarah Keech, and at right, Jason Blankenship, who worked in Cambodia last summer.

people implement or don't implement the laws."

"I was interested in international development in addition to law," notes Sarah Keech. "And now I'm really interested in Cambodia because of the opportunities for working in both areas."

"A common problem faced by all the organizations working in Cambodia is a lack of access to even the most basic legal resources and research materials," says Virginia Gordan, Assistant Dean for Graduate and International Programs. "Cambodia has been robbed of its libraries, books, and an entire generation of human wisdom and institutional experience. This new program will make our exceptional library resources available to a country profoundly lacking access to even the most basic legal materials."

Two other goals of the program are to create summer internships in Cambodia for law students and to sponsor conferences in Phnom Penh and Ann Arbor on Cambodian legal problems and development.

"The pro bono component will provide pragmatic assistance to groups working in Cambodia and afford a unique opportunity for law students to engage in development work and to obtain practical, supervised work experience."

Law School externs study, help build **a new South Africa**

PHOTO COURTESY DAVID CHAMBERS

Law School students doing externships in South Africa during Fall Term take a break during a weekened workshop in Salt Rock. From left are: Loren Francis, Bryon Geon, Ronetta Fagan, Ben Cohen, Robyn Fass, Al Mance, Jackie Payne, Emily McCarthy and Beverly Blank. Professor David Chambers is at rear.

"This beautiful and sordid country."

This is how Ben Cohen, who has spent a good deal of time in South Africa lately, describes the former home of apartheid. Cohen, who returned just in time to receive his J.D. last December, and eight other third-year Law School students spent the Fall Term working in South Africa. They worked with a wide variety of organizations and firms. For example, one student worked with an organization advocating changes in policies relating to HIV/AIDS, two others with a firm that represents the African National Congress, the party of South African President Nelson Mandela, and another worked with an advocate who brought actions against police involved in torturing criminal suspects. The students report that their experiences have been rich, both in terms of legal education and in terms of cultural exposure.

South Africa, after all, is emerging from a system of racial and class separation that was fossilized by the law of the land. That it has changed so greatly without civil war is a tribute to its leaders — President Mandela, the former convict, and Vice-President F.W. de Klerk, who as

president freed Mandela — and the determination of its people that their beautiful country with its sordid past will not be wrent apart.

The nine Law School students became a small part of the changes. Cohen, for example, who had helped to organize the externships, worked with the AIDS Law Project at the Centre for Applied Legal Studies and with Judge Edwin Cameron, chairman of the South Africa Law Commission's committee on HIV/AIDS. The incidence of HIV is at least ten times higher in South Africa than in the United States. Cohen had a chance to meet with many of the people working in the country on governmental policies relating to HIV. At the end of his stay, the Law Commission, chaired by the vice-president of the Constitutional Court, adopted a report recommending new policies on HIV/AIDS that Cohen had played a substantial role in drafting.

Another extern, Jackie Payne, e-mailed about her work with the Gender Project of the Centre for Applied Legal Studies in Johannesburg, responded: "I am currently working with others on a project designed to liberate black women who marry under customary law from the status of a minor. Currently, when a black woman 'chooses' to marry under customary law, her husband becomes her guardian and she does not have the legal capacity to contract, acquire or alienate property, or sue in court (without her guardian there representing her interest). . . .

"Many women's groups in South Africa want to find a constitutional way to change this. (It is very tricky here as there is a sincere desire to respect customs and the problem arises when customs clash with equality rights for women explicitly guaranteed in the new constitution.) I am currently working on a way to get the province I live in, Gauteng, to change the law at this level, which is a start.

"I am also working on another project for the legislature — an assessment of the health needs of rural women. The medical clinics are so inaccessible it is laughable to even pretend these women (or their children for that matter) are getting medical care."

Added Bryan S. Geon, who worked with Lawyers for Human Rights in Durban, and helped draft suggested changes for a bill on abortion then pending in the National Parliament:

"Both the customary marriage question and the abortion issue have something in common to the extent that the 'new' South Africa is very much operating in two entirely separate spheres. On one level, very little has changed or will change in the near future in many rural areas. Until now, abortion has been illegal in South Africa, but having the right to an abortion will mean very little to someone who lives at least a day's walk from the nearest health worker, or who doesn't even know about the law. For these women, the existence of the theoretical right is irrelevant. They will continue to go to a *sangoma* (an herbalist, or traditional healer) if they want abortions, or they will obtain unsanitary and dangerous abortions from unqualified people. However, for people living in the cities and townships, people who are relatively politically astute, the law will make a big difference

"There is so much space between the tiers. That is the odd thing. I have been struck by the vast contrast between the amazing infrastructure and flashy wealth of the formerly all-white areas and the equally amazing poverty of the rest of the country (only one-half of South Africans have running water)."

David Chambers, Wade H. McCree, Jr., Collegiate Professor of Law, who oversaw the South African externship program, visited with the students for 17 days in November. "It was good to be with them, to feel both their excitement and their frustrations at first hand, after nine weeks of exchanging messages by electronic mail," he says.

Chambers met with the students in Johannesburg and held a weekend workshop with them outside of Johannesburg during which each student led a discussion on an issue that had arisen in his or her work. Chambers also traveled to externship placements elsewhere in the country. One evening in Johannesburg the group dined with George Bizos, a celebrated anti-apartheid attorney who represented Mandela at the Rivonia Treason Trial in the early 1960s and is still actively involved in human rights work.

"He was a wonderful dinner guest, telling dozens of stories of his work over the years, with obvious pleasure but with little self-congratulation," Chambers says. "I think that the students felt as I did that we were privileged to be in the presence of an exceptionally able and decent man who had devoted his life to his beliefs. Bizos had accepted an invitation to dinner because two of the students, Emily McCarthy and Lauren Francis, had been working with him on one of the cases pending before the Truth and Reconciliation Commission."

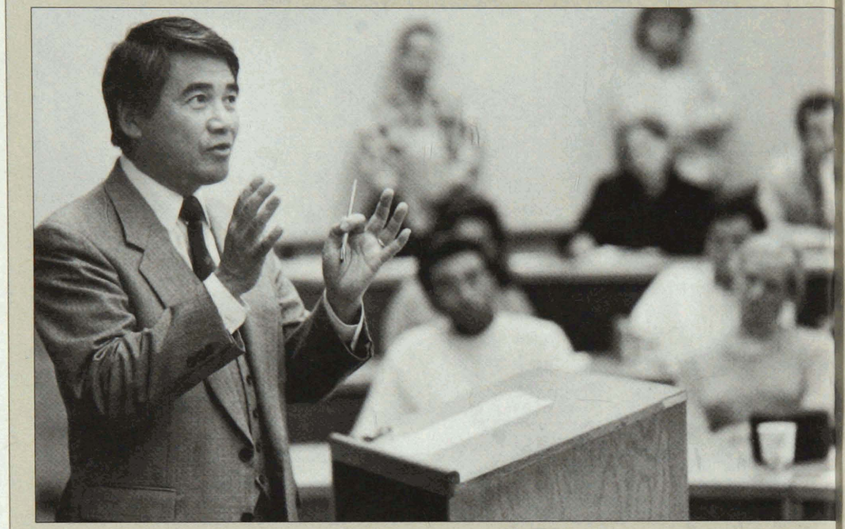
Chambers also visited the legal aid office in the town of Umtata, where Law School extern Robyn Fass was working with a woman imprisoned for having an aborion, a wrongfully dismissed employee, and many others. "Robyn has had a quite different experience from any of the other students, for she has been

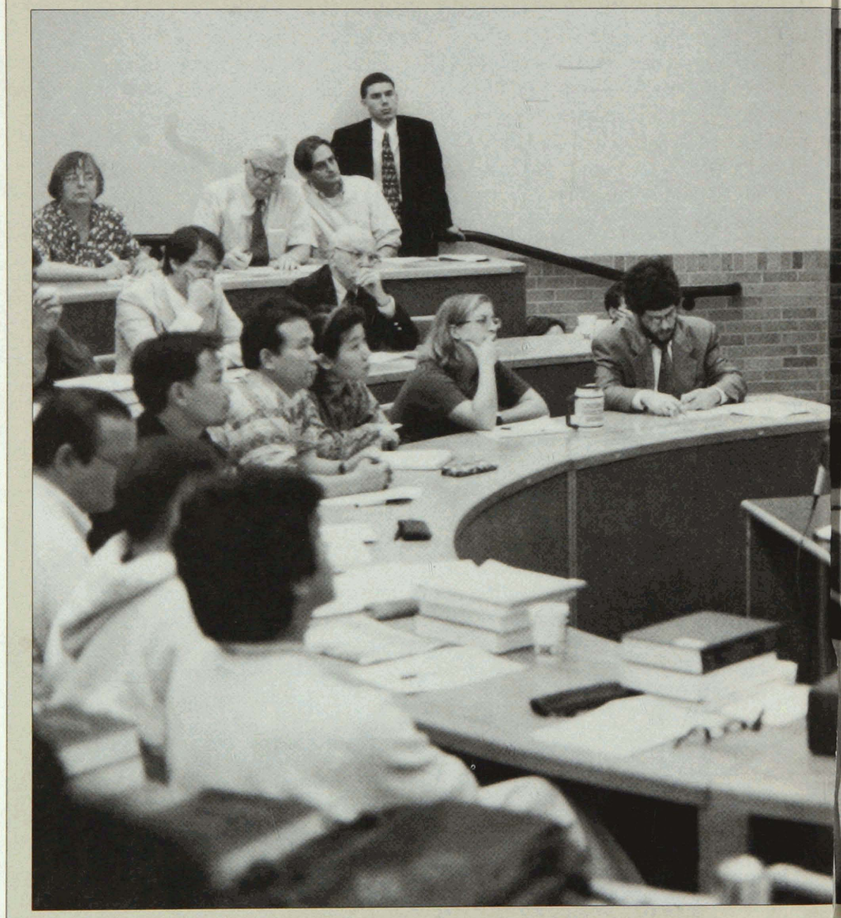
providing individual legal advice in one of South Africa's poorest areas for black clients who speak very little English," Chambers says. "This is an enormous feat considering the barriers of language (for all her clients, English is, at best, a second language) and the differences in laws, customs and cultures."

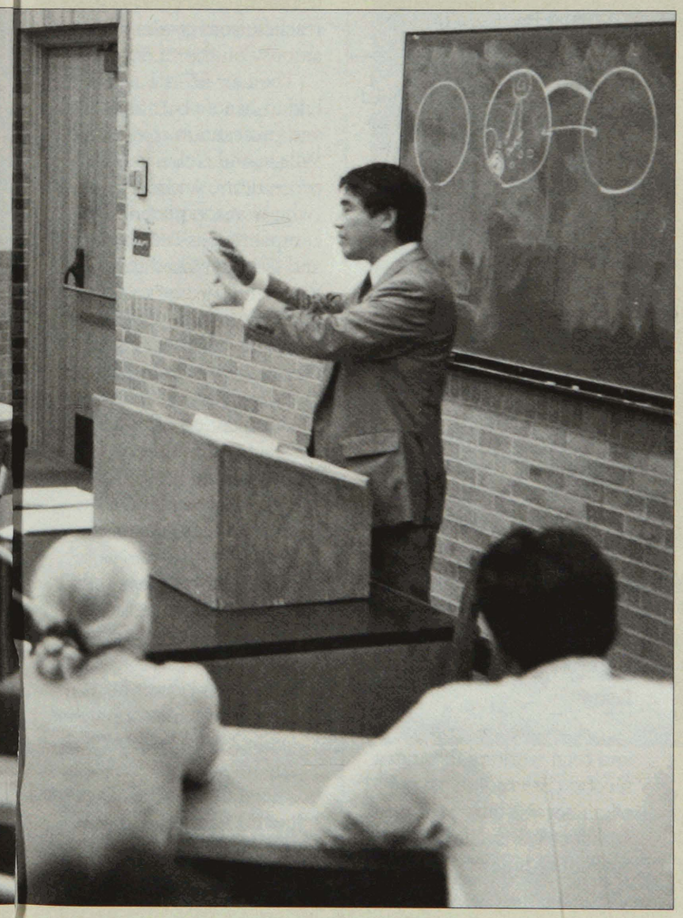
This was the first time that the Law School had organized a group of externships in another country, and, overall, Chambers and the students judge it to be successful. Chambers said he was particularly pleased by the students' initiative:

"Several of them came to South Africa and found that they had to shape a job for themselves very different from the one I thought I'd lined up for them. People they expected to work with had left jobs. One office had closed altogether. With ingenuity and help from people with whom other students were working, they all developed valuable projects. I was really impressed."

Chambers developed the idea for the externships after talks with two South Africans, Zackie Achmat of the AIDS Law Project, who was a Fellow at the University of Michigan's International Institute in 1995, and Heinz Klug, then with the law school at the University of Witwatersrand and now a member of the University of Wisconsin Law School faculty. Chambers visited South Africa last winter to make arrangements with groups Klug had contacted. Cohen began work in Johannesburg in May and helped the other students when they arrived in September.







The World View —
University of Tokyo Law Professor Yozo Yokota, left and below, discusses "Economic Development and Human Rights: A Challenge to International Law" and University of Cambridge Professor of Law John Tiley, right, asks "Towards a European Tax System?" as speakers in the 10-week International Law Workshop. Yokota, who opened the weekly series in September, noted that the interaction of international development and human rights only recently has begun to be investigated in the light of international law. "I haven't seen any institutions yet that have a group of people systematically looking at the positive or negative impact [of development] on human rights," he said. Tiley, the final speaker in the series in November, outlined the European Community's efforts to harmonize taxes among member nations while also protecting national tax systems and funding its own needs. "I don't think that we are moving toward a European tax system in the conventional sense," he said. The International Law Workshop series, coordinated by Professor of Law Michael Heller, is designed for non-specialists and illuminates "today's most debated issues in international and comparative law." Other speakers included London School of Economics Professor of Law Trevor Hartley, a visiting faculty member at the Law School this year; Professor of Law Peter Hammer; Richard Lauwaars of the Dutch Council of State; Ulrich Petersmann, Professor of Law at the University of St. Gallen in Switzerland; Guillermo Aguilar Alvarez, Mexico's Principal Counsel in the NAFTA negotiations; Harvard Law School Professor Emeritus Abram Chayes; Markus Schmidt, Human Rights Officer with the United Nations in Geneva; and Professor of Law José Alvarez.

PHOTO BY DREW COLFAX, J.D. '96

Law School students and their coach celebrate their second place finish in the National Association of Criminal Defense Lawyers' Cathy Bennett National Criminal Trial Competition in November at San Antonio. The outing marked the first time that the Law School has fielded a trial competition team. From left are: Andrew Wise, 3L; Matt Colon, '96; Clinical Assistant Professor of Law and coach Andrea D. Lyon; Gabriella Celeste; '96; Emily Hughes, 3L; and Michelle Wilson, 2L. Professor of Law Samuel Gross was co-coach for the team.

Honors come home from first foray into trial competition

The University of Michigan Law School's first venture into national student trial competition has brought home a second place win that carries with it an invitation to compete again next year.

An ecstatic team of Law School students and their coaches, Clinical Assistant Professor of Law Andrea Lyon and Professor of Law Samuel Gross, capped off weeks of intensive work and practice — all above and beyond the call of their regular duties — to beat out all but Hofstra University School of Law in the Cathy Bennett National Criminal Trial Competition sponsored by the National Association of Criminal Defense Lawyers.

A dozen teams participated in the competition, held last November in San Antonio, Texas.

"With the exception of working with real clients, this was the best experience I've had in my entire time at Michigan," said team member Matt Colon, who graduated in December. "I think our team jelled in a really phenomenal way," said Michelle Wilson, 2L. Team members developed long-term friendships as they worked together, said Gabriella Celeste, 3L and also a December 1996 graduate.

Learning to work together, as practicing lawyers often do, was a major benefit of the competition, added Emily Hughes, 3L. Hughes was the understudy, or alternate, for the four-person team and had to know and be ready to take over any other member's role with little or no notice. During preparation, she developed strategies for what teammate Colon called "crazy crosses," unexpected cross examinations for which the team nonetheless had to be ready.

Team members, who vied for spots on the roster by competing in front of "judges" and then working through a second cut via video, worked about seven hours each week with a coach and an equal amount of time on their own.

The case presented to them for competition involved a foreign-born man who fatally shot a countryman during a discussion of his wife's adulterous relationship with the other man. The accused faced charges of murder, felony murder and aggravated assault. The shooting took place in the United States, but the question of whether cultural practices in the men's home country had played a role in the shooting was part of the trial. So was conflicting testimony over conclusions reached from results of the autopsy on the victim.

The Law School students had to handle both defense and prosecution roles. With Wilson and Colon as prosecutors, Andrew Wise, 3L (who won top prize in the competition as Best Advocate), and Celeste played the role of prosecution witnesses. Wilson and Colon became defense witnesses when Wise and Celeste took over lead duties at the defense table.

Competition rules allowed each side 90 minutes and each trial lasted three hours. The Law School team completed a grueling competition of five trials in two and one-half days on the way to earning its second place finish.

To maximize the competition's educational value and provide students

with as much realism as possible, Lyon refrained from turning her own experienced hand to the team's trial preparation. Instead, she coached the students to develop their own theories of the case and prepare their own presentations. Her role was to advise and coach, not to script their trial presentation, she said.

"That way they own it," she said of the case. "It's more like real laywers do. They're able to change, absorb hits like those that occur in real trials. You never can memorize a cross examination."

"Andrea was the main coach," said Gross. "I learned a lot working with her — she has amazing trial experience — but working with these students was sheer joy. They are fantastic."

The team's second place finish means that the Law School will be invited to compete in the Cathy Bennett Competition again next year. Bennet, for whom the competition is named, was a pioneer in the development of jury selection techniques. She died six years ago at age 41.

The Law School team also has been asked to go up against 19 other schools in the ABA Criminal Trial Competition in Chicago in April. Liquita Lewis, 3L, is joining the team for the ABA competition to replace the departed Celeste and Colon. Hughes, the alternate for last fall's competition, will have a regular role and the team will compete at Chicago without an alternate.

The UN and the Law —

Czech Republic Ambassador to the United Nations Karel Kovanda, center, chats about the legal aspects of United Nations activities with some of the Law School's international law specialists during a visit to the Law School and the University's Davidson Institute in October. With Korvanda are, counterclockwise from left: Professor of Law José Alvarez; Jindrich Toman, Professor and Chairman of Slavic Languages and Literatures in the University's College of Literature, Science and the Arts; Assistant Professor of Law Michael A. Heller; Virginia B. Gordan, Assistant Dean for International Programs; and Eric Stein, Hessel E. Yntema Professor Emeritus of Law.

Statesmanship —

First-Year law students paint in the states of the United States in the parking lot at SOS Crisis Center in Ypsilanti as part of the community service portion of new student orientation at the opening of Fall Term. In addition to sessions to acquaint new students with Law School faculty, staff and programs and procedures, orientation includes an opportunity for a day of voluntary service work at nine area nonprofit service programs ranging from Habitat for Humanity to the Ann Arbor Hunger Coalition and Time for Tots.

Message to graduates:

'Let's testify with our lives'

Senior Day is a personal affair, a day for self, family, close friends and classmates. It is a day — marred only by the impending onus of final examinations, a scheduling conflict that the best lawyers' minds have not yet been able to resolve — that may fade in memory as years and accomplishments accumulate, but never loses its sheen as the mirror that each group of graduates peers into and whispers what they hope to be.

One hundred and ten graduates, J.D.'s and LL.M.'s, passed before that mirror in December, many with graduate Gabriella Celeste's admonition, "Let's testify with our lives," ringing in their ears. Celeste, a member of the Law School team that placed second in national trial competition in November (see story, page 8), a past coordinator of the Asylum and Refugee Project, and a volunteer worker with death row inmates in Alabama, was chosen by her graduating classmates to speak from the podium for them.

Despite setbacks and difficulties, she said, "we are a privileged group of people — and as a wise person once said, 'To whom much is given, much is required.'" The charge, she said, is "that we testify with our lives. Ensure that what we do is a testimony of our choices, a testimony of our values, a testimony of our hopes."

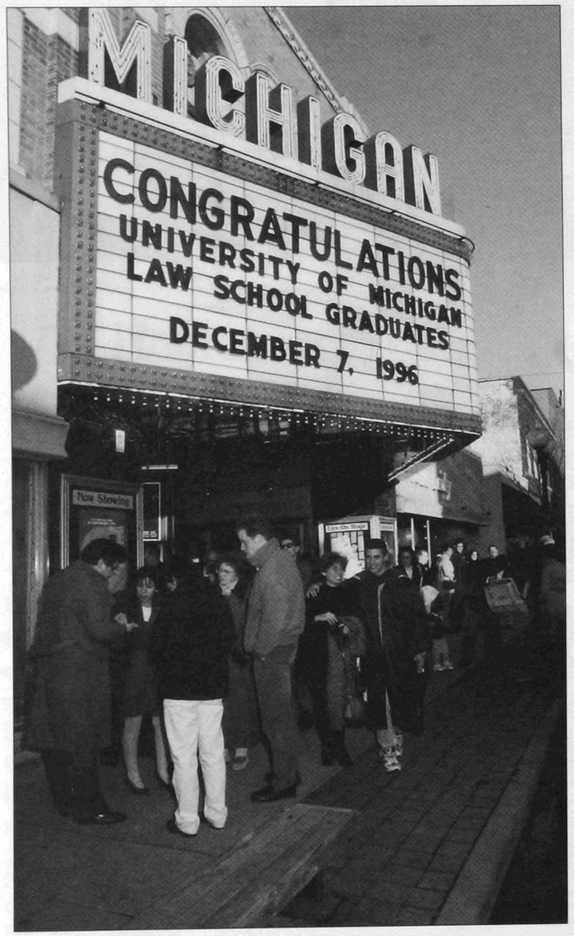
"Let us use the law toward noble ends," she said. "Shape it so that justice may be realized, even for a moment — because it's in the collective power of those moments that the world is transformed."

Theodore J. St. Antoine, James E. and Sarah A. Degan Professor of Law, faculty speaker for the day, urged graduates — and brave law firms — to restore time to the legal profession for pro bono and community work, for "self and family" and for "professional and civic contributions outside the law firm." Such moves will yield better job satisfaction and produce better lawyers, he said.

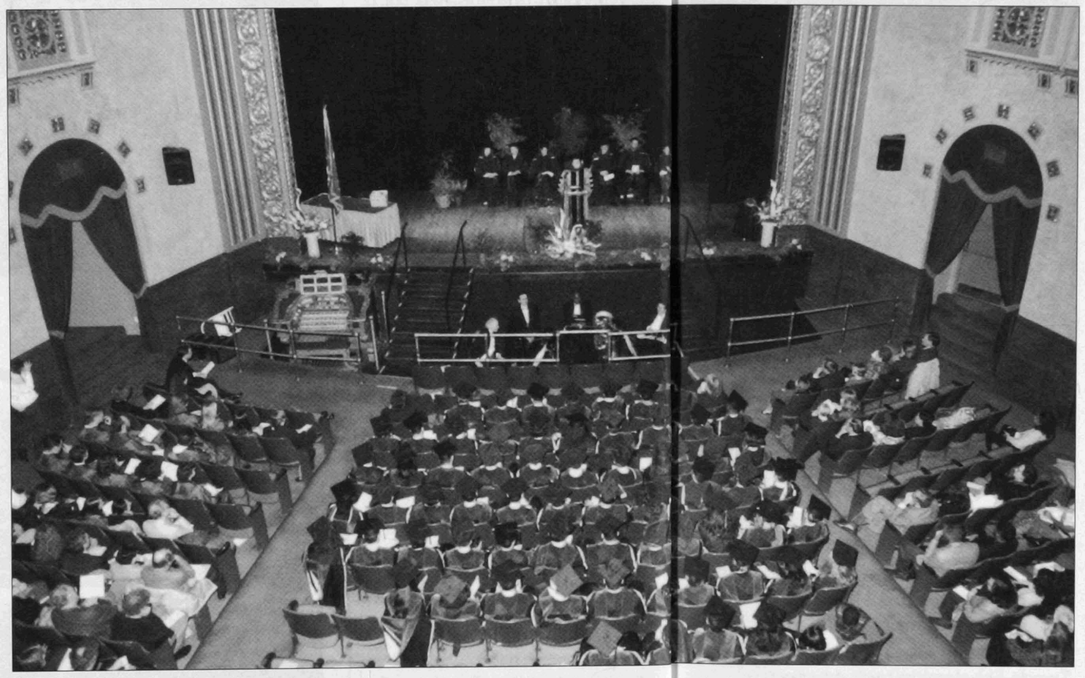
Too often in recent years, bottom line orientations and long working hours have left neither time nor energy for civic involvement, reading and contemplation, or family activities, he said. "The lawyers who are still reveling in their profession in their '60s, '70s, and even beyond are invariably persons who have spent a tour in government, or who have served on a local school board or in some charity or foundation, or who have pursued some special cause having nothing to do with the profit motive."

Other speakers included Dean Jeffrey S. Lehman and Kathleen Allen, President of the Law School Student Senate (LSSS). Returning to a theme that he has enlarged upon through much of the current year, Lehman noted how graduates "will have countless occasions to interact with opposing counsel, with friends and acquaintances, with individuals and groups who are curious about the law. All will give you opportunities to teach about the domain of your expertise."

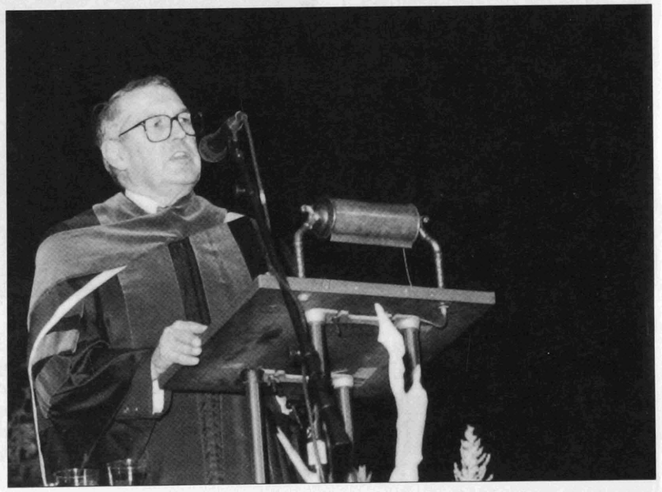
LSSS President Allen noted that the graduates are the kind of people who always have chosen the more difficult and more challenging options — and succeeded at them. "We can't just do okay," she said.



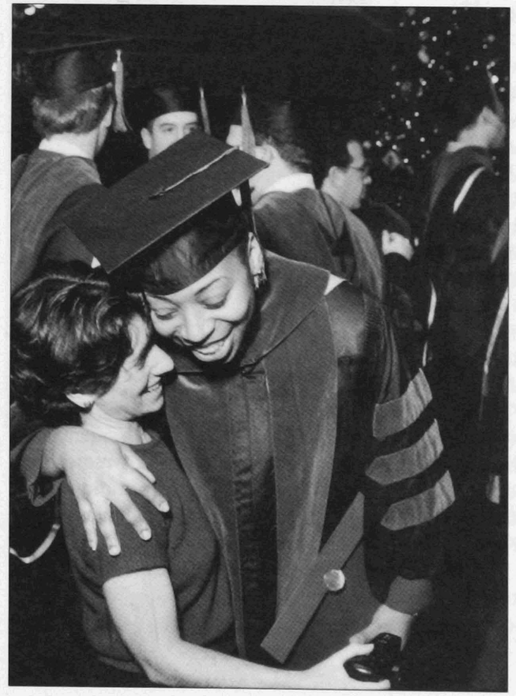
The Michigan Theatre marquee and a celebrating couple departing from graduation ceremonies capture the exuberance of commencement in December.



A center section of mortarboards dominates the scene as Dean Jeffrey S. Lehman, '81, addresses graduates in December in ceremonies at the Michigan Theatre in Ann Arbor.



Pro bono work, community involvement and having time for family and yourself make you a better lawyer, James E. and Sarah A. Degan Professor of Law Theodore J. St. Antoine, '54, the main commencement speaker, tells graduates.



Bonnie Tenneriello, J.D. '96, congratulates graduate Pascale Charlot after commencement ceremonies in December.

Symposium, banquet mark 20th anniversary of Juan Tienda's legacy

Lawmakers in Washington and in legislatures across the country are demanding from our citizenry greater "individual responsibility," but just as important is the responsibility owed to society by its corporate citizens.

At least that's the way that Martin R. Castro, J.D. '88, describes it.

"In my experience I have seen that there are two types of responsibility, voluntary and coerced, and within those two areas there are subgroups," says Castro, a partner with Baker & McKenzie in Chicago. "Under the voluntary type of responsibility there is altruistic and mercenary. Altruists are those corporate citizens who take responsibility because it is the right thing to do and they do so in order to better society. Then, of course, there is the mercenary, where the corporate citizen takes positive action because it believes that it will benefit (as opposed to society as a whole) in the long run. But either way, the decision is made by the corporate entity of its own volition."

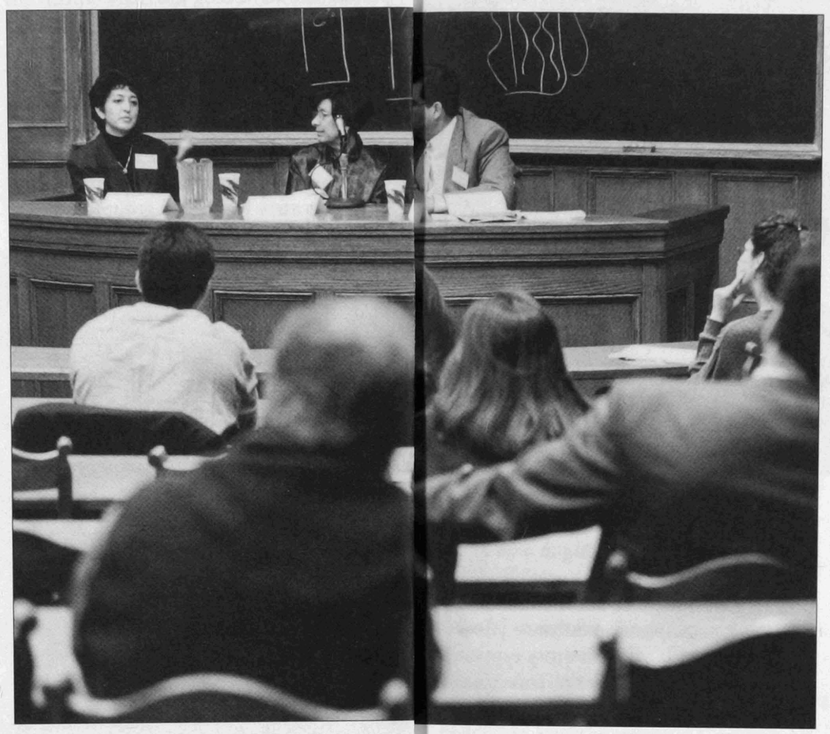
"Then there is the coerced form of responsibility where a corporate entity fears government intervention and regulation and takes action to head off a more onerous form of responsibility being imposed upon it," Castro said, citing the example of the entertainment industry's decision to install V-chips in television sets to control the violence that children are exposed to. He then spoke of actual regulation where the government steps in and regulates or prohibits conduct, thus imposing responsibility upon the corporate actor.

At the time that Castro was explaining his ideas of corporate responsibility, he was practicing what he was preaching. He was serving as volunteer speaker/moderator for a panel discussion on corporate responsibility that was part of the Latino Law Students Association (LLSA) symposium "Latino/a Voices: Moving America Beyond the Black and White Binary," last October. The symposium accompanied the Association's annual Juan Luis Tienda Scholarship Banquet, at which Castro received the J.T. Canales Award, given annually in memory of one of the first Hispanic students to graduate from the Law School. Canales, an 1899 graduate, became a well-known Texas lawmaker and in the early 20th century pushed for investigation of alleged atrocities committed by the Texas Rangers.

The Juan Tienda Scholarship of $1,000 went to Karen Phillips, a first-year student pursuing a joint J.D./M.B.A. degree; funding for the annual scholarship comes from the Henry J. Kaiser Family Foundation, Menlo Park, CA, and LLSA. LLSA's King/Chavez/Parks Professor Award went to Carlos Munoz, Jr., of the Department of Ethnic Studies at the University of California, Berkeley.

Tienda "distinguished himself as a tireless advocate of the Latino community," according to LLSA. He was president of LLSA's predecessor organization, La Raza Law Students Association, helped recruit minority law students, visited inmates at the nearby Milan Federal Correction Center and spent summers working with the Michigan Migrant Legal Assistance Project.

Phillips, who graduated from the University of Chicago in 1989 with a degree in biology, plans to work in international community development after she gets her J.D./M.B.A. Before enrolling at the Law School, she worked for a law firm in Los Angeles and put in at least 20 hours a week as Director of the L.A. Street Project, a volunteer community service organization targeting the predominantly Hispanic residential communities surrounding downtown Los Angeles. Tienda Scholarship committee members "were specifically looking to give the scholarship to somebody who embodied what Juan Tienda came to stand for in the Latino community, particularly here in the Law School," said Phillips, who serves on the executive board of LLSA and is a member of the Law School's Minority Affairs Program.



Left: Martin Castro, Esq., J.D. '88, and Irma Elder listen as Maria de los Santos, left, makes a point during a panel discussion on corporate responsibility that was part of the Latino Law Students Association (LLSA) symposium "Latino/a Voices: Moving America Beyond the Black and White Binary" at the Law School in October. Castro, who also received LLSA's J.T. Canales Alumni Award, is a partner with Baker & McKenzie in Chicago; Elder is owner/president of Troy Ford and Saab/Jaguar of Troy, Mich.; and de los Santos is associated with DDC-I, Inc., a computer software company in Phoenix.

The presentation of the 1996 Juan Tienda Scholarship took on special poignancy because it was 20 years ago that Tienda had died in an automobile accident — on Aug. 19, 1976 — before he could begin his third and final year at the Law School. Arturo Nelson, J.D. '77, of Brownsville, Texas, recalled Tienda as "a good friend" and a leader of Hispanic and other students alike. "Juan had grown up around farms, had traveled in Germany, loved hunting and fishing," he said. "He taught me how to fly fish, introduced me to archery hunting, went pheasant hunting all the time."

After Tienda's death his fellow students wanted to memorialize him and "somebody came up with the idea of a banquet," said Bernie Garza, J.D. '79. "So we cooked it," Garza and Nelson chorussed. Beans, tamales, tacos. The cooks took over the Lawyers Club kitchen that first time. As for cleanup, "I don't think there was any concern about leftovers," said Garza.

The culinary legacy continued this year, with a luncheon for symposium speakers of chile relleno casserole, flan, sopa de arroz, frijoles and other dishes — recipes courtesy of the family of LLSA Chairperson Ann Reyes-Schroeder, 2L.

The package of symposium and banquet events included talks by Richard Delgado, the Charles Inglis Thomson Professor of Law at the University of Colorado; Rodolfo Acuña, Professor of Chicano Studies at California State University, Northridge; and Professor of Law Juan Perea of the University of Florida Law School. In panel discussions, groups wrestled with questions of corporate responsibility, media perception/access, language rights, political access and immigration.

Keynote speaker Richard Delgado

Law School's new Poverty Law Program will reach out across Michigan

In a win-win move that will offer Law School students hands-on educational opportunities in the poverty law field and will aid Michigan's dollar-strapped legal services offices, the Law School is establishing a Poverty Law Program to reach out to a dozen legal services field offices throughout the state.

Federal funds for legal services programs have been shrinking significantly in recent years while restrictions have increased over what federally funded legal services programs can do. The new Poverty Law Program, funded through a two-year, $400,000 Community Outreach Program grant from the University of Michigan, will support legal services workers while simultaneously offering Law School students the chance to work on real legal services cases and issues.

"Through the work of staff attorneys, law faculty and students, the program will provide training, research support and technological resources to 12 legal services field offices," according to Suellyn Scarnecchia, Associate Dean for Clinical Affairs. "The field offices provide direct legal representation to low income clients in the areas of family, housing and public benefits law. They are located throughout Michigan and serve every county, with two offices in Wayne County. In addition, the program will directly represent individual clients in cases with broad implications for people living in poverty throughout the state, with special emphasis on the needs of women living in poverty."

A Program Director and a Clinical Assistant Professor are being hired to run the new program. The Poverty Law

Program also will include a new seminar on Legal Issues of Women in Poverty.

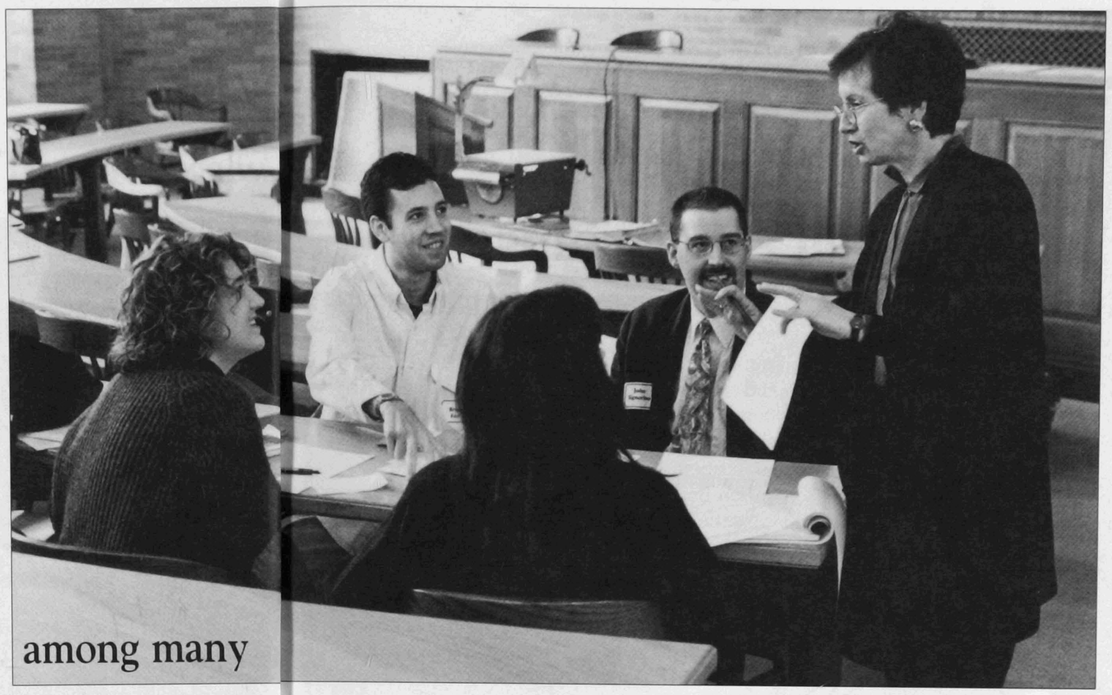
Although the new program will provide students with hands-on experience, it is different from the Law School's clinical programs, explains Scarnecchia. "This is very clearly aimed at providing service first, which is different," she says. "In our clinics we prioritize education, and service is a result. This is part of the university's effort at community outreach."

Scarnecchia says she expects about eight students each semester to work on litigation and technical support like newsletters and the establishment of e-mail systems for legal services offices in the state. Another 10 students will be able to work with the program in volunteer placements through the Office of Public Service. Litigation will focus on cases whose issues go beyond those of an individual client and an individual field office.

"Through the Poverty Law Program, we are setting a good example for our students and other law schools by stepping forward to help maintain the availability of quality legal services for the poor in Michigan," she says.

Litigation

Just one choice among many



Phyllis N. Segal, chairperson of the Federal Labor Relations Authority, discusses one of the exercises in her workshop on "Effective Lawyering: Alternatives to Litigation and Other 'Position-based' Forms of Dispute Resolution," at the Law School in November. The students are: Candice Greenberg, 1L; John Signorino, 1L; Monica Aguilar, 3L; and Bruce Fox, 1L.

Ask any working attorney. You'll be told that the high drama of courtroom arguments may be the stuff of cinematic and televised lawyering, but in the real world of briefs and research it is only a tiny part of what most practicing attorneys do. Recently, this daily grist of the legal mill has been drawing greater attention from teachers and practitioners as people seek ways to avoid the costs and delays of full trials. The change brings with it a desire at this Law School and others to acquaint students with the skills that they will need as lawyers to work out non-trial solutions.

Alternative Dispute Resolution (ADR), some call this recently re-recognized realm. Arbitration. Mediation. Negotiation. As Federal Labor Relations Authority chairperson Phyllis N. Segal explained it to participants in a Law School workshop: "Essentially what all this is about is how we handle disputes in this society."

Held in November and sponsored by the Law School's offices of Public Service and Student Affairs, Segal's workshop was called "Effective Lawyering: Alternatives to Litigation and Other 'Position-Based' Forms of Dispute Resolution." It concentrated on skills of negotiation and mediation.

