THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 40 • NUMBER 3
FALL/WINTER 1997

LAW QUADRANGLE NOTES

Keeping the President on the 'Fast Track'

The Virtue of Speed in Bankruptcy Proceedings

Václav Havel and the Velvet Divorce

A New Nuremberg?

UNIVERSITY OF MICHIGAN
LAW SCHOOL

Upcoming Events

Oct. 6	Office of Public Service Speaker Series: Mary Ann Sarosi, Executive Director, Michigan State Bar, Access to Justice Programs
Oct. 6-7	Cooley Lectures: Mark Kelman, Stanford University Law School
Oct. 8	Dean's Forum (by invitation)
Oct. 14	International Law Workshop: Pieter van Dijk, Judge at the European Court of Human Rights, "Judicial Review by the European Court of Human Rights: Its Main Limitations" *(Story on page 22)*
Oct. 16	Panel Discussion: "Practicing International Law Here and Abroad," Tim Dickinson, '79, Gibson, Dunn & Crutcher; Kathy Ward, '77, General Counsel, Rolls Royce Power Ventures, Limited; and Jonathan Heimer, '90, Mitsubishi Motors Corporation
Oct. 16-19	Committee of Visitors International Reunion *(Story on page 52)*
Oct. 20	Office of Public Service Speaker Series: Julie A. Su, Skadden Fellowship alumna
Oct. 21	International Law Workshop: Professor of Law Catharine MacKinnon, "Gender-Based Crimes in International Law"
Oct. 22	Dean's Forum (by invitation)
Oct. 28	International Law Workshop: Jerome H. Reichman, Vanderbilt University Law School, "Global Competition Under Intellectual Property Norms of the TRIPS Agreement"
Oct. 31-Nov. 2	Reunion: Class of 1957
Nov. 3-5	Cook Lectures: Joe Sax, University of California School of Law
Nov. 7-9	Midwest Clinical Law Conference *(Story on page 23)*

Continued on inside back cover

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On the Cover:
This image through an open window of the John Cook Room in the Lawyers Club, the same photograph that dominates the elegant poster for the International Reunion at the Law School Oct. 16-19, is an appropriate one to grace the cover of this issue of *Law Quadrangle Notes*, which celebrates the Law School's international impact and vigor.

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LAW QUADRANGLE NOTES

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MESSAGE FROM DEAN LEHMAN

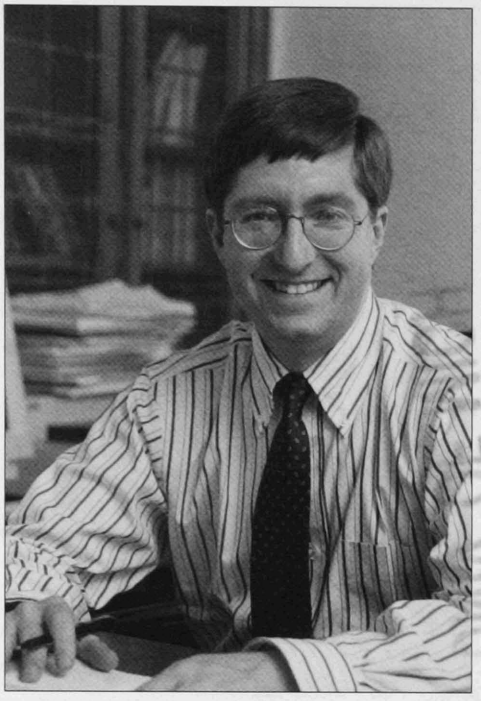
In my last message I indicated that I have decided to select as my theme for this year the great lawyer's role as citizen — as member of a community that extends beyond family. I observed that one of the more important privileges of citizenship is the privilege of feeling personally responsible for other individual members of the community and for the community as a whole. And I considered how outstanding lawyers integrate that sense of community responsibility into their relationships with clients.

This issue of *Law Quadrangle Notes* gives us an opportunity to consider just how far the "community that extends beyond family" may reach. For here at the Law School, we are encouraged every day to see that community as worldwide.

When the University of Michigan was chartered in 1837, the authorizing legislation provided that the University should employ a professor with expertise in international law. Almost as soon as the Law School began to enroll students in the second half of the nineteenth century, it attracted some of them from outside the United States. By 1900, 80 students from outside the United States had received degrees from the Law School.

Today about one in twelve of our graduates lives abroad. Some are American expatriates whose professional and personal interests have led them far from their parents' homes. But most are foreign citizens who came to Michigan with the intention of returning home after they completed their studies. When, in my role as dean, I am called upon to travel outside the United States, I am invariably inspired to learn of the leadership roles that our graduates are playing in every corner of the world. (*Ed. Note:* See the story about Dean Lehman's visit to the Philippines, page 56.)

And within the Law Quadrangle, the affairs of the world play an ever-greater role in the studies of all our students. In the middle of the nineteenth century, our students listened to lectures on shipping and admiralty from Dean James Campbell and international law from Professor Levi Griffin. This year our students can take courses taught by ten distinguished professors who are visiting Ann Arbor from England, Belgium, France, Germany, Israel, Japan, and South Africa. They can spend a semester studying at universities in Freiburg, Leiden, Leuven, London, or Paris, or work on faculty-supervised projects in Johannesburg or Phnom Penh. Over the past decade, about thirty members of Michigan's core faculty have taught law overseas.



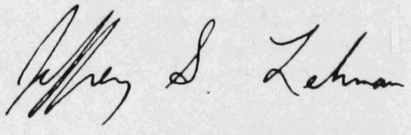
Even while we respect the legal importance of state borders, a core part of us subscribes to a "community" that includes all human beings. We are excited whenever we recognize ourselves in people from different cultures. And because law is so central to almost every culture, the University of Michigan Law School is an especially good place to pursue that recognition and feel that excitement.

When we try to explain the continual internationalization of our community and our curriculum over the past one and one half centuries, I think we should resist the simple account that subordinates law to business and a global legal profession to a global economic order. Falling transportation costs and rising technological capacity are important factors: they are what enable us to bring a professor from Kyoto to Ann Arbor for a three-day stay, and they are what enable us to conduct a joint seminar by videoconference with Oxford and Toronto. But I do not believe that profit maximization goes very far to illuminate the roots of the international imperative.

Why do so many of us want to study foreign laws and international institutions? Why do we want to understand the norms that shape the behavior of nations? Why do we care about how another country regulates marriage, or pollution, or the press?

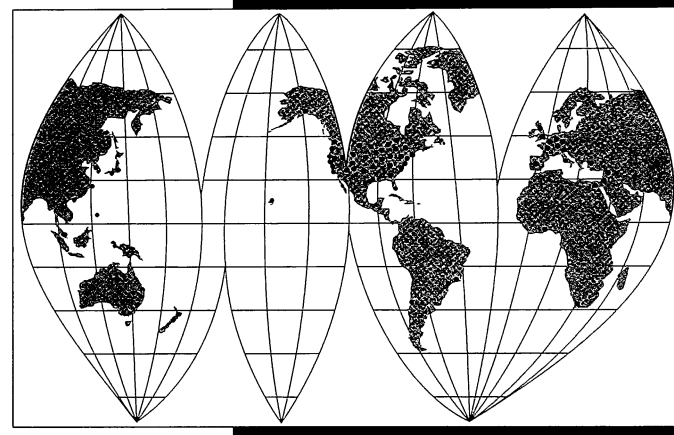
No doubt one reason is comparativist. We believe, rightly, that we will gain new insight into ourselves and our own legal system by better understanding how other societies and cultures have taken different paths to resolve similar social questions.

Yet I think an even more significant reason is fundamentally humanist. Even while we respect the legal importance of state borders, a core part of us subscribes to a "community" that includes all human beings. We are excited whenever we recognize ourselves in people from different cultures. And because law is so central to almost every culture, the University of Michigan Law School is an especially good place to pursue that recognition and feel that excitement. Francis Allen described law as "a path to the world," and his words may be read literally as well as metaphorically. In their lives as lawyers, our graduates feel a sense of responsibility to a community that embraces the entire world.



EYE ON THE WORLD

BY JOSÉ E. ALVAREZ
Professor of Law
and
VIRGINIA A. GORDAN
Assistant Dean for International Programs



Law School graduates are deeply involved in the globalization of legal careers. In the essays beginning on page 6, graduates respond to this question: If you could leap ahead 10 years, how do you think what you are doing now will change?

THOSE WHO WORK IN LAW SCHOOLS sometimes like to think that their schools will be remembered through the scholarly tomes and law review articles produced by their faculty, that is, through luminous contributions to legal thought. In their more humble moments, though, perhaps after a detour through dusty library stacks filled with long unopened books or after nervously laughing through an "irrelevant" law review article written only a few years ago, many a law teacher or administrator will admit to themselves that their or their schools' reputations are based on the testimony of practitioners, in particular the word of alumni. At Michigan, we have been fortunate enough to produce graduates that have spread "the word" to all corners of the earth.

The story of how a law school established in 1859 in what was then the "frontier" town of Detroit in the "remote Midwest" at a time when nary a lawyer believed there was ever a need to consider anything but the most local of laws, of how such an institution came to become a recognized Mecca for students from all over the world, has been told before and needs no repeating here. But we do occasionally need to remind ourselves of the international prominence of our alumni and their value to this institution.

The bare facts can be briefly summarized. From its earliest days, foreign-born students were part of the University of Michigan Law School's student body.

The first University commencement took place in 1845; of the 11 graduates, one became the first Methodist missionary in China two years later, and that same year, the first foreign students enrolled at the University: one from Wales and one from Mexico.

The Law School opened its doors in 1859, and during the 1860s had 26 students from Canada and two from England; in the 1870s we had 29 from Canada, three from Japan, one from Mexico, and two from South Africa. By the end of the academic year 1899-1900, 80 students from outside of the United States had received degrees from the Law School: seven were awarded the LL.M. and 73 the LL.B. Of the 73, 37 came from Canada and the next largest number, 28, came from Japan.

The first LL.M. degrees were granted in the 1889-1890 academic year. There were six recipients in all, two of whom were from Japan. Although in the nineteenth century most foreign students pursued the LL.B. degree, over the course of the twentieth century, graduate legal studies became the preferred vehicle for foreign students to pursue comparative law studies.

The alumni of the Law School, both the graduates of our JD program and of our graduate degree programs, have distinguished themselves in academia, government work, and private practice in more than 75 countries. Early Michigan alumni who achieved international prominence included George A. Malcolm, '06,

A LOOK AT MICHIGAN'S HISTORY ALSO SUGGESTS THAT MANY CURRICULAR INNOVATIONS WERE ORIGINALLY CONCEIVED TO APPEAL TO THE SMALL, BUT IMPRESSIVE, GROUP OF FOREIGN STUDENTS IN OUR MIDST.

LL.D. '56, who served on the Supreme Court of the Philippines from 1917 to 1936 and was the founding Dean of the College of Law of the University of the Philippines, and Charles H. Mahoney, '11, who was the first African-American to represent the United States in the United Nations.

John C. H. Wu came to pursue his law degree at Michigan in 1920. He was a graduate of Suzhou Comparative Law School in China, where, incidentally, William Wirt Blume of the University of Michigan Law School faculty served as Dean during the 1920s. Following his Michigan studies, Wu returned to China where he was the principal author of the National Constitution, served on the Permanent Court of Arbitration at the Hague and as Ambassador from China to the Vatican from 1947 to 1949. Perhaps most interestingly, he began a correspondence in 1921 with U.S. Supreme Court Justice Oliver Wendell Holmes, then 80 years old, which lasted until Holmes' death 14 years later.

Julius Wolfson, one of five Filipinos to receive LL.B. degrees between 1901 and 1920, became a major benefactor of the Law School, donating an important endowment which to this day provides significant support to faculty research efforts.

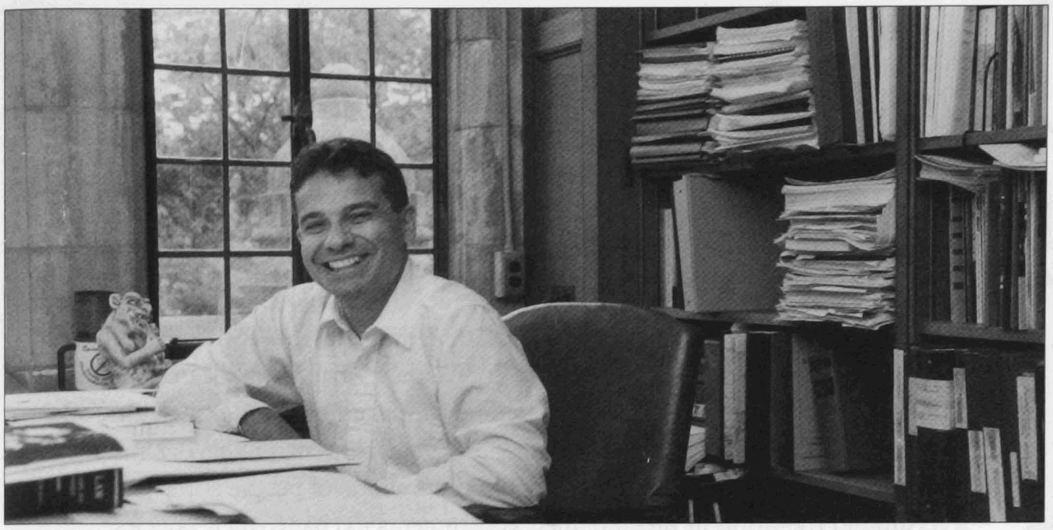
The tradition of international influence continues to the present. Seven of our former students, research scholars, and faculty currently sit on the highest courts of their countries or on international courts. They include Justice Aharon Barak of the Supreme Court of Israel; Justice Vojtech Cepl of the Constitutional Court of the Czech Republic; Dr. Pieter van Dijk of the Council of State of the Netherlands and the European Court of Human Rights; Dr. Richard Lauwaars of the Council of State of the Netherlands; Justice Florenz Regalado of the Supreme Court of the Philippiness; the Right Honorable Ivor L. M. Richardson, President of the Court of Appeal of New Zealand; and Justice Itsuo Sonobe of the Supreme Court of Japan.

Edgardo Angara, LL.M. '64, and Mirian Defensor Santiago, LL.M. '75, SJD '76, are two of the Philippines' 24 senators. Renato Cayetano, LL.M. '66, SJD '72, is the Chief Legal Counsel to the President of the Philippines. Emilio Cardenas, M.C.L. '66, recently stepped down as Argentinean Ambassador to the United Nations and President of the Security Council. Joachen Frowein, M.C.L. '58, was a member of the European Commission of Human Rights from 1973 to 1993, serving as its Vice-President for the last 11 years, and he currently directs the Max-Planck Institute in Heidelberg. John Toulmin, LL.M. '65, Q.C., recently served as President of the Council of the Bars and Law Societies of Europe. Two of our alumni are currently shaping the world of the World Trade Organization: William Davey, '74, as Director of the Legal Affairs Division, and Debra Steger, LL.M. '83, as Director of the Appellate Body Secretariat. Tim Dickinson, '79, an alumnus who practices in Washington, D.C., New York City, and Ann Arbor, has this year become the Chair of the International Law Section of the American Bar Association. These Michigan alumni are examples of the many others who are numerous on law faculties in countries around the world and who hold leadership positions in the public and private legal sectors, both within their own countries and on the international level.

As all this suggests, our alumni continue to shape their national bars, mold the foreign policies of their governments, contribute to the drafting and interpretation of domestic and international laws, and assist in solving legal problems for a panoply of international organizations — from European Union institutions to the World Health Organization, from numerous human rights bodies to environmental groups. Clearly Michigan alumni, including many on the faculties of the world's law schools, have held and continue to hold leadership positions at both the national and international levels. Their contribution to the law is clear.

What is perhaps less clear but no less noteworthy has been the foreign alumni contribution to Michigan. While our foreign alumni, like all alumni, have generously contributed financially in response to Michigan's appeals, the contribution we are addressing is different in kind and perhaps of greater import.

From 1859 to the present, thanks in large part to our foreign-born and foreign-trained students, classes at Michigan have been enriched by a variety of perspectives at odds with the parochial isolationism that has often characterized U.S. legal culture. Throughout Michigan's history, the presence of foreign lawyers in our midst has forced many a professor and many a U.S.-born JD student to wrestle with a different angle on, for example, criminal or corporate law. Foreign students, foreign trained research assistants, and access to foreign alumni helped make it possible for Michigan Law Professor Hessel Yntema to create, virtually from scratch, a new field, "comparative law," at a time when the rest of the U.S. legal academy was scarcely familiar with the foreign legal systems or foreign laws and barely aware of the value of looking outside the United States. His leadership of the *American Journal of Comparative Law*, located at Michigan for many years and subsequently edited by other Michigan professors, B.J. George and Alfred Conard, was greatly aided by Michigan's international student body. The same resources helped make it possible, a few years later, for Professor William Bishop to become a world renowned authority in "public" international law and for Professor Eric Stein to fashion, as Yntema had before, another enduring legal specialty: European Community law. In recent years, Professors Whitmore Gray, Joseph Weiler, and John Jackson (to name only some of our international and comparative



José E. Alvarez

law faculty), have, we are sure, learned a great deal about Asian legal systems, community law, and trade, respectively, from their foreign students.

Throughout Michigan's history, it seems clear that many of its acknowledged scholarly contributions, whether in international, comparative or other fields of law, have been in some way fashioned or inspired by the foreign students our faculty have encountered along the way. Further, our former students abroad have helped to give the School, and its teachers and scholarship, a worldwide reputation both because of alumni's evangelistic praise and because of our graduates' considerable achievements after their departure from Ann Arbor.

A look at Michigan's history also suggests that many curricular innovations — including many comparative courses and seminars developed over the years — were originally conceived to appeal to the small, but impressive, group of foreign students in our midst. Stein's and Weiler's courses and seminars on the European Union and specialized areas of community law and others' comparative courses on everything from federalism to criminal law have always had an understandable appeal to foreign students. Foreign students' presence in the School helped convince many of us to continue supporting such courses and to develop relationships with a number of foreign institutions and visitors. Michigan's study abroad opportunities in the universities in Paris, Leiden, London, Leuven, and Frieberg; its enviable international and comparative library collection; its successful international colloquia; and the many "comparative" interests of many of our faculty who teach domestic legal subjects, while all of significant value to our U.S. JD students, are all, in direct and indirect ways, partly a function of the presence and continuing support of foreign alumni.

U.S. law professors and administrators frequently address the need for "diversity." Frequently we assume that this means the need for a student body that is representative of the United States. At Michigan, sometimes by lucky accident and sometimes by design, we have been lucky enough to act through our history with the sense that a truly first-rate law school needs to draw upon talent throughout the world.

Virginia A. Gordan

THE TRADITION OF INTERNATIONAL INFLUENCE CONTINUES TO THE PRESENT. SEVEN OF OUR FORMER STUDENTS, RESEARCH SCHOLARS, AND FACULTY CURRENTLY SIT ON THE HIGHEST COURTS OF THEIR COUNTRIES OR ON INTERNATIONAL COURTS.

KARIMA BENNOUNE, '94

Legal Advisor, Amnesty International

IT IS A VERY DANGEROUS BUSINESS TRYING TO PREDICT THE FUTURE and one can be easily faulted later on in hindsight. But looking to the future in human rights law is not a question of accepting that fate will decide what will be. Rather, what it will mean to be a human rights lawyer in the year 2007 depends on the efforts of human rights lawyers, other lawyers and individuals of goodwill, non-governmental human rights organizations like Amnesty International, and most of all on the efforts of people at the grassroots level around the world to pressure their governments to change their policies, internationally and domestically.