"Phyllis Segal draws on her wide ranging experience working in a large firm, a public interest organization and now in government to show students how ADR principles can enhance the effectiveness of lawyers in every type of practice," said Robert Precht, Director of the Law School's Office of Public Service. "Her vision of lawyers as problem solvers is especially attractive to Michigan students."

Planned before California developer Thomas W. Ford, J.D. '49, announced his gift to the Law School last summer to endow the Thomas W. Ford Alternative Dispute Resolution Program, Segal's workshop reinforced the importance of Ford's donation to the Law School. Thanks to Ford's gift, the Law School will be one of the first in the United States to have a fully funded program designed to teach students how to work with the whole range of dispute settlement alternatives.

Indeed, there are many reasons other than cost, speed and full court dockets for seeking solutions other than by trial. For example, Monica Aquilar, a third-year Law School student, notes that in her home country of Mexico she often has found that alternatives to trials offer practical ways of settling disputes among different countries with different legal systems. Another student, Pascale Charlot, says she expects to find the alternatives useful in evening the playing field between rich and poor. Both students participated in Segal's workshop at the Law School, where distortions caused by the litigation process itself also were identified as undercutting its usefulness in actually resolving disputes (as contrasted with deciding legal claims).

"We're talking about alternate ways to settle disputes," Segal said. "I really want to break the mold that litigation is the norm and alternative dispute resolution is the alternative. . . In fact, litigation is not the norm. Many more lawsuits are filed than ever go to trial. [See "Going to Trial: A Rare Throw of the Die," by Professors of Law Kent D. Syverud and Samuel R. Gross, page 74.] Most often, the lawsuit itself sets in motion negotiation, or another route for finding a solution."

Segal, a graduate of the University of Michigan and the Georgetown University Law Center, was named to her post in 1994 by President Clinton. Her husband, Eli Segal, J.D. '67, was the Law School's commencement speaker in May 1993. He managed President Clinton's 1992 presidential campaign and was the founder of the National Service Initiative, AmeriCorps.

Starting from the idea that litigation is "a very small component of what being a lawyer is all about," Phyllis Segal outlined dispute-settling steps ranging from negotiation, in which both parties voluntarily discuss the issues and seek a voluntary agreement, to trial, in which both parties completely give up power over the outcome. In between lie methods like arbitration, in which the arbitrator's decision is binding, and mediation, in which parties to a dispute negotiate with the aid of an impartial third party whose role is to help them find a voluntary agreement that maximizes their mutual gain.

Like a good teacher, Segal used a mix of lecture/discussion and games/simulations to present her workshop. In one exercise, a game called Win as Much as You Can, participants divided into groups of four and played 10 rounds of showing either an X or Y card. One group ran up an unusually high score, both collectively and individually, by agreeing that each of them would continually cast the same card as every other member of the group.

Had one member of the group broken his agreement and played his other card instead, he might have upped his own score and lowered other players' final scores, though he also would have invited retaliaton and risked ruining his own score as well as the others'. However, the four had agreed that all of them would benefit by sticking to their agreement and devised a way to eliminate the possibility that anyone would break away. The pact meant that no single player would run away with an overwhelming victory and that all players would share in the group's success.

Segal compared the approach to a much higher stakes game: "That's called multilateral disarmament," she said.

Two from Law School win **Skadden Fellowships**

A University of Michigan Law School student and a recent graduate have been chosen to receive prestigious Skadden Fellowships to pursue public interest work. This is the third year that Skadden Fellowships have been awarded to Law School students and the first year that fellowship winners will have placements in Michigan.

The winners are Bonita P. Tenneriello, '96, and Steven H. Tobocman, who will graduate in May.

Tenneriello, currently a clerk for U.S. District Judge John Feikens, J.D. '41 (a profile of Feikens appears on page 54), of the U.S. District Court for the Eastern District of Michigan, will use her Skadden Fellowship to work with the Michigan Migrant Legal Assistance Project. She will provide basic legal assistance to migrant and seasonal workers in Michigan.

Tobocman will work with Michigan Legal Services to provide legal help to organizations like the Mexican Town Community Development Corporation and the Southwestern Detroit Business Association, two community economic development corporations that are part of the Detroit Empowerment Zones.

The Skadden Fellowships are sponsored by Skadden, Arps, Slate, Meagher & Flom through the Skadden Fellowship Foundation. The Foundation had been interested in funding a project in Detroit at the time that Tobocman's application arrived, said Susan Butler Plum, director of the Skadden Fellowship Foundation. Plum said that Tenneriello, who is fluent in Spanish as well as English, is a perfect match for working with migrant and seasonal workers in Michigan.

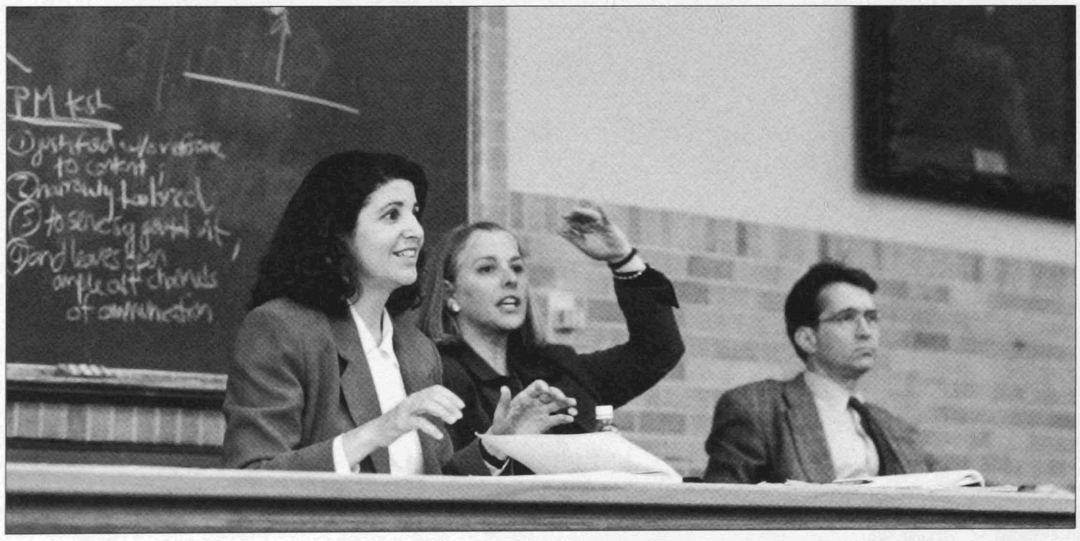
"None of this would have been possible without Rob Precht [director of the Law School's Office of Public Service]," Plum said. She said that Precht and his staff inform students about the Skaddens and other public interest opportunities, help them secure sponsors, assist with applications and generally raise the profile of opportunities for public interest work among students and others at the Law School.

She also praised Dean Jeffrey S. Lehman, a member of the Skadden Foundation board, both for helping to choose Skadden recipients from among the hundreds of applicants and for raising the profile of public interest work at the University of Michigan Law School.

Plum said the Skadden Fellowships were launched eight years ago to:

- Celebrate the 40th anniversary of Skadden, Arps, Slate, Meagher & Flom
- Offset federal cutbacks in legal services support
- Find talented young attorneys for public interest work
- Set up opportunities for young attorneys to be mentored by luminaries among legal services attorneys.

Twenty-five Skadden Fellowships are awarded each year from among hundreds of applicants. Applicants must secure agreement beforehand from a public interest sponsor to supervise them before they can apply. The Skadden Fellowship Foundation pays the recipient's salary, benefits and debt service on law school loans not covered by Low Income Protection Plans. Nearly all recipients renew for a second year.

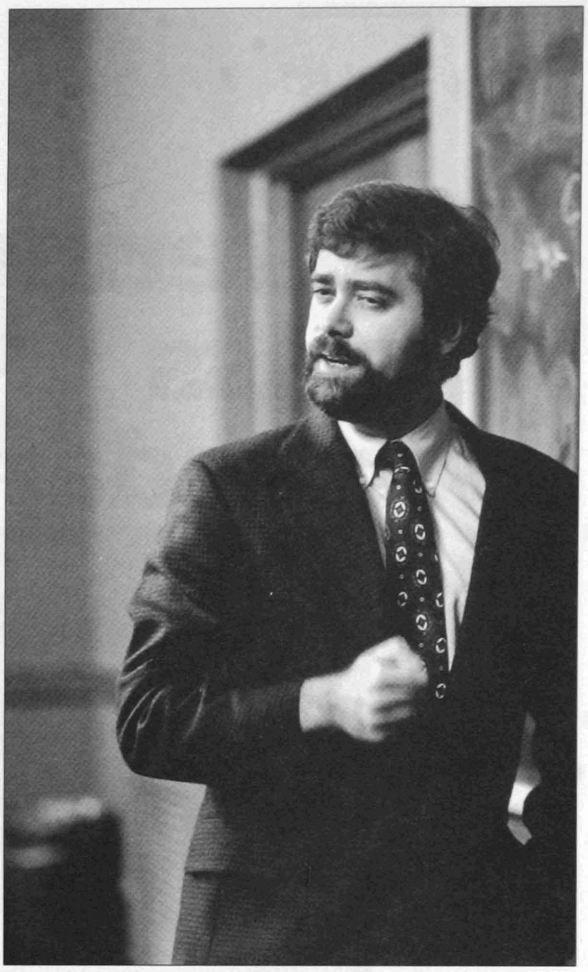


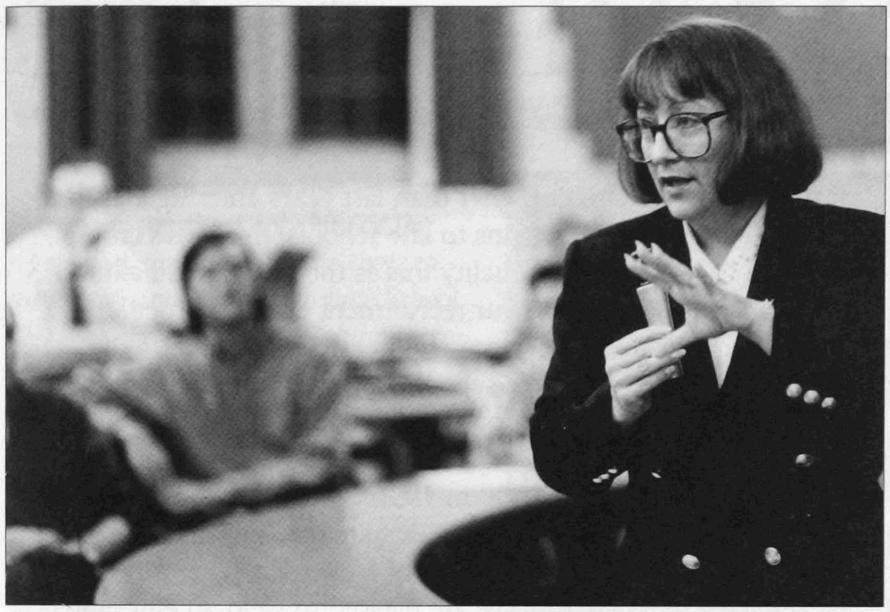
Help For The Hunt —

Susan Kalb Weinberg, J.D. '88, Director of the Law School's Office of Career Services, makes a point during a "World of Law" program on job search skills. At left is Susan Guindi, J.D. '90, Associate Director of the Office of Public Service, and at right is Robert Precht, Director of the Public Service Office. Job-hunting while a student and as a new graduate can be a challenging, competitive business that demands the best of skills. The Office of Career Services has been offering new services like e-mail and programs like "The World of Law" series to help students hone the skills they need. Weinberg told participants to think of their resume as "your paid political announcement." Other advice: Keep your resume simple in appearance and only a page or two long; tailor its content to what the potential employer is seeking; be consistent in your style and correct in your spelling and grammar. During Fall Term, the "World of Law" series presented programs for first year law students on "Resumes and Professional Correspondence," "Networking and Interviewing," "Guerrilla Tactics for Getting the Legal Job of Your Dreams" and "The Legal Job Search."

In Progress —

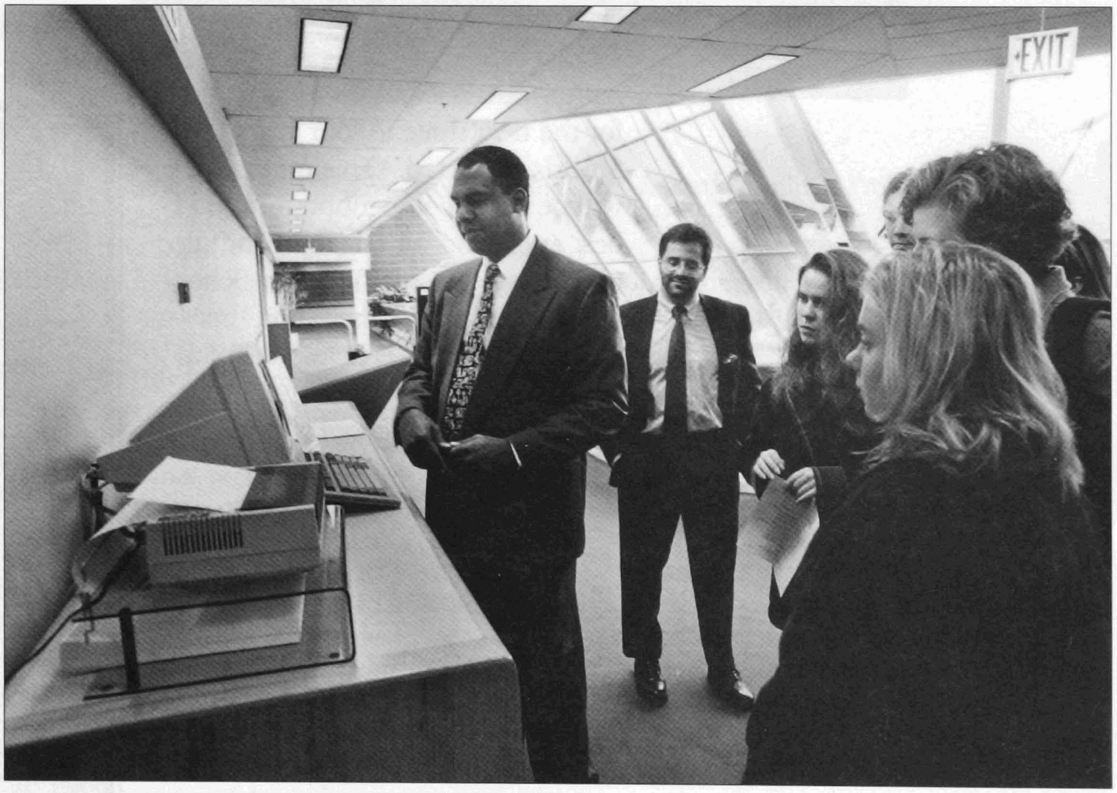
Georgetown University Law Center Professor Avery W. Katz, right, who taught at the Law School from 1986-94, discusses his in-progress paper "Economic Analysis of the Guaranty Contract" for a Law and Economics Workshop session in November. The workshop, organized by Professor of Law Merritt B. Fox, is part of the Law School's Seminar in Law and Economics and brings leading scholars from throughout the country to the Law School to present papers that they are developing. Faculty members from the Law School and elsewhere at the University and seminar students ask questions of presenters and may make suggestions. Workshop speakers this academic year came from Yale, Georgetown, the University of Chicago, Stanford, the University of California at Berkeley, Harvard and Columbia as well as the University of Michigan Law School.





Environmentally Speaking —

Thirteenth District Michigan Congresswoman Lynn Rivers, above, gestures to emphasize her point during an appearance at the Law School sponsored by the Environmental Law Society. Rivers, a member of the House Science Committee who earned a 100 percent grade on her "Environmental Report Card" from the League of Conservation Voters, was elected to her second term last fall. The Ann Arbor Democrat previously had served in the Michigan House of Representatives and on the Ann Arbor Board of Education.



Looking Ahead —

Clinical Assistant Professor of Law Lance Jones demonstrates the Law Library's computerized catalog system during a Law School tour for students from the University Mentorship Program. The tour, held in October to acquaint pre-law students with the Law School's people and facilities, included visits to the Law Library, the Moot Court Room, Hutchins Hall and other locations.

Entering class standards high

With a mean LSAT score a point higher than last year's entering class and despite a nationwide drop in applications to law schools, this year's crop of 319 first-year students maintains the quality that is the traditional hallmark of the Law School's entering classes. "Our recruitment efforts, particularly the merit scholarship program, were successful in attracting some of the very best students applying to elite law schools in the country," according to Assistant Dean and Director of Admissions Dennis J. Shields.

"Nationwide, the number of applicants to law schools declined from over 90,000 in 1991 to approximately 70,000 in 1996," Shields reported to the Law School's Committee of Visitors last fall. "Despite the substantial decrease in the size of the applicant pool, the Law School attracted very strong candidates for admission in 1996 and we are pleased to yield an entering class with credentials comparable to preceding years."

"The trend to smaller application volumes nationwide is expected to continue for the next three to four years," Shields predicted. "This means there will be fierce competition for the best applicants among the handful of elite law schools. The Law School fared well in the competition this year. Our success is heartening and a tribute to the strength of the reputation of the school and its alumni."

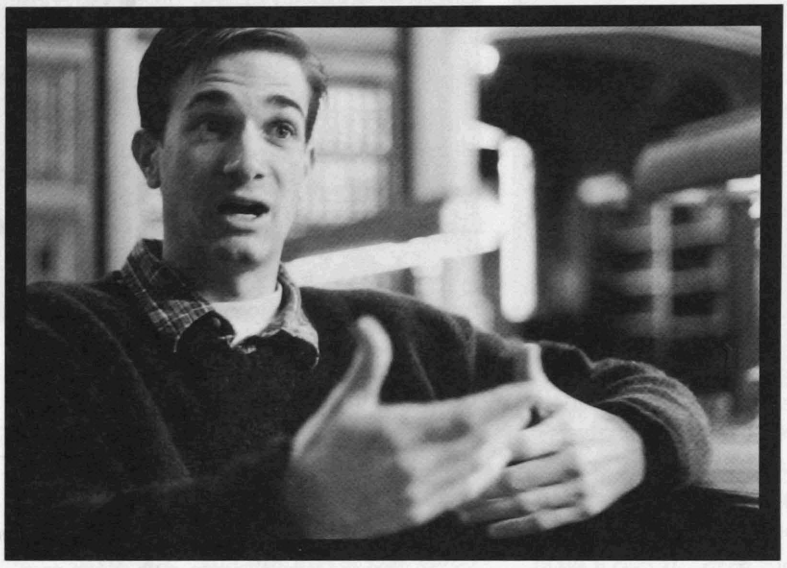
A snapshot: the Class of 1999

Total Entering Class	**319**
Female	36 percent
Students of Color	21 percent
Mean Age	24
Age of Youngest Member	20
Age of Eldest Member	41
Mean LSAT	167
Mean GPA	3.5
States (including D.C.)	36
Foreign Countries	3
Undergraduate Schools	123
Advanced Degrees	45

Meet 1999

SOME MEMBERS OF THE CLASS OF

Numbers like those in the accompanying chart only hint at the personalities of students who come to the University of Michigan Law School. To get to know the people behind these numbers is to get to know exciting and excited men and women whose experiences, goals and abilities enrich Law School life and bode well for the future of the legal profession. Let us introduce you to a few of them:



Jim Birge

Jim Birge, Indianapolis, IN

The fourth generation of his family to attend the University of Michigan Law School, Jim Birge spent the year after his graduation from Harvard University trying to decide if he wanted to become a physician or a lawyer. He studied in a pre-med program and at the same time applied to law school.

The sampler year yielded an answer. "I came to the conclusion that I am interested in health care, but the policy and legal issues fascinate me more than the actual practice," he says. In fact, he may have found the ideal combination here at the Law School and the University of Michigan.

"I'm currently thinking about doing a joint program with the School of Public Health," he said. He explained that the program that entices him is the four-year Law School/School of Public Health curriculum that leads to a joint J.D./M.H.S.A. (Masters in Health Services Administration) degree. The Law School, in its turn, has recognized the value of his interdisciplinary aspirations by making him a Darrow Scholar.

Meanwhile, Birge is glad to be following in his family's footsteps and says that, like them, he well may return to his native Indianapolis to practice. "My father, my grandfather and my great-grandfather all went here and had wonderful experiences," he says. His father, Jonathan L. Birge, J.D. '66, practices with Bingham, Summers, Welsh & Spillman in Indianapolis. His maternal grandfather, Shubrick. T. Kothe, J.D. '47, retired a few years ago from Kothe Claycombe & Kortepeter, the Indianapolis firm founded by Kothe's father, Herman W. Kothe, who had graduated from the Law School in 1910.

Birge didn't wait long to start legal studies after his dip into pre-med. "I'm a summer starter and I thought the summer start for me was wonderful. We are an extremely close group." He praised his Contracts teacher, James J. White, Robert A. Sullivan Professor of Law, and his Property teacher, A.W. Brian Simpson, Charles F. and Edith J. Clyne Professor of Law, for getting him and his fellow summer starters off on the right track. Take White's Contracts, for instance: "It was a very challenging course" — you can almost see the nods of agreement from anyone who has studied under White — "but I got a lot out of it. It really was a terrific experience for everyone who took his course. It was absolutely incredible.

"Not only were the professors wonderful this summer, but Professor White has also been an incredible asset in the Fall Term for students looking for opportunities this summer and beyond."

BRIEFS

Damali Childress, Detroit, MI

"It's really great to be a summer starter," enthuses Damali Childress. "I requested it. It was a really great way to ease into law school."

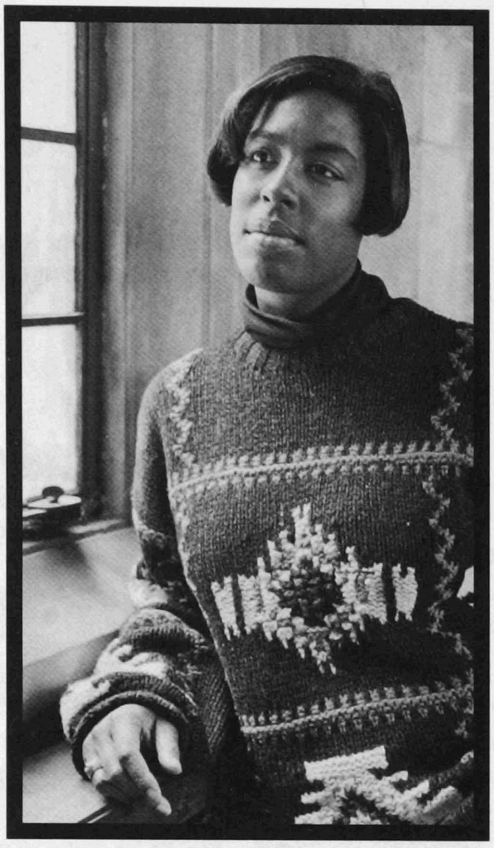
Sure was. Not just because classes in Contracts and in Property and participation in the Law School's launch of its new Legal Practice Program offered a slightly less than full immersion. But also because she started with her aunt, Tracey Wheeler, as a fellow student and soon met another summer starter, Saura Sahu, whom she married Dec. 28.

"I've got a built-in study partner," she quipped during a chat in January.

Deciding to come to law school didn't come so quickly for Childress, however. She had planned a career in business after graduating from Florida A&M University in 1994 and worked for two years with NationsBank in Charlotte, NC. But her experience as a global corporate financial analyst doing a credit/financial analysis training program and health care analyses convinced her that she wanted to widen her options. "I was strictly headed for a business career," she says. "It was a great learning experience, but I discovered that it was something I didn't want to do long-term."

"I was debating between law school and business," she explains. Law won out for the Darrow Scholar. "I just thought about all the different ways that I could use a J.D. I could work with a law firm, do corporate law or banking law. Or I could do public interest work, like working with children on child abuse and neglect. There seemed to be so many avenues that were open."

Childress' growing interest in child advocacy and "issues of education and how the law affects it" drew her to legal studies. She had seen the need for educational access as a volunteer reading tutor for elementary school children in Charlotte, where she also had organized outdoor trips for youngsters for the Sierra Club's Inner City Outings program. "A lot of these kids had never been out of the city," she says. "We'd take hikes in the mountains. Once we took a week and went tent camping."



Damali Childress

"I'm interested in education issues of equal access and funding," she says. "Most of the issues that are being tried today are constitutional issues, 14th Amendment issues."

It was the chance to follow up on those interests and the Law School's response to her application that drew her to Michigan. She had grown up in Detroit and Cleveland, and "I really wanted to come to Michigan," she says. "I really liked the Child Advocacy program, and I really liked Michigan's recruiting. I got a lot of information about student organizations and about clinics. I felt that Michigan was really interested in the people it had accepted."

The Law School's Family Law Project, a student-run program in which Childress is a student attorney, attracted her, she says. She also works as a research assistant with the Michigan Child Welfare Law Resource Center, which was established at the Law School last year with Kellogg Foundation funds to help attorneys research child protection and foster care issues. In addition, Childress is a volunteer reading tutor at a public elementary school in Ann Arbor.

Elliot Regenstein, Ithaca, NY

Elliot Regenstein, 23, looks back on his two years of work with the New York City Parks Department with the kind of fondness that he expects to propel him into public administration work after he graduates from Law School.

Regenstein worked first on the Commissioner of Parks' staff, then as chief of staff for the First Deputy Commissioner. The work was "a very tangible and physical thing, and I liked it a lot," says the Columbia University graduate in history who covered sports and wrote a column for four years for the *Daily Spectator*, the student newspaper at Columbia. "When somebody complained about a park you'd follow up on the complaint and go out and look at it."

The experience transformed his perception of lawyers and convinced him to go to law school. As an undergraduate, he says, "I specifically didn't want to go to law school, but in city government most of the people I worked with were lawyers, and they were extremely smart, talented people" committed to fashioning a parks system that answered people's needs. The experience he acquired and the camaraderie that he developed with his superiors and colleagues convinced him to enter law school.

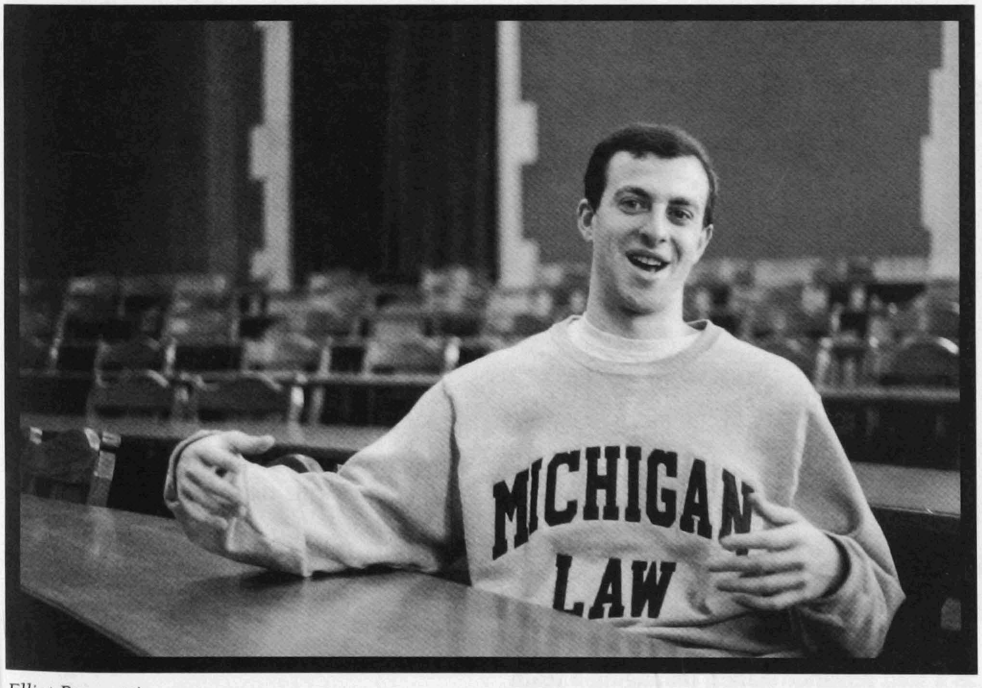
A Darrow Scholar at the Law School, Regenstein comes from an academic background. His father, Joe, is a Professor of Food Science at Cornell University; his mother, Carrie, an administrator at Cornell, is a former high school language

teacher; and his younger brother, Scott, is a senior majoring in statistics at Cornell.

Regenstein plans to sample work as a judicial clerk and in a law firm, but expects finally to settle on a career in public administration. He likes the nitty gritty of tackling problems and devising solutions and embraces the idea of making things better than he found them. "I know you can't change the whole world, but you can take a piece and work on it," he says.

Practicing what he preaches, he serves as treasurer for the Office of Public Service's Public Interest Group, where he is proud of being able to streamline reimbursement procedures. He uses the same approach he used at the New York City Parks Department: keeping the "client" in the front of his thinking.

"I don't mind standing on the corner waiting an hour for someone," he says, "but I can't stand having them wait an hour for me. You have to treat other people's time as valuable."



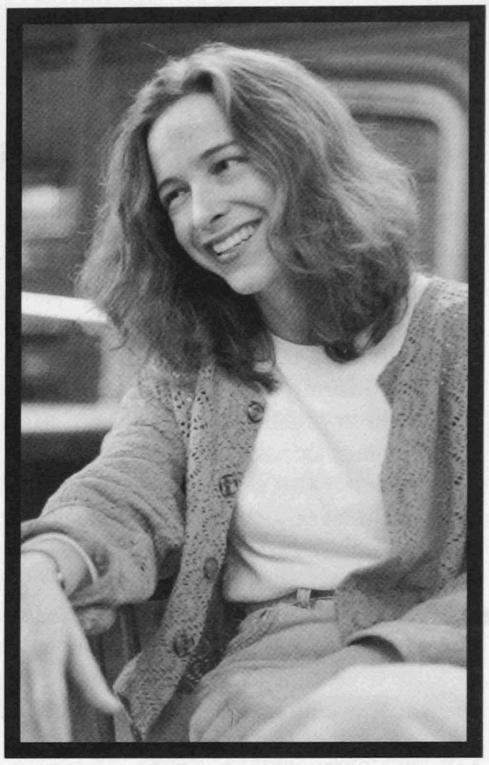
Elliot Regenstein

Carolyn Russell, Mount Pleasant, SC

As happens with so many important choices, Carolyn Russell made her decision to enroll at the Law School while she was doing something else.

She had been studying the travel diaries of early 19th century South Carolinian Harriot Horry, whose mother, Eliza Pinckney, had introduced indigo to the colony. A faculty member at the College of Charleston at the time, Russell had been poring over Horry's travelogues with the idea of writing about them. "I sat down to write the book proposal — I sat down at 9 a.m. and got up at 5 p.m. — and I just knew I was going to go to law school," she recalls.

Actually, her apparently impromptu decision had been incubating for some time, she confesses in retrospect. She had been an English major at Pomona College, where she got her bachelor's degree in 1983. After working in Boston for three years, first with the publisher Little, Brown and then with a management consulting firm, she received her master's and Ph.D. in English from the University of Chicago, where she often prowled through the law library



Carolyn Russell

researching her dissertation on confession and guilt. During her seven years at Chicago she also worked as a part-time secretary at the law firm Latham & Watkins. Then she was in her third year on the faculty of the College of Charleston, the oldest municipal college in the United States and now the state's liberal arts college.

"For a long time it was at the back of my mind," she says of her decision to go to law school. "It was a process that I wasn't fully aware of. I'd been interested in the law, in the legal system and what underlies it, in cultural concepts of right and wrong."

She also had been teaching full-time or part-time for a decade and felt the urge to do something different. "It was time for a change," she says. "This was both a movement toward the law and away from the academic world."

The University of Michigan Law School attracted her for its high standing among law schools and for its midwestern location — she grew up 70 miles south of Portland, OR, but her parents had moved to Cleveland, OH,

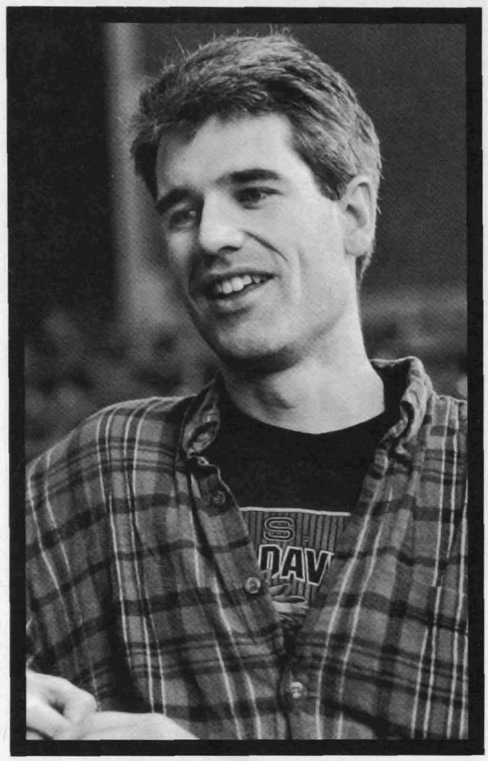
during her first year at Pomona. Mostly, however, she was drawn to "the diversity of its teaching and its faculty."

The Law School responded by naming her a Darrow Scholar. And her expectations of a diverse teaching approach have been more than met, she reports. During the Fall Term she studied under two faculty members with doctorates in philosophy (Heidi Li Feldman and Donald H. Regan) and a law professor with a doctorate in English (William I. Miller); this term she is taking classes taught by a Law School faculty member with a doctorate in history (Thomas A. Green) and another with a doctorate in economics (Peter Hammer).

Russell says she misses teaching and the teacher's contact with students, but she shifted easily from being a teacher to being a student. Her switch from teacher's briefcase to student's backpack brought one hefty revelation, however: "I weighed the books I needed for my classes. Twenty-two pounds of books."

"I love it," she says of the Law School. "My first class was in torts. I walked out of class, telephoned a friend, and said 'I love this.'"

Bill Sherman



William Sherman, Mentor, OH

Bill Sherman had a very special party to attend following his first term of Law School finals. It was held in Washington, D.C., on Jan. 20 for thousands of people to celebrate the presidential inauguration. He was a special kind of guest, too, having worked on the Clinton/Gore campaign and serving as a political appointee during the first Clinton Administration.

Following his 1990 graduation from Wesleyan University in Connecticut, where he majored in government with a concentration in American politics, Sherman worked for ICF, Incorporated, an environmental policy consulting firm doing contract work for the Environmental Protection Agency and other government agencies. While there, he helped write regulations to implement the Oil Pollution Act of 1990.

He then decided to work on the 1992 Clinton/Gore campaign, serving as a lead advance staffer, managing a team of about a dozen other campaign staff and lots of volunteers. "I worked for Al Gore and sometimes for Bill Clinton, setting up campaign events in cities across the country. I had left college for a year to work on the Dukakis campaign, so I wanted to join up again when 1992 came around," he says.

Following his efforts on the Presidential Inaugural Committee, Sherman worked as special assistant to Secretary Bruce Babbitt of the Interior Department until beginning Law School last fall. While at Interior, he developed policy and communications strategies for natural resource conservation and coordinated Department of Interior bureaus on the U.S./Mexico border. Sherman also worked with the U.S. Fish and Wildlife Service to develop a curriculum for a national conservation education and training center.

He chose the Law School because the people he knew who had attended the University of Michigan for their legal education "had nothing but good things to say about it," he explains. Sherman, who is in a joint program leading to degrees from the Law School and the School of Natural Resources and Environment, adds that "the dual degree program was also very attractive."

He is interested in environmental law and plans to take advantage of the Environmental Law Clinic and related course offerings. In the little free time that he has, Sherman is taking guitar lessons and helped arrange a visit from Representative Lynn Rivers (see p. 17) to talk to students about environmental issues. "For the most part, I've enjoyed it," he says of his first year, and, as a member of the class of 1999, he'll finish just in time for the next presidential campaign.

A shrinking role for paper at the Law Library

The Law Library is relying less on paper and more on microforms and cooperation with other libraries as staff members keep up with growing, changing demands and implement the long-range plan that the Library Advisory Committee adopted in 1991.

Progress on the plan, called "Preservation in Context" (PIC), has been so considerable that "one of my big jobs this year will be to work with the Library staff and the Library Advisory Committee to write a new long range plan, since we've reached so many of the PIC goals," says Library Director Margaret A. Leary.

Speaking at a Law Library Celebration lunch last fall, Leary outlined the changes that have occurred since "Preservation in Context" was written in 1989-90. Here are some highlights:

- The use of microforms has cut the percentage of Law Library holdings on paper from 81 percent in 1989-90 to 77 percent in 1996. "Basically," says Leary, "we withdrew enough paper volumes to empty the shelves of one level of the Legal Research stacks, and acquired in microform the equivalent of paper volumes which would have filled two levels in the Legal Research stacks."
- At the same time, the growth in the number of microform volumes has far outstripped growth in paper volumes; microform volumes increased 44 percent, while overall holdings increased 11 percent.
- Rare book storage and display facilities increased with construction and opening of the Joseph and Edythe Jackier Rare Book Room, with space for about 5,000 volumes.
- Circulation Department space has been re-arranged to store more microforms. The number of microforms has nearly doubled, from 560,000 pieces to more than 1 million.
- Fire exits, sprinklers, alarms and signs have been installed to bring the Legal Research Building Stacks up to current codes. Legal Research shelves and books also have been cleaned to remove the dust from construction.
- More than 500,000 records have been put into Lexcalibur, the Law Library's online catalog.
- Hours of searching on Lexis and Westlaw have doubled.
- Operating costs rose 27 percent, an increase that Leary says is "primarily due to increased use of computers and the software to run them, networks to connect them, and associated maintenance on all three elements." A $2 million endowment from the estate of Kenneth T. and Marion L. Johnson will help pay these costs.
- The number of documents delivered by Phone Page to faculty offices rose 16 percent; Reference Desk queries rose 63 percent; and Inter-Library Loan volume increased 31 percent.

"The interdisciplinary approach of the faculty, and the inability of the Law Library to collect everything our students and faculty need is reflected in our increasing reliance on other libraries," Leary says.

"For example, five years ago we met 76 percent of Phone Page requests from our own collection; but last year we got only 60 percent from our library. Five years ago we borrowed 769 items from other libraries; last year we borrowed 1,476."

A Justice and Her Clerks —

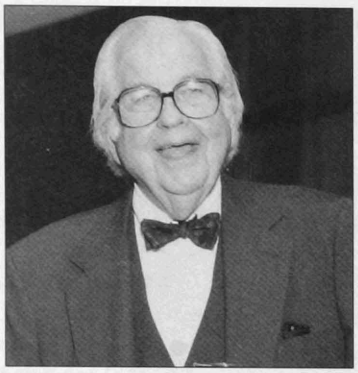
U.S. Supreme Court Justice Sandra Day O'Connor shares a moment with two of her former clerks, visiting faculty member Gail Agrawal and Associate Dean Kent Syverud, '81, during a reception for O'Connor at the Law School in December. O'Connor was commencement speaker and received an honorary degree at the University of Michigan commencement in December.

U-M awards honorary degree to John H. Pickering, J.D. '40

Honors and awards hang from the name of John H. Pickering, J.D. '40, like a hero's medals: last Dec. 15 an honorary doctor of laws from the University of Michigan; the Bar Association of the District of Columbia's Lawyer of the Year, awarded Dec. 7; the National Center for State Courts' Paul C. Reardon Award for Outstanding Service to the Cause of Justice in 1994; the Allies for Justice Award from the National Lesbian and Gay Law Association in 1994; the Fifty Year Award of the Fellows of the American Bar Foundation in 1993; and the NAACP Legal Defense and Educational Fund's Pro Bono Award in 1990.

The honor that Pickering prizes most, however, is the one that goes to others: the Pickering Scholarship that his firm, Wilmer, Cutler & Pickering, established in his name in 1994. The scholarship provides annual tuition for one University of Michigan Law School student each year — with the proviso that Pickering requested — that the recipient commit at least 10 percent of his or her future professional service to pro bono or public service work.

Pickering always has asked his lawyers to devote 10 percent of their time to pro bono work. That policy has continued as Wilmer, Cutler & Pickering, headquartered in Washington, D.C., has grown to have more than 250 attorneys in many parts of the world.



John H. Pickering, J.D. '40

"That is a tradition we have tried to carry on," Pickering told the District of Columbia *Bar Report* in 1994. "When I was president of the Bar [1979-80], one of the things that was important to me was improved access to the legal system for all segments of our society. That's something that is still important to me today."

"How is that message conveyed to young attorneys who join the firm?" he was asked.

"Well, very simply," Pickering answered with typical straightforwardness. "I bring them in, sit them down, and talk to them about it. We talk about the culture of the firm and the importance of looking beyond the next billable hour. I think our 10 percent commitment to public service is a policy that many of our young lawyers find very attractive."