If such efforts are successful, the future work of human rights lawyers will be exciting. They will work at helping to monitor and bolster the efforts of a sophisticated United Nations system for the prevention of human rights violations. A just, fair and effective international criminal court will have been created to bring to justice in accordance with international standards the perpetrators of the worst crimes in the world. A United Nations Convention on "disappearances" will be adopted so that not only will the prohibition on making people "disappear" (leaving their fate unknown to their families and friends) be clearly codified, but states will have to take comprehensive measures to prevent "disappearances" and compensate their victims. The Optional Protocol to the Convention against Torture will have been adopted, creating a global system of inspection visits to places of detention with the purpose of preventing torture. (I would like to see them visiting jails in Michigan which I once visited when working on police misconduct cases.) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women will have been adopted, creating a complaints procedure for victims of violations and an investigation procedure allowing the Committee which supervises the treaty to carry out inquiries at its own initiative into systematic discrimination against women that violates the Convention. Women's human rights will have been fully integrated into human rights work at the level of the UN and elsewhere.

Economic, social and cultural rights will be recognized as full legal partners with civil and political rights. Perhaps a Protocol to the Covenant on Economic, Social and Cultural Rights will in fact be in place allowing the Committee which monitors the Convention to further develop a jurisprudence and allowing individuals and groups to claim these key rights.

A human rights methodology which includes violations committed by private actors — with the consent or acquiescence of the state — as well as by corporations will be more fully developed so that impunity for such violations — something that is growing in importance in a world where we begin to see things like private prisons — will not be the order of the day. This will also be important in the fight against violations of women's human rights by bridging the gulf maintained in some interpretations of human rights law between the private and public spheres.

Detailed standards will be in place to stop the recruitment of child soldiers. States will be held accountable for human rights violations committed by other states — and armed groups — with weapons, technology and training that they have provided.

EYE ON THE WORLD

The international human rights standards which are already on the books will be much closer to implementation, meaning in concrete terms that states are moving toward abolishing the death penalty, working to ensure fair trials for all, taking measures necessary to stop police brutality, torture and ill treatment of all, abolishing corporal punishment, working to end racial discrimination and taking effective measures to stop discrimination against women. Rather than swimming against a tide of mass violations as we do now, human rights lawyers will be able to work to help states refine their policies and deal with aberrant violations.

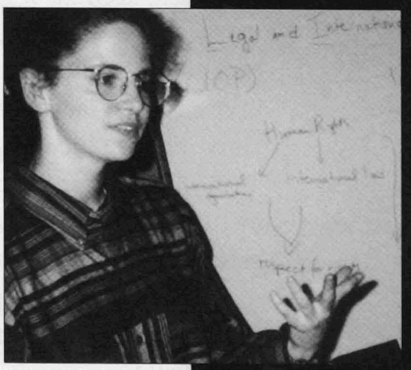
As a human rights lawyer of U.S. nationality, I would like to think that in 10 years in the United States there will be a widespread acknowledgment that what happens in this country must be in accordance with international standards, such as standards on the death penalty.

This pleasant scenario will only be possible with a lot of hard work.

Otherwise, the coming 10 years will see a continuation of the trends we have experienced since at least the end of the Cold War. Proliferating armed conflicts, which increasingly create mass flows of refugees and claim the lives and bodily integrity of increasing numbers of civilian victims, will confound our efforts. The arms trade will flourish, leading to further armed conflicts and assisting in the commission of human rights violations. Torture and executions will continue. Globalization and the dismantling of the welfare state around the world will further erode economic, social and cultural rights and cause increasing poverty, leading to other violations of civil and political rights as well. The prioritization of political concerns over human rights concerns will lead to the undermining of United Nations human rights standards and mechanisms and will frustrate efforts to create needed new standards. Women's human rights will continue to be marginalized. Some states will not pay the UN what they owe.

In considering which option we prefer, it is important to think about the kind of world we would like. This is not a theoretical question. Every day at Amnesty International the cases of victims of killings, torture including rape, "disappearances," the death penalty and other violations pass across my desk. My trips to the field are a reminder of the reality represented by those pieces of paper. I think of a woman I met while interviewing refugees from Afghanistan — a country whose war and human rights crisis have been exacerbated by outside powers, including the former Soviet Union, Pakistan, Saudi Arabia and the United States. When I remember her face as she told me that after she herself was wounded her husband had been killed in a bombing and her children had spent the night alone in the rubble of the house with their father's body, I am reminded of the compelling need for us all to work hard to make sure that it is the positive scenario which comes to pass.

It is up to us.



Karima Bennoune, '94, *is a Legal Advisor in the Legal and International Organizations Program of Amnesty International, based in London, England. She previously worked as a staff attorney with Wayne County Neighborhood Legal Services in Detroit and as a volunteer legal adviser to the Women, Justice and Law Project of Al Haq, Law in the Service of Man, the West Bank affiliate of the International Commission of Jurists. She earned her JD as part of a joint degree program in which she also received an MA in Middle Eastern and North African Studies and a Graduate Certificate in Women's Studies. While attending Law School she served as Executive Articles Editor for the* Michigan Journal of International Law. *The views expressed here are the personal views of the author alone.*

BY

FIROZ CACHALIA, LL.M. '96

Leader of the House, Gauteng Legislature, South Africa

DEVELOPMENTS IN SOUTH AFRICA HAVE, I BELIEVE, IN AN INCREASINGLY SKEPTICAL WORLD, rekindled some faith in the efficacy of human agency and the benign possibilities of political action. Through sustained political action and rational dialogue, South Africa achieved a peaceful transition to a constitutional democracy.

Constitutionalism embraces notions both of *representative government and the rule of law.* One of the more important challenges we have faced since the April 1994 elections has been the need to restructure the institutions and processes through which laws are created and enacted. I will reflect briefly on my experience of the last three years in the National Council of Provinces (NCOP), the second chamber of a bicameral National Parliament, and the Provincial Executive and Legislature of the Gauteng Government ("Gauteng" is one of the nine provinces; the word is a Sotho word meaning "City of Gold," which is how migrant workers have described Johannesburg since gold was discovered near the end of the nineteenth century).

The Provincial Executive

South Africa has a parliamentary system of government at both national ("Federal") and provincial ("State") levels. In such systems the Executive, which is both separate from and a part of the legislature, tends to exercise a high degree of control over all phases of the legislative process. Most legislation originates in the Executive and its departments. (I believe this is so in the United States as well, notwithstanding the clearer separation of Executive and Legislative powers.) The Legislature scrutinizes departmental legislation and exercises oversight over implementation, but generally does not draft.

The establishment of drafting capacity within the executive branch is therefore essential to effective governance. Legislation is, after all, one of the more important instruments of Government's decision-making. Legislative drafting has, however, somewhat surprisingly, received little attention. This description of legislative drafting in nineteenth century England (Arnold Kean, "Drafting a Bill in Britain," 5 *Harvard Journal of Legislation* 253-6) could just as easily be a description of Legislative drafting in contemporary Gauteng:

"In the 1860s ... departments ... found it necessary to employ their own counsel for bill drafting.... This system was patently unsatisfactory. Barristers employed "by the job" were entitled to high fees. There was no uniformity of language, style, arrangement, or even of principle, in the resulting statutes. There was no way to coordinate or reconcile different bills introduced by different departments..."

The department-centered, "privatized" system of bill creation often produces poorly drafted legislation. What makes matters worse is that South African judges, like British judges but unlike their U.S. counterparts, rely on the wording of the statute to ascertain legislative intention and refuse to examine the record of Parliamentary debates. Drafters must therefore draft clearly and precisely and cannot rely on judicial review to eliminate ambiguity.

Perhaps a more fundamental issue, in the design of the mechanism of bill creation that the Gauteng Government must address, is the national integration of policy making with Legislative drafting. The Gauteng Government has ambitious plans to change patterns of behavior and resources allocation established under apartheid. To develop effective legislative solutions to social problems, legislative drafters have to use a methodology which clearly identifies the problem requiring a solution, and which establishes and analyzes the relevant facts prior to considering actual solutions and specific statutory language. In the absence of a rigorous problem-solving methodology, the iron law of unintended consequences, so familiar in the field of public policy generally, runs riot in the field of Legislative drafting as well.

The Gauteng Government has recently established a central legal services directorate, and with the assistance of Ann and Robert Seidman of Boston University, is now actively addressing these issues.

The Legislature

The new constitution establishes all the basic rights which are necessary for political participation. In addition, the constitution places an obligation on the National and Provincial Legislatures to "facilitate public involvement in the Legislative and other processes of the Legislature and its committees." Clearly, our history of racial exclusion from political processes, and the tradition of popular struggle against apartheid have had a strong impact on our new constitution.

The Gauteng Legislature has introduced three interesting innovations in order to foster public participation. First, we introduced a "Notice and Comment" procedure, modeled on the Administrative Procedure Act, for all Bills that are introduced in the Legislature. Our House Rules require the sponsoring department to prepare and publish a memorandum setting out the purposes of the bill, a social and where relevant an environmental impact statement, and a statement of public comments solicited and discounted in the process of Legislative drafting. The memorandum has to be prepared in ordinary, non-technical language in order to ensure that the public have access to information which is a prerequisite to effective participation. Unfortunately, however, the departments do not yet have the resources or the skills to prepare the memorandum in a way which facilitates public participation and rational decision making. Second, we have established a Public Participation Office, with the necessary resources and staff to facilitate public participation by disadvantaged communities. We have found that it is not sufficient to create formal opportunities to participate. Legislative processes are notoriously vulnerable to "capture" by powerful interest groups. The appalling legacy of apartheid has further impaired the capacity of disadvantaged communities to participate in the highly formal and ritualized processes of modern legislatures. The office disseminates information, runs workshops with target groups and assists in the preparation of submissions to committee hearings. Third, we have established a petitions mechanism which creates an opportunity for members of the public, as individuals and collectively, to petition the Legislature directly. In general, however, our approach on this matter has been to strengthen the decision-making processes of representative bodies, rather than seek to augment representative Government with direct forms of democracy in order to remedy the supposed deficiencies of representative government.

The National Council of Provinces

Those familiar with the South African constitution-making process will be aware that one of the most intractable issues that we had to deal with was how to reconcile the powers of the national government and provincial autonomy. This, of course, is a question which resonates in the history of U.S. constitutionalism. The framers of the South African constitution dealt with this familiar tension by creating a system of "Cooperative Government" aimed at promoting both "national unity" and respect for "the constitutional status, institutions, powers and functions of government in the other spheres." Within the form of Cooperative Government, the NCOP, which is the second House of the bicameral National Parliament, occupies a central place. It is a *co-legislator* designed to promote legislative cooperation between the national and provincial governments. The uniqueness of this body lies in its composition. The Council is composed of a single delegation of 10 delegates from each province. The delegation is led by the premier of the province and four of the delegates are special delegates who are sitting members of the legislature. Matters of shared national and provincial legislative competence ("so-called Section 76 matters") are voted on by the province *en bloc*. These two mechanisms, *viz* special delegates and the block vote, create a strong system of

EYE ON THE WORLD

Firoz Cachalia, LL.M. '96,

below right, the Leader of the House in the Gauteng Legislature, ran for office while studying at the Law School. A native of South Africa, he returned to play a critical role in South Africa's establishment of its constitutional democracy. Last March he came back to the Law School to participate in a two-day symposium on "Constitution-Making in South Africa." At that conference, Cachalia shared a panel with Nicholas Haysom, below left, legal advisor to South African President Nelson Mandela.

provincial representation in the national legislative process, stronger than existed in the United States prior to the introduction of the Seventeenth Amendment.

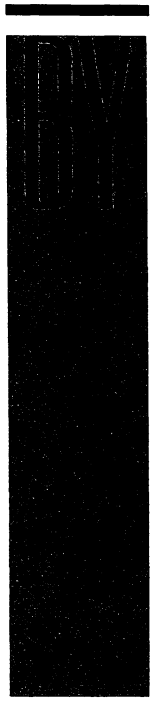
It remains to be seen if the judges of the South African Constitutional Court are persuaded by Jesse Choper's argument and the argument of the majority in *Garcia vs. Antonio Transit Authority* that power issues are non-justifiable and that Provincial autonomy is properly protected by process guarantees "inherent in the structure of the federal system (the structure of cooperative government) rather than by judicially created limitations on federal [national] power."

The legislative process contemplated by the structure of Cooperative Government creates a complex legislative process because it requires consideraton of a significant amount of legislation emanating from National Departments by nine Provincial legislatures as well as the National bicameral Parliament. In practice we are encountering enormous difficulties in ensuring that the legislative process functions effectively. These must be resolved soon if the vision of the framers of our constitution of a strongly representative, participatory and cooperative legislative process is to be realized.

Conclusion

As Leader of the House in the Gauteng Legislature, I have participated in both the Provincial Executive and Legislature, as well as in the National Council of Provinces (NCOP). I consider myself fortunate to have had the opportunity to play a role in establishing the democratic institutions contemplated by the text of our constitution. I believe that my period of study in the University of Michigan Law School helped me contribute more effectively than I might otherwise have.

South Africa is still undergoing a transition in which the elements of constitution-making and institution-building on the one hand and ordinary democratic politics and government on the other are mixed. I hope that over the next 10 years we shall have succeeded in consolidating our democratic system of government with elected politicians, the basic institutions and fundamental values established. We will then be able to concentrate on governing within an established constitutional framework of values and limits on the exercise of power.



GIORGIO BERNINI, LL.M. '54, S.J.D. '59

The train from New York arrived at the Ann Arbor station at 6:30 a.m. There I was, a young Italian graduate student who had crossed the ocean by boat, ready to meet a new life adventure. Standing on the platform, I felt like a cultural emigrant.

A taxi took me to the Lawyers Club, where I was to live. At that early hour, the door of the Club was still closed so I sat on the bench facing the entrance, waiting for it to open. It was a splendid September morning, the color of the trees was bright and the squirrels were running and climbing with their usual zest.

My thoughts ran in the few minutes I had before entering my new home. What was I doing in the United States? What were the prospects facing a student who was about to cross the great canyon parting the civil law world from the common law world? At the time, comparative law was still a sophisticated toy in the hands of a few professors who taught elite seminars for a restricted number of apprentice scholars. The structure of international legal training only slightly exceeded the substance of crystal-gazing.

Yet, in the early fifties, the incoming wave of international relations was beginning to mount. The Marshall Plan was being vigorously implemented and only a few alert observers had started to realize that the importance of this program went far beyond the scope of dispensing aid. The ITO was timidly trying to see the light, and the Havana Charter forged the principles which were to become the guideposts of the future international trade community. Although the ideas were ahead of their time and the ambitious program was aborted, the seeds of international free trade were not sowed in vain.

On our side of the ocean, a few illuminated founding fathers led a trend toward political and economic integration which would later favor the birth of the European Economic Community. The approach to European integration was becoming more pragmatic. A sector-by-sector approach drew its inspiration from the ITO and was prevailing over classic nineteenth century European federalism. The new philosophy concentrated on the adage which was to become the password for the future: free enterprise in a free market. To accomplish the integration, national borders were to disappear progressively in order to reach an ideal which coupled the

strengthening of international trade with the preservation of peace. It took nearly half a century to move from free trade to a single market.

The climax of globalization came with the successful Uruguay Round and the birth of the WTO, whose reach spans economic, social and political issues. The impact of this Copernican revolution upon the world order is paramount and reveals past achievements to be merely timid steps.

The young Italian graduate sitting on the stone bench before the Lawyers Club could not even dream of the monumental changes which were about to impact legal education and practice. On that day, he was not gifted with premonition. He was merely participating in a simple act of faith — that a changing world was capable of overcoming the limits of domestic selfishness which had caused murderous wars, and which took away the life, mortified the intelligence and constrained the education of too many young innocents.

Today, after a long and varied career ranging from academia to the legal profession and public office, I am again faced with a forecast: will the evolution of legal education and practice keep pace with the internationalization of the economy? Satisfactory past experiences allow optimism, but never certainty of future success.

Free trade and economic integration are only the first steps if globalization is to exceed the bounds of the business community. Legal harmonization should go hand in hand with the collapse of trade barriers and economic achievements should always be coupled with the awareness that the next century shall have to witness the molding of a new political order.

Legal practice must evolve accordingly and universities will bear the responsibility for a new type of legal education which is meant to be international, but not universal in scope. It should not be aimed at erasing the differences, but rather at enhancing the importance of diverse cultural influences. This will confer an added cultural value upon the intellectual endeavors of students and scholars who choose to take part in a network of educational sources at the world level. This is the lifeblood from which citizens of the new century will draw their cultural knowledge.

Also, this legal practice will remove the limits of preconceived and parochial ways of life and thinking. This is essential for international organizations which must maintain the uniqueness of domestic structures, while helping them give the right of way to a network of bodies that are integrated at the regional and global level. It is also important for national governments, whose concerns are now less domestic in the context of a rapidly evolving and demanding international community.

The University of Michigan Law School was an early laboratory for the first lap in the change of legal practice. This experience will help further the insight which contributes to the strengthening of the international roots which have been so deeply planted.

EYE ON THE WORLD

Giorgio Bernini, LL.M. '54, S.J.D. '59,

is the senior partner in Studio Bernini e Associati and a full Professor, Chair of Arbitration and International Commercial Law and Director of the Department of Law and Economics at the University of Bologna, from which he graduated in 1950. He also has attended the Universities of Paris and Cambridge and has taught at the University of Michigan Law School as a Visiting Professor. He is Honorary President of the International Council for Commercial Arbitration (ICCA) and President of the Association for the Teaching and Study of Arbitration, which is sponsored by the University of Bologna. Professor Bernini is the author of many treatises, monographs and articles on subjects like arbitration, antitrust, international trade law, mergers and acquisitions, international contracts, privatizations and project financing. He regularly advises on arbitration, antitrust and corporate issues and litigation and has been involved in cases in Italy and before other domestic jurisdictions, as well as before the European Court of Justice. He has served as counsel to the Italian Government, European Union and GATT, was the Italian delegate to the United Nations Commission on International Trade Law and President of ICCA. He has been a member of the Italian Parliament and served as Minister of Foreign Trade. He is now a member of the Board of Directors of the Italian Institute for Foreign Trade (ICE).

BY

ALEJANDRO FERRER, LL.M. '92

Vice Minister of Foreign Affairs, Republic of Panama

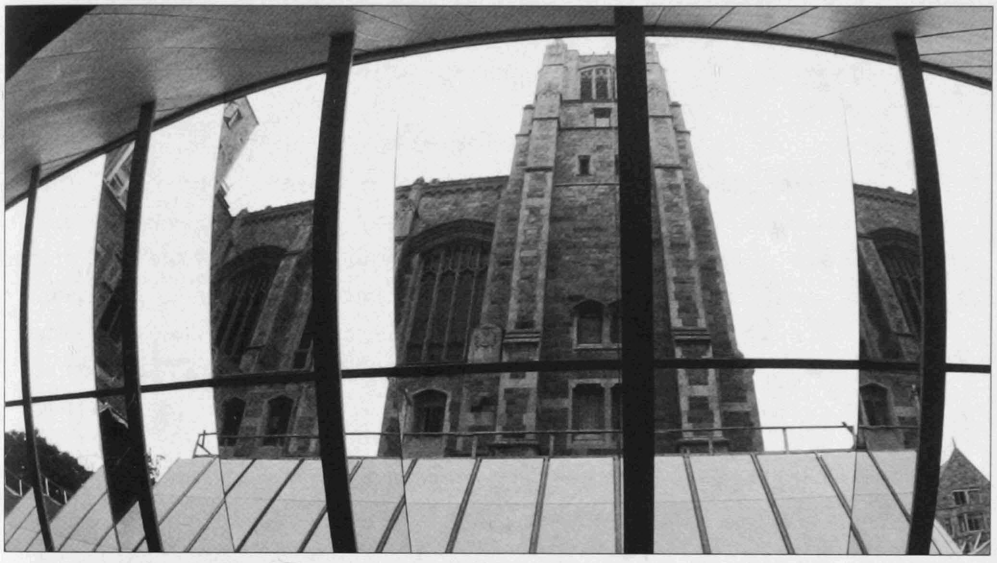
PANAMA TODAY IS AT A CROSSROAD centered on the transition of the Panama Canal into Panamanian dominion. Ten years from now, in 2007, we will have passed the phase of proving our capacity as a nation to administer the Canal and entered a phase of harvesting the fruits of a smooth transition. By the year 2007 Panama's foreign policy will no longer focus on recuperating our territorial jurisdiction but rather on managing all our resources and taking advantage of all the opportunities and challenges that we will face.