Currently chairman of the American Bar Association's Senior Lawyers Division, Pickering has practiced law in Washington, D.C., since 1946. He was one of the founders of Wilmer, Cutler & Pickering in 1962.

Pickering reflects "our brightest aspirations," Dean Jeffrey S. Lehman said in introducing Pickering at a Law School reception before he received his honorary degree. He is "a wonderful symbol of the University of Michigan Law School in virtually all aspects of the profession."

"Nothing in my professional life has given me more pleasure than the ability to pay back to this institution some of what it gave to me," Pickering responded.

Pickering was a member of the Law School Fund organizing committee in 1960 and was an initial member of the Law School's Committee of Visitors in 1962. He chaired the committee that raised funds for the underground Alene and Allan F. Smith addition to the Law Library (1973-81), was a DeRoy Fellow in 1984 and delivered the Law School's commencement address in 1992.

"I have had a fine and bully time myself," he told the 1992 graduates. "I wish you all success and happiness, and I charge you to do your part to advance the lofty goals of our profession. Go with a passion for justice — go with a dedication to work for the public good."

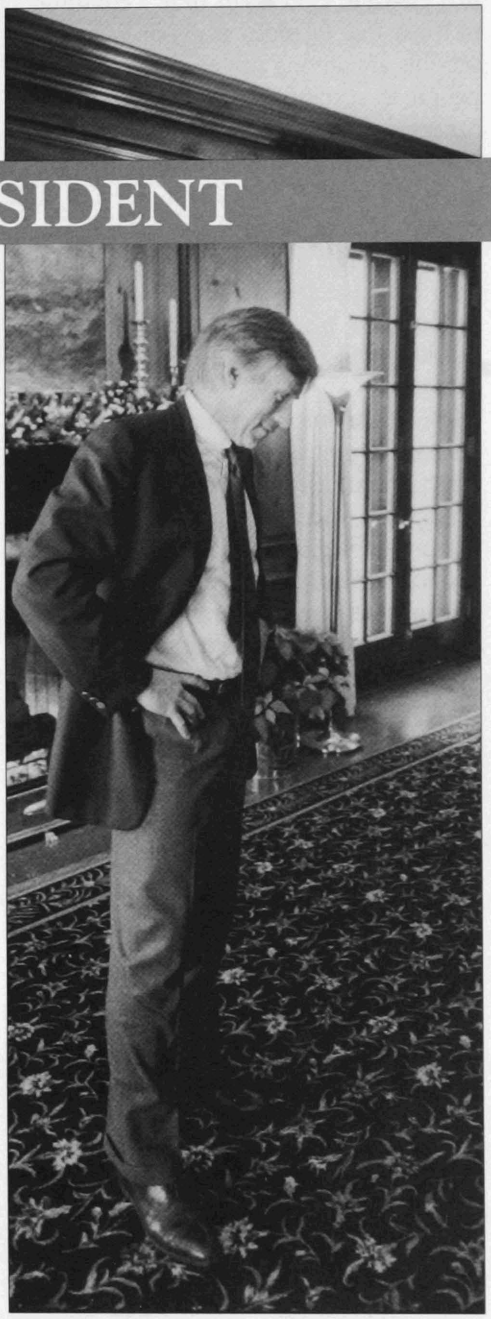
Pickering, who clerked for U.S. Supreme Court Justice Frank Murphy from 1941-43, quickly learned the highs and lows of practicing law in Washington when he returned there after U.S. Navy service. The first case that he argued was before the U.S. Supreme Court. A week later, he was defense attorney in a traffic case. But let him tell it, as he did as the first subject in the District of Columbia *Bar Report's* "Legends in the Law" series:

"That was in 1946. I'd just been mustered out of the Navy, and in those days when the Supreme Court needed to appoint counsel for an indigent they would use former law clerks. One Saturday afternoon my phone rang at home, and the deputy clerk said, 'John, the Court would like to appoint you to represent the defendant in a mail fraud case. Do you agree?' Well, I couldn't have said no even if I'd wanted to. So I argued my first case in the Supreme Court.

"I was brought back to earth the following week. My second court appearance was a traffic case in the old municipal court. I defended a chauffeur on a change of lane violation — and I lost."

Pickering was one of four recipients of honorary degrees at the University of Michigan's December commencement. The other recipients were: U.S. Supreme Court Justice Sandra Day O'Connor, who also delivered the commencement address; filmmaker Robert Altman; and astronomer Vera Rubin, of the Department of Terrestrial Magnetism, Carnegie Institution, Washington, D.C.

Welcome back, MR. PRESIDENT



There are values deep in the institution that I share that I think need to be nurtured and brought back to the surface. I would like to do that. I think that this is an institution that has a great chance to be greater than it is and I would like to help do that.

— LEE C. BOLLINGER

After 21 years on the faculty of the Law School, seven of them as Dean, Lee C. Bollinger has returned to the University of Michigan as the school's 12th President. Unanimously chosen by the Board of Regents on election day in November, Bollinger and the other three finalists underwent an unprecedented public examination before the Regents made their decision (see essay by Dean Jeffrey S. Lehman, page 30). Bollinger, who left Michigan in 1994 to become Provost at Dartmouth College, returned to Ann Arbor in January and assumed his president's duties Feb. 1.

"I accept this position with the deepest emotions, close to those connected with family," he told the University of Michigan Board of Regents on Nov. 12. "And, as the years of our collective service to this great University roll by, this abiding affection we all share should be our bond and the source of our decisions and of our treatment of each other."

"Lee is going to be a superb President," says Jeffrey S. Lehman, '81, Bollinger's successor as Dean of the Law School and chair of the Presidential Search Advisory Committee that nominated Bollinger as one of the finalists for the U-M presidency. "I joined the faculty of the Law School the year he became dean, and I had many occasions to observe and admire his talents. He is deeply reflective and articulate, a person of the highest integrity, and committed to sustaining the University as a special place where outstanding teaching, research, learning, and service can take place. In every administrative position he has held, he has continued to teach students, both in and out of the classroom; now, as President, he will have the opportunity to teach an even broader community."

In December, Bollinger took time out during a visit to Ann Arbor to share some of his thoughts with *Law Quadrangle Notes*. Here is how that conversation went:

LQN: You spent seven years as Dean of the Law School and more than 20 years as a member of the University of

"...you need to provide opportunities for faculty to participate in foreign institutions on a regular basis in order to bring international questions into the classroom and into research at Ann Arbor."

Michigan Law School faculty. What aspects of that experience may you draw on in your role as president?

BOLLINGER: Every part of it. I continue to think that faculties at major law schools are among the most talented people in academia today. They're exceptionally bright individuals deeply committed to serious scholarship and possess a kind of Old World sense of craft about teaching. So, in a powerful sense, my experience in the Law School has not only been formative for me, but it is also my lodestar, my reference point for thinking about the rest of the University.

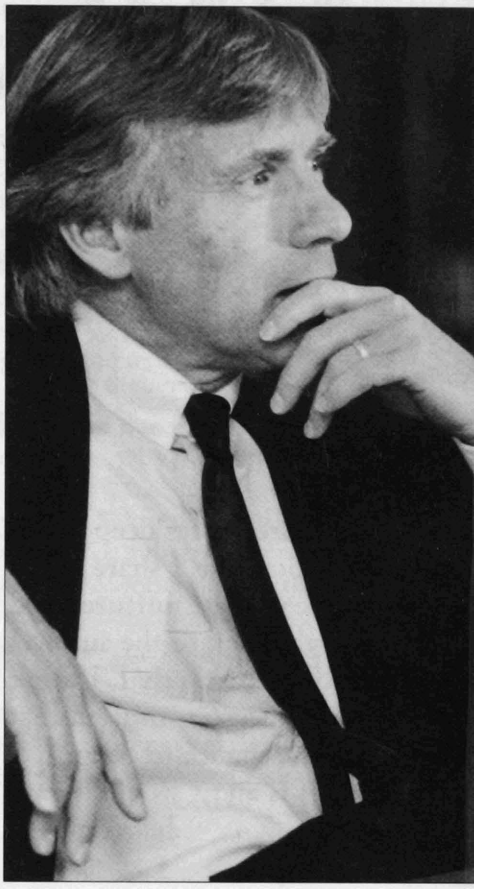
LQN: While you were Dean you launched a development campaign, beefed up international activities, began building renovation, increased the role of minorities and women and launched the program of collecting oral histories from retiring and senior faculty — a marvelous project. Now, in this new position, do you look at any of these as unintended pilot projects?

BOLLINGER: Yes, that's exactly what I think. For example, I felt that the [Law Library] Reading Room was this glorious space that had been more or less abandoned. The new underground library provided spectacular services in an extraordinary architectural setting, but at the cost of vitiating the use of the Reading Room. There are few places on the University of Michigan campus, or on any campus, that can compare with the Reading Room in terms of the capacity for inspiration. So the problem was how to revitalize the Reading Room, using it for concerts, thinking about using the alcoves for offices, providing a space where faculty and students would casually interact, informally meet. The Reading Room seemed to me to provide an ideal space for that. University-wide, my efforts to draw attention to the fact that Robert Frost spent three years here, from 1920-23, just prior to publication of his first volume of poetry to win a Pulitzer Prize, are absolutely consistent with the feelings that I had about the Reading Room.

The Law School, I felt, had to think more internationally. The faculty for years had attended conferences abroad and taken sabbaticals at universities abroad. The Law School has had a set of international connections for its entire existence, but it needed to be increased and it has been increased. I thought, for example, that establishing exchange faculty programs with Tokyo University was a very good way to have perhaps half of the faculty, over a period of years, have a personal experience with actually teaching in a preeminent Japanese university. I don't know what it will be yet for the University, but my feelings about it remain the same. That is, you need to provide opportunities for faculty to participate in foreign institutions on a regular basis in order to bring international questions into the classroom and into research at Ann Arbor.

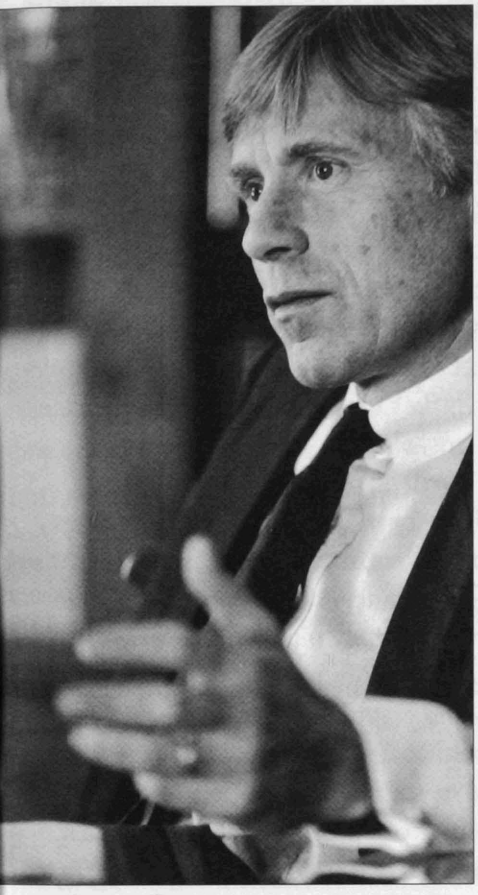
LQN: A similar question about your time as Provost at Dartmouth, a private school. Are there things that you experienced there that are influencing your thinking?

BOLLINGER: Dartmouth has a reputation as being the foremost teaching college in the country. I taught a regular class three times since I became Provost, so I've had personal experience with teaching there. My impression is that what makes students at Dartmouth so satisfied with the educational experience has less to do with what actually happens in the classroom and more to do with the availability of faculty outside of the classroom. I am confident that the education that a University of Michigan student receives matches what is available at any other top school. What remains to be seen is the opportunity for intellectual life at Michigan beyond the classroom. That is something that I want to look at closely.



Dartmouth is also an extremely well run institution with a wonderful set of trustees and excellent administrators. I carry with me now a model of a central administration and a board that I think is extremely effective. So my encounter with the teaching experience at Dartmouth and my contact with an extremely well run administration perhaps will be formative for me.

In some ways Dartmouth and Michigan are very similar. One way I've pointed out many times is the degree to which the institutions inspire tremendous loyalty on the part of the students and alums. There's something very special that happens at these institutions for students that seems to be unmatched by other institutions. And that's very important to me.



In some ways they're profoundly different. One of the institutions that reported to me at Dartmouth is called the Tucker Foundation, which has as its role the inspiration of religious values within the community. Such an institution at Michigan would promptly be declared unconstitutional, so that's quite a striking difference. Having spent all my life in a public institution where there has not been a Christian chaplain or a university rabbi, that's been stunning to me. It has raised the question for me, which I know others have asked, of what are the roles of secularized public institutions in a world that also properly has many religious values inherent in it?

LQN: You're known as a voracious reader who continually reads outside your academic specialty. What are you currently reading?

BOLLINGER: I've been reading poetry by Shamus Haeney and Helen Vendler's essays on Haeney in her new book, *Soul Says*. I've been reading a book by John Gray, a political theorist from England, called *Enlightenment's Wake*, which is about the question of whether the Enlightenment introduced economic and scientific systems that depended on a deeper set of religious and shared values that gradually have eroded. I'm re-reading for the 50th time Virginia Woolf's *Mrs. Dalloway*.

LQN: What books have stood out over the years?

BOLLINGER: Montaigne's *Essays* I admire tremendously. Classics, like Aristotle's *Ethics*. I'm determined to understand Kant by the time that I'm 70, so I'm reading several secondary sources on Kant. I happen to like the Romantic poets a lot. In 20th century poetry, I admire tremendously Wallace Stevens, but I read him mostly in warm climates. There are few poems that work well to read on days like this — "The Snowman" and a few other poems — but most of them resonate most powerfully sitting under a tree on the beach. And I like Virginia Woolf very much and re-read her work regularly. And Samuel Johnson.

LQN: Despite the duties of administration, you carve out time to write and teach and run. Why do you exact that of yourself?

BOLLINGER: I think that there's nothing better than a really good idea. And I also believe that most really good ideas come from thinking both long and hard and on a sustained basis about problems, about issues, about things that concern you and concern other people. Meetings are important and critical and a necessary part of life, but I rarely have been at a meeting that came out with a good idea. They just don't seem to go together. I think that there has to be an interaction of private, long reflection and more action-oriented meetings or interactions with other people. I think most people become over-scheduled; they fill up their lives with 50-minute sessions with other people and that can create a sense of accomplishment that I think is vacuous. So beside the fact that I like athletics a lot, I have used running basically as occasions to reflect. And running has suited me ideally for that purpose. Walking can do the same thing but it takes a long time to get to that state of mind.

LQN: You have said that the future is going Michigan's way. Can you elaborate on that?

BOLLINGER: I think that the size of Michigan is more of an asset than many people might think. The range of knowledge at an institution like this is simply beyond comprehension. The one feeling I've had going to Dartmouth is that of increased respect for the richness of the intellectual life at Michigan. So as knowledge enlarges those institutions that have the greatest array of specialists combined with generalists are going to be more and more attractive. The other thing is that the areas where Michigan has excelled — social sciences, professional schools, and I could go on — in general those are the source of strength for the future. Thirdly, its sophistication and technology are important because I've become convinced, somewhat reluctantly, that the new technologies will play an important supplemental role for education and research and Michigan is very well set up for that. And lastly, its connectedness, its ease of connection with the rest of the

Continued on page 29

Lee C. Bollinger made the following remarks to the University of Michigan Board of Regents on Nov. 12, 1996, in accepting the Board's unanimous offer to name him the 12th President of the University of Michigan.

— BY LEE C. BOLLINGER

I ACCEPT THIS POSITION

with the deepest emotions, close to those connected with family. And, as the years of our collective service to this great University roll by, this abiding affection we all share should be our bond and the source of our decisions and of our treatment of each other. In my meeting with you just over a week ago, I referred to an idea of Edmund Burke. Now I can quote it accurately: "To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in a series by which we proceed towards a love of our country and to mankind."

So it is that our "attachment" to this University is a stem of all meaningful relationships. And in this increasingly cosmopolitan world, in which loyalty to discipline rather than to place is always in the ascendancy, Burke's idea of the spiraling importance of affections, beginning with our feelings towards our "platoon," makes our love for Michigan intelligible and consequential, a matter of public service.

There are special moments in life when we feel we see more clearly and more deeply into the truth of things. I feel this is such a moment for me, and I hope it is for the University. If this is such an occasion, then we ought to make every effort to hold onto this clarity of understanding, as the daily cares will inevitably threaten to overwhelm us in the years ahead. To this end we might employ as a point of reference a little poem, "Spring Pools," written by the great American — and great University of Michigan — poet, Robert Frost; a poem, by the way, he composed in Ann Arbor.

Just after the last snow has melted, the poem says, small pools of water form and, in the still leafless forests, they reflect "the total sky almost without defect." Such near-perfect vision, however, is fleeting, for the trees "have it in their pent-up buds/To darken nature and be summer woods." The roots will "blot out and drink up and sweep away" these momentary pools of sight. "Let them think twice," the poem warns, before they "bring dark foliage on" to destroy these "flowery waters" "from snow that melted only yesterday."

I would like to think that today is at least my "spring pool," and with Frost's exquisite sense of poignancy I want to say to the inevitable burdens and cares of the years ahead, "Let them think twice before they use their powers" "to bring dark foliage on."

I am grateful to you and the University for giving me this opportunity to serve the University of Michigan.

I would like, if I might, to introduce my wife, Jean Magnano Bollinger. Jean is originally from Seattle. She also, happily, attended the University of Oregon, after which she did graduate work at Columbia University (receiving a master's degree). When we moved to Ann Arbor in 1973, Jean took classes in art and in psychology. Her major achievement in the early 1980s was as one of the four principal founders of the Ann Arbor Hands-on Museum, where she served as associate director following its opening.

In the mid-1980s, Jean decided to become a full-time practicing artist, which she has pursued ever since (including a period of time as a special student in the Art School at the University). Before leaving Ann Arbor in 1994, she had a studio in Dexter, and now she is located in Lebanon, New Hampshire. Her awards and shows are "too numerous to mention," if I may say so.

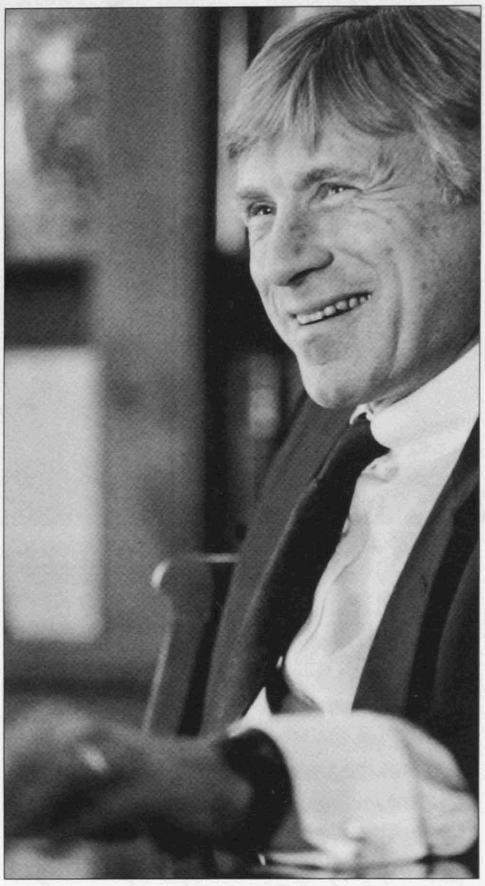
Continued from page 27

world and where it is physically located, will make it more likely to thrive in a global environment.

LQN: Recently the University successfully completed its $1 billion Campaign for Michigan — raised from private sources. The $7 million Nike contract is private — and it's got a lot of attention. Yet you and other leaders have talked about the University as a public institution. Can you elaborate on what that means in a time of increasing private contributions?

BOLLINGER: That's a profound question, one that I'm thinking about a lot, because I'm actually quite uncertain in my own mind what it means to be a public institution in the late 20th century. It's clear that if you compare public institutions with private institutions on the basis of their balance sheets, there's not that big a difference. So that's the first thing. Secondly, if you ask a faculty member at a public institution what it is that he or she thinks they're doing, and you do the same with a faculty member from a private institution, you get the same answer. And that of course is why there's this easy interchange of faculty going from public to private and vice versa. From a faculty member's point of view and from a student's point of view in many many respects the role and the experience is identical in a pubic and a private institution. I should also say that it used to be that people would say that what public institutions provided was access to citizens, but many private institutions now have need-blind admissions or extraordinary financial support for people who can't afford to attend because they are committed to the idea of equal access and will not let economic disparity interfere with the possibility of getting an education. So there's no longer the situation that used to be, where it's extremely expensive to go to a private institution and ordinary people could only afford to attend public institutions. That's really not so true anymore.

So then I begin to look at the matter of character, and on one side I see things like a lack of a sense of history, but I also see that the lack of a sense of history can be liberating. History is not always a good thing for an institution. The neglect of Robert Frost and of Auden [W.H. Auden] at Michigan is unfortunate. On the other hand, it's much more difficult for women and minorities to break into the cultures of many private institutions that once excluded them. So I think the relationship of public institutions and their history is a source of difference from private institutions, for good and for bad. I also think that public institutions tend to be more rooted or grounded in their communities. I'm speculating some here, but I think that there is something to the idea that there is a psychological tie with the community and with the state that needs to be thought through more carefully than it has been. I happen to think there are great virtues in those ties and that it would be wrong to neglect them. I think it should be a source of pride and the source of a sense of responsibility that I think is necessary for a rich life.



"I think the relationship of public institutions and their history is a source of difference from private institutions, for good and for bad. I also think that public institutions tend to be more rooted or grounded in their communities."

University's presidential search process prevented candid exchange

— BY JEFFREY S. LEHMAN, '81

The following essay is adapted from one that appeared in the Ann Arbor News *on Nov. 24, 1996, after former Law School Dean Lee C. Bollinger was named the twelfth President of the University of Michigan. The author, Law School Dean Jeffrey S. Lehman, '81, devoted last summer and fall to serving as chair of the 12-member Presidential Search Advisory Committee (PSAC), the group appointed by the University's Regents to collect names of potential Presidents and publicly present an unranked list of up to five candidates for Regental consideration. The PSAC's work was done confidentially, and the names of all potential candidates were released only at the same time as those of the finalists. The Board of Regents used the procedure in order to meet requirements of Michigan's Open Meetings Act while providing as much confidentiality as possible to candidates.*

In 1993, the Michigan Supreme Court had ruled that the preceding search for a University President had not complied with the Open Meetings Act. In that litigation, the University had failed to preserve the argument that the Michigan Constitution exempts the presidential search from legislative interference. So this time, the University sought to conduct its search in compliance with the statute.

In October 1996, only a few days before the finalists were to begin rounds of interviews, campus visits, and "town meetings" in Ann Arbor, the newspapers sued again, arguing that the Open Meetings Act precluded candidates from requesting supplementary one-on-one meetings with individual Regents. Washtenaw County Circuit Court Judge Melinda Morris, '63, issued a preliminary injunction precluding such meetings; one of the five recommended finalists then dropped out. The other four finalists agreed to continue in the process. In addition to Bollinger, they were the Provosts of Berkeley, Illinois and Pennsylvania.

The University of Michigan has selected Lee Bollinger as its twelfth President. He is an excellent choice, a leader with the talent and experience to be an outstanding President. Yet before we rush to congratulate ourselves on a "job well done," we should pause to reflect on the process that led to his selection. Otherwise, fading memories may help to delude us into believing that a good substantive result must necessarily have followed from an excellent procedure.

The truth is, we were extremely lucky to end up with four outstanding finalists who were willing to participate in the final stage of the University's search and recruitment process. And, for reasons that will take me a few paragraphs to spell out, the experience of those very finalists with the process we used means we could never repeat our success in the future.

Any search process requires tradeoffs between two very different understandings of what it means for a process to be "open." Open, candid, and respectful communication is critical to the recruitment and selection of a good President. But insisting that all communications to and among decisionmakers be available for publication in a newspaper (what might be called "newspaper-openness") does not necessarily mean that decisionmakers will enjoy a greater amount of honest and informative communication (what might be called "candor-openness"). Indeed, it will often have precisely the opposite effect.

Newspaper-openness can stifle communication for a variety of reasons. And sometimes those reasons will lead us to be glad the communication was stifled. For example, it is a good thing if newspaper-openness inhibits people from saying things they know to be unreliable. ("You shouldn't make that person your President; I think she is an ax-murderer.")

But a policy of coerced newspaper-openness has a much more extreme chilling effect, cutting off communication that is essential to sound decisions. It can inhibit people from saying things they believe to be true, when they fear retaliation. ("You shouldn't make my boss your President; he can't control his temper.") It can also inhibit people from saying things they believe to be true, simply because they wish to avoid the limelight. ("I think he's the finest person I've ever known, but I'd be mortified to see that in print.") Finally, and perhaps most significantly, newspaper-openness can inhibit communication when the speaker is unwilling to cause collateral damage to the person being spoken about. Many references will be less candid if their criticisms (whether attributed or not) might be published.

For example, one might well like, admire, and respect a coworker while believing that he has traits that make him wrong for a particular job. ("I think he's a good administrator, but only a mediocre teacher.") If one fears that a frank discussion of those traits might end up in the papers, one might choose tact over candor. One might well think it better to see one's friend receive an undeserved job than to see him publicly humiliated.

The standard practice in executive searches — public and private, government and nonprofit — is to respect the importance of candor-openness. In refusing to do so, the final phase of Michigan's presidential search was a bizarre aberration. To fully appreciate how odd the process was, it is helpful to contrast the final stage with the more traditional phase that had preceded it.

During the first stage of the search, I chaired an advisory committee (the Presidential Search Advisory Committee, or PSAC) that fit the traditional model: it was candor-open and newspaper-closed. My eleven fellow committee members were drawn from a wide range of backgrounds and included faculty members, administrators, staff, students and an alumnus. The committee sought advice from across the university, the state, and the nation. We did all our work in private, promising to protect the confidences of all those who offered us their candid assistance. We thus were able to gather a great deal of reliable information, and we were therefore able to develop a great deal of confidence in our conclusions.

But during the final phase of the search, the Regents were ordered by the Circuit Court of Washtenaw County to function in an environment that was newspaper-open and candor-closed. They were never permitted to "go off the record" with the candidates. They could not ask a sitting Provost to candidly appraise the leadership style of the President at his or her own

PHOTO BY BOB KALMBACH

Dean Jeffrey Lehman, '81, chairman of the Presidential Search Advisory Committee, presents the committee's recommendations of finalists for the University of Michigan presidency to the Board of Regents sitting as the Presidential Search Committee.

University. They could not ask the candidates which aspects of the University of Michigan were perceived to be the most troublesome. If a candidate wished to speak with one Regent about the strengths and weaknesses of a Michigan Vice President, a sitting Dean, another Regent, a previous President, the Governor, or the Editor of the *Ann Arbor News*, it always had to be within earshot of a reporter looking for a "story." And when it was time to deliberate, the Regents could not raise a question about a candidate without knowing that their words would be beamed straight to that candidate's friends and relatives.

In a post-search editorial, the *Ann Arbor News* took the position that the quality of Michigan's finalists vindicated the newspaper-open final phase. The editorial stated, "The Regents selected Bollinger from a superb field of finalists, which countered doubts that the university could attract a high caliber of candidates within the frame of the state's Open Meetings Act."

That line of reasoning is badly flawed. The four finalists —Provost Lee Bollinger of Dartmouth College, Provost Stanley Chodorow of the University of Pennsylvania, Provost and Vice Chancellor Carol Christ of the University of California-Berkeley, and Provost Larry Faulkner of the University of Illinois at Urbana-Champaign — are indeed superb people. But they were attracted through a first-stage recruiting process that was newspaper-closed. They stayed in the final phase because they could not fully imagine what a newspaper-open final phase would be like. Now that we know, all of the three finalists who were previously outsiders to the University have told me that, had they been able to fully appreciate what the newspaper-open final phase would be like, they would probably not have agreed to participate.

For eighteen days, they were the object of embarrassing, even demeaning, horserace-style handicapping. For eighteen days, they had to endure misguided suspicions "back home" that their willingness to speak with Michigan implied dissatisfaction or even disloyalty. For eighteen days, they had to respond patiently to distortions and mischaracterizations of their past actions. For eighteen days, they were subjected to irresponsibly insulting editorials and letters to the editor in the *Detroit News* and the *Michigan Daily*. For eighteen days, their effectiveness in their current jobs was drastically curtailed, because of the uncertainty over whether they would be leaving.

With grace and dignity, they put up with it all, in part because they had trusted me back on October 16. In the hours just after the lawsuit distorted the final phase of the process, I had asked each of our five recommended candidates to stay in. I had shared my honest hope that, despite the last-minute distortion of the process, they and the Regents might still be able to get to know one another well enough to determine whether there was a "good fit." Under time pressure, four of them took the gamble, and one dropped out.

With the benefit of hindsight, I now believe that my hope was misguided. So do each of the three outside finalists. As one of them said to me, "the process did not permit [the Regents] to have the kind of private interaction and frank, off-the-record conversations with the candidates that are the necessary basis on which people judge for themselves what to make of public impressions and the comments of referees." And in the words of another, "[The fifth candidate] was absolutely right."

We are a lucky University. We are lucky that a person of Lee Bollinger's quality was willing to go through this process and that in the end the Regents had the courage to offer him the Presidency without ever having had the chance to speak with him privately. We are lucky that three other people of comparable quality were willing to participate in this experiment in presidential selection, sharing insights and perspectives that will inform our University's future even though they will not be serving as our President. We are lucky that they came away from the process with warm feelings for Michigan, even though they would not have gone through it if they had fully understood it.

But we should not mistake luck for skill. It is now a nationally known fact that, in the final stage, newspaper-openness crushed candor-openness at Michigan. Our radical experiment was silly, and we escaped by the skin of our teeth. If by the time we need a thirteenth President we have not moved back to the mainstream — if we have not returned to the traditional processes used by almost all universities, public and private, by businesses, by governments, and by newspapers themselves — I doubt that even luck will be enough to redeem us.

JEROLD ISRAEL: Colleague, friend, teacher

The original version of this tribute to Alene and Allan F. Smith Professor Emeritus of Law Jerold H. Israel appeared in 94 Michigan Law Review *2450-2454 (1996), which was dedicated to Israel. This adaptation is printed with permission. A copy of the original version is available from the* Michigan Law Review. *The dedication issue also included tributes to Israel by Jeffrey S. Lehman, '81, Dean of the University of Michigan Law School and Professor of Law; Wayne R. LaFave, David C. Baum Professor of Law Emeritus and Center for Advanced Study Professor of Law Emeritus, University of Illinois; Debra Ann Livingston, Associate Professor, Columbia University School of Law, and a former Law School faculty member; and Yale Kamisar, Clarence Darrow Distinguished University Professor of Law.*

— BY PAUL D. BORMAN, J.D. '62

Jerold Israel is my colleague, my good friend, and my teacher. He is also my role model for each of these categories.

I have known Jerry since 1969 — twenty-seven years. Jerry and I met when we were appointed by Michigan Governor William Milliken to a seven-person Committee to Study the Feasibility of the State Commission on Investigation. The Committee, chaired by Judge Philip Pratt, a wise and revered jurist, gathered information by hearing testimony, by visiting states that had such commissions, and by debating the pros and cons of the commissions at length. It was an excellent vehicle to learn about the members of the Committee, and I learned to respect Jerry for his intellect, his ability to sort the wheat from the chaff, his wry sense of humor, and his up-beat personality.

That same year — 1969 — when I began teaching criminal law and procedure at the Wayne State University Law School, I quickly came to recognize that Jerry Israel was the "maven," or supreme expert, in the areas of criminal law and procedure. I also came to recognize that his casebook was the "bible" on criminal procedure. During my ten years of teaching and, subsequently, during my sixteen years of practice, I would make many a phone call or visit to Jerry to discuss issues of criminal law and procedure. He was never aloof or otherwise in an "ivory tower." He was always available, patient, and right on target with his answer.

In 1979, when I left full-time law teaching to become the Chief Federal Defender in Detroit, I had just completed a set of materials for a seminar on white collar crime. I told Jerry about the materials and proposed co-teaching an evening seminar at the University of Michigan Law School. Jerry agreed, and he and I began sixteen years of co-teaching — my most intellectually stimulating and rewarding years.

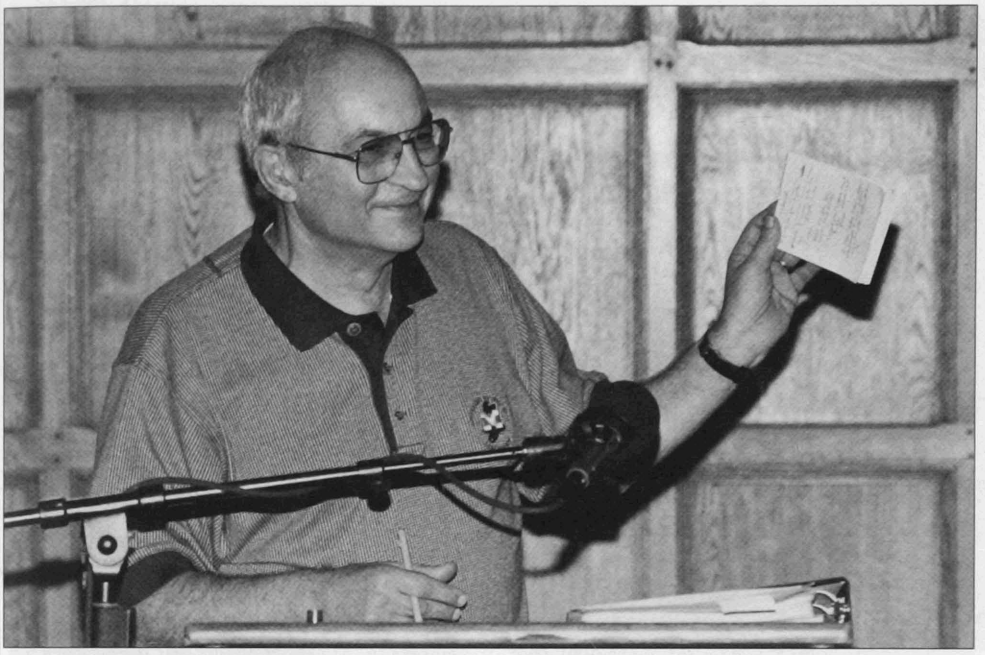
When I came to Ann Arbor in September, 1979 for our first seminar, I was the Defender, and Jerry was the author of a recent, significant article challenging civil libertarian views that the Burger Court had destroyed the legacy of the Warren Court ("Criminal Procedure, The Burger Court, and the Legacy of the Warren Court," 75 *Michigan Law Review* 1319 [1977]). The smart money in Las Vegas placed me on the left, and Jerry on the right. The reality was that neither of us could be slotted on one side or the other in 1979, nor even sixteen years later.

While the seminar was titled White Collar Crime, the materials covered more than just the substantive crimes — mail fraud and extortion — and included procedural issues (grand jury practice), evidentiary issues (privileges), civil matters involving parallel administrative investigations, and sentencing of individuals and organizations. The great reward to me — and to the students — was learning from Jerry about all of these matters.

It was appropriate that the University of Michigan designated Jerry to the Alene and Allan F. Smith Chair at the Law School. I was fortunate to have had Allan Smith as my real property professor in my first year at law school. He was an outstanding professor and was beloved by his students. Jerry has followed in his tradition.

In all of the twenty-seven years that I have known Jerry, I have never heard him utter an angry word or even seen him turn his face into a mean scowl. Even when we would talk about sports, after the Michigan football team had been blown out the previous Saturday, Jerry would never utter a harsh word about any of the coaches or the players. And these days, that's being a real gentleman.

Jerry has opinions, principles and standards, and he doesn't compromise or hide them. But he has never taken the low road to make or score a point. That is why he is respected and admired by all who know him. My respect for Jerry also extends to his family. One of the benefits of working with Jerry has been spending time with him and his wife Tanya and attending the weddings of two of his children.



PHOTOS BY PETER YATES

Hail and Farewell —

Summing up and applauding Jerold H. Israel's 35 years at the Law School is no tiny task, but faculty members came up with a distillation that met even Israel's strictly low key standards as they marked his retirement at a dinner at the Lawyers Club in September. Professor of Law Sam Gross' four-word salute was the most pithy: "Jerry is always right." But Dean Jeffrey Lehman, '81, may have pulled off the coup of the evening with his presentation to Israel of the notes that he had taken in his first class under Israel, in 1977, notes that Lehman had been saving for nearly 20 years in fear that they again might prove valuable in his dealings with Israel; after all, Lehman said, Israel "was known for two things — difficult hypotheticals in class and an impossible final exam." Yale Kamisar, Clarence Darrow Distinguished University Professor of Law and a longtime admirer and friend of Israel, and a co-author of several books with him, put it this way: Jerry is a person of integrity and open-mindedness who perfectly fits Learned Hand's description of the wise man as "the runner stripped for the race."

Jerry's move from Ann Arbor to Florida — to an endowed chair at the University of Florida Law School at Gainesville — hardly means he is ready for the rocker and the Centrum Silver. The best evidence that the mind does not atrophy after moving to Gainesville is Jerry's next-door neighbor at the Florida Law School, Professor Francis Allen. A retired Michigan Law Dean and Professor, Frank Allen, who is senior to Jerry by 15 years, has just authored an outstanding book: *The Habits of Legality: Criminal Justice and the Rule of Law*.

There remains much for Jerry to do in addition to teaching, updating his many casebooks and treatises, and cherishing his new role as a grandfather. My bold suggestion is that Jerry should consider authoring a law review article updating his earlier article which compared the impact of the Burger Court on the legacy of the Warren Court. I, for one, look forward to an article by Jerry defining the Rehnquist Court's treatment of the major themes presented in the Warren Court's decisions.

Would Jerry reach the same conclusion with regard to the Rehnquist Court that he did in his previous article regarding the Burger Court? As he wrote then: "The record indicates that the Burger Court has not undermined most of the basic accomplishments of the Warren Court in protecting civil liberties; neither has the Burger Court consistently ignored the interests of the accused."

Would Jerry favor all, several, or none of the Rehnquist Court's decisions dealing with Warren Court precedent in the area of criminal procedure? His earlier revelation regarding the Burger Court stated: "I must acknowledge that I was not a staunch supporter of the Warren Court's criminal procedure decisions, although I also was not a severe critic. I also acknowledge that I favor several (but not all) of the Burger Court decisions that may be viewed as narrowing the reach of the Warren Court precedent."

Would Jerry reach the same conclusion regarding Chief Justice Rehnquist's stewardship as he did with regard to Chief Justice Burger: "Civil libertarian critics too often assume that the positions of Chief Justice Burger will eventually be reflected in the rulings of the Burger Court. The Chief Justice today no more reflects the view of a majority of the Justices than did Chief Justice Warren in the period from 1958-1962."

Perhaps Jerry could begin by analyzing Chief Justice Rehnquist's recent Eleventh Amendment opinion in *Seminole Tribe of Florida v. Florida*, and then segue into an analysis of Chief Justice Rehnquist's Tenth Amendment criminal law opinion in *United States v. Lopez*.

Whether or not Jerry accepts my invitation to author this article — as a Judge it's easy to give suggestions/orders — I know that he will continue to be the same fine, hard-working mensch in Florida. I will miss his company on Wednesday nights at Hutchins Hall. I hope to drop in on his Florida White Collar Crime Seminar at least once a semester to continue my learning process. I wish him well.

The Hon. Paul Borman, *J.D. '62, is District Judge on the U.S. District Court, Eastern District of Michigan. He co-taught a seminar with Jerold Israel for many years at the University of Michigan Law School and is a co-author with Israel and Ellen S. Podgor of* White Collar Crime: Law and Practice *(West Publishing Co., 1996).*

Professor John Reed

Students keep your teaching fresh

John Reed, Thomas M. Cooley Professor Emeritus of Law, marked his 50th year of teaching by doing what he's always done: neatly quick-stepping to the front of the classroom, checking for the thick "railroad chalk" at the blackboard to illustrate his teaching, and moving in front of the podium to approach his students as he lectures.

"I wouldn't still be doing it if I didn't enjoy it," he tells a visitor as class is about to start.

It's the Tuesday after Labor Day, Hutchins Hall room 150, the first meeting of Reed's Evidence class (his favorite subject to teach). Reed is carrying a small portable microphone in case the stubborn viral laryngitis that has been haunting him should overcome his voice. (It doesn't.)

Learning the rules of evidence is "essentially a study in obstructionism," he tells his class. "Most of the rules are rules of exclusion." But as lawyers, "Your concern will be to consider ways to get facts to the jury that you need to have before the jury." In other words, know how to get your evidence accepted and your opponent's rejected. And know the rules so well that you can succeed at the "firing line techniques" that courtroom argument demands.

Reed doesn't count the times he has taught a class in Evidence. It doesn't matter. He prepares new notes for each semester's class and rejects the temptation to just dust off last year's outline.