By noon on Dec. 31, 1999, Panama will acquire full sovereignty over its territory; the last phase of reversion of the Panama Canal will be completed by then. Today, close to 92 percent of the workforce of the Panama Canal is Panamanian. The real challenge for the country will not be achieving the remaining 8 percent, but rather internalizing our new status as the owner and operator of the Canal, a Canal that is Panamanian because we own it, but international because of its service.

My current post as Vice Minister of Foreign Affairs will be significantly altered in the next 10 years. Today, I have the honor of helping to lay down the foundations of Panama's full participation in regional and global politics and economic affairs. Our efforts today will significantly shape the future outcome. Just this year we have joined the World Trade Organization and we are concurrently negotiating several regional free trade agreements. In 10 years, rather than negotiating terms of agreements, we will be settling trade disputes and fine-tuning our commercial ties with our new partners and Canal users like the United States, Chile, Japan, the European Union, Mexico and Brazil, to name a few. Our foreign relations will be more balanced and diversified than ever before.

Ties with the United States and Latin American nations will also be strenghthened by their participation in the Multilateral Counter-Narcotic Center (MCA) that we are proposing to establish here in Panama. No country on its own is able to fight this scourge with all the resources it needs, on all the fronts, and win by itself. We need more international coordination and cooperation to face this dire threat not only to young democracies, but also to the future generations around the planet. This is an area that is so close to the demoralization of contemporary societies that it is evident that any meaningful advance against drug trafficking will have to come from the joint efforts of governments, civil societies and citizens alike all over the world. At the same time, the possible success against this threat may strengthen the prospects of communal life in the near future.

EYE ON THE WORLD



During the next 10 years Latin America is going to realize its potential as the next economic and political "miracle." The region will have achieved the proper mix of market reforms and democratic governance with a critical and open exchange of ideas and a balancing of market excesses with social responsibility.

We need to invest in human capital, not only to update our current academic infrastructure but also to develop a new one that will prepare new generations for the challenges of tomorrow. We cannot pretend to succeed in free trade with open borders if our minds are closed to the brave new world of technology and multicultural realities. If we fail in updating our human capital project, we will have failed our future generations miserably.

Another area that may represent an obvious challenge to Panama and Latin America is the environment. Global challenges such as climate change, the loss of biological diversity, pollution, the conversion of an oil-based economy into a more nature-friendly one, and the radical transformation of our landscapes into megacities constitute a series of tasks for which a new generation of institutions and political organizations may be required.

As a young policy maker, I have been blessed with the opportunity of helping my country in articulating a new foreign policy for the future. I am optimistic that this future may be charged with positive changes and with great advances in human understanding. We are creating, by our mere presence in many new fora, a new language of peace and prosperity, the legacy of which will be the ability to discuss new problems under a new guiding light.

Alejandro Ferrer, Jr., LL.M. '92,

Vice Minister of Foreign Affairs of the Republic of Panama since 1996, also has served Panama as Joint Permanent Representative on Special Mission to the General Agreement on Tariffs and Trade (GATT), as Ambassador and Permanent Representative to the World Trade Organization (WTO), Deputy Ambassador and Permanent Representative to the United Nations, International Trade Counsellor for the Panamanian Embassy at Washington, D.C., and Legal Counsellor for the Commission of Accession of Panama to GATT. Formerly with the law firm Alfaro, Ferrer, Ramirez & Aleman, he is a member of the Panama Bar Association and a candidate for the S.J.D. degree at the University of Michigan Law School. He speaks and writes Spanish, English, Portuguese and French.

BY

JOHN V. LONSBERG, '79

THE LAST 20 YEARS HAVE WITNESSED EXTREMELY SIGNIFICANT GROWTH in the international practice of most large U.S. law firms on the basis of whatever measurement tool may be applied. For instance, a comparison of the number of non-U.S. offices maintained by today's AmLaw 100 firms or any similar group respectively in 1980 and today would provide an interesting measure of this development.

Obviously, this expansion is primarily attributable to the globalization of the economy and lawyers' and law firms' desires or needs to follow and service their clients in this global environment.Whether these needs are real or imagined, they have driven many firms to international locations that, for years, they served, if at all, through correspondent firm relationships.

Predicting where the private international market and related legal practice are going is a fundamental concern for many firms. One important reason for this is that mistakes made in this arena tend to be extremely costly, both in terms of capital and personnel resources. The increased competition for legal business now provided in the non-U.S. markets by the accounting firms, or professional service firms as they seem to prefer to be styled, will further complicate this analysis. Whether these professional service firms can move into the higher value legal services area remains to be seen. Their activities and successes in developed European markets, however, suggest that they will be a major competitive factor.

While anticipating where the market for international services will be after another decade is risky at best, any lawyer working in a successful international practice after the passage of another decade should anticipate an environment that will include the following characteristics:

1. While many clients profess that they hire individual lawyers and not firms, in practice these same clients are in the process of simplifying their outside counsel relationships, often by significant reductions in the number of firms that they engage. This trend will favor those firms offering the broadest substantive expertise and geographical diversity. Clubs or other forms of association among firms will not provide the depth of relationship that will be demanded by sophisticated clients seeking to reduce the number of counsel that they employ. Identifying which markets will require a local presence a number of years down the road will be one of the most challenging, but most vital, tasks.

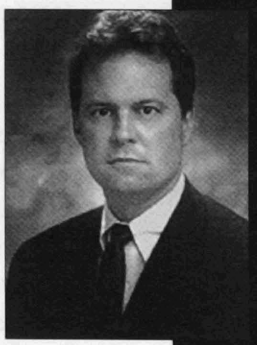
2. The competitive market for legal services dictates that firms render services as efficiently as possible. This requires the development of highly-focused expertise. The demand for efficiency will tend to drive more lawyers into narrower specialties with the result that firms, by definition, will have to continue to increase in size to meet the ever increasing substantive and geographical demands of their clients. The fact that these specialities will extend over numerous national jurisdictions and multiple types of legal systems will cause even more growth. At the same time, there will remain a need for the international generalist who can coordinate the delivery of services by these specialists across national borders.

3. Firms participating in the international market must become increasingly diverse in terms of the nationality, training, language capabilities and cultural affiliation of their lawyers. These sophisticated clients will not be satisfied by the delivery of services exclusively by American lawyers who cannot provide the cultural affinity and local market knowledge that can be provided best by local practitioners, but will demand that the services of such local practitioners be available to the clients through the major international law firms.

4. The firms that are most focused on the international marketplace will tend to lose their national identity as a corollary of their increased diversity. The boundaries between the U.S. and British legal markets are rapidly breaking down, as now evidenced by the increased Anglicization of U.S. firms' offices in the United Kingdom and the high level of hiring of U.S. lawyers by the large English firms. This blurring of national identities will continue and expand beyond these two markets where it is most obvious today. This development necessarily will create significant ethical, practice management, liability, conflicts and administration issues. For instance, how will firms reconcile widely differing compensation and partnership patterns among numerous markets? Similarly, will individual firms operate on a true global basis or will they operate more as an aggregation of member firms which exist and operate, to one degree or another, as individual profit centers? Issues such as these will have a fundamental impact on how and by whom services are rendered for clients.

While it is not likely that these factors will lead to the development of a "Big Six" or other equivalent to the accounting firms, it seems likely that the financial and management demands of the international marketplace will result in the evolution of a relatively small group of international legal firms that will have the requisite resources to compete and to function on a global basis.

EYE ON THE WORLD



John V. Lonsberg, '79, *is Leader of the International Transactions and Dispute Resolution Group and a partner of Bryan Cave LLP in St. Louis. He is responsible for the firm's offices in London, Frankfurt, Hong Kong, Shanghai, Riyadh, Kuwait, Dubai and Abu Dhabi and for coordinating the work of the lawyers who practice in the Group. He was resident in Saudi Arabia from 1980-88 and established the firm's offices in Saudi Arabia and Dubai and Abu Dhabi in the United Arab Emirates. He concentrates on international commercial transactions, with an emphasis on joint ventures, distribution arrangements, mergers and acquisitions, and the regulation of business operations. He acted as the outside counsel for McDonnell Douglas Corporation in its negotiations with the Republic of China in connection with a proposed joint venture relating to the operation of its Douglas Aircraft Company division. Recently, he has been responsible for managing a consortium of eight international and Kuwaiti professional firms that has advised and prepared $60 billion of claims for the Kuwaiti government against Iraq relating to the invasion and occupation of Kuwait. He also maintains a domestic practice focusing on mergers and acquisitions and served as Chairman of the Committee on Middle Eastern Law of the American Bar Association's Section on International Law and Practice from 1988-91. He also is a member of the Law School's Committee of Visitors.*

BY

MARIA LOURDES A. SERENO, LL.M. '93

Director, Institute of International Legal Studies, University of the Philippines Law Center

I HAVE BEEN ASKED A VERY INTERESTING QUESTION by the editors of *Law Quadrangle Notes*, and I sincerely wish that the hopes and concerns I will express reflect not only the musing of an ivory-tower pedagogue, but in a larger measure, the unarticulated questions of several generations of lawyers. By reflecting on the future, I had wanted very much to see, as concretely as possible, with my mind's eye, and mixed with a large dose of heart's desire, what might happen 10 years down the road.

For that is what my vocation really is: articulation. I have been given the very difficult role of constantly reflecting on the nature of the law, on the nature of Philippines society, and on the interaction with and the power of legal concepts to affect, if they do, the behavior of the different actors in my society. I am expected to discharge this role, amidst all the hurrying and scurrying in the twenty-first century. And I am expected to announce, at the right moments, when the insights I have accumulated form a sufficiently significant mass or have been transformed into a qualitatively important semi-synthesis, revelations or discoveries which will help people to conclude what is right and what is wrong, what should be done and what is to be avoided. And I am to unveil these revelations or discoveries, in a manner both intellectually and morally compelling, for my role as a law professor to be recognized. And, most important, I am to teach with all generosity, this power to articulate to generations of students who will one day use this power for a client's cause, or for more general, communal or societal interests. And here is where the difficulty lies.

Unlike many Western countries whose bodies of jurisprudence reflect the collective wisdom of countless men and women who have seen life through generally recognizable philosophical lenses, and validated by the experiences of community and nation-building, my country does not have that intellectual anchor. For the nearly hundred years of statute law and case law-making in my country, we have had to see possible enlightenment through alien experiences. *Since the countries from which we borrowed this particular legal doctrine have found this to be good and true, since it was meant to address a particular social objective, then we Filipinos probably are not too off-track to adapt such principles in our legal system.* This is not a strange process in itself, and for lack of any other available process of law-making and statutory interpretation, it probably is the best available. However, the process of adaptation assumes that you can integrate a foreign legal concept into your system sans the benefit of addressing questions of "fit" to local culture without too much harm to your development as a nation, and that there is sufficient chance for a process of "adjustment" to take place, precisely to answer the question of fitness.

I am deeply concerned with ensuring that the adaptation process in our legal system succeeds in delivering its promises, because our people are progressively blaming the "law" for some of our most serious problems. The formal legal concepts, as they have been transmitted through our law schools, and as popularly conceived, do not convey the essential socio-moral or even socioeconomic prerequisites for their efficacy. Take democracy and human rights, for example. Too much democracy, we have been told by a senior leader of an Asian NIC, has been

responsible for the slow economic development in the Philippines. Too much emphasis on human rights, many in Manila are now crying out, has been responsible for the brazen disregard of community rights by drug lords. As a law professor, I am expected by those whose education I am responsible for to state that the law serves good and noble purposes, and I am to explain why.

It used to be that the beauty, the logical symmetry of the law, could be sufficiently explained by carefully crafted cases written by very wise men and women in the Supreme Court. Not anymore. The realities of an exploding population, eager to cash in on the much-heralded Asia-Pacific century, with overwhelming needs that must be met, has shifted the battleground from the classroom dissection of a case to a reflection on what is wrong with our streets. It has therefore made my job of making relevant, timely and useful social commentaries more urgent, and thus more difficult. The unique position of a law professor in my university is that in moments of important legal dilemmas, which happens very often in my country, we are asked to speak. And what we speak can be carried far, very far.

We who teach the law will find ourselves increasingly compelled to suggest solutions to increasingly complicated questions, in *byte* sizes and at *megahertz* speed. The latter adjectives are of course exaggerations, but they painfully describe a future that is not willing to wait. Pulled in different philosophical directions, seduced by the sorcery of materialism, and hardly able to contain the explosive bomb of significant discontent, our society will stop to listen to us only long enough to grab the prescriptions, then possibly rush off to the nearest pharmacy, if minded to. The internalization, the tedious social debate that goes into the making of a society, into the creation of a consensus, may not be there.

But I have hopes for the future. My hope is that there will be enough people, across the globe, who share these concerns in common, and who, generous in heart and spirit, will try to impress upon their various communities the importance of taking time to reflect on, articulate and resolve their various sorrows, expectations and concerns, not through predigested solutions (even those offered by law professors), but through community dialogue. Conducted in the spirit of people who realize that each one has a deep stake involved in the outcome of the dialogue, the dialogue will hopefully lead to societal consensus, and lead to a new appreciation of what the proper role of law was intended to be — the expression of a community whose members see common stakes, in a common future, and who would thus gladly abide by common rules. In such a refreshing spirit, teaching law cannot be but exhilarating.

EYE ON THE WORLD

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BY

JOHN K. TOULMIN, CMG OC, LL.M. '65

IN ORDER TO LOOK FOR CLUES ON THE GLOBALIZATION OF LEGAL PRACTICE in 2007 it is useful to look back to 1987 and reflect on the changes that have taken place in the last 10 years. The World Trade Organization (WTO) has been set up. Regional free trade areas have been set up or developed in North America (NAFTA), South America (Mercosul), Asia (Asean Free Trade Area) and Europe (development of free movement within the Member States and the accession of new States). International standards are being developed in Human Rights and the environment. In the United States, in particular, forms of Alternative Dispute Resolution are being developed as an adjunct to or in substitution for court procedures. The legal profession has developed into a worldwide legal profession. Within Europe there have been important reforms in France (merging of avocats and conseils juridique), Germany (development of national law firms) and England and Wales (development of multinational partnerships and international strategic alliances). Perhaps most importantly European law, which was the preserve of the specialist lawyer, is now a subject which the ordinary practitioner must understand.

It is clear, therefore, that we are moving from the era of national regulation to the era of regional or international regulation. The WTO has been such a success in the last three years that it is clear that it will develop its dual role as the body which sets the rules for international trade and provides the mechanism for settling disputes between nations. It will be particularly involved in removing existing trade barriers and in resolving disputes in the services sector. Non Governmental Organizations, at present excluded, will play an important role in the WTO in the future. The development of regional blocs will continue and there will be a tension between the desire of countries within the bloc to maintain restrictions on outsiders and the desire of those outside to break down internal barriers. Often the same country will be facing in both directions. President Clinton's ambition to achieve an American Free Trade Area (both North and South) by 2005 is likely to be achieved, although not necessarily in the form which he expects. The European Union, as already envisaged, will be enlarged to include many countries from the former Soviet bloc. Unless clear limits are set by the member states, the EC Commission will play an ever larger role in the European Union and the role of the nation states will be substantially diminished.

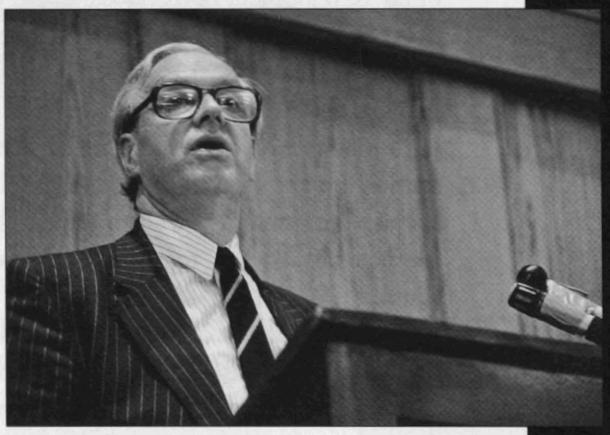
There is now a clear understanding that human rights and the environment are matters for international regulation. In 10 years time we can expect that more stringent international standards will have been developed and growing numbers of lawyers will be bringing claims before courts and tribunals to recover civil recompense for victims as well as criminal penalties against those who do not conform to international standards.

In Common Law countries, in particular, there is already a concern that the courts are too inflexible, expensive, and slow to provide an appropriate resolution of civil disputes and that alternative methods of dispute resolution must be pursued.

Mediation, both private and court-referred, will become the required first step in resolving civil disputes. More disputes will involve parties from different jurisdictions and will be decided by arbitrators with a range of expertise in the areas of law and practice of the countries involved in the dispute rather than by courts. Small claims will normally be heard without lawyers in independent practice. Parties will either be unable to recover their fees from the losing party or will be excluded from the process altogether.

Multinational partnerships, now in their infancy, will be developed. Firms from large emerging countries like Brazil and China will play a more important international role. We can expect lawyers to move freely from one country to another. By the year 2000, it is hoped that the EC Directive facilitating free movement of lawyers within the European Union, drafted with the assistance of the European Bar Council (CCBE), will have been adopted and be in force and that European lawyers will have the right to practice law in other member states using the professional qualification of their home state. By 2007 it is almost certain that this issue will have been taken up in the WTO Working Party on Professional Services and its recommendations will have resulted in the worldwide removal of similar restrictons on freedom of movement for lawyers. The United States will press in these discussions for easier access to full membership of the legal professions in other countries. Within the next 10 years there will be a worldwide code of principles of professional conduct for lawyers engaged in cross border practice agreed to by the signatories to the WTO. There are some differences between the principles in the U.S. Code, the CCBE Code adopted by all member states of the European Union, and the Japanese Code of Conduct, but with goodwill they are capable of resolution.

Finally, my one certain prediction is that in 2007 the University of Michigan Law School will be in the forefront of legal scholarship and that the Law Quad will remain a powerful magnet to its lucky alumni.



EYE ON THE WORLD

John K. Toulmin, LL.M. '65,
is Queen's Counsel practicing from 3 Verulam Buildings, Gray's Inn, London, WC1R5NT. A Companion of the Order of St. Michael & St. George (CMG), he received the Great Decoration for Merit from Austria in 1995 and in 1994 was named an honorary member of the Law Society of England and Wales. He was called to the English Bar in 1965, the Bar of Northern Ireland in 1989 and the Irish Bar in 1991. As a member of the Council of the Bars and Law Societies of Europe and CCBE President in 1993, he negotiated the GATT Round on behalf of the European legal profession. He is chairman of the Board of Trustees of Europaische Rechtsakademie Trier. His practice includes commercial/international trade law, American and European law, international mediation and arbitration, banking and administrative (regulatory) law.