Christina L.B. Whitman, J.D. '74, Associate Dean for Academic Affairs and Professor of Law and Women's Studies, who studied with Reed as a student, says she appreciates him "even more as a colleague."

"John reminds me of Fred Astaire — not because of great personal style, though he has plenty of that, but because he makes difficult things look so easy," Whitman says. "As a teacher, John made the classes fly, but he conveyed the techniques of evidence so clearly and so powerfully that generations of new graduates have found the necessary knowledge right at hand from their earliest moments in the courts. To many Michigan lawyers, John Reed is synonymous with evidence.

"I am lucky because I also know John as a colleague. Over the years I have come to depend upon him for subtle insight, nuanced understanding and excellent judgment. John is very modest, very smart, and very wise."

Reed was four years out of law school when he began teaching. He was younger than nearly everyone in his first class, which was made up mostly of returning GIs from World War II. Those students quickly dubbed their new teacher "The Kid," a title he only learned of 25 years later. Today, Reed credits his longevity in teaching to the contagious energy of students and his own leapfrogging career of teaching mixed with administration and outside service work.

"I thought about going back to practice every time I was grading blue books," he says with his characteristic understatement. "But that feeling would go away."

Why?

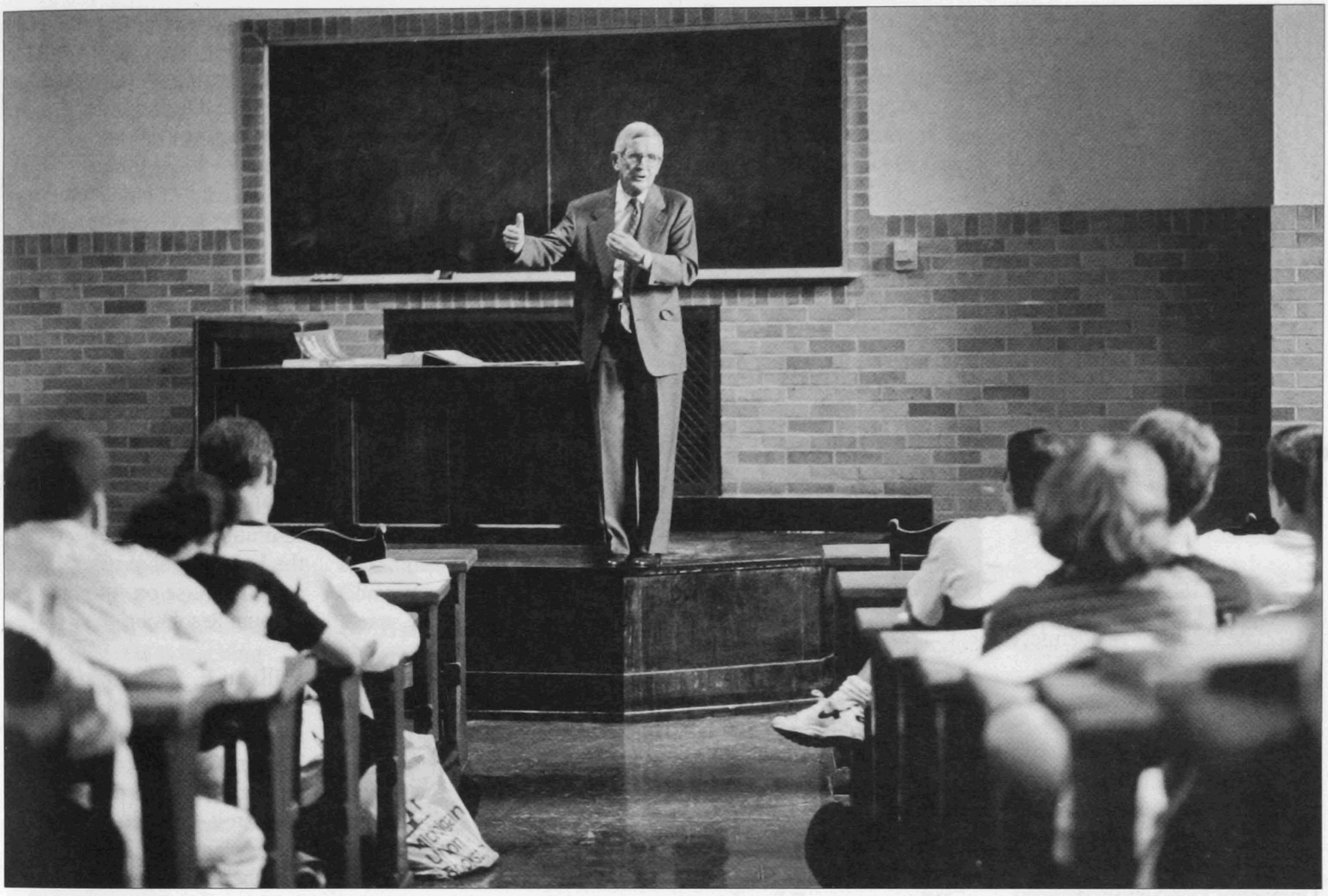
1. "As a teacher you can raise questions. As a practitioner you have to provide anwers."

2. "As a teacher you get to deal with a subject in greater depth than as a practitioner. You get to develop a mastery of a particular subject matter and that is very satisfying."

3. "You get a sense of satisfaction being with young people. They are constantly changing. Each generation has its own character. There's something very renewing about that. I don't get bored."

Twice a law school dean — at the University of Colorado from 1964-68 and at Wayne State University from 1987-92 — he has taught full time or as a visiting faculty member at Oklahoma, NYU, Chicago, Yale, Colorado, Harvard, San Diego and Wayne State as well as at the University of Michigan Law School.

A graduate of William Jewell College (which awarded him an honorary degree in 1995) and the law schools at Cornell and Columbia, he spent four years in private practice in Kansas City before joining the faculty at the University of Oklahoma in 1946. His career has been in or near the classroom ever since. He first taught at the U-M Law School from 1949-64, returned to Michigan in 1968 to direct the Institute of Continuing Legal Education (ICLE) until 1973, and has been Thomas M. Cooley Professor Emeritus since 1987.



Thomas A. Cooley Professor of Law Emeritus John Reed marks his 50th anniversary as a teacher by launching his Fall Term course in Evidence.

Reed credits his stints as dean, ICLE director and other work outside the classroom with giving him "a real world perspective" and bringing "a real world infusion" to his teaching. He currently chairs the National Conference of Bar Examiners committee that drafts evidence questions for the multi-state bar exam. He's served on the committee since it began more than 20 years ago.

He also served on the executive committee of the American Association of Law Schools from 1965-67 and was reporter for the Michigan Rules of Evidence Committee from 1975-78 and in 1983.

Over the years Reed also has done a great deal of public speaking for the Law School and currently serves as chairman of the Michigan Bar Association's Judicial Selection Committee. He also is editor of the *Quarterly of the International Society of Barristers*, a job that he says easily could become full time if he let it.

Reed and his wife Dorothy have four children and eight grandchildren.

Whitman replaces Syverud as associate dean

PHOTO BY SUZANNE COLES-KETCHAM

Associate Dean Christina L.B. Whitman, '74

Outgoing Associate Dean Kent D. Syverud, '81, shows the portrait of the Law School that he received as a thank-you from the Law School for his two-year service as Associate Dean.

Kent D. Syverud, '81, concluded a two-year term as Associate Dean for Academic Affairs on Dec. 31. Christina L.B. Whitman, '74, will serve in the Associate Dean role during 1997 and 1998. After a semester's respite from administrative duties, Syverud this summer will become Dean of the Vanderbilt University Law School in Nashville, TN.

Dean Jeffrey S. Lehman, '81, praised Syverud in glowing terms. "Kent has extraordinary judgment and is a natural leader. It is wonderful to see Vanderbilt recognize those talents, even though I will miss him here a great deal."

During his two years as Associate Dean, Syverud oversaw renovation and upgrading of the Legal Research Building's library stacks, helped centralize and streamline room reservation procedures, instituted use of a master calendar for the Law School, was instrumental in organizing the Law School's newly endowed Alternative Dispute Resolution program, strengthened the financial position of the law journals and energized the role of the Lawyers Club governing board.

Whitman was Editor-in-Chief of the *Michigan Law Review* and clerked for Judge Harold Leventhal of the U.S. Court of Appeals for the D.C. Circuit and for U.S. Supreme Court Justice Lewis Powell before returning to Michigan as a faculty member. She is a Professor of Law and Women's Studies and specializes in constitutional litigation, federal courts, feminism, and torts.

Said Lehman, "Chris brings 20 years of experience on the faculty to the role of Associate Dean. I am grateful to her for agreeing to assume this critical role within the institution."

Visiting and adjunct faculty broade study offerings

Laurence D. Connor, J.D. '65, is a senior litigation member at Dykema Gossett in Detroit. His specialties include complex business and tort litigation, trials, appeals, and alternative dispute resolution. He serves as chairperson of the Michigan State Bar Section on Alternative Dispute Resolution and is Dykema Gossett's representative to the CPR Institute for Dispute Resolution. He also serves as a panel member of the CPR's List of Distinguished Neutrals and has published several articles on alternative dispute resolution. He is returning to the Law School to teach once again a course on Alternative Dispute Resolution.

William E. Fisher received a master's degree in political science and a J.D. from the University of Wisconsin. He is a partner at Dykema Gossett in Detroit, specializing in estate planning. He is a member of the American College of Trust and Estate Counsel and is a frequent speaker at estate planning institutes. He also does advisory work for closely held businesses. He is teaching a seminar on Estate Planning.

Brinkley Messick received an M.A. in Anthropology and Near Eastern Studies in 1974 and a Ph.D. in Anthropology in 1978, both from Princeton University. He is an Associate

Professor in the Department of Anthropology at the University of Michigan. His specializations and research interests include Islamic law and the anthropology of law. From 1987-91, he served as the Editor of the newsletter of the Association of Political and Legal Anthropology. From 1992-94, he served on the Editorial Advisory Board of the *Law & Society Review.* He has been a member of the Islamic Law Forum since 1990. In 1996, Professor Messick had published a book entitled *Islamic Legal Interpretation: Muftis and Their Fatwas.* He has published several articles and papers concerning Islamic law as well. He is teaching Islamic Law.

Lawrence Ponoroff has been a Professor of Law since 1995 at Tulane University Law School in New Orleans, where he teaches Bankruptcy, Business Enterprises, Commercial Paper, Contracts, Sales, and Secured Transactions. He previously taught for ten years at the University of Toledo College of Law. For two years, he served as Reporter and Consultant to the Long-Range Planning Subcommittee of the Committee on the Administration of the Bankruptcy System of the Judicial Conference of the United States. He also was a partner at the Denver firm of Holme Roberts & Owen, where he specialized in commercial litigation and general corporate matters. He is widely published in the area of bankruptcy law, including a treatise on commercial bankruptcy litigation. He is teaching Commercial Transactions.

Wendell E. Primus holds a Ph.D. in Economics from Iowa State University. He is currently the Deputy Assistant Secretary for Human Services Policy in the Office of the Assistant Secretary for Planning and Evaluation within the Department of Health and Human Services in Washington, D.C. Previously, Mr. Primus was the Chief Economist for the House Committee on Ways and Means and the Staff Director of that committee's Subcommittee on Human Resources. He is teaching a course on Welfare Policy.

Mark D. Rosenbaum has a B.A. from the University of Michigan and a J.D. from Harvard Law School. He served as staff counsel for the American Civil Liberties Union from 1974-1984. He has taught at Loyola Law School, Harvard Law School, the University of Southern California Law Center and has been a visitor at the Law School since 1993. He is teaching a course on the Fourteenth Amendment and a seminar on Public Interest Litigation.

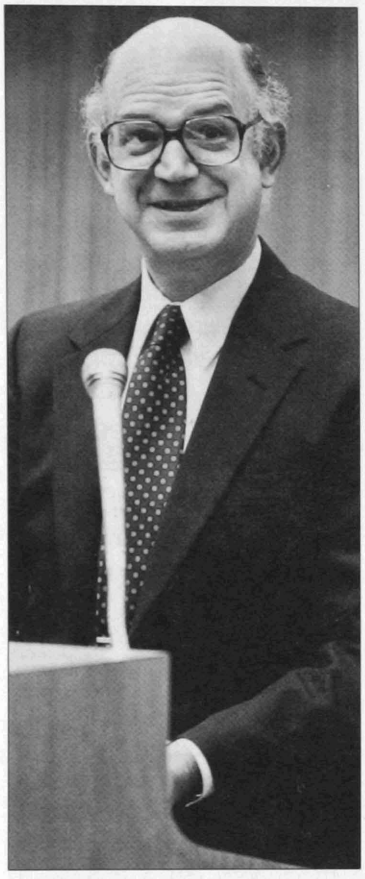
Law School faculty add to AALS annual meeting

Once again the University of Michigan Law School was well represented among program presenters at the Jan. 3-7 annual meeting of the American Association of Law Schools (AALS) in Washington, D.C. Eight faculty members were speakers, moderators or panelists during the annual gathering. They included:

- Professor of Law Richard D. Friedman, who moderated the panel disussion on "The Economics of Evidentiary Law, and New Developments."
- Virginia B. Gordan, Assistant Dean for Graduate and International Programs, a speaker for the program "Catalyst, Conceit and Cash Cow: The Competing Missions of Graduate Programs."
- Assistant Professor of Law Roderick M. Hills was featured speaker for the luncheon for alumni, faculty and others that the University of Michigan Law School sponsored in conjunction with the annual meeting. He spoke on *Romer v. Evans*, the U.S. Supreme Court case involving gay rights.
- Earl Warren Delano Professor of Law James Krier, a speaker for the program "Property Rules, Liability Rules, and Inalienability': A Twenty-Five Year Retrospective." The program is being publshed in the *Yale Law Journal.*
- Richard O. Lempert, '68, Francis A. Allen Collegiate Professor of Law, Professor of Law, and Professor of Sociology and Chairman of the Department of Sociology, a speaker for the program on "Power, Legal Pluralism and the Nation-State."
- Assistant Professor of Law Deborah C. Malamud, a speaker in the "Socio-Economic Status" portion of the workshop on "Strategies for Achieving a Diverse Student Body."
- James E. and Sarah A. Degan Professor of Law and Professor of Law Theordore J. St. Antoine, '54, who spoke as part of the program on "Mandatory Arbitration of Employment Disputes."
- Kent D. Syverud, '81, Professor of Law, moderator and speaker for the session on "Lawyers and Insurers: The Struggle for Control and the Power to Regulate." He presented the paper "What Professional Responsibility Scholars and Teachers Need to Know about Insurance" to a joint session of the Insurance Law and the Professional Responsibility sections. The program is being published in the *Connecticut Insurance Law Review.*

The theme for this year's annual meeting was "Law Faculty in the 21st Century: Responding to Megatrends and New Realities."

Justice Department honors Kauper for antitrust move against AT&T



Henry M. Butzel Professor of Law Thomas E. Kauper, J.D. '60

It's been more than 20 years since Henry M. Butzel Professor of Law Thomas E. Kauper filed the complaint that eventually eliminated AT&T's monopolistic control of U.S. telephone service — and, some might say, opened the way for an actress named Candace Bergen, aka Murphy Brown, to become spokesperson for a quick-out-of-the-blocks new telephone service called SPRINT.

The year was 1974 and Kauper was serving in the Ford Administration as Assistant Attorney General in charge of the Justice Department's Antitrust Division. His move against AT&T would have a profound effect on American telecommunications. To borrow from some of Ms. Bergen's SPRINT ads, it was like the drop of a pin that eventually would be heard around the world.

Last fall, in recognition of the continuing impact of the AT&T case, the U.S. Justice Department's Antitrust Division honored Kauper with its John Sherman Award, named for the author of the Sherman Act of 1890, the United States' pioneer antitrust law. Kauper shared the award with William F. Baxter, who headed the Antitrust Division in the Reagan Administration and spearheaded the negotiations with AT&T that led to the 1982 consent decree that broke up the giant communications company.

Kauper and Baxter, who now is William Benjamin Scott and Luna Scott Professor of Law at Stanford Law School and Of Counsel to the law firm of Shearman & Sterling, received the award in ceremonies at the Department of Justice in Washington, D.C., in October. The award inscription reads:

"Presented jointly to Pofessor Thomas E. Kauper and Professor William F. Baxter for their vision and courage demonstrated in the historic prosecution and settlement of *U.S. v. American Telephone and Telegraph Company* which brought the benefits of competition to American consumers and gave the United States pre-eminence in the field of telecommunications technology and service. With thanks from a grateful nation."

"Tom Kauper and Bill Baxter built the foundation upon which we have been constructing a competitive telecommunications industry," said Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division. "Without their visionary work on the AT&T case we wouldn't have the vigorous and innovative telecommunications industry we see developing today."

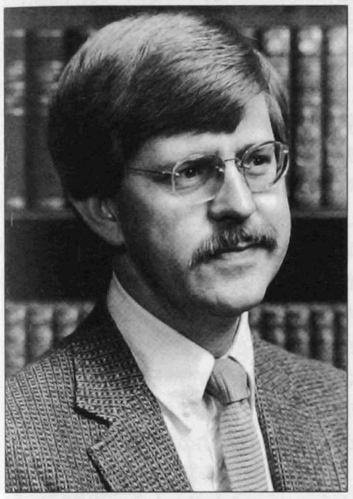
"The Department's 1974 lawsuit alleged that AT&T illegally monopolized telecommunications services and equipment, and as the trial neared completion, brought AT&T to the negotiating table," according to the Justice Department. "The 1982 consent decree reached with AT&T through those negotiations created the conditions for competition in the markets for telecommunications equipment and long distance phone service — competition that led to lower prices, better service, and higher quality products for consumers.

"The Telecommunications Law of 1996 builds on the success of the consent decree by attempting to create competition in local markets — allowing competition to thrive in all sectors of the industry."

Kauper, J.D. '60, has taught at the Law School since 1964. After graduation, he clerked for two years for Associate Supreme Court Justice Potter Stewart. In 1969 he began a two-year stay at the Justice Department as Deputy Assistant Attorney General in the Office of Legal Counsel. He went back to the Justice Department in 1972 and remained there for four years before returning to the faculty at the Law School.

The Sherman Award was established in 1994. The first recipient was U.S. Senator Howard M. Metzenbaum of Ohio. The 1995 winner was Harvard Law School Professor Phillip E. Areeda.

A 'particularly fitting' time to honor Don Duquette



Clinical Professor of Law Donald A. Duquette

Officials at the National Association of Counsel for Children (NACC) took heed when Associate Dean for Clinical Affairs Suellyn Scarnecchia,'81, advised that "this is a particularly fitting year to recognize" Donald N. Duquette for his work as an advocate for children. Since 1976, when he opened the Law School's Child Advocacy Law Clinic (CALC), "Don has provided the creative and steady leadership which has made CALC a nationally recognized and highly respected clinical program," she said.

NACC responded by naming Duquette a winner of its 1996 Outstanding Legal Advocacy Award. "The award is given annually to individuals who have exhibited excellence in the field of children's law, advocacy and protection," according to the Association's Executive Director, Marvin R. Ventrell.

A "really pleased" Duquette was on hand to receive the award at NACC's 19th National Children's Law Conference last fall in Chicago. He also was a speaker for the conference, where he addressed a plenary session on the delivery of legal services to children.

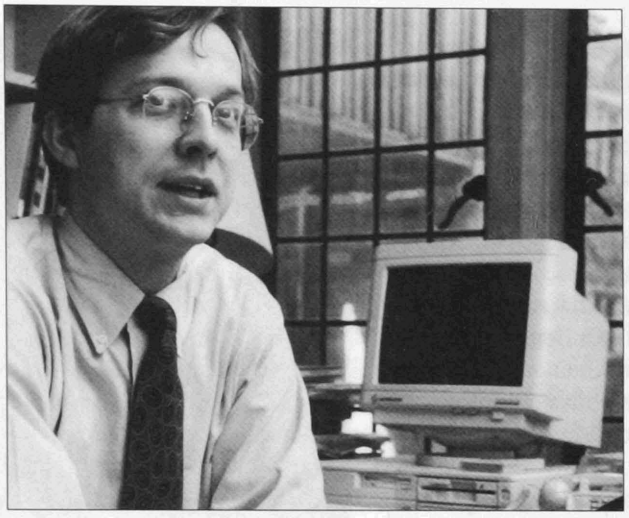
Scarnecchia also noted in her nomination of Duquette that she had watched him risk the ire of a Michigan Court of Appeals panel to represent his child clients and argue for their right to a best interests hearing after being told he could speak but could not argue the children's standing and rights. "Many attorneys would not have challenged the silencing of his clients by the court," she told NACC. "Don did challenge the silencing and, in doing so, displayed the essential characteristics of an outstanding child advocate."

In other child advocacy work, Duquette, a Clinical Professor of Law, has served on the Governor's Task Force on Children since 1992 and co-chaired the State Bar of Michigan's Children's Task Force in 1993-95.

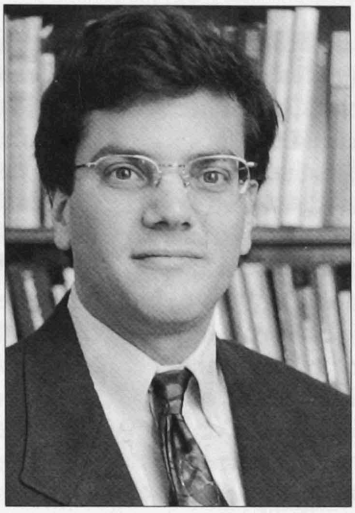
At the Law School, Duquette also administers the three-year $1.5 million W.K. Kellogg Foundation grant for the Families for Kids Initiative. The Initiative pays for: training and summer placements for law students in child welfare law offices; bringing attorneys, judges and law professors to the Law School for study; promoting the development of child welfare law offices; providing technical help to eleven Families for Kids sites throughout the U.S.; promoting the teaching of child welfare law; and developing the Michigan Child Welfare Law Resource Center to help lawyers and judges and serve as a model for similar programs elsewhere.

Duquette was one of six recipients of the 1996 National Child Advocacy Award. The others were: Linda Mallory Berry, Esq., of Richmond, Va.; the Child Abuse Center of Hampton Roads, Va.; Seth Grob, Esq., of Denver, Colo.; Tina M. Talarchyk, Esq., West Palm Beach, Fla.; and the University of Chicago Loyola CIVITAS ChildLaw Center.

Kyle D. Logue



Richard Pildes



U.S. Supreme Court draws on faculty work

At least twice last summer justices of the U.S. Supreme Court cited the work of Law School faculty members in helping to shape court decisions.

Last June, justices in the majority and in dissent in the voting rights case of *Bush v. Vera*, turned to Professor of Law Richard Pildes and his co-author, University of Rochester Political Science Professor Richard G. Niemi, for help in making their way through the issue of voter representation. In Pildes' case, his name appears in 13 citations for his article with Niemi and related work.

Then in July, in the case of *U.S. v. Winstar*, Justice David Souter, writing for the majority, cited the work of Assistant Professor of Law Kyle D. Logue.

Pildes' and Niemi's groundbreaking article, "Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after *Shaw v. Reno*," appeared in the Winter 1993 issue of the *Michigan Law Review*. It is a comprehensive effort to define the meaning of *Shaw v. Reno*, the 1993 case in which the Supreme Court declared a North Carolina congressional district to be unconstitutional because its shape indicated that race had been the overriding factor in drawing its boundaries.

"Voting rights controversies today arise from two alternative conceptions of representative government colliding like tectonic plates," Pildes and Niemi wrote. "On one side is the long-standing Anglo-American commitment to organizing political representation around geography. . . .On the other side is the increasing power of the Voting Rights Act of 1965 (VRA), which organizes political representation around the concept of interest."

Last June, in the closely decided case of *Bush v. Vera*, justices on both sides of the decision drew on Pildes' and Niemi's work. In *Bush*, the Court ruled that two Texas congressional district boundaries were unconstitutional because race had been the overwhelming factor in drawing them.

Writing for the majority, Justice Sandra Day O'Connor referred to the Pildes/Niemi article this way: "These findings comport with the conclusions of an instructive study that attempted to determine the relative compactness of districts nationwide in objective, numerical terms." She also cited their article as "the leading statistical study of relative district compactness and regularity."

The Court drew on their work in explaining the concept of "expressive harms" that they found to underlie the earlier *Shaw* decision and in developing a quantitative system for evaluating the geographic compactness of election districts:

- "Expressive harms," Pildes and Niemi wrote, "focus on *social* perceptions, *public* understandings, and *messages*; they involve the government's symbolic endorsement of certain values in ways not obviously tied to any discrete, individualized harm."
- "'Bizarre' districts that appear to be drawn for racial reasons are not per se unconstitutional. Instead, jurisdictions must offer specific, legitimate, and compelling purposes that account for the location and design of these districts. Under *Shaw*, noncompactness functions as a trigger for strict scrutiny; once a district crosses a threshold of noncompactness, special burdens of justification apply."

Summarizing the "purposes and principles that underlie *Shaw*," Pildes and Niemi concluded that "government cannot redistrict in a way that conveys the social impression that race consciousness has overridden all other, traditionally relevant redistricting values. In the Court's view, certain districts whose appearance is exceptionally 'bizarre' and 'irregular' suggest that impression.

Plaintiffs need not establish that they suffer material harm, in the sense of vote dilution, from such a district. *Shaw* is fundamentally concerned with expressive harms: the social messages government conveys when race concerns appear to submerge all other legitimate redistricting values."

But, they said, "Expressive harms are notoriously difficult to translate into legal rules. We have argued that quantitative measures of compactness provide the most secure starting points for defining 'bizarre' districts in principled and administrable terms. . . .The precise effect of *Shaw* will depend on how 'irregular' a district must be to trigger strict scrutiny, but quantitative measures of compactness promise the most useful guidance for making that choice. *Baker* became meaningful once *Reynolds v. Sims* translated it into the one-person-one-vote standard. If *Shaw* is to have its *Reynolds*, it will be through the quantitative measures of compactness we offer here."

In *U.S. v. Winstar*, Justice David Souter turned to Logue's work to help explain the Court's decision. In this case, the Court ruled that the federal government had breached its contract with buyers of three failing thrift institutions by refusing to accept "supervisory goodwill" — the excess of purchase price over face value of identifiable assets — as an intangible asset that could count toward federal capital reserve requirements. During the thrift institutions crisis of the 1980s, the Federal Savings and Loan Insurance Corporation (FSLIC) had lacked the funds to liquidate all failing thrifts, and the Federal Home Loan Bank Board had encouraged healthy thrifts and outside investors to take over ailing thrifts. As an inducement, the Bank Board had allowed the supervisory goodwill assets created by these "supervisory mergers" to count toward federal capital reserve requirements. But the subsequently passed Financial Institutitions Reform, Recovery and Enforcement Act of 1989 (FIRREA) retroactively forbade counting such assets as required reserves. As a result, many thrifts that had relied on the Bank Board's inducement were thrown immediately into noncompliance with reserve requirements.

Three such thrifts filed suit against the federal government, alleging, among other things, breach of contract. (Two of the three thrifts involved in the case were seized and liquidated by federal regulators for failure to meet FIRREA requirements; the third was privately recapitalized to avoid seizure.)

Following a win for the thrifts at trial, the case was appealed all the way to the Supreme Court. In upholding the decision of the trial court finding a breach of contract, the High Court rejected the federal government's "unmistakability defense" — that a surrender of sovereign authority, such as promising to make no regulatory changes, must be unmistakably noted in the contract in order to be enforceable — and its "sovereign defense" — that a "public and general" sovereign act, such as altering capital reserve requirements, cannot give rise to contract liability.

Wrote Souter for the plurality: "We must reject the suggestion that the government may simply shift costs of legislation onto its contractual partners who are adversely affected by the change in the law, when the government has assumed the risk of such change."

Souter went on to reject the government's application of the unmistakability doctrine, arguing that injecting the opportunity for unmistakability litigation into every common contract action would . . . produce the untoward result of compromising the government's practical capacity to make contracts. . . . From a practical standpoint, it would make an inroad on this power, by expanding the government's opportunities for contractual abrogation, with the certain result of undermining the government's credibiity at the bargaining table and increasing the cost of its engagements."

At this point, Souter cited Logue's article, "Tax Transitions, Opportunistic Retroactivity, and the Benefits of Government Precommitment" (94 *Michigan Law Review* 1129-1146 [1996]), in which Logue wrote: "If we allowed the government to break its contractual promises without having to pay compensation, such a policy would come at a high cost in terms of increased default premiums in future government contracts and increased disenchantment with the government generally."

"Voting rights controversies today arise from two alternative conceptions of representative government colliding like tectonic plates," Pildes and Niemi wrote. "On one side is the long-standing Anglo-American commitment to organizing political representation around geography . . . . On the other side is the increasing power of the Voting Rights Act of 1965 (VRA), which organizes political representation around the concept of interest."

ACTIVITIES

Professor of Law José Alvarez spoke on "The Legacy of the Tadic Case Before the Balkan War Crimes Tribunal" during the International Law Weekend in New York in November (and re-visited the issue for the International Law Workshop at the Law School later in November). In October he presented a paper (subsequently to be published in the *Inter-American Law Review*) on "Critical Race Perspectives on the NAFTA Investment Chapter" during a conference on "Lat-Crit Perspectives on International Law" at the Hispanic Bar Association's annual meeting in Miami Beach. In September Alvarez addressed more than 1,000 at the Department of Information/Non-Governmental Organizations Conference prior to the opening of the United Nations' General Assembly on "Financing the United Nations." (A version of the paper presented to the sympsoium appears beginning on page 66 of this issue.)

Susan Eklund, '73, Associate Dean for Student Affairs, has received a certificate of appreciation from the University's Council for Disability Concerns acknowledging her actions to benefit people with disabilities. The Council said she "has displayed a willingness to learn about the needs of students with disabilities and to advocate on behalf of their needs when appropriate."

Phoebe Ellsworth, Kirkland and Ellis Professor of Law at the Law School, Professor of Psychology in the College of Literature, Science and the Arts (LS&A), and Faculty Associate in the Research Center for Group Dynamics, has received an Excellence in Research Award from LS&A. This is the second year that the college has given the award for "outstanding contributions in research and scholarship." Said LS&A Dean Edie Goldenberg: "We are all in your debt for the contributions you have made and continue to make, and for the distinction you bring to the University."

Assistant Professor of Law **Heidi Li Feldman** is presenting a paper in March 1997 at a conference on objectivity in tort and criminal law at the Department of Philosophy at the University of Western Ontario.

Assistant Clinical Professor of Law **Lance Jones** presented a seminar on "The Empowered Witness" at the Annual Michigan Statewide Conference on Child Abuse and Neglect in October. The audience included about 80 physicians, psychologists and social workers. Last spring Jones addressed the graduating seniors of Creston High School in Grand Rapids and received the school's Distinguished Alumnus award. He graduated from Creston in 1982.

Deborah C. Malamud, Assistant Professor of Law, participated in a faculty workshop at Harvard Law School in November and lectured on "Summary Judgment in Employment Discrimination Cases" at the National Employment Law Association's national workshop in Minneapolis in October. Last July, she presented papers on "Engineering the Middle Classes: The Origins and Early Development of the 'White-Collar Exemptions' to the Fair Labor Standards Act" at the Transformative Labor Law Conference at the University of Kent, Canterbury, England, and at the Conference on Law and Society, Glasgow, Scotland.

James E. and Sarah A. Degan Professor of Law **Theodore J. St. Antoine**, '54, in September, acting as arbitrator between Inland Steel Co. and the United Steelworkers of America, selected Inland Steel's offer for the second half of the company's six-year agreement with the union. The decision covers about 7,000 employees in East Chicago and Virginia, Minn. St. Antoine made his ruling after a five-day arbitration hearing at Merrillville, Ind.

Joseph Vining, Harry Burns Hutchins Professor of Law, has been named a Resident Fellow at the Rockefeller Foundation's Study and Conference Center in Bellagio, Italy. Vining will be at the Center April 24-May 23 as part of a small group of Fellows from around the world.

Law School alumni win State Bar's **Champions of Justice** award

Richard Baxter, J.D. '54

Four of the five recipients of the State Bar of Michigan's Champions of Justice award are graduates of the University of Michigan Law School.

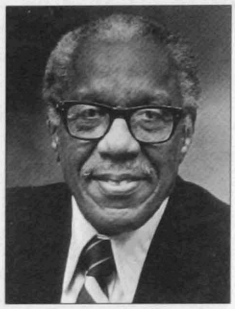
Richard B. Baxter, J.D. '54, the Hon. James T. Corden, J.D. '50, the Hon. George W. Crockett, Jr., J.D. '34, and Theodore Sachs, J.D. '51, received the award in ceremonies at the State Bar's 61st annual meeting in Grand Rapids last fall. The award is given in recognition of extraordinary professional accomplishments and dedication to the nation, state and local communities.

The fifth recipient was Wayne County Circuit Court Judge Claudia House Morcom.

Baxter, president of the International Academy of Trial Lawyers, is past president of the Grand Rapids Bar Association and Michigan Defense Trial Counsel. He received the Grand Rapids Bar Association's Donald Worsfold Distinguished Service Award in 1995 for his contributions to the Grand Rapids community and the legal profession. He has practiced law for 40 years, most recently with Dykema Gossett PLLC.

James Corden, J.D. '50

Retired St. Clair County Circuit Court Judge Corden served as a judge in that circuit from 1979-95 and as chief judge in 1994-95. He chaired the Judicial Conference of the State Bar of Michigan in 1989 and was president of the Michigan Judges Association in 1990. He has served on the board of directors for the St. Clair County YMCA, United Way and Red Cross, is a regular visitor to Cleveland Elementary School in Port Huron, is a Fellow of the Michigan State Bar Foundation and is past president of the St. Clair County Bar Association.



George Crockett, Jr., J.D. '34

Crockett, who has served as a law professor, attorney, judge and member of Congress, has been active in the civil rights arena for half a century. In 1964 he organized and directed the Mississippi Project, which sent 60 lawyers to southern states to defend civil rights workers. A founder of Goodman, Crockett, Eden and Robb in Detroit, he was elected a Detroit Recorder's Court judge in 1966 and was elected to Congress in 1980, where he served until 1991.

Theodore Sachs, J.D. '51

Sachs, a labor lawyer, is senior member and president of Sachs, Waldman, O'Hare, Helveston, Bogas and McIntosh, P.C. in Detroit. He has argued cases before the U.S. Supreme Court and has represented clients in legislative and congressional redistricting cases that implemented the one person-one vote concept in Michigan and the United States. He has served as general counsel to the Michigan State AFL-CIO and the Michigan Democratic Party, and is a Fellow of the Michigan State Bar Foundation, of the American Bar Foundation and of the American College of Trial Lawyers.

An insider's helping hand in the scramble for a judicial clerkship

"We tease and kid — sports, relationships, food. It goes on all year, and it's the way that you relieve the tension."

The Hon. Harry T. Edwards, J.D. '65, Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, was advising law students on how to apply for judicial clerkships. Along the way, he also pulled back the curtain to offer backstage glimpses of his own court at work.

When he's looking for clerks, he said in a talk at the Law School last November, "I'm trying to find a mesh. Will we have some fun together? Will a person mesh with the other people I'm planning to hire?"

Of course, clerking also is hard work. There's plenty of work, often high stress work, that has to be done quickly, accurately and conscientiously. Edwards said he wants a variety of viewpoints coming to such work, so he tries to bring together a mix of gender, age and background among his clerks. He also wants people with good writing skills and congenial personalities who will become part of the "family" atmosphere that marks his chambers.

"If that 'family' thing clicks, there's just nothing like it," he said.

A member of the Law School's Committee of Visitors, a former Law School professor, and a frequent visitor and supporter of the Law School, Edwards drew for students a clear, candid picture of the hurdles they face in applying for a clerkship, the hard work they will do in the job, and the fun, benefits and long-term friendships they may reap from it. His talk was sponsored by the Office of Career Services and followed by a reception co-sponsored with the Black Law Students Association.

In filing an application, he advised, "Size yourself up accurately. Don't kid yourself about this."

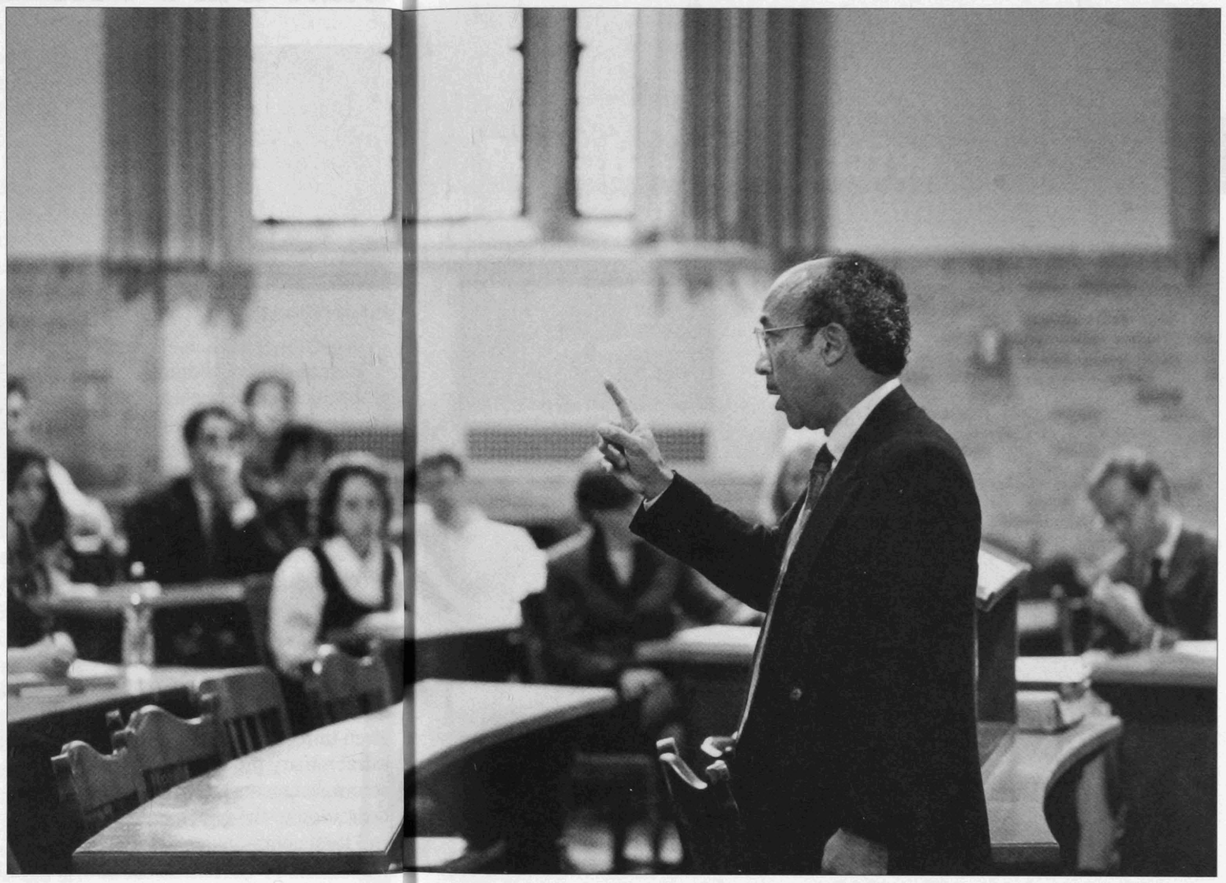
Among his other tips:

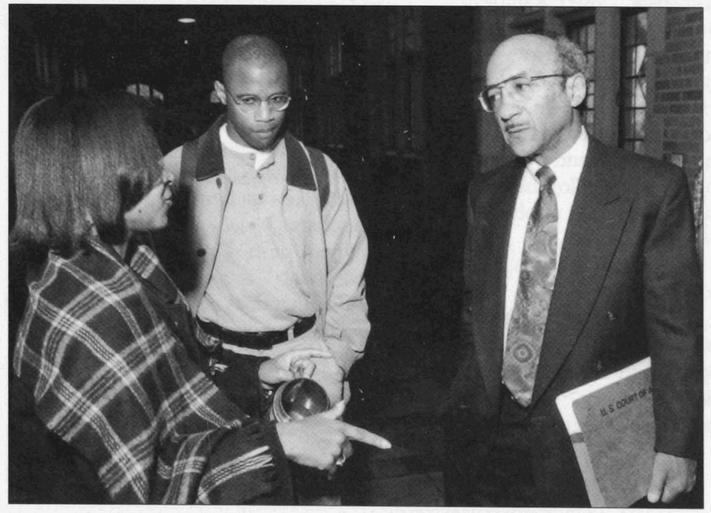
- Decide if you can afford the low wages and year-long term of a clerkship. Ask yourself: Will this be a job where I'll get some useful experience?
- Decide if you want the involvement with people and litigation of a trial court clerkship or the often-solitary research and writing that are the hallmarks of work in an appellate court. "They are different experiences, very, very different, [like] night and day."
- Decide if you want to work in a federal or state court, in a certain city or geographic area, or with a certain judge.
- Know the judge's decisions, connections, background, and the schools that usually supply his or her clerks. "If a judge has never hired from Michigan in 30 years, your chances of breaking that pattern are very small," he warned.
- Don't apply if you want to be a standout. Clerking calls for collegial, cooperative, non-competitive work with fellow clerks.
- Do not send in your application prior to the February application date.
- List references who know your personality as well as your record.