KATHERINE E. WARD, '77

General Counsel, Rolls-Royce Power Ventures, Limited

After 20 years of private practice, 10 of them spent in Michigan and then 10 in London, England, I have just this year made the move to an in-house position as so many practitioners contemplate doing at one time or another in their careers. I am General Counsel of Rolls-Royce Power Ventures Limited, which is the independent power project subsidiary of Rolls-Royce plc. I am also Vice President-Commercial of our U.S. subsidiary based in Morristown, New Jersey, so I spend a fair amount of time in the United States, as well as traveling to various countries, primarily in Asia, the Middle East and Latin America, where we are involved in the development of power projects.

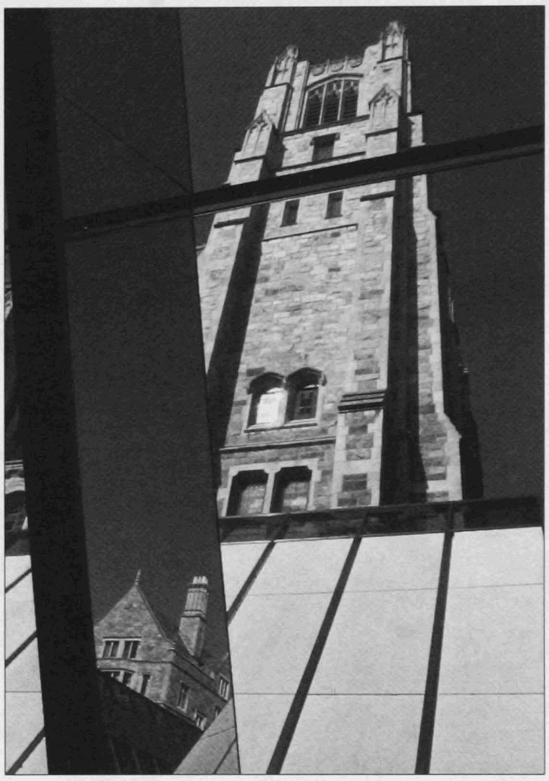
Ten years of change is a bit daunting to contemplate; indeed, 10 years ago from the date on which I write this, I was practicing law in Ann Arbor and looking forward to an upcoming visit to London that was meant to last no more than nine months. That trip turned into a permanent move, but I could never have predicted that at the time.

It is true, however, that part of the reason for my taking this position at Rolls-Royce is that, to the extent that these things are capable of prediction, I felt that the development of independent power projects is a field that will do nothing but grow in the coming 10 years. There are so many areas of the world that still have so much economic development ahead of them, and a stable and affordable supply of power is one of the most fundamental requirements of all of these economies.

No doubt the specific techniques of both constructing and financing these projects will change, as indeed has already been the case in the first 15 years or so of the development of the concept and techniques of project finance. There will doubtless be changes in the mix of sources of finance, as between governmental, quasi- and multi-governmental organizations, financial institutions, the capital markets and private companies such as our own. There will similarly be advances in turbine technology and doubtless other technologies that will make the production and delivery of power simpler, cheaper and more environmentally sound. Certainly there will continue to be revolutions in communications technologies that will make the lives of everyone who functions on a global basis simpler.

The globalization of the practice of law, which is a necessary concomitant to the global nature of business today, will also undoubtedly continue apace. The legal scene in London has changed dramatically in the past five years, and the pace of that change is still accelerating. The large U.S. firms which have traditionally had London offices have nearly all become multinational partnerships of American attorneys and English solicitors. Similarly, the large English law firms have started hiring American lawyers in significant numbers, in both cases so as to be able to provide the "one-stop shopping" service that they perceive to be of value to their international clients. The legal community in London is anticipating the first true merger of a major U.S. firm with a major UK firm, which although fraught with difficulties, is very likely to happen within the foreseeable future.

EYE ON THE WORLD



Katherine E. Ward, '77, *earned her B.A. from the University of California, Santa Barbara, taught at the Law School as an Adjunct Professor from 1984-86 and is a member of the Law School's Committee of Visitors. In London, she has taught at Notre Dame London Law Centre and Pepperdine University School of Law, London. She was an associate and then partner of Foster, Meade, Magill & Rumsey in Ann Arbor, and then was with Pepper, Hamilton & Scheetz in its London office. She was admitted to the Roll of Solicitors for England and Wales in 1995. From 1995-97 she was a partner in the London-based U.S. firm McFadden, Pilkington & Ward. In April 1997 she became General Counsel of Rolls-Royce Power Ventures, where she is involved in the development and financing of independent power projects throughout the world.*

Wearing my still relatively new hat of a client, as well as my more familiar one of a lawyer, it is clear that these developments make a great deal of sense. In developing our power projects all over the world, I deal with local counsel in each country in which we are doing business, and it is unquestionably much easier to accomplish what we require in those jurisdictions where the local bar rules have allowed U.S. and UK firms to set up, inclusive of local lawyers, so that all of our needs can be met by one firm, rather than having to hire both local and international counsel. This trend is almost certain to continue, offering many opportunities to top quality local lawyers as well as many opportunities to Western lawyers to live and work in many different parts of the world. This enormous scope for the further internationalization of the practice of law can only be good news for both U.S. and UK lawyers, as it is their firms which are in the vanguard of the movement toward global coverage. Those individuals, law firms and companies who grasp these opportunities most effectively will surely thrive and prosper well into the next millennium.

INTERNATIONAL LAW WORKSHOP:

Closing in on moving targets

Anyone looking for an overview of the cutting edge topics in international and comparative law need look no further than the Law School's annual International Law Workshop (ILW).

Coordinated by Assistant Professor of Law Michael A. Heller, ILW each year features a dozen or more scholars from around the world who present 30-minute talks and then answer questions from the audience. The talks are open to students, faculty and staff of the Law School and anyone interested in the topic of the day.

At deadline time, nine speakers were scheduled to do programs during this fall term. ILW was to begin Sept. 16 with Gerard Meehan, the European Parliament's Principal Administrator for the Director General for Research, discussing "EU Amsterdam Treaty: Marking Time or Moving Forward?" Other speakers in September, and their subjects, were: Bruno Simma, Director of the Institute of International Law and Dean of the University of Munich Law Faculty, speaking on "Reservations to Human Rights Treaties: The Views from Strasbourg and Geneva;" and Christine Chinkin, Professor of International Law at the London School of Economics of the University of London, speaking on "Alternative Dispute Resolution: International Legal Developments."

Louis Henkin, Columbia University Law School Professor Emeritus, fields a question after addressing the International Law Workshop last spring. Each year the Workshop features talks by leading scholars from throughout the world on subjects that are at the cutting edge of international issues. At left at the front of the room is Professor of Law José Alvarez and at right is Assistant Professor of Law Michael A. Heller, coordinator of the Workshop.

Here are the speakers for the remainder of the fall term:

OCT. 14: Dr. Pieter van Dijk, Judge at the European Court of Human Rights and a Member of the Council of State of the Netherlands, speaking on "Judicial Review by the European Court of Human Rights: Its Main Limitations."

OCT. 21: Catharine MacKinnon, Professor of Law at the University of Michigan Law School and a driving force behind the growing legal recognition of rape as a war crime, speaking on "Gender-Based Crimes in International Law."

OCT. 28: Jerome H. Reichman, Professor of Law at Vanderbilt University Law School, discussing "Global Competition Under Intellectual Property Norms of the TRIPS Agreement."

NOV. 11: Julie Roin, Professor of Law at the University of Virginia Law School, will speak on "International Implications of the 1997 Tax Act."

NOV. 18: Iraqi communications specialist Jabbar Al-Obaidi will discuss "Flow of Information vs. Censorship in the Middle East: The Constitutions and People." He formerly was Professor of Communication at Sara's University, Yemen; Yamuuk University, Jordan; and Baghdad University, Iraq.

DEC. 2: Dorothy Thomas, Director of the Human Rights Watch Women's Rights Project. Her subject was unavailable at deadline time.

Meehan, Simma, Reichman and Roin are Visiting Professors at the Law School. Al-Obaidi is a research scholar at the Law School. Winter term speakers will be announced later.

Conferences, symposia offer participants rare opportunities

High quality teaching, collegial discussions and the overriding atmosphere of intellectual inquiry that mark the Law School mean that the phrase "academic high" is merely a description of standard operating procedure. In this setting, however, there are peaks of even more focused inquiry by groups of people with shared interests. These symposia and conferences bring together scholars who otherwise often cannot squeeze in the time for discussions with the wide ranging yet focused character of the conversations and debates that occur at these special gatherings.

Typically, the Law School year features several major conferences and symposia that provide discussants a rare opportunity to talk directly and continually with colleagues and offer observers the even more rare opportunity to watch these scholars in action with each other. Here is a sampling of the conferences and symposia approved or proposed for the 1997-98 academic year at the Law School:

NOV. 7-9: Midwest Clinical Law Conference. Clinical law specialists from throughout the Midwest will gather for plenary and small group sessions on how clinics can increase access to legal services for indigent people and how new technology can aid this access; quality control in a clinical setting and how experiences of private firms, in-house corporate counsels, defenders and prosecutors can provide insights on maintaining quality; and peer review in a hierarchical setting where some people have tenure or comparable job security and others do not.

Continued on page 24

BRIEFS

Continued from page 23

NOV. 14-15: Physician-Assisted Suicide: Questions After the Supreme Court Has Answered. The U.S. Supreme Court's decision last summer that there is no constitutional right to physician-assisted suicide was designed to encourage continuing debate of the issue, according to Chief Justice William Rehnquist. A significant portion of that debate will take place at the University of Michigan in a conference jointly sponsored by the Law School, the University of Michigan Medical School and the University's Program in Society and Medicine. Papers from the conference will be collected and published by the University of Michigan Press. Participants from the Law School will include law professors Peter Hammer, Yale Kamisar, Richard Pildes, Donald H. Regan and Carl Schneider, '79. Schneider has been working with the co-sponsors to organize the conference. Also participating will be Sonia Suter, a Visiting Professor at the Law School last year, and Christopher McCrudden, a Visiting Professor in Winter Term 1997 and a Reader in Law, Oxford University and Fellow, Lincoln College, Oxford. According to Schneider, participants will consider at least these questions:

- What does the Supreme Court decision say?
- Was the decision correct as a matter of constitutional law?
- How should we now think about the ethical status of physician-assisted suicide and more generally of euthanasia?
- What should medical practice in this area now be?
- Which legal and political institutions ought to have authority to decide questions in this realm?
- How can this decision be understood in its larger historical and international context?

NOV. 21: The Moskowitz Conference on Taxation in an International Economy. At deadline time, 15 scholars from the Law School, the University of Michigan School of Business Administration, the University of Michigan Department of Economics, law schools at Harvard, University of Virginia and Wayne State University, and the University of North Carolina School of Business had agreed to participate. U-M Assistant Professor of Law Kyle D. Logue, who is organizing the conference, said that plans call for a presentation of two papers in the morning and two additional papers in the afternoon. In addition to Logue, participants from the Law School will include Dean Jeffrey S. Lehman, '81; Professor of Law Merritt B. Fox; and Assistant Professor of Law Michael Heller. The conference is being sponsored by the Law School and the School of Business Administration with funding from the Louis and Myrtle Moskowitz Fund, which sponsors an annual professorship that rotates between the Law School and the School of Business Administration. Robert A. Sullivan Professor of Law James J. White served as the Louis and Myrtle Moskowitz Research Professor in Business and Law during the 1996-97 academic year. Attendance is by invitation.

FEBRUARY 21, 1998: Asian-American Critical Race Theory and the Law. Organizers say this conference is the first in which the legal aspects of critical race theory will be analyzed from the Asian-American perspective. Critical race theory, which deals with how concepts of race affect members of racial groups, usually is applied to African-Americans and Native Americans. "We're trying to open up a potentially rich field of research," organizers of this conference say. Participants will discuss issues like Asian-American Women, Affirmative Action and the Asian-American, Immigration and other issues. The conference is sponsored by the Asian Pacific-American Law Students Association and the Law School.

MARCH 20-21: Jury Reform Symposium: Do Juries Work? A project of the *University of Michigan Journal of Law Reform*, the symposium "will include topics such as jury nullification, race, juror decision rule and the ethics and proper role of jury consultation," organizers say. Several recent events have pointed up changes in the form and use of juries: a recent videotape in which a district attorney told junior prosecutors to try to avoid African-American jurors in a case involving an African-American defendant; the use of juries in "bold and imaginative ways" such as for summary jury trials and private juries; CBS News' recent visit behind jury doors for the television report "Inside the Jury Room;" recent state experimentation with jury size and the unanimity rule; the O.J. Simpson trials. Overall, organizers say, the symposium will focus on "whether juries can continue to function appropriately as an effective body for deciding cases, and in which ways juries can be reformed to be fairer, more efficient and more democratic."

At deadline time, the Law School's Journal and Symposia Committee also was evaluating proposals for conferences/symposia on Hispanic issues, eroding protections for the poor and the new Superfund for environmental cleanup.

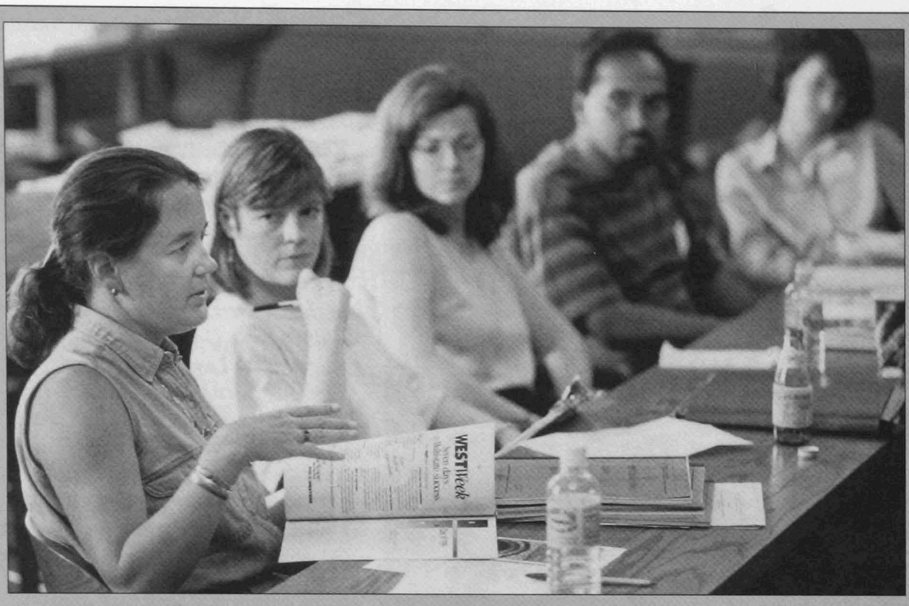
Signing On —

Marie R. Deveney, '84, and author Kathryn Horste renew their acquaintance during the autograph party in May for Horste's new book The Michigan Quadrangle: Architecture and Origins, *published last spring by the University of Michigan Press. Deveney, an attorney with Dykema Gossett in Ann Arbor, taught at the Law School from 1986-91. Horste wrote the text for the book; most contemporary color photos in the volume are by Gary Quesada. The cover photo of this issue of* Law Quadrangle Notes *is from the book. Photos from the book also appeared on the covers in Summer 1997 and Spring 1996 and on the inside back cover in Spring 1997. For price and other ordering information, contact:*

University of Michigan Press
839 Greene Street
Ann Arbor, MI 48106-1104
Telephone: 313.764.4392
Fax: 800.876.1922
djentzen@umich.edu

Up In Smoke —

In a presentation to Professor of Law Richard D. Friedman's Introduction to Civil Procedure class in August, Indiana Attorney General Jeffrey A. Modisett describes the action that his state has filed against the tobacco industry and the proposed $360 billion agreement with the industry that Congress is considering. Modisett explained that in the suit that it filed in February 1997, Indiana drew on statutory law and common law for the nine causes of action it alleges against the tobacco industry: conspiracy; agreement to restrain trade; deceptive acts and practices; unjust enrichment; indemnity; negligence; intentional breach of assumed duty; criminal mischief; and nuisance. Modisett said when he spoke at the Law School in August that 40 states had filed similar suits. At the federal level, he said, "I'm pushing the settlement in Congress," but he noted that the much publicized agreement that negotiators for the tobacco industry and their opponents hammered out and signed earlier this year "is not a settlement. This is a guideline for a proposed settlement." Congress will make the final decision, he said. "What the tobacco industry gets out of this, at least for a time, is financial predictability," he said.



Career Questions —

Law School career services professionals from universities in the Midwest, East and South gathered at the University of Michigan Law School in June to share insights and discuss the issues that they face in their work. Here, at left, Karen Comstock, Director of Career Services and Placement Development at Cornell Law School, has the floor as she makes a point during one of the discussions. Listening are: Harriet Robinson of Yale Law School, Jo-Ann Verrier of the University of Pennsylvania Law School, Gihan Fernandez of Cornell Law School, and Diddy Morris of the University of Virginia School of Law. Below, other participants listen in; from left are Pamela H. Pilch, University of Michigan Law School; Paul Woo, University of Chicago Law School; Suzanne M. Mitchell, '82, University of Chicago Law School; and Susan Kalb Weinberg, '88, Director of Career Services at the Law School and organizer of the conference. Among the topics that participants discussed were minority programming, counseling the bottom 25 percent of the class, international degree recipients, judicial clerkships, job satisfaction and self assessment, the Internet and alumni services.

Okun named Assistant Dean of Development/Alumni Relations

Kathy A. Okun, who holds three degrees from the University of Michigan, has been named the Law School's new Assistant Dean of Development and Alumni Relations.

Okun's official starting date at the Law School is Oct. 1. In her new post she will provide policy and administrative direction for development and alumni relations activities and work with Dean Jeffrey S. Lehman, '81, and the faculty and graduates to fashion long-term goals for development and alumni programs.

Okun had been Director of the Office of Trusts and Bequests for the University of Michigan since 1994. She received her Ph.D. from the U-M in 1981 in higher, adult and continuing education. She received her A.M. in educational administration in 1975 and her A.B. in history and elementary education in 1973.

Most of Okun's professional career has been at the University of Michigan. She was Associate Director of the Office of Trusts and Bequests from 1992-94. She directed development and alumni programs at the School of Nursing from 1986-92 and for the School of Social Work from 1983-86. She also has worked as a Program Development Specialist with the Washtenaw Council for Children.

Keeping the Meter Running —

"I learned a lot from this case," Charlotte Johnson, '88, Director of Academic Services, explains of Detroit Metropolitan Airport Taxicab Association v. County of Wayne, *which she entered in 1988, when it was three years old. The case dealt with Taxicab Association members' opposition to Wayne County efforts to upgrade Metropolitan Airport facilities and service. "If properly used, the rules of discovery can help assist you on a case," Johnson explained during her talk to students in August. As for deposition taking, "You want to know as much about your case as possible before you go for a deposition." An attorney with limited experience can make himself the equal of a veteran attorney by diligently preparing for a case, she said. What finally broke the logjam in the case was the trial judge's decision to set a trial date: "After five years, he set a trial date. That was the only thing that moved people to work seriously toward a settlement of the case."*

Election law project on hold

Last summer's coup in Cambodia (*see story on page 28*) apparently has shelved meaningful in-country evaluation of the Draft National Election Law that University of Michigan Law School students spent much of the past academic year developing.

The two-volume draft law and accompanying report, a product of the Law School's Pro Bono Cambodia project, still is being translated into Khmer, according to Assistant Professor Peter Hammer, who oversees the project. There are few electoral documents published in Khmer, and the translated draft law will be a valuable addition at some future date when and if Cambodia forges an election law, Hammer says.

Election law discussion was underway when Second Premier Hun Sen toppled First Premier Prince Norodom Ranariddh last July. Sen, a former Khmer Rouge leader, lost the 1993 elections that were organized and overseen by the United Nations. But he refused to accept the results and eventually came to share power with the elected winner, Prince Ranariddh.