"Size up your hand," he said. "And then play it correctly."

At deadline time, two other programs on judicial clerkships were planned, a panel discussion on "Women and Judicial Clerkships" sponsored by the Women Law Students Association and a panel discussion by nine recent graduates/ judicial clerks sponsored by the Office of Career Services. "Women and Judicial Clerkships" participants were to include Assistant Professor of Law Deborah Malamud; Visiting Professor of Law Sonia Suter; Susan Guindi, Deputy Director of the Office of Public Service; and Kathleen Wilson, a third-year law student who is doing research on women and judicial clerkships.

The panel sponsored by the Office of Career Services was to include:Guy-Uriel Charles, '96, clerk for the Hon. Damon J. Keith, U.S. Court of Appeals, 6th Circuit; James Mitzelfeld, '96, clerk for the Hon. David W. McKeague, U.S. District Court, Western District of Michigan; Emily Houh, '96, and Noceeba Southern, '95, clerks for the Hon. Anna Diggs Taylor, U.S. District Court, Eastern District of Michigan; Bonnie Tenneriello, '96, clerk for the Hon. John Feikens, U.S. District Court, Eastern District of Michigan; Judith Levy, '96, clerk for the Hon. Bernard A. Friedman, U.S. District Court, Eastern District of Michigan; Andy Portinga, '96, clerk for the Hon. Conrad L. Mallett, Jr., Supreme Court of Michigan; Rick Fanning, '96, clerk for the Hon. James. H. Brickley, Supreme Court of Michigan; and Dave Meretta, '96, clerk for the Hon. Lawrence M. Glazer, State of Michigan 30th Judicial Circuit.

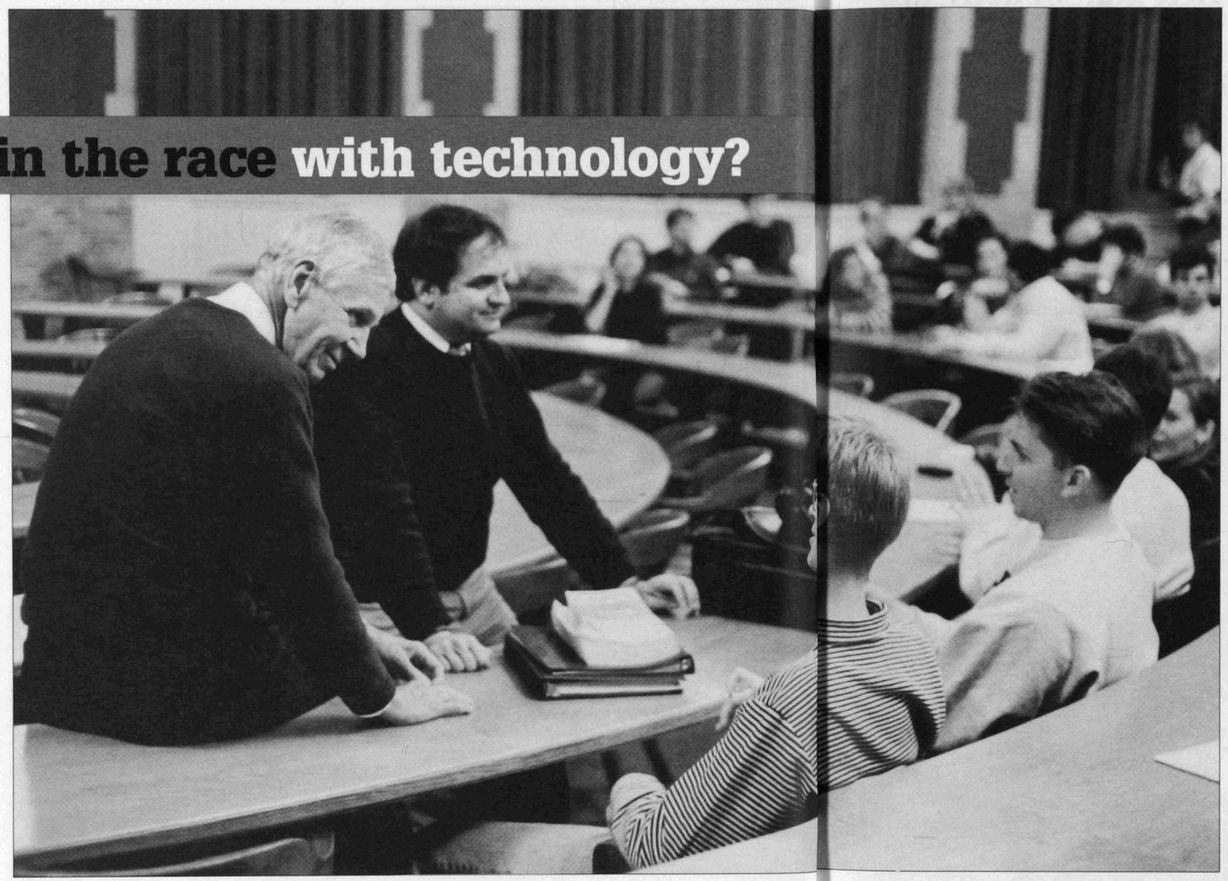




Law School students listen as the Hon. Harry T. Edwards, J.D. '65, Chief Judge of the U.S. Court of Appeals for the D.C. Circuit, explains the intricacies of applying for a judicial clerkship. Edward's talk was part of a series of programs being sponsored by the Office of Career Services to aid students in applying for and securing placements. Below, Edwards chats with law students Kelly Whiting and Thurston Bailey at the post-program reception.

ALUMNI

Who can stay in the race with technology?



Former Florida Congressman Lou Frey, Jr., J.D. '61, left, and Visiting Professor Carey Heckman, director of Stanford University's Law and Technology Center, chat with Law School students Chris Olson and Andrew Vance during the program "Can Congress Cope with Changing Technologyy?" in November. The program was sponsored by the Michigan Telecommunications and Technology Law Review.

"Can Congress Cope with Changing Technology?"

The answer, says former Congressman Louis Frey, Jr., J.D. '61, sponsor of the bill that pried loose American Telephone and Telegraph's hold on the U.S. communications industry, is not all the time, but probably better than the executive or judicial branches of government.

Frey should know. During his 10 years as a Republican congressman from Florida (1969-79), he not only led the battle to break up AT&T. He also strongly supported NASA, which he compares to the post-World War II GI Bill in the value of its return on investment. He was also the ranking member of the Subcommittee on Communications and served on the House Science and Technology Committee.

He has kept abreast of technological advances since leaving Congress and is deeply involved in international trade issues and the effort to find civilian uses for military technology. Now a partner in Lowndes, Drosdick, Doster, Kantor & Reed, in Orlando, Fla., Frey is president of the Center for Independence Technology and Education and president of the Former Members of Congress. He does political analysis for the ABC television affiliate in Orlando, has a weekly program on the Florida Radio News Network and writes a column for Florida newspapers.

So why is it hard for Congress to keep up with technology?

Because, Frey said in a program at the Law School in November, "There is no political capital in these issues. They're too complicated."

Terms are too short, Frey explained. The issues are too complex and may involve U.S. relations with other countries. Consumers (read: voters) care about service and convenience, not about the arcane maze of technology issues.

And the executive branch isn't doing any better than Congress, he said. The White House no longer has an office of technology. Overall, technology issues have been pushed out of government and public view.

All of that does not mean that Congress cannot take some action in the technology field, however. A few members of Congress can make a huge difference.

Back in the 1970s, Frey and a few other members of Congress led the battle to break up AT&T and revolutionize U.S. telecommunications. Frey and his colleagues knew they were ushering in a new era although their crystal ball did not lay out all the details. The effects continue today: cellular telephones now pepper the market and competing long distance services offer deals that vie for your allegiance. (Henry M. Butzel Professor of Law Thomas E. Kauper was the Assistant Attorney General in charge of the Justice Department's Antitrust Division who filed the complaint in 1974 that led to AT&T's breakup; the Justice Department recently honored him for his action. See page 38.)

Consumers, however, did not always appreciate the upside of the competition that had been unleashed. To some, the changes seemed to sum up as the new inconvenience of getting multiple bills for local and long distance telephone service. Others missed the well-worn-glove fit of the familiar AT&T giant. "A revolution took place," Frey said, "and people complain that they're getting four pieces of paper."

Today, the prominence of the AT&T breakup has receded. Many high profile communications issues now involve obscene and objectionable material on the Internet and software piracy. Although Congress eventually may need to take action to restrict children's access to the Internet, Frey said, it is preferable to have software and other means available so that parents can control what their children see. "As a practical matter, I think that the only way that you can do it is for technology to ameliorate it by different software and giving parents the chance to control it."

But "you can't censor everything," he added. "You can't control every thought of every person. . . Congress may have to act to get something done."

As for software piracy, there's "probably not much" that Congess can do, he said. "It really depends on the power of the United States over the country you're dealing with. It depends how much pressure we can put on the country you'd be dealing with."

Frey's comments took the form of responses to questions from panelists from the Law School and the schools of Public Policy, Business Administration and Information. His appearance at the Law School was sponsored by the *Michigan Telecommunications and Technology Law Review*.

Visiting Professor Carey Heckman, director of Stanford University's Law and Technology Center, helped organize the program and invited students in his Law and Technological Change class to attend. Heckman said that he likes to expose his students to alumni and other outside specialists as often as practical to extend their classroom learning.

Terms are too short, Frey explained. The issues are too complex and may involve U.S. relations with other countries. Consumers (read: voters) care about service and convenience, not about the arcane maze of technology issues.

International Reunion offers 'rich mix' of activities

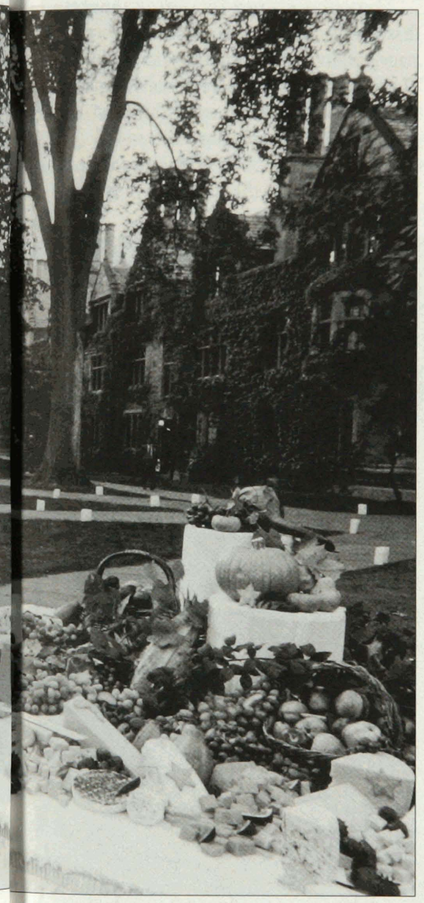
"A rich mix of intellectual substance and opportunities for relaxation and enjoyment."

That's what Dean Jeffrey Lehman and Assistant Dean for International Programs Virginia Gordan promise those who attend the second International Reunion Oct. 16-19 at the Law School. From discussions of international legal and educational issues to that other rough and tumble world of football and the Michigan Wolverines vs. the Hawkeyes of Iowa, reunion activities offer something for every interest and every taste.

Those who attended the first international reunion at the Law School six years ago, for example, will have plenty of new things to see and sample: renovations in many classrooms and the Legal Research Building; major advances in electronic library research and on-line resources; the new Joseph and Edythe Jackier Rare Book Room, which for the first time allows the Law Library to bring together its rare books in the secure housing that they deserve; and upgraded computer facilities.

Much at the Law School remains unchanged, too: the stately buildings and setting of the Law Quadrangle, a place for both camaraderie and contemplation; the collegial atmosphere made up of those who share pride in being part of the legal profession; and the ready access to the unbounded resources of the University of Michigan for study and recreation.

Emilio J. Cárdenas, M.C.L. '66, Argentina's ambassador to the United Nations from 1992-96 and president of the UN Security Council in 1995, will deliver the keynote address for the reunion, "The Future Role of the United Nations Security Council." Cárdenas now is ambassador-at-large for Argentina and executive director of Roberts S.A. de Inversiones in Buenos Aires.



There will be greetings from Dean Lehman; workshops on topics of current interest, like "War Crimes at the National and International Level" and "The WTO and its Dispute Procedures: Appraising the First Three Years;" tours ranging from the Law School and the University of Michigan Museum of Art to the Henry Ford Museum, Greenfield Village and the Dexter Cider Mill; and other activities.

On Saturday evening, Oct. 18, the reunion will take over the second floor of the recently renovated Michigan Union and turn it into an American Jazz and Billiards Club. Participants will be able to enjoy hors d' oeuvres and games of billiards, darts and cards while listening to live entertainment. A formal dinner will be served in the restored Michigan Union Ballroom followed by a program on American jazz.

Mailings of complete information about the reunion, lodging arrangements and registration information are being sent to all overseas alumni. U.S.-based alumni with an interest in international law and/or Law School international activities also are invited to attend; they may get reunion information by contacting:

Julie Levine, Development and Alumni Relations
721 South State St.
Ann Arbor, MI 48104-3071
313.998.7969, ext. 218
jalevine@umich.edu

Irene R. Cortes, LL.M. '56, S.J.D. '66, dies in Philippines

Retired Supreme Court of the Philippines Justice Irene R. Cortes, LL.M. '56, S.J.D. '66, died Oct. 29 in the Philippines, nine days after celebrating her 76th birthday. She had been in failing health for the past year but had continued to be active and to attend meetings associated with the Philippine Judicial Academy, for which the Supreme Court had appointed her Vice-Chancellor.

Cortes "was a truly remarkable person who devoted herself tirelessly to law reform in the Philippines, including legal rights of women," says Virginia Gordan, the University of Michigan Law School's Assistant Dean for International Programs.

Cortes was a speaker at the Law School's first international alumni reunion in Ann Arbor in 1991. "She was a very dear friend of the University of Michigan Law School, sending many outstanding candidates to our graduate program," says Gordan. "She was one of our most distinguished alumnae, with her service on the Supreme Court of the Philippines capping a truly remarkable career. Her death is a tremendous loss to the legal profession."

A member of the faculty of the University of the Philippines Law Center for many years and a former dean of the center, Cortes retired from the Supreme Court in 1990.

Both the Supreme Court and the University of the Philippines held special services for Cortes. Her family asks that contributions in her name be sent to the University of the Philippines College of Law Development Foundation, Inc.

Irene R. Cortes speaking at the International Reunion in 1991.

A TRIBUTE

— BY AVERN COHN, J.D. '49

Charles Levin, J.D. '47

This essay is adapted from a column that appeared in The Detroit News *Feb. 8, 1996. It appears here as a tribute to Michigan Supreme Court Judge Charles Levin, J.D. '47, who retired recently after serving for 32 years on the state's highest court. Reprinted with permission of* The Detroit News.

Dec, 31, 1996, was a milestone in Michigan legal history. On that day the judicial career of Justice Charles Levin, J.D. '47, of the Michigan Supreme Court, who had served as an appellate judge for three decades, came to an end. The state Constitution says a judge may not run for re-election after his 70th birthday; Justice Levin turned 70 on April 28.

Justice Levin's departure from the Supreme Court left more than an empty seat. The court, and the people of Michigan, lost a uniquely judicial and independent mind. Indeed, when Justice Levin first ran for the Supreme Court in 1972, he formed his own political party to obtain a ballot position; in 1980 and 1988, he eschewed the political nominating process and simply filed an affidavit of candidacy.

Few judges in Michigan's legal history have displayed more concern for disadvantaged persons and unpopular causes, greater skepticism of the power and wisdom of government, or more attentiveness to the facts of the individual case than has Justice Levin. Over the years many of his colleagues have too frequently seemed to rely uncritically on dubious citations of authority or too eager to answer questions before they are asked. But in the common law tradition of judging, Justice Levin has characteristically defined the task of judging each case as the challenge of answering the questions presented after careful review of the record presented.

Through his numerous and thoughtful dissents in both argued cases and back-page orders, he has been the conscience of the court while discreetly announcing its shortcomings to the world outside the conference room. To have this voice stilled by Justice Levin's depature is an enormous loss to the judiciary and the public.

Besides reviewing the decisions of lower courts with cases it has chosen to shape the law of Michigan, the Supreme Court exercises supervisory control over the state judicial system and acts as the final authority for administering discipline to Michigan judges and lawyers. With respect to all of these functions, Justice Levin has shown distinguished intellect and practical judgment and has often clashed with his colleagues who have come from both political parties.

Justice Levin has often expressed a desire for the justices to share the responsibilities of court management with lower court judges, lawyers and the public. Hopefully, Justice Levin will be succeeded by a justice who favors sharing responsibility for lawyer affairs with the State Bar and responsibility for court management with those who use and work in the lower courts.

If Justice Levin has a fault, it is his willingness to show too much leniency in dealing with the misconduct of judges and lawyers. But his tendency to accept and forgive human imperfection are so much a part of the man and the judge that it is difficult to be too critical.

While the popular and legal press have often counted Justice Levin as an ally of plaintiffs and Democrats, his philosophy cannot be labeled so simplistically. On numerous occasions he has declined the invitation to create or expand novel causes of action or to provide more

liberal measures of damages.

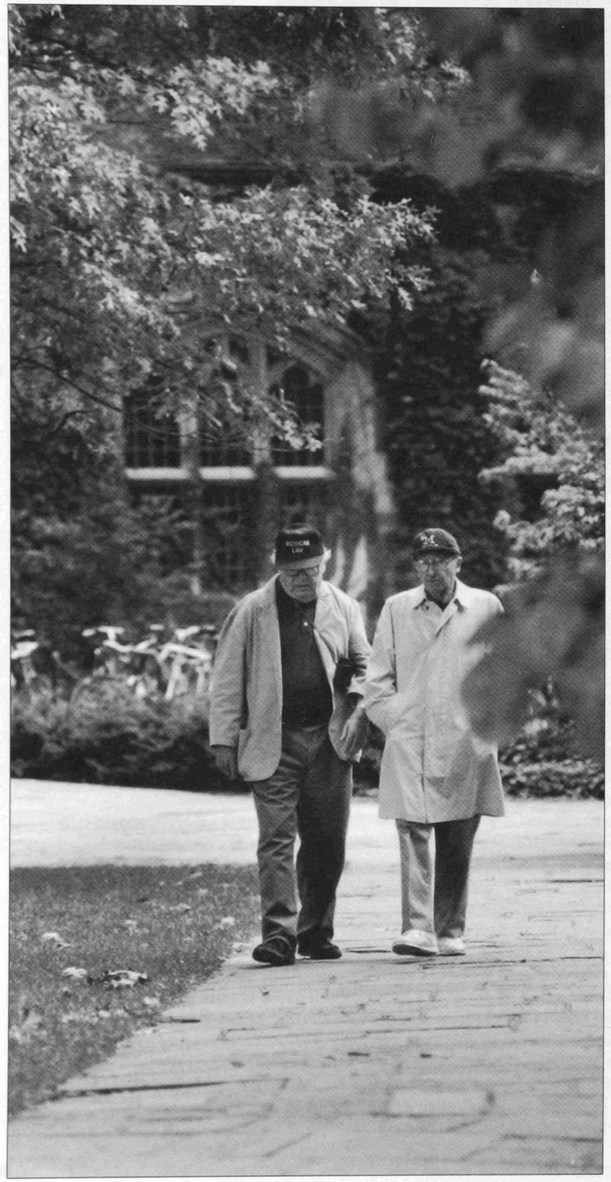
Justice Levin has consistently displayed intellect, compassion, respect for due process and, most importantly, humility. In an unassuming way largely unnoticed by non-lawyers, he has made an outstanding contribution to the people of Michigan. Whoever succeeds him has an enormous job to do.

***The Hon. Avern Cohn**, J.D. '49, a U.S. District Court Judge for the Eastern District of Michigan, is a member of the Law School's Committee of Visitors, has served as a judge for Campbell Moot Court competitions at the Law School, and last fall delivered the University of Michigan Senate's Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom.*

Speaking of Academic Freedom —

The Hon. Avern Cohn, J.D. '49, of the U.S. District Court for the Southeastern District of Michigan, delivered the sixth annual Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom at Lydia Mendelssohn Theatre in October. The lecture, whose sponsors include the Senate Advisory Committee on University Affairs and the Law School, is named for three University of Michigan faculty members who were dismissed during the 1950s after refusing to answer questions from an arm of the House Un-American Activities Committee. Cohn outlined the status of the concept of "academic freedom" in American law: "Given the constantly changing landscape of constitutional rights and the scope of academic freedom, it is not safe to predict the likelihood of future cases in court or the course such cases will follow. For example, in a California case last August setting aside discipline against a professor for having created a hostile learning environment by his sexually oriented teaching methods, the Court of Appeals said that the courts have yet to determine the scope of First Amendment protection to be given a public college professor's classroom speech. Just last month a district judge ordered to trial a protest by a Temple University professor that he was denied tenure because he protested conditions in a laboratory in which toxic materials were stored. The judge said the protest was protected speech on a matter of public concern and could not be the basis of adverse action. There is no mention in the decision of academic freedom. In this area the same uncertainty also obtains as to private colleges made subject to constitutional limitations in some of the states by statute as in California and in New Jersey by court decision. This I do know, judges will continue to differ."

PHOTO BY THOMAS TREUTER



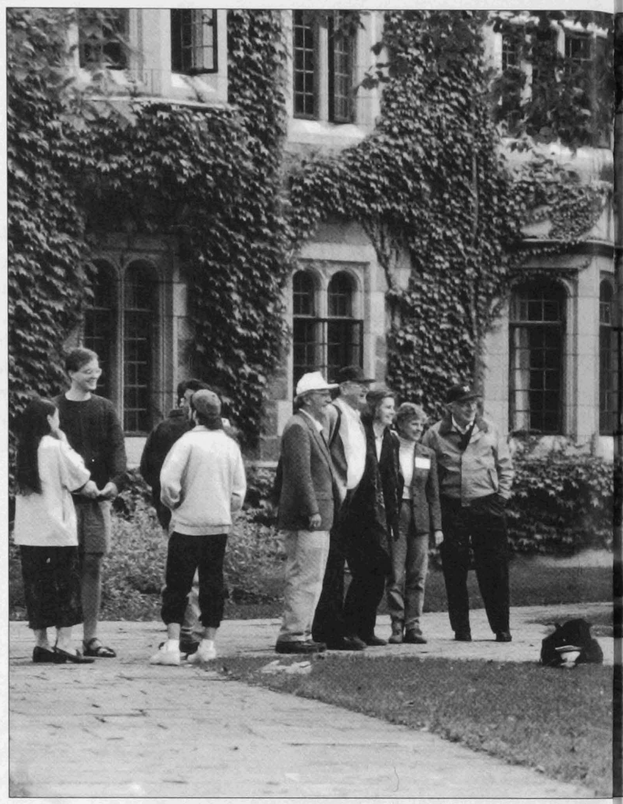


PHOTO BY THOMAS TREUTER

Reunions —

Law School alumni reunions are times for re-tracing former steps, capturing memories, learning and wrestling with current issues and just plain fun. Here, clockwise from left:

— Sam Krugliak, J.D. '41, and Al Rothman, J.D. '41, discuss memories as they walk through the Law Quadrangle;

— reunions, like graduations, are times for picture-taking;

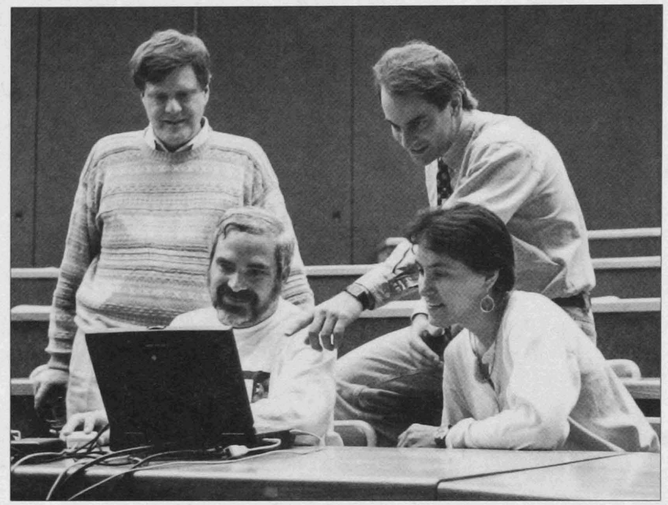
— Bill O'Neill, J.D.'76, John Gaguine, J.D. '76, and Martha Arthos, J.D. '91, listen as Law School Web Manager Frank Potter demonstrates the school's regularly updated web site;

— Law School faculty members Peter Hammer, Grace Tonner and James J. White, and Dean Jeffrey Lehman, '81, center, listen as Donald Regan speaks during a panel discussion on "What is the Point of a Legal Education, Anyway?" Legal substance and legal analysis both are part of what students learn in law school, said Regan, William W. Bishop, Jr., Collegiate Professor of Law and also a professor of philosophy. "We do all of these things and they are inseparable," he said;

— Charlotte Crane, J.D. '76, second from right, Cecilia Schreudeer, Hillary Fox, Teresa Fox and Eric Fox transform a Hutchins Hall staircase into an impromptu breakfast nook prior to taking part in reunion activities.

Classes of 1941, 1951, 1956, 1961 and 1966 had their reunion at the Law School in September; classes of 1971, 1976, 1981, 1986 and 1991 returned to the Law School in October.

ALUMNI *reunions*



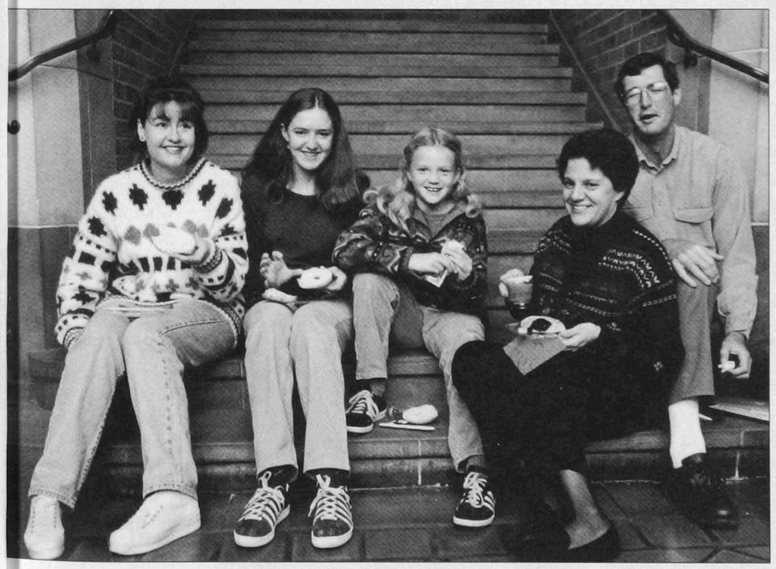
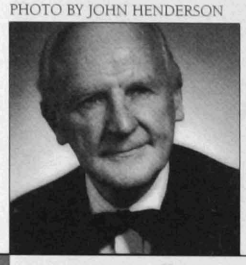


PHOTO BY DWIGHT CENDROWSKI

PHOTO BY JOHN HENDERSON



The Hon. John Feikens, J.D. '41

THREE PRESIDENTS = one John Feikens appointment

Alumni reunions are the places for storytelling. And for reminiscing. And for discovering the little-known nuggets that can mark someone's career. Here's an example.

The Hon. John Feikens, J.D. '41, has the distinction of being appointed by three presidents to the same seat on the U.S. District Court for the Eastern District of Michigan. He related the tale during a break in reunion activities for the Classes of '41 (for which he served as co-chairman), '51, '56, '61 and '66 last September. It happened this way:

■ Early in 1960, outgoing two-term President Dwight Eisenhower nominated Feikens for the judgeship. Feikens was well-known in Republican circles: He had headed the Eisenhower candidacy committee for Michigan before Ike's nomination, and then had chaired the Michigan Republican Party from 1953-57. But a U.S. Senator from Michigan blocked the nomination and it remained in limbo until fall 1960, when Congress adjourned. Eisenhower then named Feikens as an interim appointment, a "recess appointee" who did not require congressional approval until later.

■ After taking office in January 1961, incoming President John F. Kennedy followed Eisenhower's lead and re-named Feikens to the District Court judgeship, a move than meant that Feikens continued to sit on the bench. But, Feikens says, his old nemesis, Sen. Pat McNamara, still successfully blocked his confirmation and on Sept. 23, 1961, "I received a telegram from the administrative office saying that my power had ended." Had Nixon won the cliffhanger presidential race of 1960 instead of Kennedy, "I would have confirmed you," Feikens says McNamara told him. Feikens returned to practicing law.

■ Finally, in 1970, President Nixon nominated Feikens again for the post, and Congress approved. He has held the judgeship since then and took senior status about nine years ago.

Feikens jokes that the decade between his false starts and his final, permanent appointment turned out to be a blessing. "I had five kids, the first going to college," and private practice earned enough to meet family bills when they were greatest, he says.

The time away from the bench also foreshadowed how long cases could stay with Feikens once he was on the bench. Some of the most significant actions that he has been involved with have drawn few headlines and occurred in a low profile way over many years, he says. He's been involved with an action brought by women prison inmates for "close to 19 years" and his oversight of remedies to meet federal requirements for wastewater treatment in southeast Michigan has been continuous since the 1970s.

At one time in the wastewater treatment case, the Environmental Protection Agency wanted the U.S. Army Corps of Engineers to oversee moves toward compliance, Feikens explains. The Corps didn't want the task. "So I made an agreement with Coleman Young [the mayor of Detroit at the time] that I would appoint him special administrator . . . provided that he'd get a very skilled administrator to run the plant. It worked." Normal weather flows now meet federal standards and recently begun moves are aimed at improving wet weather treatment to cope with increased flows, he says.

Feikens believes that fashioning workable compromise out of stubborn conflict is one of the great functions of the American legal system. Often, such moves do not generate headlines and take place over long periods of time, but they are the processes that build and maintain our civilization, he says. Often, such progress grows out of the ying and yang of conflict and compromise.

"Human beings have the ability to think, choose, reason and discern," he says. "I think that inherent in that is conflict. People hate conflict. But there is a good in conflict. Conflict is a safety valve when it leads to an exchange of views that leads to compromise."

Still, you can ask too much of the law, he believes, and this is a time when people are indeed asking too much of it. "There is a dangerous problem of judge bashing," he says. "We are in an era of an outrageous amount of litigiousness. Lawyers are not civil to each other, they are not civil to judges. . . We look to the law to solve the problems, and the law can't solve many of these problems."

Many of the problems are rooted in a breakdown of the roles of traditional institutions like schools, churches and synagogues, he says. The breakdown breeds a deep frustration in people that manifests itself in conflicts that often enter the legal arena.

He does not believe the spin is irreversibly downward, however. "I think it's cyclical," he says optimistically. "We'll come out of it."

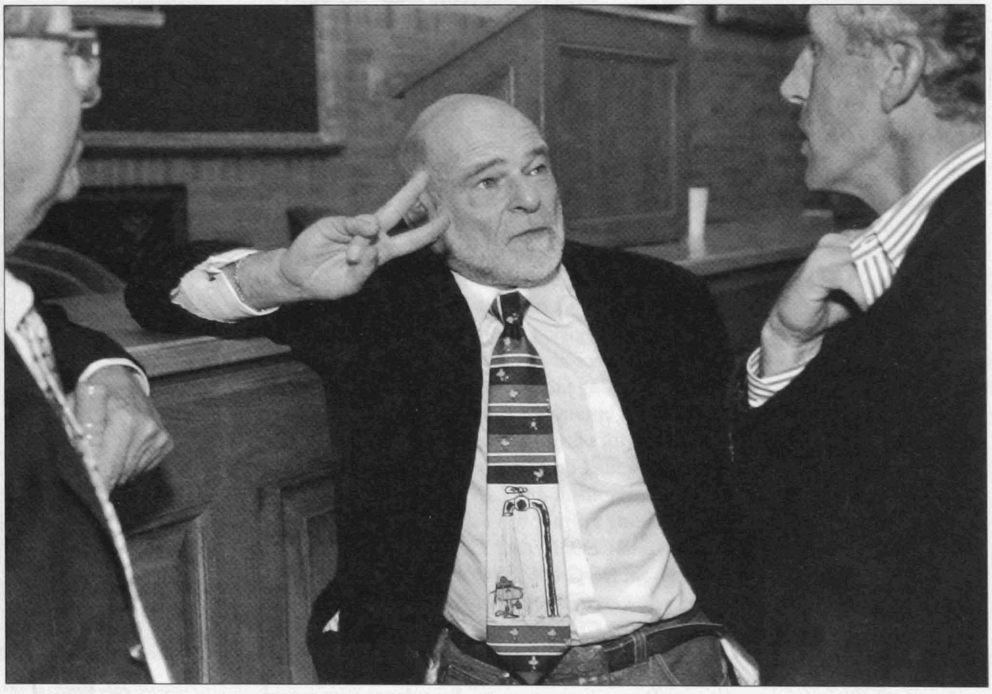
A Sign of the Times —

In the nostalgic traveling of memory lane that accompanies alumni reunions, Julie Richardson, Bettye S. Elkins and Wanda Reif, all of the Class of 1971, recall some of the highlights that marked their Law School years. The three women said their class was the first at the Law School in which women accounted for at least 10 percent of enrollment. They also recalled how they were instrumental in getting a firm barred from recruiting at the Law School for a time after students collected signatures on a petition complaining that the firm discriminated against women in recruiting interviews. In the 26 years since then, the percentage of women in Law School classes steadily has grown. New laws and policies require that all students face only questions about job-related issues such as professional competence and aspirations in job interviews. Since 1991, employers recruiting at the Law School have been required to sign an Equal Opportunity Statement that they will follow the principles of equal opportunity as stated in the bylaws of the Association of American Law Schools (AALS). AALS bylaws require that a school shall provide its students and graduates "with equal opportunity to obtain employment without discrimination or segregation on the ground of race, color, religion, national origin, sex, age, handicap or disability, or sexual orientation."

Talking Success —

Businessman Sam Zell, J.D. '66, center, makes a point to Ann Arbor developer Donald Chisholm, left, and classmate William S. Hagwood, J.D. '66, of Phoenix, Ariz., after Zell's talk during the reunion of the classes of 1941, 1951, 1956, 1961 and 1966 at the Law School in September. Zell described how his Law School training helps him handle the complex business negotiations and make the transaction agreements that are his stock in trade. A legal education "gives you an extraordinary confidence" in knowing how the system works and "allows you to challenge the conventional wisdom," he said. At the reunion of the classes of 1971, 1976, 1981, 1986 and 1991 in October, Robert Fiske, J.D. '55, the former independent counsel in the Whitewater affair, and Simon Lorne, J.D. '70, former chief counsel for the Securities and Exchange Commission, spoke of their experiences working in Washington, D.C.

PHOTO BY DWIGHT CENDROWSKI



Physicians must be healers, alumnus tells U.S. Supreme Court

Washington State Senior Assistant Attorney General William L. Williams, J.D. '69, was the lead-off lawyer on the morning of Jan. 8 when the U.S. Supreme Court heard two hours of oral arguments on the "right to die."

Williams is counsel of record for the Washington State case that was teamed with a case from New York State for Supreme Court consideration. Williams urged the justices to reject the argument that the U.S. Constitution provides a right to physician-assisted suicide for competent terminally ill patients. He maintained that such a constitutional right would deny the state the ability to keep "a clean line between physicians as healers and curers and physicians as instruments of the death of their patients."

The case, *Washington v. Glucksberg*, came to the Supreme Court after a physician and his terminally ill patient successfully challenged the Washington State law that makes physician-assisted suicide a crime. The U.S. Court of Appeals for the Ninth Circuit, sitting en banc, upheld the decision last spring, finding that a person has a "liberty interest in choosing the time and manner of one's death." The "liberty interest" provides constitutional protection through the 14th Amendment to the U.S. Constitution.

Williams said that Yale Kamisar, the Law School's Clarence Darrow Distinguished University Professor of Law and a long-time opponent of physician-assisted suicide who has written and spoken widely on the subject, was "an active resource" for him and for many of the attorneys who wrote the nearly 40 amicus briefs that accompanied the case.

In the companion case, *Vacco v. Quill*, the U.S. Court of Appeals for the Second Circuit ruled that a New York law prohibiting assisted suicide violated the Equal Protection Clause by denying a terminally ill patient physician-assisted suicide while allowing a patient who is on life-support equipment to have that equipment withdrawn.

During oral arguments, Supreme Court justices exhibited both a compassion for the human side of the issue and a reluctance to identify physician-assisted suicide as a right protected by the U.S. Constitution. Their decision is expected in early summer.

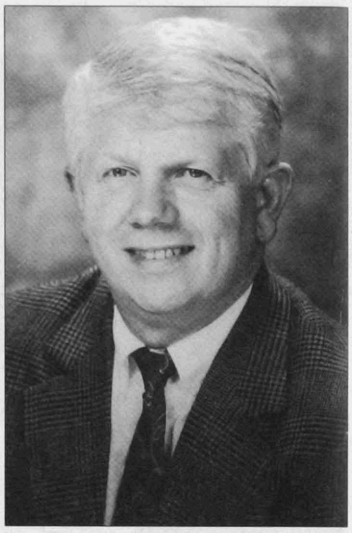


PHOTO BY FITZGERALD PHOTO, INC.

William L. Williams, J.D. '69

Conversation —

Bella I. Marshall, J.D. '75, chats with Law School students during a Dean's Forum luncheon in November. Dean's Forum luncheons bring together distinguished graduates whose successful careers have been in areas other than law practice with students for wide-ranging, informal discussion. Marshall is President and CEO of Waycor Development in Detroit and was Detroit's chief financial officer during Mayor Coleman Young's administration. She and her husband, Don Barden, CEO of Barden Cablevision, are active supporters of renewal and revitalization in Detroit. In December, the Dean's Forum luncheon featured William Bogaard, J.D. '65, a visiting faculty member, a senior attorney and finance executive with domestic and international experience in corporate finance, mergers and acquisitions, securities law and regulated industries. At deadline time, other Winter Term Dean's Forum guests were expected to include: Richard Dale Snyder, J.D. '83, President and COO of Gateway 2000, Inc.; Joseph Roy Seiger, J.D. '67, Founding Partner of Vintage Properties; Bruce P. Bickner, J.D. '68, Chairman and CEO, DeKalb Genetics Corp.; James E. Crowther, J.D. '58, retired from H&C Communications, Inc.; B. Lance Sauerteig, J.D. '69, principal, Levett, Rockwood & Sanders, PC; and Robert P. Luciano, J.D. '58, Chairman and CEO, Schering-Plough Corp.

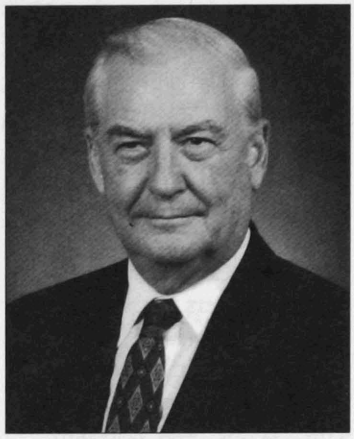
Richard W. Pogue, J.D. '53: Cleveland is a place to celebrate

When bicentennial time rolled around last year for Cleveland, Ohio, Richard W. Pogue, J.D. '53, believed strongly that the city had something to celebrate. He had witnessed the fall and rise of Cleveland, and as co-chairman of the city's Bicentennial Commission, he helped forge his belief in Cleveland's future into the year-long gala that the city just completed. A gala, by the way, that Pogue and others credit for generating $150 million in projects for the city.

"Cleveland is now one of the top destination centers in the country," Pogue said recently as he tallied some of the city's major attractions: the Rock & Roll Hall of Fame, which opened a little more than a year ago; Jacobs Field, the new home of the Cleveland Indians that opened in 1994; and a new basketball arena for the Cavaliers.

The 1996 American Automobile Association's annual survey of members ranked Cleveland No. 2 behind only Atlanta and its Olympic Games, and *Travel & Leisure* magazine in December 1996 called Cleveland one of the "10 Hot Spots for 1997," along with London, Borneo and Tobago, he says.