Ranariddh left Cambodia during the coup and at deadline time had not returned, although his army remained intact and had retreated to the northwestern part of the country.

Under terms of the U.N. supervision of the 1993 elections, new elections are to be held by 1998. But now "it's uncertain if there will be any election," says Hammer. "What is certain is that if there is an election it will be heavily slanted toward the CPP [Cambodian People's Party, led by Hun Sen]."

The Election Law Project is the work of nearly a dozen Law School students: Chi Carmody, Meg DeRonghe, Andrea Freudenberg, John Humphrey, Laura Hutcheson, Scott Llewellyn, James Myers, John Yatchisin, Kathryn Youel and LL.M. candidates Michael Aguinaldo and Clarence Trocio of the Philippines.

The students brought "an incredibly rich" mixture of experience and enthusiasm to their work, Hammer reports. "Their hard work, dedication and commitment was inspirational."

"They were one of the brightest and most diligent groups of students I have had the privilege of working with at Michigan," he adds.

After students completed the draft law last March, it was forwarded to the Cambodian Institute for Human Rights for distribution to Cambodian government leaders, policy-makers and others in the country. Translation into Khmer began over the summer and is continuing, Hammer says.

"To my knowledge," Hammer says, "it's the only comprehensive proposal that is out there. . . . My objective is less to have this law adopted than to have a law adopted."

Hammer, students get caught in

PHOTOS COURTESY PETER HAMMER

Eighty-five percent of Legal Aid of Cambodia's work is with Cambodians who are in prisons like these awaiting trial, during trial, or because they have been tried and sentenced to prison. The country's prison buildings were built during the French colonial era.

Cambodian coup

The chatter of small arms fire and the deeper boom of rocket explosions were not on his agenda when Assistant Professor of Law Peter Hammer flew into Phnom Penh this summer. He had in his briefcase materials for the annual meeting of the Advisory Council of Legal Aid of Cambodia (LAC), for which he serves as president. He also expected to talk with the six law students working as LAC interns in Cambodia's provinces, but instead found himself concerned with safely getting them out of the country.

Hammer's plane touched down in Cambodia just as Second Premier Hun Sen was toppling First Premier Prince Norodom Ranariddh. "On Friday, July 4, we went to an Independence Day reception at the U.S. Embassy and then went out for dinner," Hammer recalled. "Half way through our dinner we were told that we had to leave, that the 'political tension' was too high."

The next morning, Saturday, July 5, "I got up and went to the office for a meeting. . . . At mid-morning there were reports of fighting at the airport. By mid-afternoon it was clear that fighting had spread to the capital."

"I ended up leaving on a charter flight on July 18, two days before I had planned, to go to a meeting in Bangkok with the Southeast Asian Bureau chief of our largest funder."

— PETER HAMMER

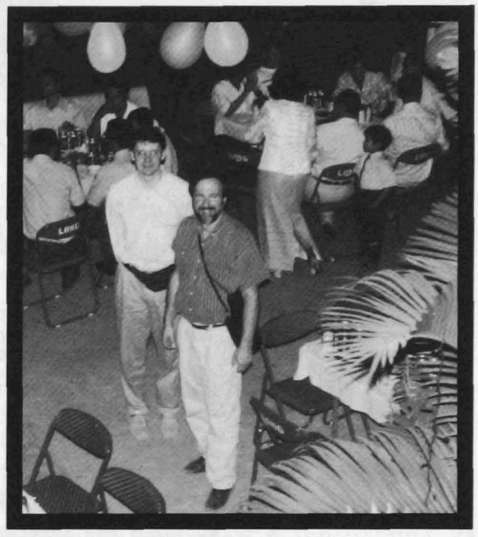
Sunday, July 6, "was the day of the most intense fighting in the city. We heard small arms and rocket fire. You got a very good sense of what was close and what was not."

From the rooftop of the Golden Gate Hotel, where Hammer, LAC officials and many foreign nationals took refuge, "you could see pillars of smoke from various directions. If you knew the geography of the city, you knew what was being hit. We were one to two kilometers away from what were considered to be important targets."

When they weren't on the rooftop, Hammer and others at the Golden Gate watched CNN, listened to the BBC in the restaurant or tried to contact their embassies.

Meanwhile, LAC's six interns, including Helen Chen, a University of Michigan Law School student, were making their way to the capital for their scheduled meeting with Hammer and LAC officials. Interns spend four weeks at provincial placements throughout Cambodia, then come to Phnom Penh to meet with the LAC Advisory Council before returning to the provinces for their second four-week rotation at different provincial placements. The other interns were from law schools at the University of Minnesota, Harvard, Hastings, Boston College and the University of Arizona.

Despite the shutdown of Phnom Penh airport and the posting of troops at 50-foot intervals along main roads in the capital, the interns all arrived safely. Chen, Hammer said with a chuckle, was one of the last to arrive. She was sightseeing along the way, apparently unaware of the armed coup that was taking place.



In more stable times, Assistant Professor of Law and Legal Aid for Cambodia President Peter Hammer, left, and LAC Secretary John Finck celebrate the opening of LAC's new office in Kampong Cham last year. After the coup last summer, LAC leaders recognized the symbolic and real values of maintaining legal services to Camobodia's poor people and decided to keep LAC's offices throughout Cambodia open and operating.

Reluctant to scuttle their summer internships, LAC officials watched conditions carefully. Finally, they canceled the program on July 10, when the U.S. Embassy evacuated all but essential personnel and announced that all Americans should leave the country.

"At that point leaving the country was sort of an academic exercise because there were no flights out," Hammer said. Phnom Penh airport had been closed, its runways pockmarked with artillery damage and much of its air controller and other equipment destroyed. Military flights came in to evacuate foreign nationals and eventually some commercial and charter flights resumed.

But tickets were scarce. LAC officials stood in line for days before they were able to book their interns onto a Thai charter flight out of the city on July 14. "These are one-way tickets," Hammer explained. "The charter drops you in Bangkok and then you're on your own."

A member of the LAC Advisory Council accompanied the interns to Bangkok and helped them look for placements there or book connecting flights. Two interns found work in Bangkok; one went to Laos to find a placement.

The coup left LAC's internship program in tatters. This fall's programs have been canceled and programs are on hold for summer 1998. "One possibility is a one-year hiatus," Hammer said. (The coup also has put on hold the Law School's Cambodian Election Law project; see story on page 27.)

For himself, Hammer stayed on. "My original intention was to stay until July 20. My own assessment was that if I didn't feel that my personal security was threatened then I had work to do. These were important and difficult times for LAC. Symbolically, it would have been very damaging to leave."

"I ended up leaving on a charter flight on July 18, two days before I had planned, to go to a meeting in Bangkok with the Southeast Asian Bureau chief of our largest funder."

LAC, which provides legal services to poor people throughout Cambodia, "will stay open," Hammer said. "The Board concluded that continuing the organization's efforts to build a rule of law in Cambodia was more important now than ever," Hammer explained later in an essay in the *Detroit Free Press*. "In carrying out this mandate, LAC adopted an aggressive policy to keep each of its eight provincial offices open — fighting for access to our clients in prison and pressuring the courts to reopen.

"At this moment of crisis, the last thing in the world we could afford to do was question our own right to exist. This was not naïve heroism. It was a pragmatic response to the country's real needs."

A long night's journey into day

Assistant Clinical Professor of Law Andrea Lyon's signature — *Andrea D. Lyon* — is there in the lower right corner, a firm, readable signature that seems to reflect her tenacity at staying with a cause she believes in. There are 15 other signatures scattered over the court order, the autographs of people who devoted many years to winning freedom for a Chicago area car wash worker who had been wrongfully sentenced to death and spent 11 years on death row.

Andrea D. Lyon

STATE OF ILLINOIS)
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
SIXTH MUNICIPAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS)
)
v.) Case No. 84C14214
)
VERNEAL JIMERSON)

ORDER

A trial judge has inherent authority to dismiss an indictment for good cause shown.

The penumbra of circumstances brought to this Court's attention shows that Verneal Jimerson was wrongfully accused, indicted and convicted. The result was an egregious denial of due process.

IT IS HEREBY ORDERED THAT:

Pursuant to the Court's decision of June 24, 1996, the indictment is forever quashed.

Judge Sheila M. Murphy

Entered:

On this 22nd day of July, 1996.

ENTERED
SIXTH MUNICIPAL DISTRICT
CIRCUIT COURT, COOK COUNTY
JUL 22 1996
AURELIA PUCINSKI
CLERK OF CIRCUIT COURT

"Andrea is someone who is extremely passionate, and she was extremely passionate about this case," Ter Molen says of Lyon. "And she had very passionate feelings that Verneal was innocent."

— MARK R. TER MOLEN

"The penumbra of circumstances brought to this Court's attention shows that Verneal Jimerson was wrongfully accused, indicted and convicted," Judge Sheila M. Murphy of the Circuit Court of Cook County wrote in her order quashing the indictment against Jimerson last year. "The result was an egregious denial of due process."

Illinois Gov. Jim Edgar subsequently pardoned Jimerson "based on innocence."

This story, which drew national attention as the case of the Ford Heights Four, is one of coerced testimony, shoddy defense work, and second trials for the same crime. The turnabout came because of dogged work by attorneys like Lyon, Northwestern University Professor David Protess and three of his journalism students, and recent advances in DNA testing that allowed evidence frozen several years ago to show that the men charged with rape were not guilty.

Lyon entered the case with the Capital Resource Center, the organization that she founded in Cook County, Illinois, to defend death row inmates and people accused of capital crimes. She continued with the case after leaving the Center to join the University of Michigan's clinical law faculty.

"I wasn't going to stay away," she says. She constantly reviewed documents in the case. A few years ago she was in Illinois arguing forcefully — and very loudly, she admits — before a judge to preserve frozen semen samples from the case. Her success then was a major step in the reversals that she and other attorneys eventually won last year.

"Vermeal's victory was a tremendous collective achievement, and your constant advice, support, and enthusiasm were essential parts of his success," Jimerson's attorney, Mark R. Ter Molen, of the Chicago office of Mayer, Brown & Platt, wrote Lyon last June. "But for your passion, this case would have languished and the incredible turnaround that has benefited all of the men would not have occurred."

Lyon had been instrumental in having Ter Molen, whose name in Dutch means "To the windmill," named to the case and in convincing his firm that pro bono work on behalf of Jimerson was worthwhile. Ter Molen was just four years out of the University of Chicago Law School when he was named Jimerson's attorney six years ago. An associate of Mayer, Brown & Platt then, he now is a partner and is representing Jimerson in his civil suit against Illinois. (Law School student Alexandra "Sasha" Miller was a summer associate with Mayer, Brown & Platt and worked with Ter Molen on civil cases.)

"Andrea is someone who is extremely passionate, and she was extremely passionate about this case," Ter Molen says of Lyon. "And she had very passionate feelings that Verneal was innocent." She was "a real sparkplug" for Jimerson's legal team. Lyon, in turn, says that Ter Molen did the lion's share of work on the case.

"Hitchcockian," Ter Molen calls the case. "An incredibly tragic story."

"We have two issues here," he said after the cases' reversals. "How important it is to volunteer, to help, and how difficult it is to correct mistakes like this. This shows that people can be innocent and be on death row."

Frederick Levin, '88, now of Mayer, Brown & Platt's Los Angeles office, also was part of the pro bono team that worked on the case. One participant estimated that the team reviewed 20,000 files and spent $1.4 million on the case.

Briefly, here's what happened. Nineteen years ago, Lawrence Lionberg and Carol Schmal, who were engaged to be married, were kidnapped from the suburban Chicago convenience store/service station where Lionberg worked. They were later found dead from gunshot wounds; Schmal had been raped. Police set out to question three men and arrested Jimerson as he walked to the car of one of the suspects.

At trial, prosecutors failed to disclose that they had made a deal for leniency with the star prosecution witness. Jimerson was released after the witness recanted her story, but the other three men were convicted of murder and rape. Eventually, courts ordered a new trial for all three men. Prosecutors re-tried them — plus Jimerson — again using the testimony of their once discredited star witness, who had spent six years in prison as a result of the first trial.

Jimerson's attorney represented him poorly, and later said that he made only a weak effort at the sentencing stage because he did not expect the judge to consider — or levy — the death penalty. The three other defendants also were convicted again and one was sentenced to death.

Lyon, Levin, Ter Molen and other attorneys, plus journalism students from Northwestern University, went to work on the case. While attorneys battled to show that testimony against the men was false, that representation by a defense attorney was shoddy, and to get DNA testing done, the journalism students tracked down reports that had been available at the time of the original trials but had been ignored by the prosecution. The journalism students and their professor followed leads to new suspects in the case and convinced three of them to sign confessions. The fourth suspect

Continued on page 32

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died in 1993. Eventually, the convictions of Jimerson and his co-defendants were reversed.

"Ninety percent of winning capital cases is having the will to do what you need to do, to dig up the evidence, to just keep at it," says Lyon.

"There are a lot of people innocent on death row," she says. "This is the clearest case I know of a prosecutor knowing he has someone who is innocent and doing nothing about it. This isn't the most egregious case — this is just the one with the happy ending."

That's what Ter Molen thinks every time he looks at the framed, autographed copy of the court order that hangs in his office.

Lyon will think much the same when she looks up at her copy — as soon as she finds time to frame and hang it. When she received it from Ter Molen, she was just going into the final stages of another capital case that she's been fighting for 15 years.

ACTIVITIES

Professor of Law **José Alvarez** co-chaired the American Society of International Law's Annual Meeting on "Implementation, Compliance and Effectiveness" at Washington, D.C., in April; he also served on ASIL's Executive Council.

Professor of Law **Rebecca S. Eisenberg** has received a $162,000 grant from the U.S. Department of Energy to study "Private Appropriation, Public Dissemination and Commercial Product Development in Genomics." According to her grant proposal, the "principal objective" of her research "is to examine the impact of different approaches to the protection of DNA sequence information as intellectual property on the dissemination of the information and its utilization in the development of commercial products. DNA sequencing efforts provide fertile ground for studying the role of intellectual property at the wavering boundary between public and private research science."

Merritt B. Fox, Professor of Law, last spring delivered the paper "The Political Economy of Statutory Reach: U.S. Disclosure Rules in a Globalizing Market for Securities" at the American Law and Economics Association Annual Meeting in Toronto and at the Conference on the Regulation of International Activity at Georgetown University Law Center. In May he spoke on "Required Disclosure and Corporate Governance" at the Conference on Comparative Corporate Law, Max-Planck-Institut Hamburg, Hamburg, Germany. In April he lectured on "The Historical Development of Insider Trading Regulation in the United States" at Catholic University in Santiago, Chile. As chairman of the American Association of Law Schools' Business Associations Section, he is organizing the January 1998 section program for the AALS' annual meeting in January.

Professor of Law **Richard D. Friedman** presented a paper on "Truth and Fairness in Adjudication" in May to the Michigan Law & Economics group and to the University of Michigan Decision Behavior Research Consortium. Later in May he taught Contemporary American Legal Services at the University of Tokyo, Japan.

Professor of Law **Samuel R. Gross** presented the paper "We Could Pass a Law . . . What Might Happen If Contingent Fees Were Banned" at the third annual Clifford Seminar on Tort Law and Social Policy: Contingency Fee Financing of Litigation in America in April at DePaul University College of Law in Chicago. He also was a panelist on the subject "Expert Witness and Ethical Considerations" at the National Conference of Tort and Insurance Practice Section of the ABA, Medicine Law Committee: The Experts Analyze Brain Damaged Baby Cases, in San Francisco in April. In Ann Arbor, he did a presentation on "Expert Testimony in Legal Proceedings" at the Center for Forensic Psychiatry in June and a presentation in March on "Dispute Resolution — Pretrial Bargaining and Trial Outcomes in Civil Cases" for the Turner Geriatric Center's Learning in Retirement Program.

Hessel N. Yntema Professor of Law **John H. Jackson** lectured at Nottingham University, England, in May and taught a short course at London University, Queen Mary & Westfield College. The same month he taught classes at the Foundation for International Environmental Law and Development, London, and the London School of Economics. In April he chaired a panel for the American Society of International Law Annual Meeting in Washington, D.C., and in March he made a presentation at the Brookings Institution in Washington, D.C.

Douglas A. Kahn, Paul G. Kauper Professor of Law, chaired the Subcommittee on Governance and Compliance for the self-study that the University of Michigan did for the NCAA; he also served on the Steering Committee for the self-study report.

Clarence Darrow Distinguished University Professor of Law **Yale Kamisar** was a member of a panel of experts who discussed physician-assisted suicide as part of the program at the American Bar Association annual meeting in San Francisco in August. John Pickering, '40, of Wilmer, Cutler & Pickering in Washington, D.C., was moderator.

Francis A. Allen Collegiate Professor of Law **Richard O. Lempert**, who also is chairman of the University of Michigan's Sociology Department, has won the Law and Society Association's Harry Kalven Prize, a biennial award for "empirical scholarship that has contributed most effectively to the advancement of research in law and society;" chairman of the selection committee was Joel Handler of UCLA Law School. Said the Kalven Committee: "Lempert's research on the Hawaiian public housing eviction board exemplifies the finest in sociological research on informal justice. . . . His work has significantly contributed to our understanding of the uses of discretion, the influence of legal counsel, and the role of cultural differences in the interpretations of meaningful explanations." Lempert also completed his term as chairman of the Sociology of Law Section of the American Sociological Association and served on the Law School Admissions Council's Committee on Test Development and Research.

Clinical Assistant Professor of Law **Andrea D. Lyon** in May spoke at the Alaska Academy of Trial Lawyers Spring All-Star Litigators Conference at Alyeska, Alaska; and in April taught in the Continuing Legal Education program at the Institute for Criminal Defense Advocacy at California-Western School of Law, San Diego.

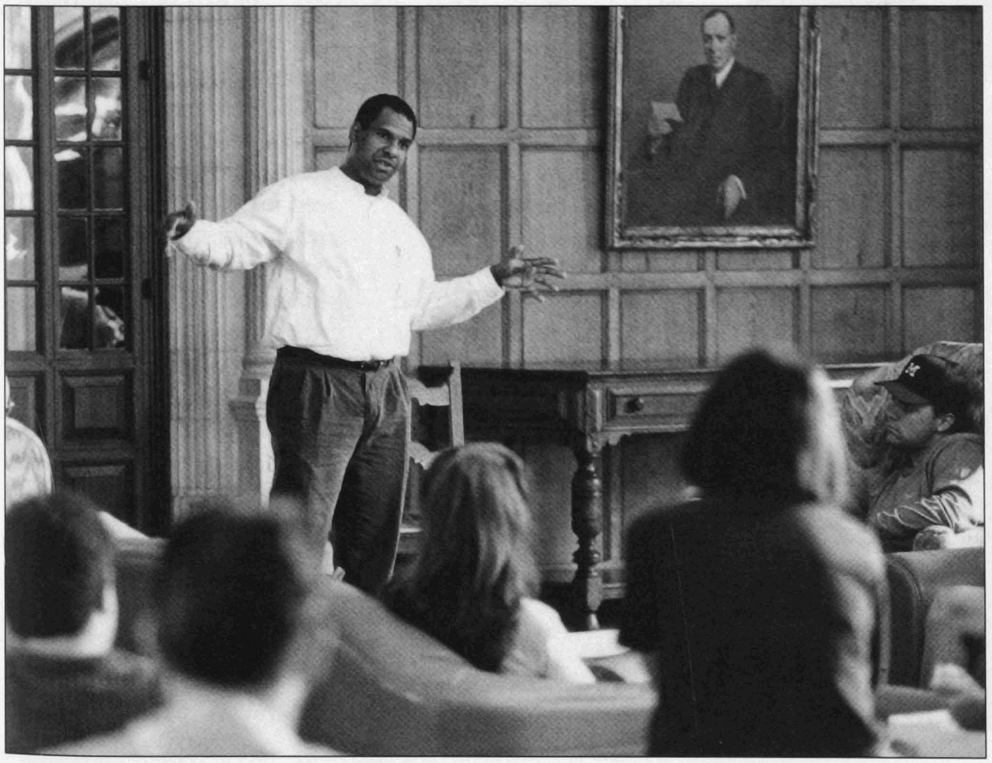
Professor of Law **William I. Miller** spoke on "Disgust and the Social Order" at the Legal Theory Workshop at Cornell University Law School in April. Last January he did a presentation on "Through Thick and Thin Description" at the Annual Meeting of the American Historical Association in New York.

William W. Bishop, Jr., Collegiate Professor of Law **Donald H. Regan** has been selected to be a Visiting Fellow in the Research School of Social Science at Australian National University in summer 1998.

James E. and Sarah A. Degan Professor of Law **Theodore J. St. Antoine**, '54, in June spoke on "Fiduciary Obligations of Employee Benefit Plan Trustees" before the annual meeting of the American prepaid Legal Services Institute at Montreal. In May he addressed the Labor Law Section of the Dallas Bar Association on "Mandatory Arbitration of Employment Disputes" and presented to the National Academy of Arbitrators at Chicago the first complete draft under his editorship of *The Common Law of the Workplace: The Views of Arbitrators*. In April he addressed the Labor Arbitration Institute at Chicago on "Ten Most Common Errors in Contract Interpretation" and "Five Top Myths About Labor Arbitrators."

James Boyd White, L. Hart Wright Collegiate Professor of Law, has been named a Phi Beta Kappa Visiting Scholar and in that capacity will present lectures, seminars and classes at eight colleges and universities.

Robert A. Sullivan Professor of Law **James J. White**, '62, was a member of the University of Michigan's Search Committee for a Vice President for Financial Affairs.



The Unanswered Question —

The instruction of law often draws on the personal experiences of its teachers. Here, Assistant Clinical Professor of Law Lance R. Jones, '89, outlines the complexities of a case that he dealt with as a staff member for the Children's Law Center in Grand Rapids. The case, In re Brittany and Joseph Shaffer, *213 Mich App 429: 540 NW2d (1995), eventually went to the Michigan Court of Appeals, which awarded custody of the two minors to the mother, who promptly took her children and left the state. Michigan law guarantees that the child in such a case be represented by legal counsel, but the children involved in this case had only an appointed guardian ad litum. "The interesting issue that still hangs fire," Jones told students during a talk in the Lawyers Club Lounge in July, is "who can appeal?" The guardian ad litum is not allowed to act as an attorney, so the Children's Law Center stepped in claiming to be acting as the children's attorney for purposes of the appeal. The Circuit Court agreed to let the center act as attorney — but only for the appeal. The question remains unanswered if the guardian ad litum can act as an attorney at the trial stage. "There is a clear legal right but no means of invoking a remedy," Jones said.*

The (helpful) long arm of the law

The Law School's new Michigan Poverty Law Program (MPLP) will be a pioneer in finding ways to provide legal help for poor people, especially women and children, as their access to legal services is narrowed by shrinking federal support.

That's how Anne Schroth, the Law School's new Clinical Assistant Professor of Law, views the cooperative effort that teams the Law School with Legal Services of Southeastern Michigan and the Michigan Migrant Legal Assistance Project. She will teach MPLP's Poverty Law Clinic and supervise its litigation.

Ann Schroth

"I see it as a real cutting edge model for attacking a problem that all states will have to deal with," says Schroth, who came to the Law School last summer from Washington, D.C., where she was a staff attorney with AYUDA/Clinica Legal Latina, an agency that represents low income victims of domestic violence in the immigrant community.

MPLP is funded by a $300,000 grant from the State Bar of Michigan and a $400,000 Community Outreach Program grant from the University of Michigan. It features a new clinic that includes a class in Women and Poverty, plus satellite offices affiliated with Legal Services of Southeastern Michigan and the Migrant Legal Assistance Project.

Clinic enrollees work on actual cases, many of them referred from Legal Services offices across the state and considered to be of statewide or broader significance. The program also provides technical assistance to the 12 Legal Services offices throughout the state. The aid may range from hooking up e-mail systems for outlying offices to developing a "Briefs Bank" so that Legal Services attorneys can draw on model briefs for cases. Pro Bono Students of America, headquartered at the Law School, also is sending interns to MPLP.

Schroth, who earned her J.D. at Harvard Law School and her B.A. from the University of Chicago, is being assisted in teaching the clinic during this startup fall term by Juliet M. Brodie, an Assistant Attorney General in the Wisconsin Department of Justice. Brodie is part of the Medicaid Fraud Control Unit and prosecutes Medicaid providers who submit fraudulent claims for payment. This is the second time that Schroth and Brodie have worked as a team; they worked together at the Harvard Legal Aid Bureau when they both were students at Harvard Law School.

"I'm very happy to be working again in poverty law, where there's such a great need for programs like MPLP," says Brodie. "Anne and I were very close colleagues as 'student attorneys,' and it's great to be reunited now in these new roles in clinical legal education."

With both Scroth and Brodie at the helm, this fall term clinic is open to 12 students. Subsequent clinics are expected to enroll eight students.

Schroth expects family and public benefits case referrals to predominate on the initial clinic docket, with housing law cases coming in later. She expects a goodly number of cases to involve Supplemental Security Income for disabled children because new rules for determining eligibility for that aid recently have gone into effect. Cases will involve both new recipients and those who are being cut from the rolls, she predicts.

"In addition, the students are going to be handling some individual domestic violence cases to give them experience," she says.

Explains Suellyn Scarnecchia, Associate Dean for Clinical Affairs, "MPLP is part of the University's effort at community outreach." The new program sets "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.

Federal Legal Services Corporation President Martha Bergmark, '73, in a talk at the Law School last February, praised programs like MPLP for helping to fill the gaps in legal help for the poor that are being created by federal restrictions and funding cutbacks. Federally funded Legal Services aid cannot go into cases involving undocumented immigrants, legislative redistricting or class action issues, for example.

"I think that over the years we've seen the steady building up of other resources, through bar association efforts and initiatives like the Poverty Law Program at the University of Michigan Law School," Bergmark said.

Schroth says she was drawn to the Law School by MPLP's emphasis on outreach. "I really like the fact that it's connected so closely to the field and connected with what Legal Services lawyers are doing," she says. "Part of me feels that you can get too far away from real practice."

Not here.

Juliet M. Brodie

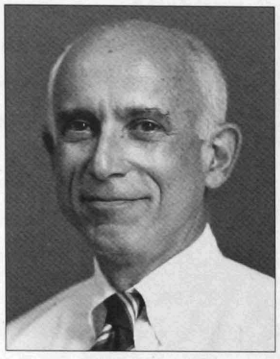
"I'm very happy to be working again in poverty law, where there's such a great need for programs like MPLP. Anne and I were very close colleagues as 'student attorneys,' and it's great to be reunited now in these new roles in clinical legal education."

— JULIET M. BRODIE

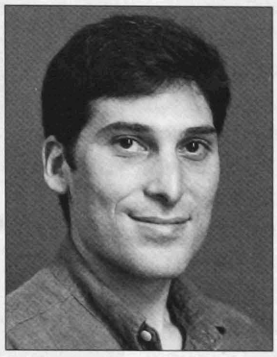
Visiting faculty lend variety of perspectives

The Law School has earned wide praise for its hospitality to visiting faculty members and other professionals who share their expertise by teaching, giving presentations and otherwise adding to the lively life of the School. These visitors ride a two-way street: they offer our students — and fellow faculty — fresh perspectives and new insights, and leave after their experience here enriched by the contacts they have made with the School and its people.

The Law School is fortunate this academic year in the strength and variety of its visiting faculty. They come from many parts of the world and represent many sides of the legal profession. The Visiting Professors who are teaching at the Law School throughout the 1997-98 academic year include:



John S. Beckerman, who is teaching Civil Procedure I and Securities Regulation the fall term and Civil Procedure II in the winter term. Beckerhman has a doctorate in history from the University of London and his law degree from Yale Law School. He has taught at Yale Law School, Rutgers-Camden and Benjamin Cardozo Law School and practiced in New York City as a litigator. He clerked for the Hon. José A. Cabranes, then U.S. District Judge for the District of Connecticut. His article, "Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions" (104 *Yale Law Journal* 2053 [1995], with Elliott J. Weiss), provided the basis for the "lead plaintiff" provisions in the Private Securities Litigation Reform Act of 1995.



Mitchell N. Berman, '93, practices with Jenner & Block in Washington, D.C., and clerked for Judge James D. Phillips of the U.S. Court of Appeals for the Fourth Circuit. After receiving his law degree, he earned a masters degree in political science at the University of Michigan. He also has served as research assistant to Judge Harry T. Edwards, '65, chief judge of the U.S. Court of Appeals for the District of Columbia. Berman is teaching Criminal Law in the fall term and Introduction to Constitutional Law in the winter term.

Shozo Ota, a faculty member of the Graduate School of Law & Politics at the University of Tokyo, is teaching Japanese Law: Current Issues, with Visiting Professor Noboru Kashiwagi in the fall term and Introduction to Japanese Law in the winter term.

William F. Pedersen, Jr., a widely published author, former Associate General Counsel for the Environmental Protection Agency and currently a partner with Shaw, Pittman, Potts & Trowbridge, is teaching Environmental Law. Pedersen is a graduate of Harvard Law School and served as an associate with Sullivan & Cromwell in New York City and with Ropes & Gray in Boston. He clerked for Circuit Judge Henry J. Friendly of the U.S. Court of Appeals for the Second Circuit. He has taught at Harvard Law School, was counsel with Verner, Liipfert, Bernhard, McPherson & Hand in Washington, D.C., and counsel and then partner with Perkins Cole.

In addition, Visiting Adjunct Professor **Cyril Moscow**, '57, is teaching Business Planning for Closely Held Corporations during the fall term and Business Planning for Publicly Held Corporations in the winter term. A partner with Honigman, Miller, Schwartz & Cohn in Detroit, he practices corporate and securities law. Chair of the State Bar subcommittee on the revision of the Business Corporation Act, he is the co-author of texts on Michigan corporate law and securities regulation.

VISITING PROFESSORS FOR FALL TERM:

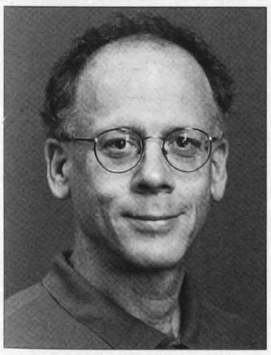
Michael Aujean, Director of Indirect Taxation in Directorate General XXI, Customs and Indirect Taxation with the Commission of the European Union, is teaching a course on European Tax Law, Fiscal Federalism and Tax Competition. He has taught European Tax Law at the University of Tours in France since 1984.

Arnold Enker is Professor of Law at Bar Ilan University in Israel. The Founding Dean of the Faculty of Law at Bar Ilan University and former Senior Advisor to the Attorney General of Israel, he has taught courses in criminal law, evidence, professional responsibility and

Jewish criminal law. At Michigan, he is teaching Legal Profession and Legal Ethics.

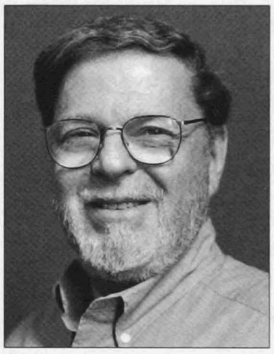
Noboru Kashiwagi, a Professor at the International Center for Comparative Law & Politics at the University of Tokyo Law School, is teaching Japanese Law: Current Issues with Visiting Professor Shozo Ota.

Atsushi Kinami, LL.M. '84, a Professor at Kyoto University School of Law, is teaching Japanese Legal Systems.



Saul Levmore teaches commercial law, comparative law, contracts, corporate tax, corporations, public and the law, and torts at Virginia Law School, where he is Brokaw Professor of Corporate Law & Albert Clark Tate, Jr., Research Professor. At the University of Michigan Law School, he is teaching Torts and Enterprise Organization.

Gerard Meehan is Principal Administrator and Assistant to the Director General for Research of the European Parliament at Kirchberg, Luxembourg. He is a gaduate of the University of Strathclyde and the University of Edinburgh in Scotland. At the Law School, he is lecturing for a variety of programs and classes.



Jerome H. Reichman is Professor of Law at Vanderbilt University Law School, where he teaches advanced intellectual property, contracts, copyrights, intellectual property in international trade, international law and unfair competition. He received his law degree from Yale Law School, where he was Comment Editor for the *Yale Law Journal*. He was a Fulbright Scholar to Madras University, India, taught at Ohio State University, was a visitor at the University of Florida Law School and has been a Fellow with the German Marshall Fund of the U.S. At the University of Michigan Law School he is teaching Copyright and Intellectual Property in International Trade.

Julie Roin, Henry L. & Grace Doherty Charitable Foundation Professor of Law at the University of Virginia Law School, is teaching Tax I. She received her J.D. from Yale Law School, where she was a member of the *Yale Law Journal*. She clerked for Judge Patricia M. Wald of the U.S. Court of Appeals for the D.C. Circuit and has been an associate with Caplin & Drysdale in Washington, D.C. She has taught as a visiting professor at the University of Virginia, Yale, Harvard and the University of Chicago law schools. She teaches contracts, federal taxation, international taxation, property and international business and economics.

Jane F. Schacter, an Associate Professor of Law at the University of Wisconsin Law School, is teaching Civil Procedure I and a seminar on Sexual Orientation. She received her law degree from Harvard Law School, where she was Articles Editor for the *Harvard Women's Law Journal*. She clerked for Judge Raymond J. Pettine of the U.S. District Court for the District of Rhode Island, was an Associate with Hill & Barlow in Boston and served as Assistant Attorney General for the Commonwealth of Massachusetts.

Bruno Simma, Professor of Law at the University of Munich, has been a frequent visitor to the Law School and was on the faculty from 1987-92. This year he is teaching International Law. He has served as counsel for Cameroon in a boundaries dispute with Nigeria before the International Court of Justice and is an expert for conflict-prevention activities of the U.N. Secretary General. Simma is a member of the Court of Arbitration in Sports of the International Olympic Committee and of the U.N. Committee on Economic, Social and Cultural Rights. Co-founder and co-editor of the *European Journal of International Law*, he has served as vice-president of the council of the German Society of International Law.

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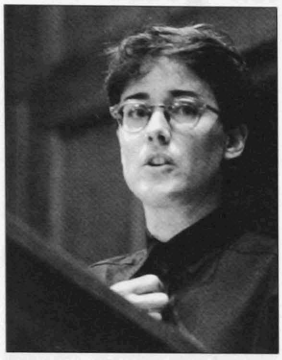
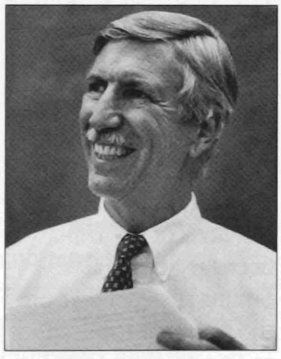
FACULTY

VISITING ADJUNCT PROFESSORS FOR FALL TERM:



Paula Ettelbrick, Director of Public Policy at the National Center for Lesbian Rights and former Legal Director of LABDA, is teaching Sexuality and the Law.



William R. Jentes, '56, a partner at Kirkland & Ellis in Chicago, is teaching Complex Litigation. He has been a lecturer at the University of Chicago Law School and for the American, Federal, Texas, Illinois and Chicago Bar Associations.

Curtis Mack, LL.M. '73, former Regional Director of the National Labor Relations Board, is a founding partner of Mack, Williams, Haygood & McLean in Atlanta, a firm that specializes in labor and employment relations cases. He is teaching Labor Law: Advanced Topics and Problems.

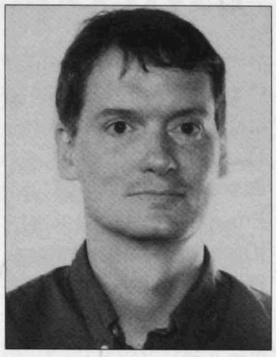
Jeffrey Miro, '67, Chairman at Miro, Weiner & Kramer in Bloomfields Hills, is teaching Real Estate Tax. He previously has lectured in taxation at Detroit College of Law and been an Adjunct Professor of Law at Wayne State University.

Steven D. Pepe, '68, who has been an instructor for the Law School's Bridge Week programs, is teaching Legal Profession and Legal Ethics. He is U.S. Magistrate Judge in the U.S. District Court for the Eastern District of Michigan. Prior to his appointment, he was an Associate Professor of Law at the University of Michigan Law School and directed the Clinical Law Program.

Stanley S. Schwartz, '55, a specialist in law and medicine and medical malpractice, is teaching Law and Medicine: Trial Advocacy. He is a shareholder in the firm of Sommers, Schwartz, Silver & Schwartz, P.C., in Southfield.

In addition, **Dana M. Muir**, '90, Assistant Professor in the University of Michigan School of Business Administration, is teaching Employee Benefits in the Fall Term as a Visiting Adjunct Assistant Professor. She is a staff editor of the *American Business Law Journal* and President of the Midwest Academy of Legal Studies in Business. At the Business School, she teaches legal environment, enterprise organization, and employment law.

Ronald Mann joins Law School faculty



Ronald J. Mann

Ronald J. Mann has joined the Law School faculty as Assistant Professor of Law. He received his J.D. from the University of Texas at Austin, where he was managing editor of the *Texas Law Review* and graduated first in his class.

Mann clerked for Justice Lewis F. Powell of the U.S. Supreme Court and was an assistant to the Solicitor General of the United States. He also practiced as a commercial real estate lawyer in Houston, where he represented both developers and lenders.

His publications have appeared in the *New York University Law Review*, *Harvard Law Review*, *Texas Law Review* and *UCLA Law Review*. He currently is at work on a textbook. Mann's current research focuses on the dynamics of secured lending. He comes to the Law School from Washington University School of Law.

Mann is teaching Real Estate Transactions in the fall term and Commercial Transactions and Intellectual Property in the winter term.

Faculty Publications

The expansion of knowledge and the exercise of intellectual inquiry are as much a part of the faculty member's regimen as teaching and service. The production of scholarly, thoughtful and thought-provoking writing is an integral part of faculty life at the Law School. Students regularly benefit from such work, both in the classroom and in the privacy of their own studies. Here, *Law Quadrangle Notes* offers an overview of faculty publishing since 1995:

Francis A. Allen

The Habits of Legality: Criminal Justice and the Rule of Law, based on the 1994 Cooley Lectures, Oxford University Press (1996).

"The Scholarship of Kenneth Pye," 49 *SMU Law Review* 439-61 (March-April 1996).

José E. Alvarez

"International Law: Some Recent Developments," 46 *Journal of Legal Education* 557-568 (1997).

Revised chapter on "Financial Responsibility" for paperback edition of *The United Nations and International Law* (Christopher Joyner, ed.) 1997.

"Critical Theory and the North American Free Trade Agreement's Chapter Eleven," 28 *Inter-American Law Review*, Vol. 2, 303 (1996-97).

"El Estado de derecho en Latinoamérica: problemas y perspectivas," in *Estudios Especializados de Derechos Humanos* (T. Buergenthal and A. Cancado Trindade, eds.) 1996.

"Constitutional Interpretation in International Organizations," *Working Paper Series*, Global Peace and Conflict Studies Institute (1996).