Pogue was vice-chairman of the drive to raise the money that it took to capture and build the Rock & Roll Hall of Fame. It's a "coincidence" backed by savvy lobbying that brought the Hall of Fame to Cleveland, he says. After New



Richard W. Pogue, J.D. '53

York-based music company heads hit on the idea for the Hall of Fame but ruled out their own city for it, Clevelanders "came up with the idea of why don't we use Allen Freed's connection with rock 'n' roll." Freed was the Cleveland disc jockey who is credited with coining the term rock 'n' roll.

"We delivered petitions with 600,000 signatures to the music industry urging that it be placed here in Cleveland," Pogue says. "Then *USA Today* conducted a two-day national telephone poll and at the end of the two days Cleveland people had made 110,000 calls and the next highest was Memphis with 7,000. We were utterly astounded."

So was the rest of the country. The deal was done when Cleveland's newly reinvigorated public/private partnership came up with the funds — initially $28 million but finally about $93 million — to build the Hall of Fame.

It's been a good investment. During its first year of operation, which ended last September, the Rock 'n' Roll Hall of Fame drew 1.1 million visitors, 60 percent of whom came from outside of Ohio. Twenty percent came from outside the United States.

Now city leaders like Pogue are turning their thoughts to the face that Cleveland presents to Lake Erie. A $55 million science center just opened on the lakeshore, and an auto museum is re-locating there from the Case Western Reserve University area. A retired ore boat has been turned into a floating museum. Leaders also are launching a search for backing to build a state of the art convention center in the city and increase the downtown area's 2,700 hotel rooms to about 15,000.

This is a far cry from the depths to which Cleveland had fallen during the 1960s and'70s. "The steel industry declined," Pogue recalls of that terrible slump. "Air conditioning made manufacturing in the South and the West possible, so the manufacturing moved out. We had very strong unions that had imposed very restrictive work practices, so Cleveland became known as a high cost area. Then we developed a very pronounced schism between local government and the business community."

But "it's been straight up since 1980," says Pogue, a Massachusetts native who grew up in Washington, D.C., and came to Cleveland in 1957 as an antitrust litigator with Jones, Day, Reavis & Pogue. Cleveland's public/private partnership has been restored and once again provides inspiration and powers development for the community, he says.

It didn't take Pogue long after arriving in Cleveland to become an active part of the city's civic life. His resumé testifies to his community involvement: co-chairman, Cleveland 1996 Bicentennial Commission; chairman, University Hospitals of Cleveland and University Hospitals Health System; chairman, Cleveland Chapter, The Newcomen Society of the United States; trustee (and former chairman), Cleveland Ballet; trustee, Case Western University; trustee and executive committee member, Rock & Roll Hall of Fame and Museum; trustee and chairman of Marketing and Membership Committee, the City Club of Cleveland; trustee (and former chairman), Cleveland Institute of Music.

And those are just some of the recent entries. "I came here because of the law firm that I joined, but I quickly realized that this is a fine, unsung city," he says. During the nine years that he was Managing Partner, his law firm grew from 335 lawyers in five domestic offices to 1,225 lawyers in 20 international offices.

In recent months much of Pogue's attention has centered on the re-alignment of medical facilities that is taking place in Cleveland. "It's a fierce competition on a lot of levels," he says, and it reflects the tremors in medical care throughout the country. University Hospital, whose board Pogue chairs, is affiliated with Case Western

Reserve University Medical School. Department chairpersons in the medical school also chair counterpart departments at the hospital. University Hospitals' major competitors do not have the same kind of arrangements with medical schools and therefore do not have the same kinds of restrictions.

"I've been brought up on the idea that an academic medical center is a good idea," Pogue says. "Of course, being affiliated with a medical center imposes some costs, so we have to make up for that with being exceptionally productive and keeping our charges down to the market level."

When the dust settles, he predicts, "there's going to be either three or four groups of hospitals in Greater Cleveland, including University Hospital, and all the rest will sign up with one or the other of them."

Pogue left Jones, Day, Reavis & Pogue in July 1994, when he reached the firm's mandatory retirement age, to become a part-time senior advisor to Dix and Eaton, a Cleveland public relations firm.

"This is a great base of operations for me," he says. "I'm extremely active in a lot of things. But the actual public relations service is a lot less strenuous than law practice. It's a 9-5 business five days a week."

9-5? Pogue? Yeah. Sure.

From Law School to Congress: Harold E. Ford, Jr., J.D. '96

No one who knows Harold E. Ford, Jr., J.D. '96, could accuse him of being unfocused, slipshod in pursuit of his goals, or unorganized. If he were any of these things, the freshman Congressman from Tennessee's 9th District in Memphis could not have completed law school while co-managing one congressional campaign and then running as a candidate himself.

Ford, who graduated last May and left the celebrations early to return home to campaign, was sworn in as a new member of Congress on Jan. 7. He succeeds his father, Harold Ford, who held the 9th District seat for 11 terms.

"This is the first time in African-American politics that a black has succeeded his mother or father in Congress," says Ford, Jr. "It's a tremendous feeling. It's another dimension that heightens the excitement. But I don't want to be the first African-American who follows his parent and then doesn't get re-elected. So I'll be working hard."

Ford doesn't know any other way to work, if his Law School record is any hint. As he describes it:

- His first year, 1993-94, was one of acculturation. "I actually enjoyed it. It was perhaps the most intensive and rigorous learning process that I've ever been in." He learned how to study law, and "I was active in the Black Law Students Association (BLSA) and, not that I'm a great athlete, played every intramural sport that was offered."
- "The first semester of 1994 I was co-manager of my dad's campaign and interviewing with law firms, and the second semester I got active with BLSA, where I was head of the speaker's committee." Ford brought California Congresswoman Maxine Waters to the Law School as a speaker.
- "The third year I was back in Memphis every weekend. I'd catch the 3:30 p.m. flight to Memphis each Friday and be back in Ann Arbor on Sunday night."

Overall, he says, Law School prepared him well for his work in Congress: "It forced you to organize and structure the way that you thought and the way that you learn. Particularly during the campaign, there were so many things going on. There is an extraordinary amount of work that needs to be done and an extraordinary amount of information that needs to be processed."

The Law School also provided "a tremendous opportunity to meet a wide range of people representing different ethnic backgrounds and economic backgrounds," he adds. "Once you reach this level of graduate professional education you're around a group of dedicated people who want to do something with their lives."

Frank G. Millard Professor of Law Peter K. Westen, Professor of Law Richard H. Pildes, and Assistant Dean for Admissions Dennis J. Shields were major influences on him at Law School, Ford says. And he singles out as a special "mentor and advisor" Dores M. McCree, who retired last year and whose "student services associate" title didn't hint at the respect and affection that Law School students hold for her.

Harold E. Ford, Jr., J.D. '96

When Ford launched his bid for Congress, many people saw his youth and the "Jr." that follows his name as disadvantages. But in typical fashion he turned them into allies.

"A lot of folks in the district were skeptical because of my age," he says. "I was 25, turned 26 during the campaign." Law School classmates contributed the first $2,000 to his campaign, he says, and several helped in his campaign. Law School friends — among them John Hughes, J.D. '96, Erik Stamell, J.D. '96, and Jared Wolf, J.D. '96 — also helped Ford establish campaign positions on issues like crime and education.

As for that "Jr." label, an opponent in the primaries tried to pin it on Ford in derision. Ford's response was to produce white campaign buttons with big red letters saying "Jr.", underlined in blue and the words "A New Vision" in red across the bottom. His primary opponent quickly regretted raising the issue.

The Ford name creates electoral magic in Memphis. The Rev. Jesse Jackson and Vice President Al Gore, a fellow Tennessean, campaigned with Ford. At election time, Ford won 61 percent of the vote and became one of the youngest candidates ever elected to Congress. "Naturally, it's a lot of emotion," he told a reporter. "But I'm ready to go serve. My dad has set a tall standard and I recognize the responsibility."

Ford already knows his way around inside the Beltway. He worked on President Clinton's first campaign and on his transition team and also served as a special assistant to the late Commerce Secretary Ron Brown.

Like many members of the 105th Congress, Ford hopes Congress can develop bipartisan approaches to balancing the federal budget, campaign finance reform, education reform and other issues. "As one who represents a generation that has vast concerns about the future economic viability of the nation, I have a profound interest in having the budget issue resolved," he says.

"I certainly plan to be active," he says. "I may not have the seniority of many others, but I look forward to working with both sides of the aisle."

1942

55TH REUNION

The class of 1942 Reunion will be Sept. 12-14.

1946-47

50TH REUNION

The combined classes of 1946-47 Reunion will be Sept. 12-14.

1948

Luis M. Ramirez-Boettner, S.J.D. '48, has left the post of Foreign Minister of Paraguay to serve an appointment as Paraguay's Ambassador to the Vatican.

1951

George A. ("Dutch") Leonard received the Clara Barton Honor Award for Volunteer Leadership for "distinguished performance over many years" from the Cincinnati Red Cross. The honor is the highest Red Cross award that can be given at a local level.

1952

45TH REUNION

The class of 1952 Reunion will be Sept. 12-14.

William M. Saxton was elected Fellow Emeritus in the Washington, D.C.-based College of Labor and Employment Lawyers, an independent nonprofit organization established to honor and recognize attorneys who, by long and outstanding service, have distinguished themselves in the field of labor and employment law. He is an attorney with Butzel Long. **Robert J. Battista**, '64, a member of the Butzel Long Board of Directors, was elected a Fellow in the College.

1954

Stephen A. Bromberg was elected to a three-year term as a regent of the American College of Mortgage Attorneys. As a regent, he will participate in the organization's management for the term of his election. Bromberg is president and chief operating officer of Butzel Long, practicing in the firm's Birmingham, Michigan, office. His practice includes all aspects of real estate law.

Cuyahoga County (Ohio) Common Pleas Judge **Carl J. Character** retired December 31, after a 30-year legal career.

1956

Thomas R. Ricketts, chairman of Standard Federal Bank, was named 1996-97 chairman of the Greater Detroit Chamber of Commerce, which has 10,000 member businesses and works to promote business interests in Southeastern Michigan.

1957

40TH REUNION

The class of 1957 Reunion will be Oct. 31-Nov. 2.

1958

Family law specialist and children's advocate **Harry D. Krause** has retired from the University of Illinois. A prolific writer of articles and books, Krause credits Hessel E. Yntema Professor Emeritus of Law Eric Stein with convincing him to leave practice and take up the academic life in the 1960s. He was a Visiting Professor at the Law School in 1981.

1960

C. Robert Wartell, a founding shareholder in the Southfield law firm Maddin, Hauser, Wartell, Roth, Heller & Pesses, P.C., was elected chairperson of the Real Property Law Section of the State Bar of Michigan at its annual meeting in Grand Rapids. He practices primarily in areas relating to real estate.

1961

Linscott R. "Lin" Hanson has published his fourth book, *The Illinois Corporation System — 5th Edition* (Illinois Institute for Continuing Legal Education, 1996). The book is available in both print and electronic forms and contains 180 forms for use in corporate practice. Forms can be merged with an existing corporate database to produce specific forms for any client in the database. Hanson wrote the original edition in 1978.

John Edward Porter, R-Illinois, chairman of the House Appropriations Subcommittee On Labor, Health, Human Services, and Education, has become a member of the Congressional Advisory Panel to the National Campaign to Reduce Teen Pregnancy.

1962

35TH REUNION

The class of 1962 Reunion will be Sept. 12-14.

Class notes

1963

Francis X. Beytagh, a law professor at the Ohio State University College of Law, will leave OSU in the summer of 1997 to begin serving as president of the new Florida Coastal School of Law in Jacksonville, Florida. In addition to filling the part-time position of president, Beytagh hopes to teach at Florida Coastal.

Colonel **Ralph O. Wilbur** was reappointed to the Military Appeals Tribunal by Governor John Engler. The tribunal has appellate jurisdiction to hear and review an accused National Guardsman's service record in all decisions of court-martial. Wilbur has been a judge advocate for the United States Air Force Reserve since 1967.

1964

Michael R. Capizzi, Orange County District Attorney since 1990, was elected president of the California District Attorneys' Association, an organization that promotes legislative advocacy and legal education.

Stephen Roberts, the Republican national committeeman from Iowa, was profiled in the July 1996 *Business Record* of Des Moines. He is a partner with the Des Moines law firm David Brown Koehn Shors & Roberts.

1965

Richard L. Blatt, a senior partner in the law firm Blatt, Hammesfahr & Eaton in Chicago, is co-author of a Japanese edition of *Punitive Damages: A State By State Guide To Law And Practice*, first published in 1991 by West Publishing Company. The Japanese edition was published by Hoken-Mainichi Shinbun-Sha of Tokyo.

Terrence Lee Croft was elected as a member at-large by the Atlanta Bar Association.

C. Douglas Kranwinkle is now the managing partner of O'Melveny and Myers. He practices in the firm's New York City office in the areas of securities, mergers and acquisitions, and complex business transactions.

1966

Alfred M. Butzbaugh of Berrien Springs was elected 1996-97 treasurer of the State Bar of Michigan by the Board of Commissioners. He is a senior member at the law firm Butzbaugh and Dewane, P.L.C., in St. Joseph.

John H. Martin, a partner with the Muskegon office of the law firm Warner Norcross & Judd L.L.P., was elected chairperson of the State Bar of Michigan Probate and Estate Planning Section. He also is the primary author of the proposed Estate Planning Settlement Act which is currently before the Michigan State Senate after nine years in the making. Martin and his family reside in Spring Lake, Michigan.

The California law firm Munger, Tolles & Olson was one of five recipients nationwide of the American Bar Association's 1996 Pro Bono Publico Awards for public service. **Ronald Olson**, a named partner in Munger, Tolles & Olson was key to the firm's winning the award, according to a spokesman in the San Francisco office.

1967

30th Reunion

The class of 1967 Reunion will be Sept. 12-14.

Kenneth F. Snyder was elected managing partner of the Cleveland office of Baker & Hostetler. Snyder, a tax and personal planning lawyer, previously was chair of the firm's National Tax Group.

1968

Henry S. Gornbein initiated and hosts the Bloomfield CableVision show "Practical Law," produced for the general public featuring interviews and current issues of law. He practices law with Bookholder, Bassett, Bornbein & Cohen, P.L.L.C.

Roderick H. Potter has joined Horton's Downeast Foods as vice president of sales and general counsel. He previously was a partner in the law firm Potter, Prescott, Jamieson & Nelson.

1969

Steven Y. Winnick was named the "Best Boss in America for Working Moms" by *Redbook* magazine in its September 1996 issue. Winnick serves as deputy general counsel and agency ethics official of the United States Department of Education. He was nominated for the award by two supervisory attorneys at the Department, including **Amy Comstock**, '86, for establishing a job share arrangement which has allowed them to balance their responsibilities as both attorneys and mothers of young children.

1970

John R. Laughlin is the managing director of Ridgecraft Valuation Associates, Inc., of Frederick, Maryland, which specializes in the appraisal of privately-held businesses.

1971

Eli Grier and **Coquese Wilson**, '95, have joined the Farmington Hills-based law firm Fink Zausmer. Grier concentrates his practice in private and public sector labor and employment law, including collective bargaining, unemployment compensation, employee manuals, discrimination matters, and wrongful termination. Wilson's main areas of practice include litigation, environmental and municipal matters.

The Hon. **Deanell Reece Tacha**, judge of the Tenth Circuit Court of Appeals and a member of the Law School's Committee of Visitors, delivered the annual Ainsworth Lecture at Loyola University of New Orleans School of Law in November. She spoke on "Lawyers and Judges: Patriots for Another Century" as speaker for the annual Ainsworth Lecture in November at Loyola University of New Orleans School of Law.

1972

25th Reunion

The class of 1972 Reunion will be Sept. 19-21.

Bob F. McCoy was promoted to associate general counsel at The Williams Companies, where he will oversee legal matters for Williams Field Services, WilTel and WilTech, in addition to his current responsibilities. He joined The Williams Companies in 1988.

El Segundo, California-based Mattel, Inc., has named **Barnett Rosenberg** senior vice president, general counsel and secretary, responsible for overseeing the company's legal activities worldwide. He previously worked as deputy general counsel and assistant secretary for Pitney Bowes, Inc.

1973

Robert E. Hirshon was elected to serve as chair of the American Bar Association Tort and Insurance Practice Section. He is a shareholder in the Portland, Maine, law firm Drummond, Woodsum & MacMahon, where he heads the firm's Financial Services Group, which provides litigation and regulatory legal services to banks, insurance companies and federal agencies.

Kathleen McCree Lewis was elected chairperson of the Rules Advisory Committee of the United States Court of Appeals for the Sixth Circuit. Lewis is an attorney and appellate specialist in the Detroit office of Dykema Gossett P.L.L.C. She is a member of the firm's Litigation Practice Group, specializing in civil appeals in both state and federal courts.

Michael F. Neuchterlein, a shareholder at Carlton Fields of Tampa, Florida, was elected a Fellow of the American College of Construction Lawyers, a distinction he shares with three other Americans, as well as attorneys from Canada and Great Britain. The purpose of the College is to facilitate and encourage the association of outstanding lawyers who are distinguished for their skill, experience, and high standards of professional conduct in the practice or teaching of construction law. Neuchterlein heads Carlton Fields' Construction Law Department.

Philip R. Telleen is serving a three-year term on the Board of Directors of the Washington, D.C.-based Federal Energy Bar Association, which is comprised of energy law practitioners from across the country. Tellen also is an assistant general counsel of MidCon Corp., which is headquartered in the Chicago suburb of Lombard, Illinois.

1974

David W. Clark has become a partner in the Jackson, Mississippi, office of Lake Tindall, L.L.P., where he practices commercial litigation.

Phil Ponce, a television correspondent with "Chicago Tonight," a nightly news analysis program on WTTW-TV, has also taken on the role of columnist for the *Chicago Tribune*.

Craig A. Wolson, of Westport, Connecticut, has become a partner in the law firm Williams & Harris, New York, New York.

1975

Ronald S. Longhofer, a partner with Honigman Miller Schwartz and Cohn, is co-author of *Michigan Court Rules Practice-Evidence*, a three-volume treatise on the Michigan Rules of Evidence published by West Publishing Company.

Barbara Timmer has become senior vice president and director of government relations for Home Savings of America, principal subsidiary of H.F. Ahmanson & Company. She will divide her time between Los Angeles and Washington, D.C., in order to work directly on legislative and regulatory issues affecting Home Savings and the financial services industry. Timmer previously served as assistant general counsel and director of government affairs for the ITT Corporation.

1977

20TH REUNION

The class of 1977 Reunion will be Sept. 19-21.

Kathleen Ziga, a partner in the law firm Dechert Price & Rhoads of Philadelphia, was elected chair of the Tax Section of the Philadelphia Bar Association.

1978

Richard W. McHugh, formerly associate general counsel for the UAW, has opened a plaintiffs' practice in Ann Arbor, focusing on labor, employment, and civil rights matters. **Anne France**,'88, has associated with the law office. Her practice also focuses on labor, employment, and civil rights matters.

Elie Lederman, a research scholar at the Law School '78-'79, has assumed the position of dean at the Tel-Aviv Law School. He writes in the criminal law field.

Richard K. Rufner was elected to a four-year term on the Littleton Public Schools Board of Education. Littleton is a suburb of Denver, Colorado, with more than 15,000 students in 23 schools. Rufner also owns his own law firm in Englewood, Colorado, where he specializes in civil litigation and family law.

1979

Stuart Dunnings III has been elected prosecutor in Ingham County, Michigan. Dunnings is the first African-American to be elected to the post.

Hiroo Kajitani, LL.M., was named managing director of NKK International Pte. Ltd., in Singapore.

Samuel Press is on sabbatical from litigation practice to study energy policy and public administration at the Kennedy School of Government in Cambridge, Massachusetts.

Ford H. Wheatley was appointed to a four-year term as the presiding municipal judge for Glendale, Colorado. He also has been working as an adjunct instructor for two graduate schools, teaching classes in employment law.

Class notes

1980

George Brandon has become a partner in the Phoenix office of Steptoe & Johnson, where he will continue to practice complex corporate litigation. He and his wife and three children recently moved to Phoenix from New York, where they had lived for 16 years.

Ronald I. Heller, a shareholder in the Honolulu law firm Torkildson Katz Fonseca Jaffe Moore & Hetherington, was elected a Fellow of the American College of Tax Counsel. He continues to practice in the areas of taxation, tax litigation, and business/commercial litigation.

Greg Sumner, a professor in the Department of History at the University of Detroit Mercy, is the author of *The Challenge of Cosmopolitan Democracy* (Cornell University Press), a book about Dwight Macdonald, a political thinker and author of the post-World War II years. The book was reviewed in a Sept. 15, 1996, article in the *Chicago Tribune*.

1982

15th Reunion

The class of 1982 Reunion will be Sept. 19-21.

Suzanne Mitchell, formerly associate general counsel at the University of Chicago Hospitals, was appointed assistant dean and director of career services at the University of Chicago Law School. She continues to be a lecturer at the University of Chicago Medical School, and to speak and write about health law issues and topics in medical ethics. She has also recently completed her term as chairperson of the Illinois State Bar Association Health Care Section.

Janet L. Neary, a member of the law firm Dykema Gossett, P.L.L.C., was named chairperson of the Computer Law Section of the State Bar of Michigan. Neary is a member of the firm's Corporate and Finance Practice Group, specializing in computer software and high technology matters as well as corporate and commercial law.

Kent D. Stuckey is principal author of the treatise *Internet and Online Law*, published in September 1996. He is vice president of CompuServe Ventures Incorporated, responsible for defining and implementing alliances, merger, acquisition, and joint venture strategy.

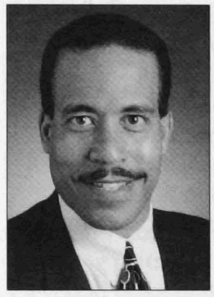
1983

Jon Robert Steiger has joined the Bloomfield Hills, Michigan, office of Howard & Howard Attorneys, P.C. He specializes in commercial litigation, employment litigation, labor, and eminent domain/condemnation law.

John C. Vryhof has joined the law firm Snell & Wilmer L.L.P., as a partner in the Estate Planning and Probate practice of the firm's Phoenix office. Vryhof specializes in techniques of charitable giving and international estate planning.

1984

Margaret H. Chutich has accepted the position of deputy attorney general of the Law Enforcement Section of the Minnesota Attorney General's Office. She previously worked as an Assistant United States Attorney in the District of Minnesota.



Martiné (Marty) R. Dunn has joined the law firm of Benesch, Friedlander, Coplan & Aronoff as a partner. He is resident in the firm's Cincinnati office and focuses his practice in real estate and in loan transactions. Dunn previously was a partner with the Dayton, Ohio, law firm Coolidge, Wall, Womsley & Lombard.

Lynn Campbell Tyler, a partner in the law firm Barnes & Thornburg, was recently married to Andrea Lee Adams, who works as the registrar for the Indiana Continuing Legal Education Forum.

1985

Carl A. Butler, of the New Orleans law firm Deutsch, Kerrigan & Stiles, L.L.P., has completed Basic Mediator Training with the Attorney-Mediators Institute, Houston, Texas. The Institute has judged him qualified to mediate disputes serious enough to become lawsuits.

Andreas Fabritius, LL.M., was appointed vice chairman of Committee I (Investment Companies and Mutual Funds) of the Section of Business Law of the International Bar Association. He was included in Euromoney's 1995 *Guide to the World's Leading Banking Lawyers*, and in 1996 was nominated one of the World's Leading M&A Lawyers by Euromoney. Fabritius is a partner in Bruckhaus Westrick, Stegemann, Frankfurt am Main.

Timothy J. Ryan was appointed president and chief executive officer of the Detroit-Macomb Hospital Corporation, where he had served since 1988 as vice president of legal affairs and risk management.

1986

Gregory C. Burton was named the François-Xavier Bagnoud Fellow in the Department of Aerospace Engineering at the University of Michigan. He will study flight dynamics and conduct research in orbital mechanics. He previously was an associate in the white-collar criminal defense group at the Washington, D.C., office of Skadden, Arps, Slate, Meagher & Flom.

Michael Grace, formerly head of Latham & Watkins' Los Angeles intellectual property practice, has joined Greenberg Glusker Fields Claman & Machtlinger as a partner. The firm concentrates on matters related to the entertainment industry.

Jon Jacobs and his wife, Susanne Mason, announce the birth of their daughter, Emily Mason Jacobs, born June 21, 1996.

1987

10TH REUNION

The class of 1987 Reunion will be Sept. 19-21.

Michael S. Ashton was elected a shareholder of the Lansing law firm Fraser Trebilcock Davis & Foster, P.C. He practices in the firm's Government and Administrative Law Department with an emphasis in utility law.

Callie Georgeann Pappas has moved from Washington, D.C., to Pittsburgh to join the Law Department of US Steel, a unit of USX Corporation. She will continue her practice of international trade and commercial law.

Giuseppe Scassellati-Sforzolini, LL.M., has become a partner in the New York-based law firm Cleary, Gottlieb, Steen & Hamilton and is resident in the firm's Brussels, Belgium, office. He is not special counsel to the firm, as was reported in *Law Quadrangle Notes'* summer edition.

1988

Elizabeth M. Barry was appointed director of academic human resources on the Human Resources & Affirmative Action and Provost's staff at the University of Michigan. She administers human resource programs, policies, and procedures for instructional, primary research, librarian and curatorial staff, and educational assistants. Barry was previously a university attorney at Harvard University, where she specialized in faculty issues.

Martin R. Castro, based in Chicago, has been named a partner of Baker & McKenzie. Castro also received the Latino Law Students Association's 1996 J.T. Canales Award, given annually in memory of Law School student Juan Luis Tienda. (see story, page 12).

Bradley G. Lane was elected shareholder to the law firm Brinks Hofer Gilson & Lione, where he practices in the Chicago office. He is a patent attorney specializing in patent litigation, client counseling, and patent procurement for clients in the mechanical and electrical engineering fields.

Melissa H. Maxman of Philadelphia, Pennsylvania, served on a panel which helped select the federal government's top executives for the 1996 Presidential Rank Awards, one of the most prestigious awards given to senior managers. Maxman is an attorney at the law firm Duane, Morris, and Heckscher.

Ruth Rodriguez was elected treasurer of Women in International Trade of Texas, a nonprofit corporation that promotes professional growth, education, leadership, common cause, and social activities among women worldwide employed in the field of international trade. Rodriguez is a founding member of Braumiller & Rodriguez, L.L.C., in Dallas, Texas, where her practice focuses on customs, export/import, international trade, international finance, and international litigation.

David J. Rowland has become a partner with the law firm Seyfarth, Shaw, Fairweather & Geraldson, where he will continue to represent employers in labor and employment matters. He practices in the firm's Chicago office.

Mark R. Soble was promoted to senior commission counsel with the Enforcement Division of the California Fair Political Practices Commission.

Craig Sumberg was named the director of public information and legal affairs at the National Jewish Community Relations Advisory Council. The NJCRAC is the umbrella public affairs arm of the organized Jewish community in America.

1989

Steven R. Englund has become a partner with the law firm Arnold & Porter, where he is resident in the firm's Washington, D.C., office. He is a member of Arnold & Porter's Intellectual Property and Technology and Government Contracts Practice Groups.

1990

Christine M. Drylie has accepted a position as operations attorney for Corn Products, a division of CPC International Inc., in Summit-Argo, Illinois. She formerly was an income partner with the Chicago office of McDermott, Will & Emory.

Danial J. Kim of Holt, Michigan, has joined the executive staff of the State Bar of Michigan as associate executive director for planning and marketing. He will be responsible for market research and coordinating creation of promotional material for State Bar activities. He previously served as publisher and editor-in-chief of *Michigan Lawyers Weekly*.

Richard C. Mertz was named general counsel of the New Mexico Environment Department in Santa Fe. The Department handles environmental litigation and regulation affecting the state of New Mexico.

Mark Peters was elected to Community School Board 15 in Brooklyn, New York.

Matthew V. Piwowar, a December 1989 graduate, has joined the Warsaw, Poland, office of London-based Clifford Chance, where he serves on the Board of Management. He was previously with the Warsaw office of Dickinson, Wright, Moon, Van Dusen & Freeman. Piwowar also has co-authored articles in the January 1995 issue of

International Financial Law Review, both the 1995 and 1996 editions of *Banking Yearbook*, and the June 1996 issue of *Central European Automotive Report*. His practice concentrates on international law, finance, banking, securities, mergers and acquisition, and commercial paper.

Douglas L. Rabuzzi has accepted a position with the Legal Unit of Duquesne Light Company, Pittsburgh, Pennsylvania.

Jennifer C. Warren has become business and legal affairs counsel for Fox, Inc., of Beverly Hills, California. She was previously a senior associate attorney with the Corporate Department of Tenzer Greenblatt, L.L.P., New York, New York.

1991

Craig Smith has been named a Joseph B. Kelly Teaching Fellow at the Dickinson School of Law, Carlisle, Pennsylvania, where he is teaching lawyering skills.

1992

5TH REUNION

The class of 1992 Reunion will be Sept. 19-21.

Michael S. Burkhardt has joined Morgan, Lewis & Bockius, L.L.P., as an associate in the firm's Philadelphia office. He practices in the Labor and Employment Law Section.

Kristina Dalman has joined the Seattle law firm Hillis Clark Martin & Peterson as an associate. Her practice emphasizes land use and real estate matters. She previously worked as an associate with the Perkins Coie firm.

Steven A. Hicks has opened his own law practice in Okemos, Michigan. He specializes in representing individuals in disputes over insurance or disability benefits, in addition to employment discrimination and wrongful discharge cases. He previously was an associate with the Lansing law firm Sinas, Dramis, Brake, Boughton, McIntyre & Reisig, P.C., where he handled primarily personal injury cases.

Lydia Pallas Loren has joined the faculty of Northwestern School of Law of Lewis and Clark College, Portland, Oregon, as an assistant professor of law. She teaches intellectual property, copyright, and federal courts. Loren previously practiced with the Ann Arbor law firm Bodman, Longley & Dahling.

Michael Mishlove is clerking until September (1997) with the Hon. Walter J. Cummings of the U.S. Court of Appeals for the Seventh Circuit.

Dean Nash has joined the McLeod Law Firm, Kansas City, Missouri, as an associate. He concentrates on appellate practice and tort litigation.

Joseph Schmitt, formerly of the Minneapolis law firm Popham Haik Schonobrich, has joined Halleland Lewis Nilan Sipkins & Johnson, of Minneapolis.

Jan Van Lancker has left the Brussels, Belgium, office of the law firm De Bandt, van Hecke & Lagae to join its Antwerp office. He practices securities law, corporate law, and general business law.

1993

Kimberly White Alcantara has left the law firm Pattishall, McAuliffe, Newbury, Hilliard & Geraldson, to become counsel in the legal department of True North Communications Inc., the Chicago-based parent company of the Foote, Cone & Belding advertising agencies. She practices intellectual property, advertising, and promotions law.

Kara Lyon has started her own company, Accessible Evidence of New York City, which designs and develops demonstrative evidence for use in trials.

Anthony J. Mavrinac has joined the Detroit office of the law firm Miller, Canfield, Paddock and Stone, P.L.C. As an associate in the Finance and Development Department, he will be involved in local and national real estate finance matters. Mavrinac previously was associated with the law firm Day, Berry and Howard, of Hartford, Connecticut.

Alexander M. Sanchez is the executive director of the Cleveland, Ohio-based Esperanza, Inc., which provides educational, motivational, and financial assistance to Hispanic youth. He previously was with the law firm Thompson, Hine and Flory, and recently completed studies for a Masters of Government Administration at the University of Pennsylvania.

1994

Dennis R. Kiker has joined the law firm Morrison & Hecker L.L.P., of Phoenix, Arizona. He practices in the area of general commercial litigation, with an emphasis on intellectual property law.

1995

Robert Baker has left the United States Attorney's Office in San Diego to become a deputy district attorney in Sacramento, California.

Michael Carrier has joined the Washington, D.C., law firm Covington Burling as an associate.

Steven W. Clark has joined the law firm Warner Norcross & Judd L.L.P. as an associate in the firm's Muskegon office. He practices in the area of employee benefits law.

Mark H.F. Kuo wrote the article "Project Security," which was published in the July/August 1996 issue of *Independent Energy*, a trade magazine for project finance professionals. The article analyzed the new security interest law promulgated in the People's Republic of China.

Lorena Ortega has become an associate of the law firm Gartner & Young in Los Angeles, California. Gartner & Young is an employment litigation firm, specializing in the defense of management in employment discrimination cases.

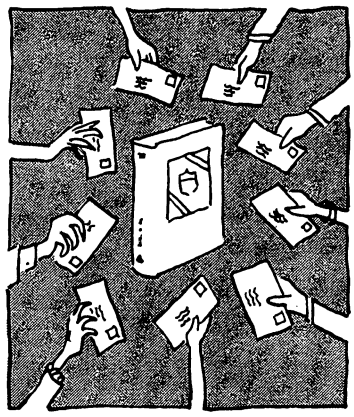
Allana Stark is doing a year-long clerkship with the Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit.

Jamina Tepley and **Eric Genin**, '96, have joined the Chicago office of the law firm Vedder, Price, Kaufman & Kammholz, as associates.

1996

David B. Cade has become associated with the firm of Honigman Miller Schwartz and Cohn. He concentrates his practice in bankruptcy law at the firm's Detroit office.

Harold E. Ford, Jr., of Memphis has been elected to the United States Congress. (See story on page 58.)



Need new directory? Check for availability

Those who have ordered a copy of the new Law School directory of alumni are receiving the new volume at about this time.

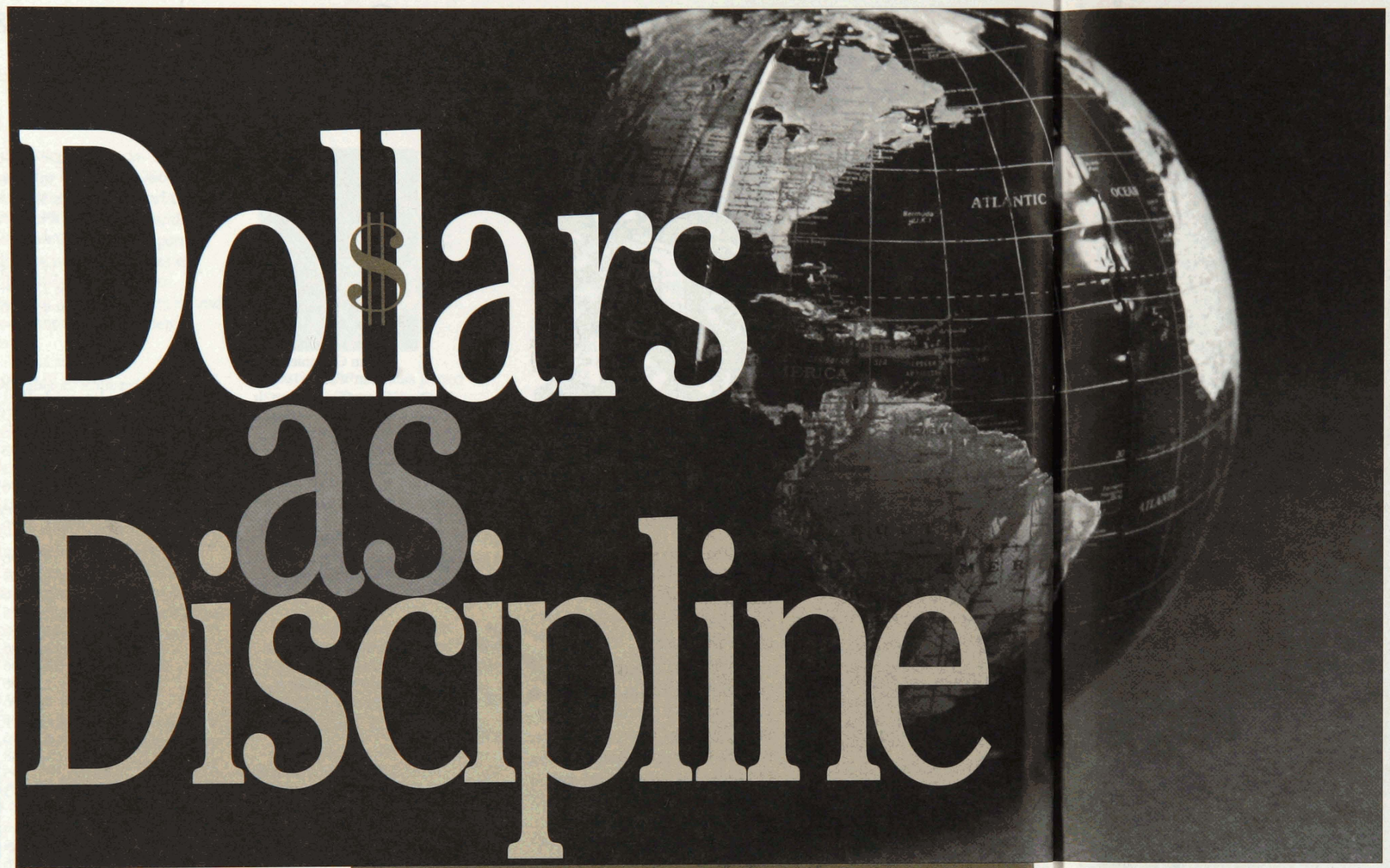
Harris Publishing, which prints the directory, made its printing run to correspond with the number of directories that had been ordered. However, those who did not pre-order a directory still may be able to get one if any printing overrun copies remain.

For information on availability, contact Harris Publishing's Customer Service department at 800-877-6554. If any copies of the directory remain on hand, Harris will fill orders for them on a first-come first-serve basis.

IN memoriam

'24	Francisco Penberthy	September 3, 1995
'25	Hon. Laurens L. Henderson	June 30, 1996
'28	John W. Holmes	March 3, 1996
	Mary L.K. McShane	August 24, 1996
	Frederic P. Rich	January 1, 1991
	Louis E. Smith	
'29	Amos M. Pinkerton	May 27, 1995
	Earle L. Richmond	August 2, 1994
	Hawley E. Stark	August 4, 1996
'30	Roy R. Ray	May 17, 1994
'31	William G. Coultrap	
	Steven G. Danielson	November 1, 1977
	Albert V. Hass	April 18, 1996
	George D. Milliken, Jr.	January 1, 1991
'32	Merrill Hendershot	May 26, 1993
'33	Richard P. Brous	August 2, 1996
	William A. Ruble	July 30, 1993
'34	Clarence J. Boldt, Jr.	
	Arno R. Vogt	March 3, 1996
'35	Irving S. Frank, Jr.	March 29, 1991
	Susanna M. Osterling	June 4, 1996
'36	Harold E. Fawcett	
'37	Paul L. Proud, Jr.	July 16, 1996
	Edward Sherman	January 1, 1989
'38	Richard E. Cross	August 31, 1996
	C. Shelby Dale	June 26, 1996
'39	Richard W. Ryan	August 24, 1996
'40	Delos P. Bassinger	February 22, 1996
'41	William E. Miller	September 29, 1996
	Stanley Cole Miner	January 1, 1996
'42	Raymond R. Allen	May 1, 1996
	Malcolm B. Ramey	January 1, 1995
'43	William A. Bell II	July 1, 1996
	Tin Seong Goo	September 1, 1988
'46	Harold C. Rudolph, Jr.	August 14, 1995
'47	Robert M. White II	February 13, 1995
'48	Franklin Essenburg, Jr.	
	Dan Hale	June 24, 1996
	Robert C. Hoel	February 7, 1995
	Hon. Helen Wilson Nies	August 7, 1996
'49	Loren W. Campbell	August 10, 1996
	Howard William Haftel	September 12, 1996
	Ralph E. Hunt	May 24, 1995
	John H. Spelman	Febrary 12, 1996
'50	James G. Hartrick	October 3, 1996
	Byron D. Walter	August 23, 1996
'52	Thomas G. Caley	June 29, 1996
	Morton L. Simons	October 12, 1994
'54	Richard H. Norris III	August 18, 1996
'55	Albert W. Easton	June 2, 1996
	Herbert H. Tanigawa	July 30, 1996
'56	John T. Abernethy	April 12, 1993
	Friedrich W. Albrecht	August 24, 1996
'58	Hon. John E. Rees	August 2, 1996
	L. Edward York	November 1, 1995
'60	Samuel J.K. Rogers	February 12, 1996
'61	David C. Dethmers	May 1, 1995
'63	William B. Lum	
	Robert D. McVeigh	January 1, 1996
'65	Edward F. Langs	September 15, 1996
'68	Stephen F. Idema	August 4, 1996
'69	Steven W. Draheim	
'72	Charles H. Seller	September 8, 1996
'73	Peter W. Sturtz	May 1, 1990
'74	W. James Noland	January 1, 1993
'85	John D. Wilson	
'91	Robert Charles Dowd	

Dollars as Discipline



THE U.S. & THE UN

This essay is based on a speech delivered at United Nations Headquarters on Sept. 12, 1996 as part of the UN Department of Public Information conference for Non-Governmental Organizations. Portions of this speech were also delivered on March 28, 1996 at the Annual Meeting of the American Society of International Law in Washington, D.C. and subsequently were published as part of those proceedings under the title "The United States' Financial Veto." A fully cited version is available from the author.