"The United States' Financial Veto," in *Proceedings of the 90th Annual Meeting*, American Society of International Law 319 (1996). A version appeared in *Law Quadrangle Notes* 40:1, Spring 1997, 66-73.

"Foreword: What's the Security Council For?", 17 *Michigan Journal of International Law* 221-28 (Winter 1996).

"Nuremberg Revisited: The Tadic Case," 7 *European Journal of International Law*, Issue No. 2 (1996).

"Judging the Security Council," 90 *American Journal of International Law* 1-39 (1996).

"Researching Legal Issues in the United Nations," in *Introduction to International Organizations*, L. Louis-Jacques, J.S. Korman, eds. (1996).

"Theoretical Perspectives on Judicial Review by the World Court," in *Proceedings of the 89th Annual Meeting*, American Society of International Law 85 (1995).

"Legal Issues," chapter in *A Global Agenda: Issues Before the 50th General Assembly of the United Nations*, J. Tessitore, S. Woolfson, eds. (1995).

"Financial Responsibility of Members," chapter in *The United Nations and the International Legal Order*, O. Schachter, C. Joyner, eds. (1995).

"The Once and Future Security Council," 18 *Washington Quarterly* 5 (1995) (reprinted in *Order and Disorder after the Cold War*, B. Roberts, ed., 1995).

Eric Bilsky

"Metaphysical and Ethical Skepticism in Legal Theory," *University of Denver Law Review* (forthcoming 1997).

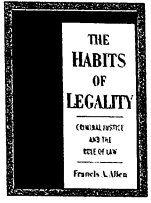
Lorray S. C. Brown

"From Product to Process: Evolution of a Legal Writing Program" (with Durako, Stanchi, Edelman, Amdur and Connelly), 58 *University of Pittsburgh Law Review* 719 (Spring 1997).

David Chambers

"25 Divorce Attorneys and 40 Clients in Two Not So Big But Not So Small Cities in Massachusetts and California: An Appreciation," 22 *Law and Social Inquiry* 209-231 (1997).

"What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples," 95 *Michigan Law Review* 447-491 (November 1996). Reprinted in *Law Quadrangle Notes* 40:2, Summer 1997, 60-70.



Faculty Publications

"Fathers, The Welfare System and the Virtues and Perils of Child-Support Enforcement," 81 *Virginia Law Review* 2575-2605 (November 1995).

Edward H. Cooper

Vols. 16, 16A, 16B, *Federal Practice and Procedure: Jurisdiction 2nd* (with C.A. Wright and A.R. Miller).

"Rule 68: Freeshifting and the Rulemaking Process," in *Reforming the Civil Justice System* 108-49 (L. Kramer, ed.) (1996).

"Rule 23: Challenges to the Rulemaking Process," 71 *New York University Law Review* 13-63 and App. 64-73 (April-May 1996).

Annual 1997 Supplements, Vols. 13, 13A, 15A, 15B, 16, 16B, 17, *Federal Practice and Procedure: Jurisdiction 2d*, Vol. 18, 1st edition.

Working Papers of the Advisory Committee on Civil Rules on Proposed Amendments to Civil Rule 23, Vol. 1 (1997).

1995 and 1996 Supplements, Volumes 13, 13A, 15A, 15B, and 17, *Federal Practice and Procedure: Jurisdiction 2nd* (with C.A. Wright and A.R. Miller).

1995 and 1996 Supplements, Volumes 16 and 18, *Federal Practice and Procedure: Jurisdiction* (with C.A. Wright and A.R. Miller).

Proposed revisions, Federal Rules of Civil Procedure 9(h), 26 (c), 47 (a), and 48, with Committee Notes (as reporter, Advisory Committee on the Federal Rules of Civil Procedure); 91 F.R.D. 123-147.

Vol. 19, *Federal Practice and Procedure: Jurisdiction 2d* (with C.A. Wright and A.R. Miller).

Steven P. Croley

"The Federal Advisory Committee Act and Good Government" (with William Funk), 14 *Yale Journal on Regulation* (forthcoming 1997).

"Vicarious Liability in Tort: On the Sources and Limits of Employee Reasonableness," 69 *Southern California Law Review* 1705-38 (July 1996).

"Practical Guidance on the Applicability of the Federal Advisory Committee Act," 10 *Administrative Law Journal of the American University* 111-78 (Spring 1996).

"The Administrative Procedure Act and Regulatory Reform: A Reconciliation," 10 *Administrative Law Journal of the American University* 35-49 (Spring 1996).

"Libertarianism as Critical Theory," 1 *Michigan Law and Policy Review* 179-97 (1996).

"WTO Dispute Procedures, Standard of Review, and Deference to National Governments" (with John Jackson), 90 *American Journal of International Law* 193-213 (April 1996).

"The Nonpecuniary Costs of Accidents: Pain-and-Suffering Damages in Tort Law," (with Jon Hanson), 108 *Harvard Law Review* 1785-1917 (June 1995).

"Making Rules: An Introduction," 93 *Michigan Law Review* 1511-38 (May 1995),

"The Majoritarian Difficulty: Elective Judiciaries and the Rule of Law," 62 *University of Chicago Law Review* 689-790 (Spring 1995). Reprinted in *Law Quadrangle Notes*, 38:3, Fall/Winter 1995, 48-56.

Don Duquette

"We Know Better Than We Do: A Policy Framework for Child Welfare Reform" (with Danziger, Abbey and Seefeldt), *University of Michigan Journal of Law Reform* (forthcoming 1997).

"Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity," monograph, June 1996. Reprinted in *University of Michigan Journal of Law Reform* (forthcoming 1997).

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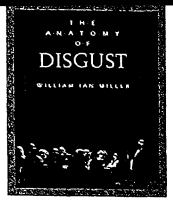

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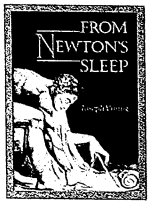

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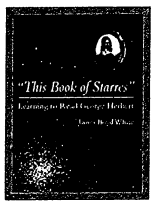

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Lawrence Waggoner

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James Boyd White

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Law School graduates accept clerkships throughout U.S.

For many graduates, the road to practice leads through a year spent as a clerk in one of the country's many courts, from the U.S. Supreme Court to local state courts. Sometimes, graduates accept two clerkships, with one succeeding the other.

The clerkships help graduates hone skills that they learned in the classroom as well as to learn of the inner life of the court: how judges make their decisions, how skillful research and interpretation lie at the foundation of making the legal system work. At the same time, the beginning lawyers are providing invaluable research and other assistance to judges in their daily decision making.

Once again, Law School graduates will be working in courts throughout the country. A handful, including two who will be working at the U.S. Supreme Court, will launch their second clerkships this year. Those beginning their second clerkships this year are 1996 graduates; all others are 1997 graduates unless otherwise noted. Here are the graduates and the judges and courts for which they will be clerking, according to information provided by the graduates:

STUDENTS WHO HAVE ACCEPTED TWO CLERKSHIPS AND START SECOND IN 1997

Raymond M. Kethledge, '96
The Hon. Ralph B. Guy, Jr.
U.S. Court of Appeals
for the Sixth Circuit
and
The Hon. Anthony M. Kennedy
U.S. Supreme Court

Deborah L. Hamilton, '96
The Hon. Harry T. Edwards
U.S. Court of Appeals
for the District of Columbia
and
The Hon. David H. Souter
U.S. Supreme Court

Melanie D. Plowman, '96
The Hon. Robert M. Parker
U.S. District Court of Appeals
for the Fifth Circuit
and
The Hon. R. Guy Cole, Jr.,
U.S. Court of Appeals
for the Sixth Circuit

Karyn S. Johnson, '96
The Hon. Loretta A. Preska
U.S. District Court
for the Southern District
of New York
and
The Hon. Robert R. Beezer
U.S. Court of Appeals
for the Ninth Circuit

Ariana R. Levinson, '96
The Hon. Myra Selby
Indiana Supreme Court
and
The Hon. John G. Davies
U.S. District Court
for the Central District
of California

Amy S. Bennett, '96
The Hon. Patrick E.
Higginbotham
U.S. Court of Appeals
for the Fifth Circuit
and
The Hon. Louis H. Pollak
U.S. District Court
for the Eastern District
of Pennsylvania

Thomas L. Kenyon, '96
The Hon. James L. Ryan
U.S. Court of Appeals
for the Sixth Circuit
and
The Hon. William H. Yohn
U.S. District Court
for the Eastern District
of Pennsylvania

OTHER CLERKSHIPS

Christopher M. Taylor
The Hon. Bruce M. Selya
U.S. Court of Appeals
for the First Circuit

Ilann S. Maazel
The Hon. John M. Walker, Jr.
U.S. Court of Appeals
for the Second Circuit

Jason J. Kilborn
The Hon. Walter K. Stapleton
U.S. Court of Appeals
for the Third Circuit

Jason M. Levien
The Hon. Diana Gribbon Motz
U.S. Court of Appeals
for the Fourth Circuit

Timothy R. Macdonald
The Hon. Emilio M. Garza
U.S. Court of Appeals
for the Fifth Circuit

Silvia J. Hansell
The Hon. Cornelia G. Kennedy
U.S. Court of Appeals
for the Sixth Circuit

Michael D. Leffel
The Hon. Karen Nelson Moore
U.S. Court of Appeals
for the Sixth Circuit

Jessica B. Lind
The Hon. Karen Nelson Moore
U.S. Court of Appeals
for the Sixth Circuit

David A. McCreedy
The Hon. James L. Ryan
U.S. Court of Appeals
for the Sixth Circuit

Chad A. Readler
The Hon. Alan E. Norris
U.S. Court of Appeals
for the Sixth Circuit

Valerie Tatem
The Hon. Eric Clay
U.S. Court of Appeals
for the Sixth Circuit

Andrew B. Kay
The Hon. Joel M. Glaum
U.S. Court of Appeals
for the Seventh Circuit

Jeffrey L. Fisher
The Hon. Stephen Reinhardt
U.S. Court of Appeals
for the Ninth Circuit

Eric J. Hecker
The Hon. William A. Norris
U.S. Court of Appeals
for the Ninth Circuit

Shannon C. Jones
The Hon. A. Wallace Tashima
U.S. Court of Appeals
for the Ninth Circuit

From the Inside —

Clerking for a judge is a significant boon to your skills and your career, whether you want to be a litigator, a transactional specialist or a law professor, clerks Guy-Uriel E. Charles, '96, Richard W. Fanning, '96, and Andrea M. Gacki, '96, tell Law School students during a program on "Clerks and Clerkships" in August. Much of a clerk's work for an appellate court is solitary and research-oriented, said Charles, clerk for the Hon. Damon J. Keith of the U.S. Court of Appeals for the Sixth Circuit. Clerking for a state court provides insights into that state's legal and organizational systems and helps prepare you to work in that state, said Fanning, clerk for the Hon. James H. Brickley of the Michigan Supreme Court. Clerking for a federal district judge gives you the chance to see attorneys in action, said Gacki, clerk for the Hon. Avern Cohn, '49, of the U.S. District Court for the Eastern District of Michigan. Among the tips that the three clerks offered to law students:

- *Get to know your law professors; judges weigh their letters of recommendation highly.*
- *Hone your writing skills while you are a law student.*
- *Do not neglect to check into state and magistrates' courts as places for rich clerkship experiences.*
- *Begin thinking about a clerkship early in your Law School career.*
- *Do not limit your applications to judges whom you think share your ideological convictions.*

The clerks were introduced by Professor of Law Richard D. Friedman.

Nancy E. Vettorello
The Hon. Betty B. Fletcher
U.S. Court of Appeals
for the Ninth Circuit

Chad G. Asarch
The Hon. David M. Ebel
U.S. Court of Appeals
for the Tenth Circuit

John C. Ford
The Hon. Deannell R. Tacha
U.S. Court of Appeals
for the Tenth Circuit

John P. Brumbaugh
The Hon. Peter T. Fay
U.S. Court of Appeals
for the Eleventh Circuit

Kristen M. Flynn
The Hon. Rosemary Barkett
U.S. Court of Appeals
for the Eleventh Circuit

Rick A. Bierschbach
The Hon. A. Raymond Randolph
U.S. Court of Appeals
for the District of Columbia

David S. Mendel
The Hon. Harry T. Edwards
U.S. Court of Appeals
for the District of Columbia

Steven C. Seeger
The Hon. David B. Sentelle
U.S. Court of Appeals
for the District of Columbia

Matthew S. Miner
The Hon. Richard W. Vollmer, Jr.
U.S. District Court
for the Southern District
of Alabama

Daniel R. Stutz
The Hon. Dickran M.
Tevrizian, Jr.
U.S. District Court
for the Central District
of California

Jason A. Crotty
The Hon. William B. Shubb
U.S. District Court
for the Eastern District
of California

Tim J. Schmuckal
The Hon. Marilyn L. Huff
U.S. District Court
for the Southern District
of California

Hardy Vieux
The Hon. Richard P. Matsch
U.S. District Court
for the District of Colorado

ALUMNI

Timothy M. Pinto
The Hon. Roderick McKelvie
U.S. District Court
for the District of Delaware

Emily H. McCarthy
The Hon. Norma H. Johnson
U.S. District Court
for the District of Columbia

Kathleen A. Wilson
The Hon. Louis F. Oberdorder
U.S. District Court
for the District of Columbia

Chrysanthe L. Gussis
The Hon. William Moore
U.S. District Court
for the Southern District
of Georgia

Sandra Y. Nay
The Hon. Sarah Evans Barker
U.S. District Court
for the Southern District
of Indiana

Emily A. Hughes
The Hon. Michael J. Melloy
U.S. District Court
for the Northern District
of Iowa

Pryce G. Tucker
The Hon. Kathryn Vatril
U.S. District Court
for the District of Kansas

Stephen M. Kuperberg
The Hon. Benson E. Legg
U.S. District Court
for the District of Maryland

Alex Romain
The Hon. Reginald C. Lindsay
U.S. District Court for the
District of Massachusetts

Aron L. Bornstein
The Hon. John Feikens
U.S. District Court
for the Eastern District
of Michigan

Freeman L. Farrow
The Hon. John Feikens
U.S. District Court
for the Eastern District
of Michigan

Lucy G. Clark
The Hon. Nancy G. Edmunds
U.S. District Court
for the Eastern District
of Michigan

Sally J. Dworak-Fisher
The Hon. Horace W. Gilmore
U.S. District Court
for the Eastern District
of Michigan

Liquita F. Lewis
The Hon. Denise Page Hood
U.S. District Court
for the Eastern District
of Michigan

Derek J. Sarafa
The Hon. Gerald E. Rosen
U.S. District Court
for the Eastern District
of Michigan

Max "Ben" Valerio
The Hon. John C. O'Meara
U.S. District Court
for the Eastern District
of Michigan

Timothy K. Howard
The Hon. Ann D. Montgomery
U.S. District Court
for the District of Minnesota

John D. King
The Hon. Richard H. Kyle
U.S. District Court
for the District of Minnesota

Wendy J. Schechter
The Hon. I. Leo Glasser
U.S. District Court
for the Eastern District
of New York

Lauren E. Fischer, '96
The Hon. William C. Conner
U.S. District Court
for the Southern District
of New York

Angela I. Onwuachi
The Hon. Solmon Oliver, Jr.
U.S. District Court
for the Northern District
of Ohio

Michael E. Gordon
The Hon. Susan Dlott
U.S. District Court
for the Southern District
of Ohio

Elizabeth A. Mayer
The Hon. Marvin Katz
U.S. District Court
for the Eastern District
of Pennsylvania

Gilliam L. Thomas
The Hon. John T. Nixon
U.S. District Court
for the Middle District
of Tennessee

Neil J. McNabnay
The Hon. A. Joe Fish
U.S. District Court
for the Northern District
of Texas

Jeremy D. Spector
The Hon. Thomas E. Ellis III
U.S. District Court
for the Eastern District
of Virginia

Michael P. Matthews
The Hon. Joseph J. Stadtmueller
U.S. District Court
for the Eastern District
of Wisconsin

Scott F. Llewellyn
The Hon. Clarence A. Brimmer
U.S. District Court for the
District of Wyoming

Jennifer W. Chaloemtiarana
The Hon. Marc L. Goldman
U.S. Magistrate Court
for the Eastern District
of Michigan

Rachel E. Schwartz
The Hon. Alexander Bryner
Alaska Supreme Court

Ann L. Skjei
The Hon. Robert Gross
Florida, Fourth District Court
of Appeals

Andrew R. Gifford
The Hon. Robert C. Buckley
Illinois Court of Appeals
for the First District

Deborah Freye
Michigan Court of Appeals

Lisa M. Long-Velarde
Michigan Court of Appeals

Jennifer L. Ouding
Michigan Court of Appeals

Lisa M. Robinson
The Hon. John F. Foley
Michigan Circuit Court
for the Ninth Judicial Circuit

Linda G. Coffin
The Hon. Duane Benton
Missouri Supreme Court

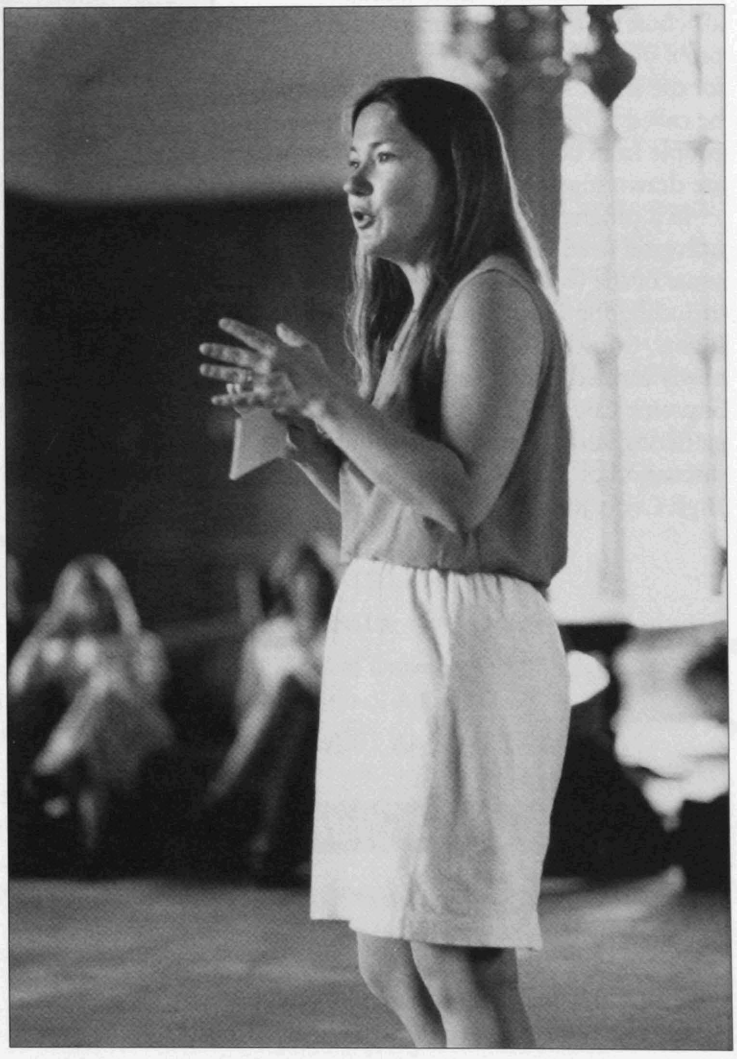
Elizabeth R. Bain
The Hon. Lawrence E. Meyers
Texas Court of Criminal
Appeals

Timothy M. Kasten
The Hon. Gordon Myse
Wisconsin Court of Appeals

Alphonso Mance
San Francisco Superior Court

Tool for Change —
Washtenaw County Probate Judge Nancy Francis, '73, who remembers as a child being profoundly impressed by the African-American adults who fearlessly pursued the legal case against Emmet Till's killers during the 1950s, tells Law School students: "I never lost the belief that if there were lawyers courageous enough to take the cases and judges courageous enough to make the difficult decisions then the law could be a tool for change." Francis, the first African-American judge to serve in Washtenaw County, was appointed in 1990. She currently is Judge of the Family Division of the Washtenaw County Trial Court Demonstration Project. Her advice for attorneys appearing before a judge? — Be very honest; be prepared; and always be yourself. She discussed her "View from the Bench" during a program in July sponsored by the Office of Student Affairs.