— BY JOSÉ E. ALVAREZ

The United States owes at present some 73 percent of the considerable sums of money that member states now owe the United Nations. The U.S. debt stands roughly at $1.6 billion. Why is the United States, the world's richest and most powerful nation, the UN's leading "deadbeat?"

PHOTOS BY THOMAS TREUTER

Some of the explanations for the dismal state of U.S./UN financial relations have been the subject of prior analyses and need only be briefly addressed here:

1. Bad press, bad realities. Thanks to press reports and even some internal UN documents, there has been constant and persistent attention paid to allegations of corruption, fraud, and mismanagement within UN headquarters and UN field offices. Some of the difficulties have been due to mere inefficiencies such as those stemming from overlapping or duplicative programs. In other instances, as with respect to some peacekeeping missions in Somalia, Rwanda, and Bosnia, there have been flawed mandates or at least perceptions of failure. With respect to some recent peacekeeping efforts, many believe that the UN failed to respond quickly, despite fair warning, thereby allowing thousands to die in preventable genocidal massacres.

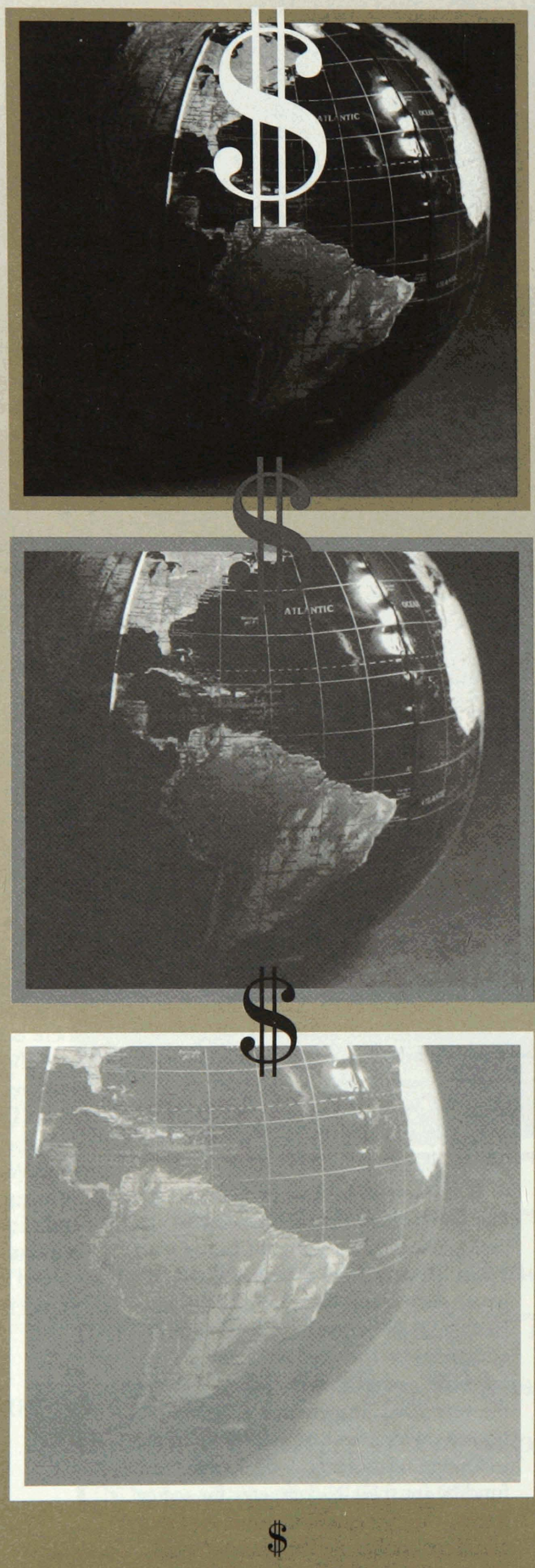
2. The backlash to "aggressive multilateralism." There has been a backlash, not entirely partisan, to the Clinton Administration's initial suggestions that it would increasingly resort to international organizations, particularly the UN, when faced with decisions to use force abroad. Faced with accusations that it was threatening to "sub-contract" away the national security interests of the United States or that it was more willing than prior administrations to have U.S. soldiers serve under "foreign command," the Clinton Administration soon buried any reference to "aggressive multilateralism." Senator Jesse Helms, among others, succeeded in vilifying the phrase as an irresponsible surrendering of "national sovereignty."

3. Balanced budget pressures. Given recent U.S. government shutdowns, UN policy issues in Washington, along with virtually every other aspect of the U.S. government's activities, have been held hostage to an increasingly bipartisan consensus on the need to secure a balanced budget for the United States by the year 2002. Impenetrable "firewalls" to protect government expenditures relating to foreign relations no longer exist. Today, funding for the UN competes for scarce funds with, for example, initiatives to put additional police on the streets. Pitted against domestic concerns of direct interest to clear constituencies within the United States, UN funding loses the battle.

4. Lack of domestic support. Alongside increased competition for less money has been the continued absence of formidable U.S. constituencies in favor of paying UN dues. Only specific UN programs such as UNICEF have generated genuine grass-roots support within the U.S. public. With the exception of organizations such as the UN Association, relatively few U.S.-based organizations are inclined to mount an offensive directed at securing money for the general operation of the UN system. From the perspective of those in Congress, a vote against an appropriation for the UN is not likely to generate significant voter discontent.

5. UN peacekeeping budgets. In the immediate aftermath of the Cold War, peacekeeping expenditures authorized by the Security Council grew at a phenomenal rate, at one point exceeding $3 billion annually. Such sums were more than the amounts due the organization for its "regular" budget. Since the U.S. is assessed over 30 percent of peacekeeping expenses and requests for payment of these sums have been traditionally included in budget requests on behalf of the U.S. Department of State, peacekeeping expenses emerged as an ever larger portion of the sums due that department. While the increases in peacekeeping budgets have now ended, there is heightened wariness with respect to authorizing and financing such ventures.

6. The end of the Cold War. To some, since the United States "won" the Cold War, it simply did not need to devote as many resources to the UN. To many, the end of the Cold War suggested an opportunity to "turn inward" to enable the United States to put "its own house in order."



IT SHOULD BE NOTED THAT ALTHOUGH THE MOST SIGNIFICANT "DEADBEAT," THE UNITED STATES IS HARDLY ALONE. AS OF THE END OF 1995, NEARLY ONE-HALF OF UN MEMBERS HAD NOT YET PAID FOR REGULAR BUDGET ASSESSMENTS DUE AT THE BEGINNING OF 1995. INDEED, TWENTY-TWO OF THEM HAD MADE NO PAYMENTS AT ALL. THE RESULTS HAVE BEEN GRIM FOR THE UN. EARLIER THIS YEAR, THE UN UNDERSECRETARY FOR ADMINISTRATION AND MANAGEMENT INDICATED THAT UN FINANCING WAS "PRECARIOUS AND HEADED FOR THE BRINK."

7. Devolution of power. Emerging hostility toward the U.S. federal government, amidst a move to "restore" power to governmental units considered "closer" to the people, has brought in its wake a new skepticism of international organizations. For some, including some members of Congress, another component of the move to restore power to states within the United States is to lessen the federal government's prerogatives in "foreign bureaucracies" like the United Nations.

8. The "democratic deficit." The greater the perception that the UN makes a difference, the greater is the perception — accurate or not — that it is a de facto "law-maker." The more the organization is seen as "interfering" with national decisions, the more likely the UN comes to be regarded as a law-making institution that should be as accountable to representative government as other law-making bodies. Within the United States, the UN has come to be seen as an increasingly potent tool of the U.S. executive branch, particularly the President. Accordingly, support for the UN has increasingly become a partisan issue between Republicans and Democrats, with Republicans using UN funding to make the Democratic President more "accountable" to their demands.

But for international lawyers, the single most evident underlying reason for the United States' refusal to pay its UN dues is a ninth cause, itself the result of 1-8 above: the breakdown in the bipartisan consensus which formerly existed that payment of UN dues was a legal and not merely a political obligation. In showing the historical context for that breakdown and its consequences, I hope to demonstrate that these funding issues are not "merely" a matter of an obstinate treaty violator.

The Current UN Financial Crisis

Since September 1995 the U.S. has made a series of sporadic and anemic payments to international organizations as part of continuing resolutions that have funded the entire federal government. There is, as yet, no agreement between the President and Congress on a long term plan to finance the UN — or for that matter the U.S. State Department, in which such a plan would be found.

Over the past months, the Clinton Administration has announced plans to ask Congress to approve a five-year plan to pay the United States' UN arrears. In exchange, the U.S. would insist on elaborate UN reforms, changes in the "capacity to pay" formula used to determine UN regular budget assessments, and a reduction of the U.S. share of that budget (from 25 percent to 20 percent). Since Congress did not fund the final two payments of the last five-year repayment plan, proposed by the Bush Administration, we should not be too optimistic about this latest Clinton proposal. The historical record of U.S./UN financial relations suggests that Congress could well seize upon this Administration's proposals for UN reforms, add to them, insist on a reduction in the U.S. contribution, and still renege on payment of arrears.

It should also be noted that although the most significant "deadbeat," the United States is hardly alone. As of the end of 1995, nearly one-half of UN members had not yet paid for regular budget assessments due at the beginning of 1995. Indeed, twenty-two of them had made no payments at all.

The results have been grim for the UN. Earlier this year, the UN Undersecretary for Administration and Management indicated that UN financing was "precarious and headed for the brink." He predicted that, absent a new influx of cash, the UN would literally "run out of cash" by the end of the year. Although thanks to some payments by UN members (including the United States) the immediate forecast is not quite as grim now, UN financing remains precarious and staff morale is low. There

is also considerable frustration among both the secretariat and member states and it is now almost uniformly directed at the United States.

The Rise and Fall of the "Duty to Pay"

For over 35 years, the United States government, Republicans and Democrats alike in both the executive and the legislative branch, adhered to a bipartisan consensus with respect to UN financing. The United States government stated that it believed that article 17 of the UN Charter meant what it said: all members owe a legal duty to pay for whatever assessments, to be used for whatever purpose, the collective membership determines are owing under the UN Charter, and no UN member can unilaterally "pick and choose" among the activities that the organization chooses to fund communally. More important, the United States acted consistently with that belief and paid its dues in full and on time. While, through the late 1970s, the U.S. Congress expressed occasional frustration with the level of U.S. assessments, it disputed only the application of the UN "capacity to pay" formula for determining contributions to the UN regular budget. On the relatively few occasions when Congress threatened to act unilaterally to reduce U.S. contributions, its intent was always to reach a maximum assessment of 25 percent — a goal, not in and of itself unreasonable or improper under the Charter, which the United States had articulated before the very first General Assembly in 1946.

With time, other UN members came to share the United States' legalistic view of the "duty to pay" — even with respect to once controversial peacekeeping expenses. By the late 1970s, the membership had accepted the principle of collective financial responsibility as had been laid out by the World Court's opinion in the Certain Expenses Case in 1962.

U.S. unilateral withholdings, starting in 1979, directed at specific UN programs (such as programs involving the PLO), marked the beginning of a significant change in U.S. attitudes. Particularly after passage of the Kassebaum amendment in 1985 — which resulted in unilateral U.S. withholdings until the organization began adopting budgets by consensus instead of the 2/3 vote provided for in article 18 — U.S. officials began wielding a de facto U.S. financial veto. The United States began to shift to a more "politicized" view of the "duty to pay."

In this decade, the use or threat of use of the U.S. financial veto has become far more pronounced. With variations of most of the United States' threats to withhold (dating from the 1980s) still in place, new ones have emerged. Allegations of fraud, mismanagement and waste led to passage, in 1994, of a requirement that the United States withhold 10 to 20 percent of UN assessed contributions absent Presidential certification that the UN had established an "independent office of Inspector General" charged with certain powers. In addition to requiring additional consultation between the President and Congress concerning UN peace operations, Congress also unilaterally reduced the U.S. share of peacekeeping expenses from the level that the United States had previously accepted (30.4 percent) to 25 percent effective Oct. 1, 1995. As Rep. Ben Gilman (R-NY) described it, Congress was applying "a carrot and stick approach to force discipline on the United Nations."

Since that time, the current Congress has seen fit to "discipline" the UN on a continuing basis. Since November 1994, Congress has approved numerous conditions on financing by hefty majorities in one or both houses. Most of these are not law today only because of Presidential vetoes. Many are likely to re-emerge in future bills in some form. Among the most seriously considered, drawing support from key congressional leaders, are 17 proposals that would:

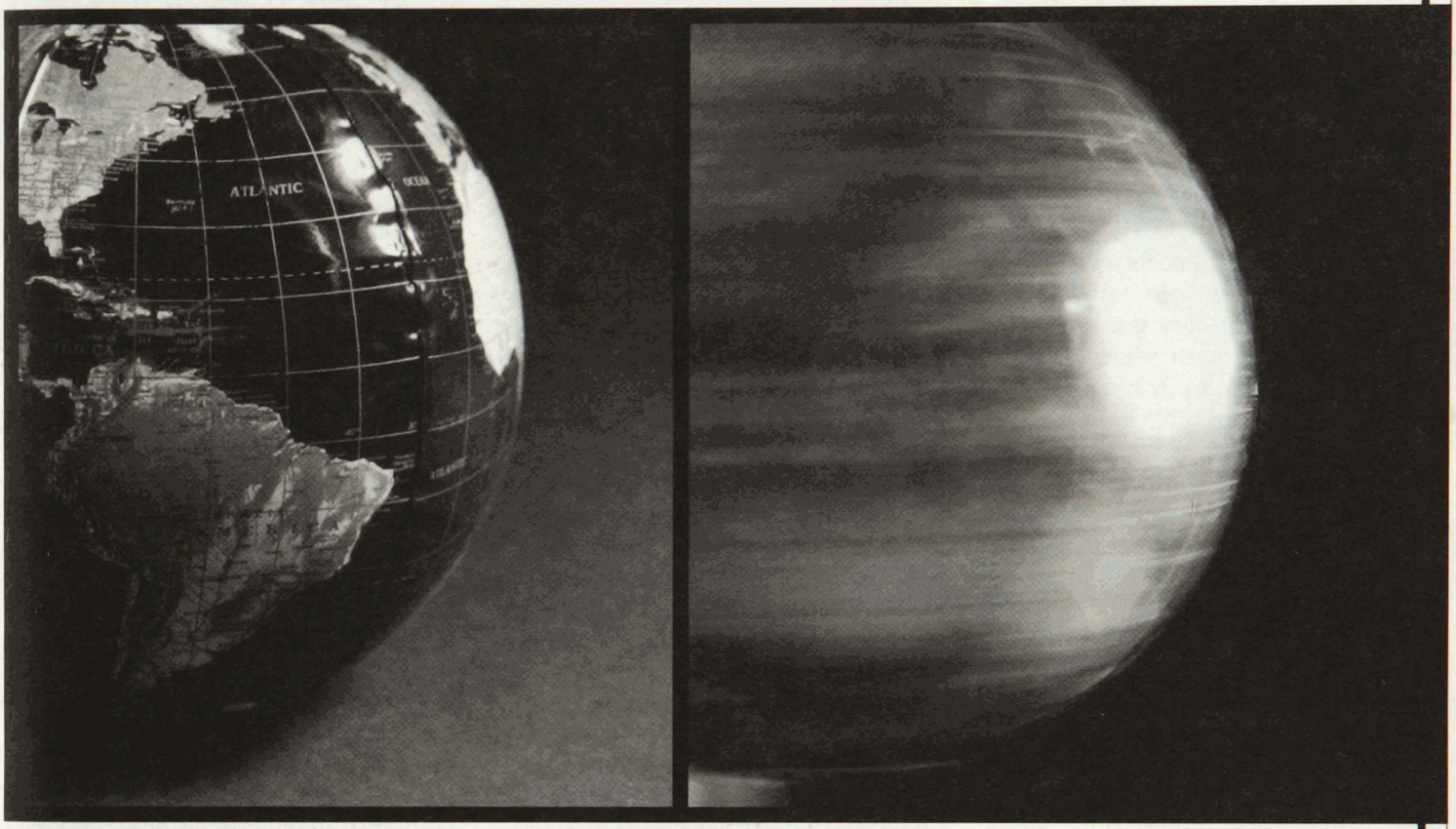
1. prohibit or severely restrict the placement of U.S. troops under the "command or operational control" of foreign nationals acting on behalf of the UN;

2. require regular reimbursement by the United Nations for all services, direct or indirect, rendered by the U.S. military, a sum estimated to be in excess of annual U.S. peacekeeping assessments;

3. tighten up existing consultation requirements between the Congress and the President such that, for example, the President would be obligated to give 15 days prior notice before the United States' UN representative could vote in favor of changing any peacekeeping mandate or creating any new peace operation;

4. require specific Presidential certifications (such as a finding that a mission is in the "national interest" or that U.S. intelligence information is not compromised) prior to deployment of U.S. troops for UN peace operations;

5. prohibit payment of U.S. assessed or voluntary contributions to the UN if that organization "imposes any tax or fee on United States persons or continues to develop or promote proposals for such taxes or fees;"



6. require changes in UN procurement procedures to ensure "equal treatment" for U.S. manufacturers and suppliers;

7. prohibit the payment of any arrears, interest or penalties owed to the UN as a result of the reduction to 25 percent maximum on peacekeeping assessments;

8. reduce the U.S. share of peacekeeping assessments to 20 percent;

9. require executive branch certifications with respect to the continuing effectiveness of the UN's Office of Internal Operations;

10. prohibit any U.S. participation in any further "world wide conferences;"

11. prohibit funding of any organization that either performs abortions or counsels states to change their existing laws relating to abortion;

12. require the UN to adopt "zero-based" budgeting such that the organization would have to absorb costs such as inflation;

13. require that any future payment of arrears owed to any international organizations "be directed towards special activities that are mutually agreed upon by the United States and the respective international organizations;"

14. require Presidential submission of a comprehensive blueprint for reform of the UN system;

15. condition the payment of U.S. contributions to a particular peace operation on changes in that mission or other acts by the Security Council;

U.S. UNILATERAL WITHHOLDINGS, STARTING IN 1979, DIRECTED AT SPECIFIC UN PROGRAMS (SUCH AS PROGRAMS INVOLVING THE PLO), MARKED THE BEGINNING OF A SIGNIFICANT CHANGE IN U.S. ATTITUDES.

$

16. require the executive branch to seek the elimination of the arms embargo against Bosnia in the Security Council and if that fails, in the General Assembly; and

17. cut U.S. contributions to the UN to resolve debts owed by diplomatic missions in New York City.

These proposals, which have often appeared in authorization bills for the Departments of State or Defense but sometimes have been the subject of free-standing bills relating to national security or peacekeeping, are only the tip of the iceberg. Indeed, when the Senate began consideration of the State Department's authorization bill (S.908), in August of 1995, over 140 amendments were introduced. Congress is also insisting on conditions with respect to assessments to other international organizations.

All of these instances involved explicit or implicit threats to withhold regular budget, peacekeeping, or voluntary contributions (or, often, all three) unless Congress' conditions were met. In addition, assessed or voluntary contributions for all international organizations are being pitted against the funding of favored domestic priorities with established domestic constitutiencies with grim results for the funding of these organizations. Administration requests to pay assessments in these organizations have been repeatedly rejected out of hand, with cutbacks justified, for example, on the grounds of the need to increase appropriations to the U.S. Department of Defense. Forced to choose among organizations, the Clinton Administration announced that the U.S. was withdrawing from UNIDO (United Nations Industrial Development Organization) and was not rejoining UNESCO (United Nations Educational, Scientific and Cultural Organization), not because of dissatisfactions with either organization, but due to budgetary constraints. U.S. membership in the ILO (International Labour Organization) just barely escaped a similar fate.

Today the United States is plainly not adhering to the budgetary scheme envisioned in the UN Charter. To most members of Congress who must appropriate the funds, the United States has not a "duty" but an "option" to pay. The Clinton Administration finds that UN payments increasingly require a policy rationale and not simply the argument that they are required under a treaty obligation. The United States' new de facto financial veto is broader than its veto in the Security Council. While the latter is limited to non-procedural issues before the Security Council, the financial veto knows no bounds. Today, no aspect of the UN's operation — from the scope of peace missions to the security of intelligence information, from the treatment of NGOs at UN conferences to the use of UN insignia by U.S. troops assigned to UN missions, from the intricacies of UN employment practices to its accounting procedures, from the day-to-day operations of its Office of Internal Operations to the treatment of private contractors to the UN — is immune from Congressional scrutiny and financial threat. And, as with its Security Council veto, the U.S. financial veto seems effective even when merely threatened. Both the Clinton Administration and the UN jump through the Congressionally-demanded hoops once a threat garners credible support in Congress. U.S. leverage over the organization seems effectively asserted whether or not the newer threats are actually implemented as part of U.S. domestic law.

International lawyers and others have made many arguments against the exercise of this relatively new U.S. "financial veto." We have argued that under international law, holding the UN hostage constitutes an inexcusable, misguided breach of a treaty obligation that undermines the rule of law. We have argued that UN reforms adopted under threat will be less effective, ephemeral and not genuine because they are forced upon the organization instead of arising from true institutional learning or multilateral cooperation. We have complained that it is impolitic, impracticable and arrogant for the United States to insist that the UN become a branch office of the U.S. Department of State. We have criticized the U.S. government for exhibiting to the world the inadequacies of its diplomatic skills through the use of such a blunt, distasteful club. We have pointed to the ironies of all this occurring just when the UN seems most inclined to serve U.S. purposes and when, through consensus-based budgeting and the United States' legitimate Security Council veto, the U.S. seems to have sufficient (if not already inordinate) control over the organization. For these reasons, many of us have tended to see the partisan battles over UN funding as a conflict between good and evil, with the Republicans in the U.S. Congress (mostly) wearing the black hats these days.

But if our arguments are so compelling, why are we losing the battle for funding in the U.S. Congress?

It is wrong to suggest that Congressional proponents of the measures I have described are all fundamentally hostile to continued U.S. involvement in multilateral institutions. While there are probably as many reasons for these UN-bashing attempts as there are members of Congress, for many on Capitol Hill pulling the UN's purse strings is simply a tool that "works." To most members of Congress, exercise of the U.S. financial veto is responsible for the new wariness towards peace operations (by both the Clinton Administration and the Security Council), adherence to "zero real growth" and now "zero nominal growth" UN budgets, creation of the equivalent of a UN "inspector general's" office, the continuance of consensus-based

budgeting, closer scrutiny of the participation rights of non-state entities, and improvements in the international civil service. From their perspective, it seems odd that the same internationalists that now bemoan threats to the UN are often the ones encouraging sanctions on human rights violators or the conditioning of loans to objectionable regimes by the World Bank. Treaty obligations aside, many members of Congress do not understand, *from a policy perspective*, why it is okay to sanction a state but not an international organization.

Nor do they understand why they are permitted to keep the U.S. executive branch and its agencies on a financial tether but must renounce this potent policy tool when the executive branch acts, as it increasingly does, in fora that are even less transparent or accountable to the average U.S. citizen, such as the Security Council. Presidential candidate Pat Buchanan may be wrong about how to deal with the problems of the "new world order," but he is right to suggest that the UN imposes obligations on the United States — apart from the duty to pay. From the perspective of many in Congress, it is their business to scrutinize all such obligations, along with all those who make them, and the expenses they entail.

UN peacekeeping raises additional concerns. As those who have studied Congress' repeated use of its "national security appropriations power" would remind us, it is not rare for the Congress to attempt to "pull the purse strings of the commander-in-chief." Today, when the commander-in-chief often acts through UN auspices, should it surprise him (or us) if he feels the pull of Congress nonetheless? When the UN authorizes operations — as in Somalia, Bosnia, or Haiti — that appear to some members of Congress uncomfortably close to the onset of hostilities contemplated in the War Powers Resolution, is it a surprise if Congress turns to its purse-strings power to keep these in check?

Conclusion

In the end, the battle over who pays for the UN is a fight over who controls it. This results in tensions not only between major and small contributors but also between the U.S. executive branch that sets the UN's agenda and the legislative branch that pays for it. In the United States, the battle over who "controls" the budget — legislature or executive — has increasingly become part of the perennial inter-branch struggle over who "controls" U.S. foreign policy. For some of the participants in recent congressional/executive squabbles over UN peacekeeping budgets, those confrontations are an essential element of constitutionally mandated "checks and balances" on the waging of war.

As all this suggests, we international lawyers should not be so confident that we occupy the "high ground" on this issue. We will continue to lose the argument over UN financing so long as many on the Hill sincerely believe that they are exercising a constitutional prerogative that is the equal of the supremacy clause, if not its moral superior: the duty of a legislature in a democracy to keep law-making institutions, whether national or international, accountable to the taxpayers who ultimately pay the bills. We will lose if keeping the UN one step away from bankruptcy continues to be seen as the necessary price of the U.S. separation of powers.

Professor of Law José E. Alvarez *joined the Law School faculty in 1993 after teaching at George Washington University's National Law Center. Before joining the George Washington faculty, he served as an attorney at the U.S. Department of State, where he worked on international arbitration and investment issues. He also practiced in a private firm in Washington, D.C. He graduated summa cum laude from Harvard College and received a B.A. with honors from Oxford University and a J.D. with honors from Harvard Law School. He teaches courses in international law, international organizations and foreign investment.*

Going to trial

This essay is adapted from "Don't Try: Civil Jury Verdicts in a System Geared to Settlement," appearing in *44 UCLA Law Review 1* (1996). Publication is by permission. A complete, fully cited version is available from the editor of *Law Quadrangle Notes*.

A rare throw of the DIE

— BY SAMUEL R. GROSS AND KENT D. SYVERUD

PHOTOS BY THOMAS TREUTER

If it is true, as we often hear, that we are one of the most litigious societies on earth, it is because of our propensity to *sue*, not our affinity for *trials*. Of the hundreds of thousands of civil lawsuits that are filed each year in America, the great majority are settled; of those that are not settled, most are ultimately dismissed by the plaintiffs or by the courts; only a few percent are tried to a jury or a judge.

This is no accident.

We prefer settlements and have designed a system of civil justice that embodies and expresses that preference in everything from the rules of procedure and evidence, to appellate opinions, to legal scholarship, to the daily work of our trial judges. Our culture portrays trial — especially trial by jury — as the quintessential dramatic instrument of justice. Our judicial system operates on a different premise: that trial is a disease — not generally fatal, but serious enough to be avoided at any reasonable cost.

Preference for settlement is not unique to the American legal system but it is especially pervasive and strong, for several reasons. We have many lawyers, by any count, but few judges. As a result, we have very many litigated disputes per judge — so it is essential that most cases be resolved without judgment. This scarcity of judges is possible because of our adversary system of adjudication. In this system the parties control the development and presentation of facts; the fact finder (judge or jury) is passive, and has a comparatively small role in the process. Party control of evidence makes private settlement easier, since the parties themselves, rather than the court, procure the information they need to negotiate. Adversary fact finding is also expensive, unpredictable (especially if the ultimate tribunal is a jury), and, given our scarcity of judges, slow. As a result, the savings to be realized by settlement — in time, money and risk — are greater than they might be in a quicker, cheaper and more predictable system. These explanations, of course, are not independent of each other. On the contrary, the major structural reasons for the special importance of settlement in American litigation — scarcity of judges and abundance of lawyers, adversarial fact finding, trial by jury — are all manifestations of a single cultural value: the preference for private ordering over public control.

Trials, of course, are important beyond their numbers. For the public, trials have the advantage of visibility. They are open and dramatic while settlements are usually boring and private — in fact, invisible. Their openness also makes trials attractive subjects for study by scholars, with the added benefit that cases that are fought to the end are likely to present more of the issues that we like to study

When civil disputes end in trial

and need to teach. But for practitioners trials are important primarily because they influence the terms of settlement for the mass of cases that are not tried — because they cast a major part of the legal shadow within which private bargaining takes place. Trials have this standard-setting effect despite the fact that they are not typical of the cases in which their results are used as guides for settlement. Scholars are unanimous in recognizing that trials are not representative of the mass of litigated disputes. They seem to be selected because of unusual rather than common features, such as high stakes, extreme uncertainty about the outcome, and reputational stakes of the parties. *Liebeck v. McDonald's Restaurants* (1994) is an extreme case, but a useful example nonetheless.

On Feb, 27, 1992, Mrs. Stella Liebeck, aged 79, a passenger in a car driven by her grandson, bought a cup of coffee at a take-out window of a McDonald's in Albuquerque. With the car stopped, she held the styrofoam cup between her legs, tried to pry off the top, and spilled the coffee — which was scalding hot. She suffered third degree burns. She sued, and three years later a jury returned a verdict against the McDonald's Corporation for $160,000 in compensatory damages and $2.7 million in punitive damages.

The verdict became an instant cliche in the tort reform debate. At first, it was the ultimate jury-trial horror story: Woman gets $2.86 Million For Spilling Her Coffee. Later, it re-emerged as a tale of justice done: Mrs. Liebeck was severely injured — she was hospitalized for eight days and required skin grafts; she was injured because of McDonald's policy of serving coffee 15 to 20 degrees hotter than its competitors; McDonald's knew the danger of selling coffee at that heat — it had received 700 prior complaints in the previous five years, some involving serious burns — but it never considered changing its practice; the $2.7 million

there is almost always a clear loser, and usually a clear winner as well.

punitive damage award was chosen by the jury to be equal to two days worth of coffee revenue for McDonald's; the trial judge reduced the total award to $640,000; in the aftermath of the case, McDonald's lowered the temperature of its coffee.

Needless to say, *Liebeck v. McDonald's* was an unusual trial. The damages were unusually high, and the facts of the claim were uncommon, to say the least. In many respects, however, it is a perfectly representative example of an American civil jury trial — as we shall see.

To understand civil trials in America it is necessary to consider them in the context of the pretrial bargaining in which civil litigation is usually resolved. That is what we attempt in this article, using two samples of civil jury trials in California state courts, one from 1985-1986, and one from 1990-1991. Both samples were drawn from case reports in *Jury Verdicts Weekly*, a state-wide California jury verdict reporter that is widely used by lawyers in evaluating their cases — in other words, our data were generated by one of the instruments through which trials cast their shadows over settlement negotiations. For the second sample, we also interviewed 735 attorneys who represented a plaintiff or defendant in one of the cases, and asked them about insurance coverage, fee arrangements, the parties' pre-trial bargaining positions, and the factors that drove the cases to trial. This survey provides unique data.

For this article, we assembled a statistical portrait of the civil jury-trial caseload of the California State Superior Courts, the state courts of general jurisdiction. Briefly, we find that most civil jury trials in California (over 70%) concern personal injury claims of one sort or another; that almost all plaintiffs, in trials of every sort, are individuals; that the overwhelming majority of these plaintiffs (especially in personal injury cases) pay their attorneys on a contingent basis; and that almost all defendants, except some large businesses and most government entities, have insurance that covers the cost of defending the lawsuit and all or some of the potential damages. The typical civil jury trial is a personal injury claim by an individual against a large company, in which neither party is playing with its own money: the plaintiff is represented by an attorney whose fee and expenses will be paid out of the recovery (if any), and the defendant has an insurance policy that covers all defense costs and any likely judgment. *Liebeck v. McDonald's* fits all those criteria, except that the defendant may well have been self insured.

Three notable outcomes emerge from the outcomes of these trials:

First, most of the total sum of money awarded in these trials is concentrated in a small number of very large cases.

Second, the pattern of outcomes in personal injury trials is very different from that in commercial trials. Plaintiffs lose most personal injury trials — that is, they do less well at trial than they would have by settling — while defendants are more likely to lose in commercial trials. On average, personal injury verdicts are roughly midway between what the plaintiffs demand and what the defendants offer in settlement; on average, commercial verdicts are considerably larger than the plaintiffs' demands as well as the defendants' offers.

Third, jury verdicts are rarely compromises. Compromise, of course, is the essence of settlement, but compromise judgments are also possible at trial. In fact, they hardly happen. When civil disputes end in trial there is almost always a clear loser, and usually a clear winner as well.

Here, we examine the role of trial in American civil litigation, and consider possible reforms. The key question is: Why are compromise verdicts so uncommon? We offer a structural explanation: This is a natural consequence of a legal system in which settlement and trial are mutually exclusive rather than complementary methods of dispute resolution, and it is exacerbated by the high cost of trials. Very few cases go to trial, and those that do are atypically difficult disputes that could not be compromised by the parties and are not likely to produce compromise verdicts. Once again, *Liebeck v. McDonald's* is a good illustration. The defendant passed up many opportunities to settle, starting with a $2,000 demand by the plaintiff before she filed the complaint, and ending with a $225,000 recommendation from a mediator. At trial, the issue was framed in all-or-nothing terms: The Case of the Careless Customer vs. The Case of the Callous Corporation. The verdict was much larger than any proposed settlement, but judging from public response it could just as easily have been zero.

The trials we see are the products of a procedural system that is devouring itself. As we have refined and elaborated the rules for jury trials we have multiplied the costs of trial both to the parties and to the courts. The costs to the parties drive them to skip all these expensive procedures and settle; the costs to the system drive judges and rulemakers to find new ways to encourage them to do so. Increasingly, the cases that litigants insist on trying are not only rare but peculiar. In a sense, the *Liebeck* trial was common even in its peculiarities. It is misleading to hold up *Liebeck* as a typical example of American litigation: car accidents and medical procedures must generate a thousand lawsuits for every coffee-burn case, and punitive damage awards in any amount are rare in personal injury trials. But trials are never typical. Ordinary cases of every sort are compromised and settle, and those that don't are unusual even if the context is a garden-variety two-car crash. Trials are

"Win/win" outcomes are rare in civil trials in America.

the most visible aspect of our system of adjudication, and they show it at its worst: the slowest, most expensive and most contentious cases, where compromise has failed, and where the verdict is most likely to seem arbitrary or extreme.

Why are civil jury verdicts so uncompromising?

In most trials there is at least one loser. This may not sound surprising — it may even seem obvious — and for that reason it is important to remember that losing is not an inevitable feature of adjudication. "Winning" and "losing" are defined by reference to the alternatives, and in this setting the common alternative is settlement. A "loser" at trial is someone who does less well than she could have by accepting an available settlement offer from the opposing side — and a "winner" is someone who does better by that standard — considering both the judgment and the cost of obtaining it. By that definition, it is perfectly possible for a trial to produce a "win/win" outcome, an adjudicated compromise between the pretrial positions of the parties. However, judging from these samples, "win/win" outcomes are rare in civil trials in America — by our estimates, 4% to 7%. When one side wins the other almost always loses. And when one side loses the other usually wins; all around disasters in which everyone takes a beating are also uncommon — by our estimates, 9% to 14% of civil trials. In the great majority of the cases, perhaps 80% to 85%, the verdict is a clear victory for one side and a clear loss for the other.

Why are compromises so rare among the small percentage of cases that go to trial? The major reason seems to be structural: the sharp division we draw between settlement and adjudication. In any system, the parties to a litigated civil dispute are allowed — indeed encouraged — to try to settle their differences on their own. Even if they fail, they are likely to resolve some issues along the way, and to narrow their differences. In the United States, however, these partial compromises generally come to naught if the case proceeds to a jury trial. The dispute shifts to a new mode — adjudication before a fact finder who was not party to any prior partial compromises, under rules of procedure that make reference to settlement discussions improper. At trial all deals are off, and all risks are restored. If you fail to settle you must drop out entirely or pay a lot to gamble at high stakes.

This is not the only way to run a court. In Germany, for example, the process is very different. As in America, a primary goal of the system is to facilitate settlement, but that is done by very different means. German civil procedure does not distinguish between trial and pre-trial proceedings. Each case is assigned to a single judge, who actively oversees it from start to finish. Along the way, the judge will convene a series of hearings or conferences with the attorneys and parties, identifying and resolving issues, taking testimony and hearing argument as necessary, attempting at each stage to focus on the legal and factual disputes that must be resolved in order to end the case, either by adjudication or by a settlement that completes the court-assisted convergence.

A typical California Superior Court case, by contrast, is set before a series of judges who know little about it and who play limited reactive roles at various steps along the way. Pre-trial negotiation and much of pre-trial litigation go on in private with no judicial oversight at all. The first point at which a judge is likely to take part in an attempt to resolve the case is a settlement conference close to the date of trial, after the parties have failed to settle on their own and have invested a great deal in trial preparations. If that too fails, there is a trial from scratch before a jury that (by definition) knows nothing of the history of the case.

Actual practice in each country is variable and complicated. For the moment, however, it may be useful to reduce these two systems to ideal types: Court-assisted settlement backed up by court-imposed compromise, vs. private settlement with a high-price poker game as the penalty for failure. The second system, which is pretty much what we live with in America, might as well have been designed to discourage trials. And it does, very successfully; that's why civil trials are so rare.

Few people want to go to trial under these circumstances, or at least they are not willing to own up to it. For our second sample of trials we asked the attorneys directly: "Why did this case go to trial rather than settle?" We classified the first reason given by each respondent as follows: Did the attorney say that her side (the party or its attorneys) was responsible for the trial, or did she say that the other side was responsible, or did she mention some other cause? A clear pattern emerged immediately: Each side says the other one did it. Fifty-four percent of the plaintiffs' lawyers said the defendant or the defense lawyers caused the trial, 19% said their own side did it, and 27% gave some other reason. On the defense side, 41% blamed the opposition, 27% blamed themselves, and 31% chose some non-party cause. This tendency is as pronounced among winners as among losers. For example, 54% of the plaintiffs' lawyers who recovered nothing at trial blamed the defense for the failure to settle, as did 64% of those who recovered

more than $500,000. Attorneys who won hundreds of thousands of dollars said they were forced to court by the defendant's stupidity, and others who successfully defended big claims said trial was caused by the plaintiff's greed or craziness. Almost nobody said "We gambled and lost" or "We decided to fight, and we won."

This is the way people talk about unfortunate events — wars or losses, not adventures or victories. That attitude is no surprise, not even coming from lawyers. Attorneys, like insurance adjusters and other regular players in litigation, make their daily bread in negotiation. When a case falls through the cracks into the other costlier and chancier arena, their reaction reflects the judgment of the system as a whole: A trial is a failure. This view of trials is related to their outcomes in two ways. First, as a cause: The (accurate) belief that trials are expensive and risky is a powerful incentive to settle those cases that can be settled — to compromise whenever compromise is possible, and to avoid trial at all costs when the stakes are too small for either side to come out ahead. That leaves a residue of all-or-nothing cases that resisted compromise before trial and are likely to produce all-or-nothing verdicts after trial. Second, as a consequence: The fact that trials usually are expensive winner-take-all affairs reinforces the consensus that they are dangerous and to be shunned.

And what are these stubborn, uncompromising cases that end in trial? Judging from our data, they are primarily disputes over liability rather than damages. In part, that is inherent in the nature of the issues: Damages is a continuous variable, and therefore more susceptible to compromise and settlement. In addition, if damages were the main issue in contention at most trials we would expect to see more compromise verdicts. A case in which liability is given may go to trial if *either* party is overly optimistic in its prediction of the award, or overly aggressive in its bargaining, but it is most likely to go to trial if *both* sides are unrealistically optimistic or overly aggressive — if the plaintiff asks for too much *and* the defendant offers too little. When that happens, the verdict is likely to fall between their bargaining positions, and may well be a win/win outcome. The fact that such verdicts are rare suggests that damages is not often the main issue at trial.

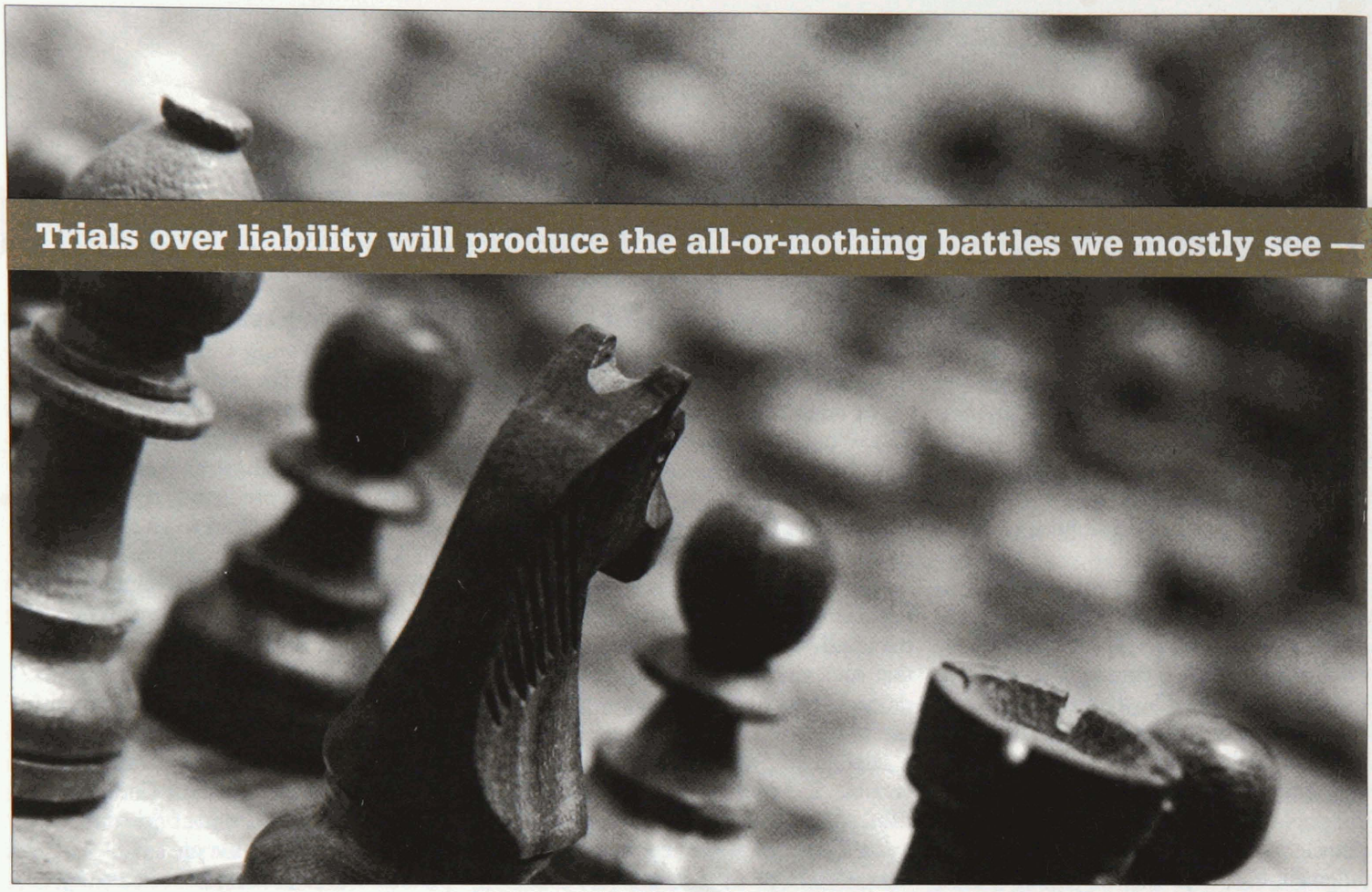
Liability, by contrast, is a dichotomous variable. If damages are known and liability is at issue a trial can only be *avoided* if the parties agree on a discounted figure that reflects the actual damages multiplied by some estimate of the likelihood that a jury will find the defendant liable. Pre-trial bargaining will reflect this logic. The plaintiff will not ask for more than the known damages, although in an extreme case she may demand no less, while the defendant will offer some fraction of the real loss, or nothing at all. If the case does go to trial the jury is likely to side with the defendant and to give the plaintiff nothing, or to side with the plaintiff and give her as much as or more than she demanded in settlement. And indeed, one or the other of these outcomes occurred in about 77% of our cases. In other words, trials over liability will produce the all-or-nothing battles that we mostly see — cases in which one side always loses, and the other side almost always wins.

Why do we have trials at all?

Considering the cost and risk, the interesting question about American litigation is not why there are so few trials, but why we have as many as we do. The obvious problem is resources: How can litigants afford to go to trial? The key is that the costs and risks are aggregated across many cases, through the twin institutions of contingent fees and liability insurance. Almost all plaintiffs in our cases are individuals, and nearly half of defendants are individuals or small businesses. Such parties, on their own, could rarely muster the funds or the nerve to conduct a Superior Court trial. The plaintiffs would settle or dismiss; the defendants would settle or default. But a plaintiff with a contingent-fee attorney or a defendant with an insurance company can afford to go ahead, even to trial. As a result, plaintiffs' attorneys and liability insurers play a major role in determining who has access to court. In most cases, a plaintiff who can't get a contingency fee lawyer probably won't be able to sue; one reason plaintiffs' attorneys may decline to take a case on a contingency is that the defendant is uninsured — which means that, except for large institutions, uninsured defendants are unlikely to be sued, and if they are sued, they are unlikely to be able to defend themselves through trial.

But contingent fees and insurance only make trials *possible*. They do not explain why civil trials actually occur, or tell us what functions trials serve (if any) in a system in which 98% of disputes are resolved by settlement. The possible explanations fall into three categories: guidance for settlement, strategic bargaining and strategic intransigence, and non-economic interests.

1. ***Guidance for Settlement.*** Every theory of pre-trial bargaining assumes that a negotiated settlement is



Trials over liability will produce the all-or-nothing battles we mostly see —

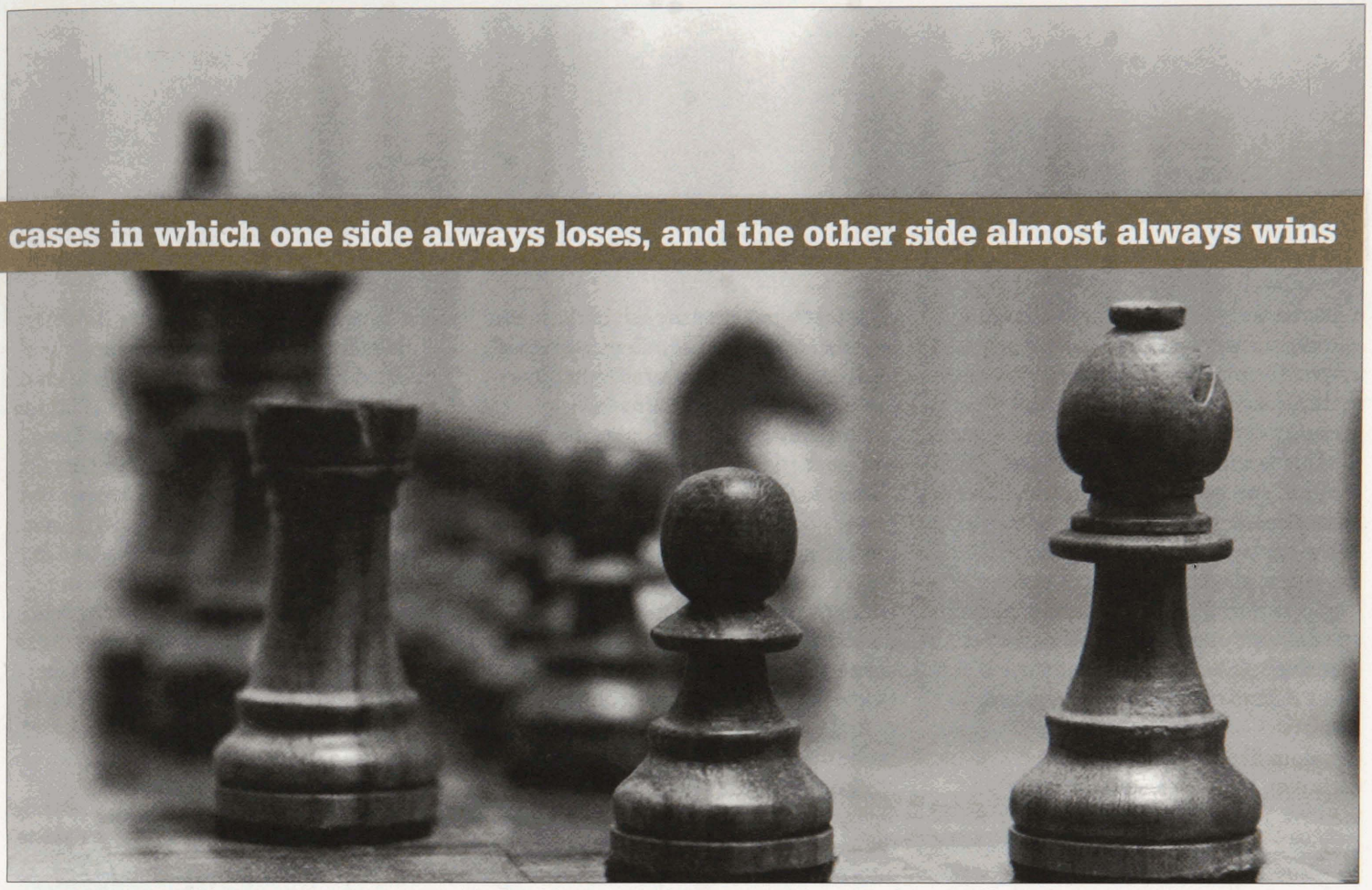
determined, at least in part, by the parties' predictions of the outcome of the case if it did go to trial. Needless to say, such predictions are uncertain, and that uncertainty may affect the terms of a settlement. For example, a risk-averse plaintiff may accept less than the expected value of her claim because she is unwilling to take the chance of an unlikely but possible defense verdict. But there must be some common basis, however shaky, for assessing the consequences of a failure to settle. If trials became vanishingly rare lawyers and litigants would make increasingly crude predictions of trial verdicts. As a result there would be more cases in which their ill-informed guesses would be too far apart to compromise; which would lead to more trials, more verdicts, and better information on trial outcomes; which in turn would produce more settlements, and reduce or stabilize the trial rate. For all we know, the few trials that now occur are pretty close to the minimum number our settlement-dominated system requires.

2. ***Strategic Bargaining and Strategic Intransigence.*** In litigation, as in other adversarial contexts, many of the moves in negotiation are "strategic" — ploys that are used to mislead and manipulate. Thus litigants will conceal or distort information to impress their opponents, demand things that they don't want to get other concessions that they do, and play chicken with the opposition in order to get paid to avoid trials that nobody wants. When strategic bargaining works it improves the terms of settlement — you may get an additional $20,000 out of a defendant by convincing him that otherwise you'll go to trial even if it costs you $100,000 — but if he calls your bluff the result may be no settlement at all.

Our data show clear signs of this sort of strategic bargaining. For example, most defendants in our commercial trials made puny settlement offers and then got hammered in court. In 1985-86 the offers in commercial trials averaged $574,000 less than the verdicts and the defendants lost 67% of the trials; in 1990-91 they averaged $1,710,000 less and the defendants lost 55% of the time.

Wouldn't it have made simple economic sense for many of these defendants to offer more and settle instead of losing? In some individual cases, of course, that must be true, but overall we think not. For the most part the *plaintiffs* in these cases played along with the defense and made puny *demands* — on average $322,000 less than the verdicts in 1985-86 and $710,000 less in 1990-91 — in contrast to personal injury plaintiffs, who demanded on average a great deal more than the juries gave them. If the commercial plaintiffs who ultimately went to trial were willing to settle for that little, those who did settle may have agreed to take an even smaller fraction of the jury value of their claims. Why? The great majority of these commercial plaintiffs are individuals, and (unlike personal injury plaintiffs) most of them must pay some or all of the costs of trial: over a third pay their lawyers at least partly by the hour, and two thirds advance at least a portion of the trial expenses. Very likely most of these plaintiffs were reluctant or unable to invest money in litigation, even in

cases in which one side always loses, and the other side almost always wins



winning cases — and the defendants can take advantage of their timidity by sticking to low-ball offers. That strategy, however, requires the defendant to maintain a posture of intransigence: Take $20,000 or go to trial. This may be the best approach, and it may work 95% of the time, but when it fails the result probably won't be a settlement for $100,000 but an expensive trial followed by an even larger verdict.

When a party to a dispute is a repeat player — a person or an institution that participates in a steady stream of litigated cases — it has an additional incentive to behave strategically: to influence the outcomes of other cases. For example, a newspaper may refuse to ever settle any defamation claim, regardless of the merits or the cost, in order to discourage libel suits by building a reputation as a stubborn and expensive opponent. On the other hand, a manufacturer may quietly settle a products liability case in order to avoid a public trial that could produce a dangerous precedent if the manufacturer loses, and might provoke other similar lawsuits even if the manufacturer wins.

The most common repeat players in civil litigation for monetary damages are not parties themselves but agents of the parties — plaintiffs' attorneys and insurance companies. This creates the possibility of conflicts of interest. On the plaintiff's side, the attorney may want to go to trial to establish herself as a winner, or at least as someone who will fight to the expensive end. Such a reputation might bring in business, it might even help future clients, but it has no value to the current one-shot plaintiff. On the defense side, the most common potential conflict occurs in cases with doubtful liability and damages in excess of the liability limit of the defendant's insurance policy. If the plaintiff makes a demand at or near the policy limit, the defendant will probably want to take the settlement, which is free to him, rather than risk a trial after which he might be stuck with personal liability for damages above that limit. Most liability insurance contracts, however, give the insurance company the power to accept or reject settlements, and the insurance company may prefer a trial: It can't lose more than the policy limit one way or the other, and, for the price of trying the case, it might save itself a settlement of about that amount.

We don't doubt that plaintiffs' attorneys and defendants' insurers sometimes act in conflict with the best interests of the parties. But we don't believe that such conflicts (strategic or otherwise) are a common cause of trials. Taking a case to trial against the interests of the client violates professional norms, and may subject the attorney or the insurance company to formal or informal sanctions. Norms and sanctions don't eliminate abuses, but they do suggest that the disfavored behavior is the exception rather than the rule. In this context, our survey data are consistent with that expectation. The attorneys we interviewed frequently said that the trial was caused by the opposition's stupidity or stubbornness, but no defense attorney said that there was no settlement because the plaintiff's attorney wanted a shot at a

Almost nobody said "We gambled and lost" or "We decided to fight, and we wo

major verdict, and no plaintiff's lawyer said that it happened because the insurance company had little to risk at trial and was unconcerned about its insured.

If we ignore occasionally serious conflicts and assume that attorneys and insurance companies handle these cases in the best interests of the parties, then the repeat players in ordinary civil litigation are all on the defense. Plaintiffs are almost always individuals and therefore necessarily one-shot players, while defendants, if they are not large businesses or government entities — and therefore likely to be repeat players in their own right — are almost always insured, usually completely. In other contexts, repeat players may just as easily be plaintiffs. This is true of some private litigants (e.g., environmental groups) and it is the rule for public litigants: the Internal Revenue Service, regulatory agencies, and, most important, criminal prosecutors. If a repeat party is a plaintiff it can set its agenda and influence law and practice by its *filing strategy*. Indeed, that is likely to be its main tool, since nothing that happens later is as influential as the decision to file in the first place — especially since most repeat player plaintiffs see many more possible cases then they can ever handle.

A repeat player defendant can hope to exercise some control over the general pattern of litigation, but only through its *settlement* strategy. Unlike a repeat player plaintiff, it has no other way to send signals or channel cases. The only ultimate threat it can make is the threat of trial, and it must take some cases to trial to keep that threat credible. Therefore we would expect the defendants in these ordinary civil cases to be more likely than the plaintiffs to engage in strategic bargaining, and more prone to take cases to trial for strategic reasons. Our survey data support this prediction. Although each side was apt to say the other caused the trial, overall the attorneys were more likely to say the defendants rather than the plaintiffs did it, 52% to 42%.

One way to influence litigation is to win most trials, and repeat players on both sides do just that. The non-repeat player opponent is more risk averse; therefore, the repeat player plaintiff (e.g., prosecutor) can win most trials by taking strong cases to court and offering defendants in weak cases deals that they are afraid to refuse, and the repeat player defendant (e.g., insurance company) can do the same. *Plaintiffs* win most cases in both situations, usually by plea bargain or settlement: repeat players or not, they rarely file unless they expect to win. But the repeat player plaintiffs (prosecutors) also win 75% or more of criminal *trials*, while insured civil defendants (who settle and pay up on most *claims*) win approximately 70% of personal injury trials.

Our settlement data show clear signs of strategic bargaining by defendants that is aimed at goals beyond the outcomes of the trials at hand. Many of these cases went to trial without any meaningful pre-trial negotiations because the defendants made no settlement offers whatever. These zero-offer cases make up over a quarter of all trials, and about 60% of medical malpractice trials. A zero offer is never a reasonable assessment of the expected cost of a case to a defendant. The trial itself is never free and usually expensive, and there is always a chance, however low, that a jury will side with the plaintiff. But unlike the low-ball strategy that defendants seem to use in commercial cases, making zero offers is not a promising way to avoid trials. If no face-saving settlement whatever is offered, a plaintiff who has already filed and pursued a case may well plow ahead to the end, at high cost to everyone. This is particularly true in personal injury cases, where the costs of trial are usually born by the plaintiff's attorney — a repeat player who has the money to spend, and who can afford to lose most cases as long as she wins some big ones. On the other hand, a defendant (or his insurer) might make such an offer to affect *other litigation*. Refusing to settle increases the risk to future litigants and may discourage future claims, and taking winners to trial may be worth the cost if it helps you bluff successfully in negotiations with plaintiffs in future cases.

3. ***Non-Economic Interests.*** Trials may also occur because the parties have non-economic interests in obtaining judgments. Several scholars have discussed the importance of one particular non-economic motive: the desire to have a day in court, to obtain formal justice. They claim that many litigants want a type of satisfaction that settlement rarely provides — public vindication — and they argue that vindication is a goal that our legal system should promote.

Our interviews with attorneys in the 1990-91 trials provide some hints on the role of non-economic stakes in civil trials. For the most part, our findings are negative. In 735 interviews, only three attorneys mentioned a desire for vindication as an explanation for why their case went to trial. Two attorneys said their case was tried because a party demanded her day in court; they were on the opposing sides of the same case, and each pointed his finger at the other's client. Only a few attributed trials even in part to the desire of a client for a hearing or a public judgment. Nor did any other non-economic motive surface as a common explanation for these trials.

Why is vindication all but ignored by those attorneys as an explanation for trials? There are several possibilities. The attorneys may undervalue their clients' desire for vindication and focus on their clients' (and their own) economic interests in the litigation. Some attorneys may have become so acculturated to the professional view that trials are bad that they fail to notice that their clients actually want to go to court. If so, they might underestimate the role of non-economic factors in the clients' trial-seeking behavior: if a desire for vindication is driving their cases to trial, they don't see it.

It is also possible that the clients in most common litigation in California courts don't care much about having their day in court. Despite what some scholars think, they may in fact have no preference for public adjudication over private settlement unless there is an economic advantage. Finally it may be that many plaintiffs and defendants would prefer vindication at trial to private settlement, but they do not have the power to act on that preference and force a trial, since the defendant's insurance company and the plaintiff's attorney usually control the settlement decision. As the result, few of the cases that do go to trial get there because of a party's desire for vindication.

Other less direct data suggest that a desire for vindication was indeed at the root of many trials — at least in one type of case. As we've seen, 27% of these cases did not settle because defendants offered nothing to the plaintiff, at any point in the pretrial proceeding. This "zero-offer" rate varied across types of claims, from a low of 11% to 15% in vehicular negligence trials, to a high of 59% to 60% in medical malpractice trials. We believe the high rate of zero-offers in medical malpractice cases is best explained by the desire of physicians for vindication at trial.

Most physician malpractice insurance policies sold in California contain a "consent to settle" clause which requires the agreement of the doctor to any non-zero settlement negotiated by the insurer. Lack of consent is mentioned by an attorney as a cause of trial in 19 of the 32 1990-91 zero-offer medical malpractice trials, and we suspect that it was a factor in at least several other medical malpractice trials in which no attorney specifically mentioned it. We also know that the trial rate in medical malpractice cases is considerably higher across the nation than for any other category of personal injury litigation, and that doctors win defense verdicts in more than 90% of the cases in which there is no settlement offer at any point in the litigation. What explains these patterns?

What seems to be happening is that doctors are insisting on trial in some medical malpractice cases in which they expect to obtain public vindication. This is most likely to happen when the doctor is convinced that she acted in a professionally responsible manner, but has nonetheless been wounded in her self esteem and damaged in her reputation by a patient's claim that she committed malpractice. Cases where the defendant feels like that all the way up to trial are likely to be winners for the defense. In other contexts, insurance companies settle most odds-on winners for comparatively small amounts, in order to save trial costs and to minimize risks. Not here. Unlike other litigants, doctors have negotiated insurance contracts that give them the power to make that choice themselves. Moreover, since the insurance company remains responsible for the defense costs and for damage awards at trial, the defendant doctor can usually reject a low settlement without undertaking personal liability for legal costs or for any judgment within policy limits. The usual result is a trial that the insurance company pays for, and the doctor wins. In other words, at least in one type of litigation where reputation and vindication are particularly significant for a coherent constituency of defendants, those defendants have been able to order their private relationships with their insurance companies in a way that protects that interest.

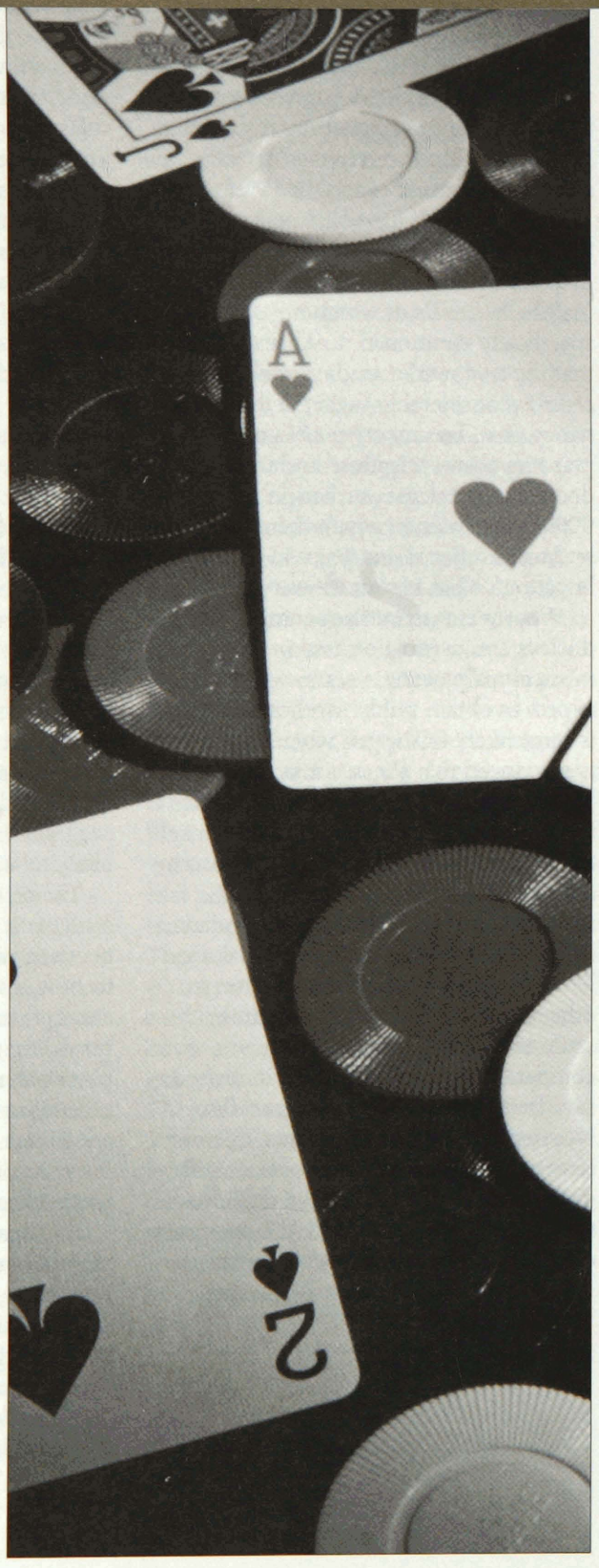
How might we change this system?

As we noted at the outset, a major — and successful — goal of lawyers, judges and rule makers is to promote settlements. We do not advocate an attempt to further reduce the extremely low trial rate in our civil courts, but if a further reduction is sought, our research suggests that some methods are more likely to succeed than others.

The techniques of encouraging settlement can be roughly divided between two approaches. The first set of techniques rely on *information*. They attempt to achieve settlement by providing unbiased information to the parties about the dispute. The second set of techniques rely on *incentives*. They encourage parties to settle by increasing the risks or reducing the rewards of proceeding to trial.

Information based techniques include judicially-supervised settlement conferences, mediation, and most other forms of court-sponsored dispute resolution. The theory is that if both parties to a dispute confront an evaluation of their case by a

At trial all deals are off, and all risks are restored. If you fail to settle



disinterested expert they are more likely to converge on a single estimate of the outcome, and to agree to settle. While such techniques may contribute to the existing low trial rate, our data suggest that they are unlikely to succeed in squeezing out many more trials. Mediation and similar procedures are probably most effective in helping the parties close the gap in their predictions of the jury's evaluation of damages, but that doesn't seem to be the main problem in the cases that go to trial. Predicting verdicts on liability is another matter. Most litigants on both sides already discount their estimates of damages in light of their uncertainty about the jury's decision on liability. On the plaintiff's side, that explains the large number of judgments that exceed the plaintiff's demand; on the defendants' side it explains the fact that in most cases with zero awards the defendants did offer money to settle the claims. The trials that occur nonetheless are primarily in cases in which the parties remain so far apart in their predictions of the decision on liability that they are willing to gamble on the jury's notoriously unpredictable verdict. In that context, no information from a disinterested expert is likely to change their minds.

The alternative to attempting to provide more information about the outcome of the case is to alter the rules under which it is litigated. The common method is to increase the risk of trial by requiring the losing party to pay some or all of the winners' legal fees. Other proposals change the structure of incentives at trial by limiting the damages that a party may recover, or the fees that its attorney may receive. We do not necessarily advocate such changes, but we do believe that they have greater potential to depress the trial rate than attempts to provide more information to litigants who are already willing to bear the risks and costs of gambling on trial

you must drop out entirely or pay a lot to gamble at high stakes.

on the basis of the best information they have been able to obtain. By changing the structure of costs and rewards it is possible to change the odds of favorable outcomes for one side or the other, or for both, across whole categories of cases. The result might be an overall change in the pattern of civil litigation, including, perhaps, a reduction in the number of trials.

Or perhaps not. For example, consider the effects of eliminating contingent fees altogether — an extreme proposal, and, in our opinion, an extremely bad idea. If that happened the number of civil law suits would be reduced drastically, at least in the short run; and the distribution of cases that were filed would change dramatically (e.g., a higher proportion of the remaining filings would be in commercial cases); new institutions would be created to cope with the new needs generated by the system (e.g., new systems for paying legal fees, including perhaps new forms of insurance); the pattern of settlements and trial outcomes would change in unforeseeable ways; and the number of trials *might* go down. But it also might not. It could turn out that we would still need as many trials as we now have, or more to define the contours of the new system.

Procedures that affect the risks of trial may also have the opposite effect. The risk of large jury verdicts on the one hand, and of defense verdicts on the other, weigh heavily in favor of settlement. Ancient procedural devices such as remittitur and additur, and newer ones such as damage caps and limitations on punitive damages, should (if anything) *increase* the percentage of filed cases that proceed to trial. In addition, or instead, the parties to a lawsuit may agree privately to restrict the risk of extreme outcomes at trial. A striking example is a technique known as the "high-low agreement."

A "high-low agreement" is a partial settlement in which the plaintiff and the defendant each insure the other against an extreme verdict. The plaintiff agrees to collect no more than a maximum amount specified in the agreement, regardless of a higher jury verdict, while the defendant agrees to pay no less than a minimum amount specified in the agreement, regardless of a lower jury verdict. High-low agreements have been reported since at least 1968. They are usually reached shortly before or during trial, particularly in personal injury cases involving large potential damages and uncertain liability; they are legal and enforceable.

High-low agreements permit private parties to limit the scope of a jury's fact-finding on damages in ways that go beyond those permitted by the rules of evidence and summary judgment. Under this procedure, trial outcomes are constrained by the settlement negotiations that preceded them: the agreement to participate in this constrained trial is the last step of an incomplete compromise. The availability of this option (if the parties are aware of it) will tend to discourage full settlements and to facilitate trials. It's no secret that our system of civil justice has generated a pent-up demand for *low cost* litigation. As a result, a procedure that lowers the cost of litigation —for example, a small-claims court — will increase the volume of litigation and the number of trials (albeit cheaper, quicker trials). The development of the high-low agreement demonstrates the existence of a parallel demand for *low risk* adjudication. Any technique, public or private, that reduces the range of possible outcomes at trial could help answer that demand by making trial less scary, which might encourage more parties to take their chances and try it.

Conclusion

The essence of adversarial litigation is procedure. We define justice in procedural terms: the judgment of a competent court following a trial that was procedurally correct. When we want to improve our judicial system we pass a procedural reform, which invariably means elaborating old procedural rules or adding new ones — rules that govern the presentation of evidence and arguments, rules that create opportunities to investigate and to prepare evidence and argument, and rules that are designed to regulate the use of the procedures that are available to investigate, prepare and present evidence and argument. The upshot is a masterpiece of detail, with rules on everything from special appearances to contest the jurisdiction of the court to the use of exhibits during jury deliberation. But we can't afford it. As litigants, few of us can pay the costs of trial; as a society, we are unwilling to pay even a fraction of the cost of the judicial apparatus that we would need to try most civil cases. We have designed a spectacular system for adjudicating disputes, but it's too expensive to use.

We respond to this dilemma on two levels, private and public. The private response is to create institutions that enable parties to aggregate the costs, risks and benefits of litigation across many cases: liability insurance for defendants, to pay for legal fees as well as damages, and contingency fees for plaintiffs. These structures make it possible for parties to prepare for trial, and to retain trial as an

The main function of trials is not to resolve disputes but to deter other trials.

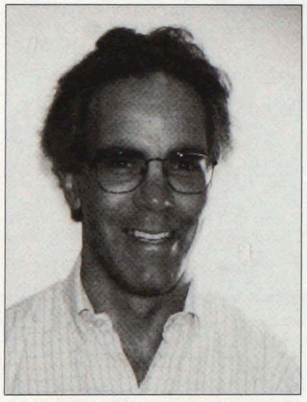
option. The public response is to actively discourage trials. We provide some positive assistance in reaching compromises, but the main push is negative: Litigants learn to avoid trial in order to reduce their risks and save their money. Formal litigation is presented not as an adjunct but as an alternative to private settlement; not as an aid but as a threat.

The main function of trials is not to resolve disputes but to deter other trials. And they do, very effectively. One consequence is that those few cases that do go to jury trial — perhaps 2% of civil filings, and less than 1% of all civil claims — are very different from the mass of cases that settle. They are typically high-risk, all or nothing cases, cases with unusual facts or intransigent parties, cases that defy compromise. Their outcomes, by comparison with ordinary work-a-day settlement cases, are costly, unpredictable, and sometimes bizarre. Since jury trials and jury verdicts are the most visible products of litigation, these extreme and unrepresentative cases distort public perception of the administration of civil justice. In the process, they perpetuate the image of litigation as terror, which helps drive all but the most hopeless disputes out of court, which means that any general policy based on what happens in those cases that are tried will be misconceived.

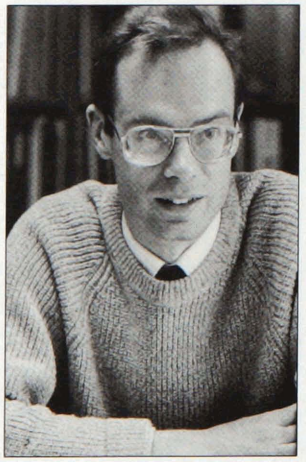
In 1921 Learned Hand wrote that "as a litigant I should dread a law suit beyond almost anything else short of sickness and death" — a widely repeated and deceptively simple sentence. Judge Hand's statement was not intended as a report of an idiosyncratic aversion, but as a judgment by one who ought to know that litigation is dreadful. Lesser judges and mere lawyers mostly agree, including us. Our research adds evidence to support one part of this widely shared belief: those lawsuits that are fought to the end are indeed risky, costly, and unpredictable.

Hand's main message, of course, is not a description, but an injunction: Don't litigate. It is a concise expression of the repeated advice of generations of conscientious lawyers: Anticipate problems and avoid conflicts; if conflicts arise, resolve them privately; if at all possible, don't sue. And when lawsuits are filed, this advice is transformed into the mantra of the judge: Settle. Every day in countless settlement conferences trial judges sell their own versions of Learned Hand's wisdom: "They're offering you $70,000. A jury could give you $150,000, but I've seen folks just like you come up empty, lots of times. If it were me, I'd be scared; I'd take it." More often yet, this lecture is delivered by lawyers long before any judge enters the picture.

There is another injunction that could be embedded in Judge Hand's aphorism: Our system of justice is terrible, and we must change it. But we don't understand him that way anymore than we interpret him to mean that a dispute is an injury and a lawsuit the process by which it is healed. We not only accept as a fact that it is the *lawsuit* that is the disease, we seem to relish it. If trial were a safe, soft, reassuring process, many more disputants would seek trial and the courts would be overwhelmed; they're struggling as it is at a 2% trial rate. But there's no cause for concern. The major elements of the system — adversarial factfinding, trial by jury, contingent fees, liability insurance — all fit together to make trial the dangerous event we need to drive nearly everyone to settle.



Professor of Law Samuel R. Gross *has published on the death penalty, eyewitness identification, the use of expert witnesses and the relationship between pre-trial bargaining and trial verdicts. A graduate of Columbia College, he earned his J.D. at the University of California at Berkeley. He has worked as an attorney with the United Farm Workers Union, the Wounded Knee Legal Defense/ Offense Committee, the NAACP Legal Defense and Educational Fund., Inc., and the National Jury Project. He teaches in the fields of evidence, criminal procedure, and the use of social sciences in law.*



Professor of Law Kent D. Syverud, '81, *recently completed his two-year term as Associate Dean for Academic Affairs and this spring is a visiting professor at the University of Pennsylvania Law School. He teaches in the areas of insurance law, civil litigation and negotiation. A former law clerk for Associate Justice Sandra Day O'Connor of the U.S. Supreme Court and the Hon. Louis F. Oberdorfer, U.S. District Court for the District of Columbia, he has practiced law in Washington, D.C. A graduate of the School of Foreign Service at Georgetown University, he earned his M.A. at the University of Michigan and his J.D.at the University of Michigan Law School.*

— BY JOSEPH VINING

CORPORATIONS AND THE COLOR OF MONEY

Criminal Law

This part of From Newton's Sleep, *published by Princeton University Press in 1995 and in a paperback edition in early 1997, is reprinted by permission of the publisher.* From Newton's Sleep *is a book on the legal form of thought and its meaning for science and religion. It consists of some two hundred and fifty self-contained pieces arranged in eight sections. In its form, the book is much like and is meant to be much like the material with which lawyers routinely deal. Here,* Law Quadrangle Notes *excerpts a piece that touches on a subject of lively debate today, among practitioners and legal scholars both — the nature of criminal law and in particular its application to economic organizations. This excerpt, "Corporate Crime," is from Section VII of the book, "The Expression of Responsibility: On the Organizational in Legal Thought."*

The application of the criminal law to business corporations has one overriding function. It counters, as can nothing else, the temptation to define the purpose of the corporate entity as the maximization of money profit.

Purpose pervades all aspects of the legal analysis of entities. It governs legal decisions on the capacities of individuals, whether when they act they act for the entity. It governs individuals' decisions whether to act when acting for the entity. As a purpose, profit maximization externalizes all value and translates all decision into calculation of advantage, introducing the implacable into an already competitive world and rendering law itself, law that conceives the entity and continues to make it conceivable, an object not just of some manipulation but total manipulation.

Always in the air of thought, a playful postulate of political, economic, and biological theory alike, profit maximization is only of real moment in law in analysis of business corporations, which are not, analytically or as a matter of fact, themselves agents of decision-making individuals. The temptation to profit maximization is handled routinely in the human breast; it appears so rarely in pure form in individuals that its appearance is marked as a sign of disintegration and insanity. The cycle of life and the looming of death are alone usually sufficient to dissolve it. But it can be abstracted out and given to a corporate entity, and the life of the corporate entity can be insulated from the natural cycle of the life of an individual. Thus entry of criminal law; and of a criminal law, moreover, unstained by the bloody rope or the twisted flesh of the prison.

Criminal law is the internalization of value. There is no crime in any set of facts, no matter how much hurt there is in them, unless there is a criminal state of mind. Causing death is common, murder is not; what distinguishes death from murder is mind. The criminal state of mind, raised as a possibility by the applicability of the criminal law, is precisely the externalization of value defined and protected by the criminal law, calculation as to value, manipulation of it, coldness toward it — precisely the state of mind contemplated for the profit-maximizing decision maker.

Prescription drug safety or worker safety are not achieved by simple prohibitions but by ingenious devices and institutional design. The criminal penalties that appear in connection with prescription drugs or worker safety have another function, which is to speak to the agent of the entity who is asking, "What is my duty, how am I to think about actions I may take on behalf of the entity?" and to speak to the lawyer for the entity, advising agents of the entity in the large and in the particular. What is spoken and said is that

for the business corporation and agents thereof, as for individuals in other situations in social life, substantive values are ultimately to figure in decision as such and in and for themselves, and are not, ultimately, matters of indifference to be left entirely to the concern of others.

That this needs particularly to be declared in corporate law gives reason for applying the criminal law more broadly to corporations than to individuals. And the reasons for real hesitation in invoking the criminal law — the awful pain of its penalties against the body, the petty tyranny of its application to the weak and poor, the depressive effect of its threats in the psychology of everyday life, which is often named an interference with liberty or with the sense of freedom — have not the same force when the potential defendant is a corporate entity. The vagueness endemic to the criminal law in the specification of what is or is not to be done becomes less a defect, more a protection of its efficacy against a calculating mentality, including that of the litigating lawyer.

Next to this, this declarative and structuring function, the penalties and sanctions criminal law brings to bear are of secondary importance. Criminal law is internal to corporate law, part of the defining and enabling that corporate law and lawyers are engaged in — the instituting of the modern economy, its very peopling. Criminal law does not swoop in from the outside to affect what has already been set in motion. Certainly there is deterrence in some sanctions; but in the absence of pain, and with fines set as for individuals, or set with attention to their effect on individuals who are dependent on the corporation, the consequences of criminal conviction have historically been scoffed at and bundled into cost-benefit formulas. Recent developments, attaching civil liability to criminal conviction and multiplying civil damages by some punitive factor, introducing supervision (as in probation or other semi-incarcerative measures for individuals), and, above all, conditioning corporate continuation in licensed activities on "fitness" and "character" (to which criminal conviction has always been thought to speak where individuals are involved), have made the actual outcomes of actual criminal prosecutions factors to be reckoned with by corporate decision makers. And the criminal law can work, in this sense. Decisions about its scope, appropriateness, and application are not troubled by any real fear of its impotence where corporations are involved.

But each development in the effectiveness of the sanctions that are directed at corporate entities meets the web of dependencies that surround the corporate entity and with which the entity itself may be identified. These filaments of connection are usually of such extent that they cannot be ignored, as the family of the individual convict is ignored; and increasing sensitivity to systemic effects generally, economic or ecological, has made the unintended and undesirable side effects of corporate sanctions factors to be reckoned with by public decision makers. It is thus in another sense that the criminal law works, where corporations are involved: before sanctions, addressing the very nature of decision making on behalf of corporations, speaking to what factors are to be taken into account and with what weight and what factors are not to be taken into account, what good faith consists of, what is authorized and what is not, and touching moreover all those further organizational and institutional decisions that determine whether a substantive determination will be implemented — what is to be taken to another level in decision-making structures, or what is cause for dissociation, or what is disclosable and what not, or what is defensible in preventive, protective, and self-protective activity.

Analytically there are other ways to address these questions, and they are addressed at other places in corporate law. If the interests of those holding securities entitling them to participate in some way in the equity left on liquidation (at the end of the corporation's activities) are to be focused upon with special prominence in corporate decision making during corporate life, then there can be exploration in legal argument of what those interests are and how, when they conflict, they are to be weighed or sought. If the universe of such interests is not the sole focus, there can be exploration of what other groups, from employees to customers, are to be admitted into the category of those whose claims are not costs to be minimized, and exploration of how their interests and claims are to be defined. Analytically these interests, groups, or claims are often surrogates for values protected by the criminal law, and might enter the thinking of corporate agents with much the same life and sense of right. But such democratic or communitarian capitalism is yet inchoate and may remain so for as many centuries as the problems of organizational law have so far persisted.

From the earliest time corporations have arguably been subject to the criminal law; certainly through this century they have. In the broadest frame of reference, what is irrational and a stumbling block to those who are sure they know what the corporate entity is, may, for the empirical, be critical evidence of the place of entity in the mind and, indeed, the nature of the person created by each individual.

Harry Burns Hutchins Professor of Law Joseph Vining *has taught at the Law School since 1969. A graduate of Yale University and Harvard Law School, he has a degree in history from Cambridge University, practiced law in Washington, D.C., and served with the Department of Justice and the President's Commission on Law Enforcement and the Administration of Justice. In 1982-83 he was a senior fellow of the National Endowment for the Humanities. He lectures and writes on legal philosophy, crime, administrative law, and corporate law. In addition to* From Newton's Sleep, *he is the author of* The Authoritative and the Authoritarian *(1986) and* Legal Identity *(1978). Last year he was elected a Fellow of the American Academy of Arts and Sciences.*