The World View —
Teresa Holderer, '94, an attorney with General Motors' International Legal Operations practice area, explains during a program at the Law School in June that practicing law in the international field offers attorneys the opportunity to work with people from many cultures and language backgrounds. Large companies like General Motors that have worldwide operations offer attorneys a variety of work in the international field, she said. Holderer was introduced by Virginia Gordan, Assistant Dean for International Programs, whose office arranged the program.



U-M Law School:

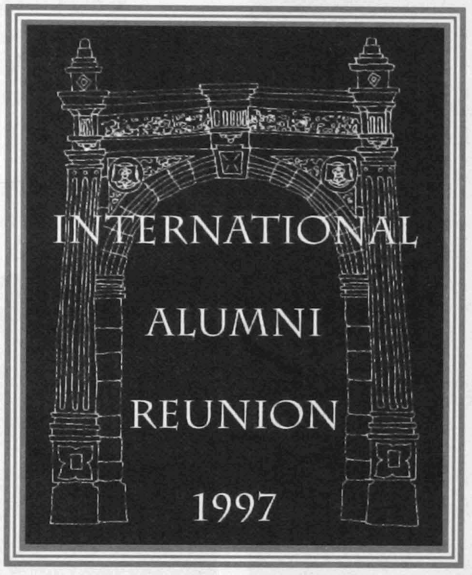
The place where the world meets

Like a world summit to discuss the role of law.

And a storytellers' swapping ground.

These heady opposites outline the vitality and variety that characterize the Law School's second International Reunion, being held Oct. 16-19 in Ann Arbor. Once again people from many countries are walking through the Law Quadrangle, drawn by their fond memories of student days at the Law School and united by their shared affection for the law. If someone needed proof of the universality of people's need for the social structure that has come to be called "The Law," it is here, where people from countries around the world are drawn together by it.

In a program that reflects the universal need for law, justices from some of the world's highest courts, including the European Court of Human Rights, Constitutional Court of the newly formed Czech Republic and the Supreme Court of the Philippines, are gathering at the Reunion for a roundtable discussion of "Comparative Issues of High Court Jurisprudence."



With a program ranging from visits to a rural cider mill and an Ann Arbor brew pub to panel discussions on "The Law and Ethics of Death and Dying" and "War Crimes at the National and International Level," the Reunion schedule includes activities for every taste and professional enrichment preference.

As Dean Jeffrey S. Lehman, '81, and Assistant Dean for International Programs Virginia Gordan say, "The weekend offers an enjoyable mixture of intellectual stimulation, relaxation and opportunities to see old friends.

"Events of the weekend include panels and workshops on legal topics of professional interest, reserved seats at the Iowa v. Michigan football game, a very special banquet, tours of the Law School highlighting architectural renovations and developments in information technology, and trips to local museums of art and history."

Friday morning's keynote talk features Ambassador-at-Large Emilio Cárdenas, M.C.L. '66, of Argentina, his country's former ambassador to the United Nations and former president of the UN Security Council. Cárdenas is speaking on "The Future Role of the United Nations Security Council." Activities associated with the Saturday evening banquet, in the ballroom and adjacent areas of the recently remodeled Michigan Union, include an evening of American jazz.

The weekend's panel discussions bring together Law School faculty members and legal experts from many countries in a rare opportunity to compare culturally different approaches to the same issues. On one panel, for instance, Robert A. Sullivan Professor of Law James J. White is sharing views of "Cultural Differences in Negotiation" with fellow panelists Dr. Walter König, M.C.L. '69, an attorney in Zurich, Switzerland, König's classmate Yoichiro Yamakawa, M.C.L. '69, of Koga & Partners in Tokyo, and John Lonsberg, '79, International Group Manager for Bryan Cave in St. Louis.

Here are the highlights of the International Reunion schedule, as activities and participants were confirmed at deadline time:

THURSDAY, OCT. 16

DEAN'S WELCOME RECEPTION (evening).

FRIDAY, OCT. 16

WELCOME REMARKS: Dean Jeffrey S. Lehman.

KEYNOTE SPEECH: "The Future Role of the United Nations Security Council," Emilio J. Cárdenas, M.C.L. '66.

WORKSHOPS

- "The Law and Ethics of Death and Dying." Professor Yale Kamisar, University of Michigan Law School; Dr Pieter van Dijk, member of the Council of State of the Netherlands, Judge at the European Court of Human Rights; and John H. Pickering, '40, Wilmer, Cutler & Pickering, Washington, D.C.
- "The WTO and Its Dispute Procedures: Appraising the First Three Years." Professor John Jackson, '59, University of Michigan Law School; Marco C.E.J. Bronckers, LL.M. '80, Stibbe Simont Monahan Duhot, Brussels; Professor Lourdes Sereno, LL.M. '93, University of the Philippines Law Center; and Debra Steger, LL.M. '83, Director of the WTO's Appellate Body Secretariat.
- "Cultural Differences in Negotiation." Professor James J. White, '62, University of Michigan Law School; Dr. Walter König, M.C.L. '69, Attorney, Zurich; Yoichiro Yamakawa, M.C.L. '69, Koga & Partners, Tokyo; and John Lonsberg, '79, of Bryan Cave in St. Louis.
- "Roundtable Discussion of Comparative Issues of High Court Jurisprudence." Dean Jeffrey S. Lehman, '81, University of Michigan Law School; Justice Vojtech Cepl, LTC, Constitutional Court of the Czech Republic; Dr. Pieter van Dijk INT, Member of the Council of State of the Netherlands, Judge at the European Court of Human Rights; and Justice Florenz D. Regalado, LL.M. '63, of the Supreme Court of the Philippines.

PLENARY SESSION: "The Globalization of American Legal Education." The Dean's report and a faculty panel on the Law School's international programs.

OPTIONAL: visit Ann Arbor microbrewery.

SATURDAY, OCT. 18

WORKSHOPS

- "Reforming the Constitution for Europe." Professor Emeritus Eric Stein, '42, University of Michigan Law School; Jacques H.J. Bourgeois, Akin, Gump, Strauss, Hauer & Feld, Brussels; Professor M. Stern, Economics Department, University of Michigan; Professor Michael Waelbroeck, Liederkerke Wolters Waelbroeck & Kirkpatrick, Brussels, and University of Brussels Law Faculty.
- "War Crimes at the National and International Level." Professors José Alvarez and Catharine MacKinnon, University of Michigan Law School.
- "Globalization of Antitrust." Professor Thomas Kauper, '60, University of Michigan Law School; Jean-Francois Bellis, LL.M. '74, Van Bael & Bellis, Brussels; and Elaine Johnston, LL.M. '87, White and Case, New York.
- "A Practical Approach to International Arbitration." Professor Emeritus Whitmore Gray, '57, University of Michigan Law School; Professor Georgio Bernini, LL.M. '54, S.J.D. '59, Studio Bernini Associati and Chair of International Commercial and Arbitration Law at the University of Bologna; and Manuel Teehankee, LL.M. '86, Attorney, Manila and New York.

TAILGATE LUNCHEON.

FOOTBALL: Iowa v. Michigan.

TOUR of University of Michigan Museum of Art.

BANQUET AND JAZZ CONCERT.

SUNDAY, OCT. 19

CHAMPAGNE BRUNCH

EXCURSIONS:
Henry Ford Museum/Greenfield Village;
Dexter Cider Mill/Fall Color Tour.

HONG KONG
THE FUTURE HERE IS AN ADVENTURE TO BE LIVED

— BY DAVID HAGER, '78
FROM THE HONG KONG SPECIAL ADMINISTRATIVE REGION, PEOPLE'S REPUBLIC OF CHINA

The following essay is based on a letter that the author, who practices in Hong Kong, sent to Thomas M. Cooley Professor Emeritus of Law John W. Reed.

The night of June 30 marked the rain-soaked culmination of 13 years of wondering, preparation and discussion leading up to the end of one and a half centuries of British rule of Hong Kong. Most of the world watched parts of this on television, and I will not attempt to repeat the content of the speeches or the chronology of events here. I will share instead some of the feelings and impressions which accompanied this poignant moment.

There were many ceremonies throughout the day, but the British Farewell, held at the British military barracks in Central, between 18:00 PM and 21:00 PM, and the formal hand-over of sovereignty at midnight were the center pieces. Despite steady rain, 10,000 invited guests watched a colorful outdoor performance of Chinese and British music, dance, and military performances, ending in thoughtful and evocative speeches by Governor Chris Patten and Prince Charles. The actual hand over ceremony took place indoors between 23:45 PM and 00:15 AM in the new Convention Center Extension. After a massive banquet, 4000 guests observed the Chinese and British delegations pass the governance and sovereignty of this city of six million plus souls from Britain to China.

It was impossible for even this political cynic not to be somehow deeply stirred at the events which took place. The British and the Chinese were both at their best in this highly ceremonial program, but it was, in my opinion, really more about Britain and less about China. The Chinese chapter is yet to be written, but the United Kingdom was there to close one, and close it they did, with a blaze of the dignity and nobility which characterizes the British nobility at its best. The sun may have set on the British empire, but not on its spirit.

To this irreverent American, neither Prince Charles nor Chris Patten have ever been particularly charismatic personalities. Yet it seems that momentous events have a way of calling forth greatness and timelessness from those who find themselves drawn into them. I saw in both Prince Charles and Governor Patten an awareness and presence which can only be described as spiritual. There was no grudging surrender here, but rather a dignified, somewhat sorrowful, and solemn acknowledgment that the tide of history has turned for Hong Kong and a genuine wish that the future of both Hong Kong and China be a peaceful and successful one. To be sure, both speakers gently but firmly reiterated the essence of the points of the Joint Declaration and the promises which both the UK [United Kingdom] and China had made to the world, but the restatement was clear and clean, without the undertones and political barbs that would emerge in a less momentous event.

To his credit, Chinese President Jiang Ze Min's short speech after midnight mirrored that of Prince Charles, acknowledging the key points of the Joint Declaration and China's responsibility for them. Cynics, including myself, are primed and ready to see how well China honors these sentiments, but for the suspended moments of time in the ceremony, it was clear that the Chinese side wanted to give the British the dignity of an honorable departure, and that on some level the two nations have had a meeting of spirits which will leave its imprint on their attitudes and actions in the future.

And from here? Life goes on in Hong Kong. The Governor and Prince Charles sailed off into history on the Royal Yacht just after midnight. The new government was sworn in during the wee hours after the hand over. The Democratic Party, led by Martin Lee, staged its promised protest from the balcony of the Legislative Council Building, and did so without incident. Revelers of all types partied into the night. The PLA quietly

moved its 4000 troops into the former British barracks scattered around the territory, replacing a somewhat larger number of British troops previously stationed there. More festivities, fireworks and programs took place over the next couple of days. Working people have gone back to work. And the pundits are no longer able to talk about what will happen on July 1, 1997, but must now discuss events farther into the future.

One thing is certain, and that is that we on this once "barren rock" are indeed starting a new era. Hong Kong will certainly change under Chinese rule. It was in a maddening and constant state of change under British rule as well. But perhaps more important from the larger perspective is that the job of managing Hong Kong will change China as well. If I were writing history for my personal convenience, Hong Kong would be another Singapore, sort of a Never-Never Land type of city-state with its own sovereignty. But today, Hong Kong's destiny is in part to be a sort of democracy laboratory for China. Hong Kong will get some bruises in the process, most likely, but China's leaders and its people will be forever changed by the experience of trying to manage one of the world's most free and vibrant cities.

Hong Kong, of course, is not and never has been a democracy in the political sense. The British governed well by governing little, while still retaining ultimate control of power. But it is a place where economic freedom, the rule of law, personal liberty, and the values and culture of a democratic society are deeply rooted and strongly held. We will certainly be changed by Chinese rule, but we are also something of a Trojan Horse for the future of China. China has already been strongly affected by its relationship with Hong Kong, and even more significant changes will likely occur in the future. How soon? How much? I don't know and no one else really does either. The future here is an adventure to be lived, and not a plan to be executed. But the British have said good-bye and that new era has clearly started. In another famous farewell speech, J. R. R. Tolkien's Bilbo Baggins put it very well:

The Road goes ever on and on,
Down from the door where it began.
Now far ahead the Road has gone,
And I must follow if I can,
Pursuing it with eager feet,
Until it joins some larger way
Where many paths and errands meet,
And whither then? I cannot say.

David Hager *is a 1978 University of Michigan Law School graduate and the managing partner of Hager & Associates Ltd., which provides legal and strategic assistance to multinational companies developing or expanding operations in mainland China. He and his wife and three children have lived in Hong Kong since 1990. Hager welcomes e-mail correspondence sent to him at hager@iohk.*

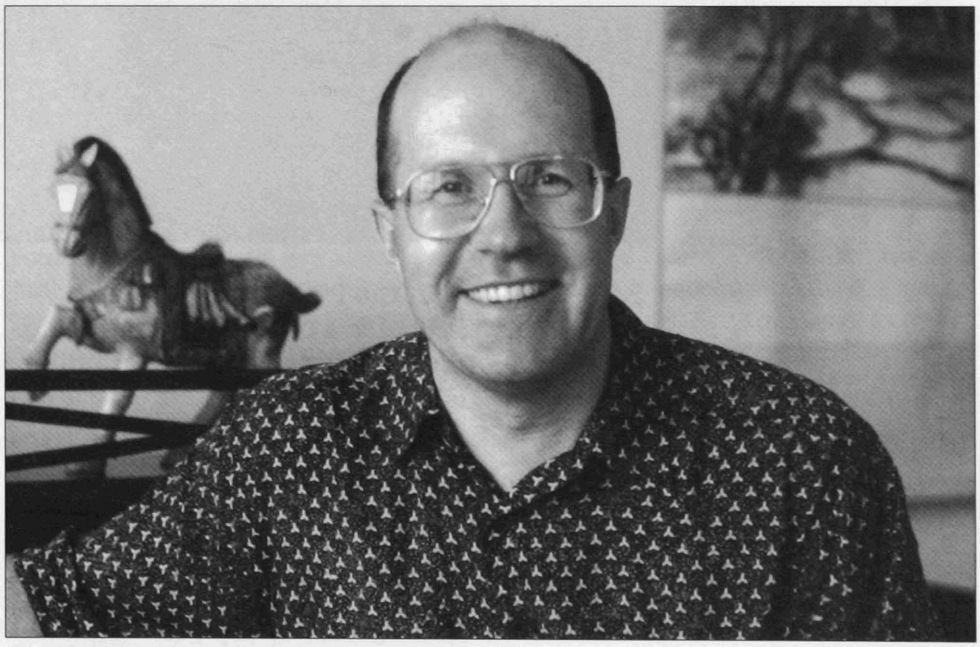


PHOTO COURTESY DAVID HAGER

David Hager

One *in a* million

Dean Jeffrey S. Lehman, '81, shakes hands with Philippines President Fidel Ramos during World Environment Day ceremonies in the Pacific nation. At left is Renato L. Cayetano, LL.M. '66, S.J.D. '72, Chief Legal Counsel to Ramos. Lehman visited the Philippines, Japan and Hawaii last spring to meet with Law School graduates.

In the Philippines, the Law School is a one in a million thing. But oh what that one in a million is doing.

"Today, the Philippines are the thirteenth most populous country in the world, with a population of about 65 million," notes Dean Jeffrey S. Lehman, '81, who visited the Asian island nation in June. "Only 75 out of those 65 million people have LL.M. degrees from the University of Michigan Law School. But what a 75 they are!"

From presidential advisor to political leaders to Supreme Court justice, legal scholars, private practitioners and entrepreneurs, University of Michigan Law School graduates are among the decision makers who are leading the Philippines into the next century. At times when there is political conflict, there are U-M Law School grads on both sides, a reflection of the diversity of approaches and viewpoints that characterize the far-flung Law School family.

Lehman visited the Philippines last spring as part of a Pacific swing that also included stops in Hawaii and Japan to meet with Law School graduates (in each case, including members of the highest

court of the jurisdiction). Our Asian alumni hold an inspiring attachment to the Law School, and the Dean expects such trips to be a regular part of his work schedule.

The Philippines truly rolled out the red carpet for Lehman during his June visit. His first morning began with a welcome from President Fidel Ramos immediately before the President's World Environment Day speech in the Hall of Heroes at the Malacañang Palace. "The Hall was packed with visitors, including the ambassadorial corps, and to my astonishment President Ramos asked that three seats be set up in front of the ambassadors for me and two other Michigan alumni — Renato L. "René" Cayetano, LL.M. '66, S.J.D. '72, and Gabriel Singson, LL.M. '60."

Perhaps Lehman should not have been so astonished. After all, Cayetano is Chief Legal Counsel to President Ramos. And Singson is the Chairman of the Central Bank of the Philippines, widely credited for a monetary policy that has contributed to the country's recent economic successes.

"President Ramos gave a smart, funny speech, and then came over to meet with me some more. We exchanged gifts. It turns out that he has a masters degree in engineering from Illinois; he assured me, however, that if he had ever wanted to go to law school, he would have wanted to come to Michigan!"

Under the Philippine Constitution, President Ramos' term is limited to six years and will expire in 1998. During Lehman's visit, there was much speculation about what would happen after President Ramos steps down.

Much of the speculation centered on Cayetano. One of the nation's most prominent and popular lawyers, he makes time in his professional schedule to co-star in the Philippine television show "Compañero y Compañera." Many expect that after his service to President Ramos is complete, he will be elected to the Philippine Senate.

During the afternoon after Lehman's meeting with the President, two other Michigan alumni were making news. Senator Edgardo J. Angara, LL.M. '64, and Senator Miriam Defensor Santiago, S.J.D. '75, are frequent political rivals who each head one of the major political parties in opposition to the party of President Ramos. Both Angara and Santiago are considered leading candidates for the presidency next year. But on that afternoon, the two of them were meeting to discuss the possibility of merging their two parties into a united opposition party that would join behind a single presidential candidate.

That evening, Lehman had the opportunity to meet with alumni from many of Manila's most prominent law firms. "Everywhere I turned, I discovered that the leaders of the profession had chosen to complete their education at Michigan. I would estimate that about 15% of the partners at the top firms had spent at least a year of their professional training in Ann Arbor."

The next day brought more high points to Lehman's visit. The Chief Justice of the Supreme Court hosted a special luncheon in Lehman's honor, with most of the Court in attendance. Most of the Justices wore the traditional *barong tagalog* — the country's traditional ceremonial garb. Lehman reports that it was an occasion he will not soon forget. In recent years, the Law School has had a significant impact on the 15-member Supreme Court:

- Florenz D. Regalado, LL.M. '63, is currently an Associate Justice on the Court.
- Hugo E. Gutierrez, Jr., LL.M. '65, recently stepped down from the Court to found a new law school in the Philippines.
- Irene Cortes, LL.M. '56, S.J.D. '66, served on the Court for several years after a distinguished career as faculty member, law school dean, and provost at the University of the Philippines. Her death last year was widely mourned throughout the country.

The dean's visit concluded with a lecture at the University of the Philippines Law School, where three of the four research institutes are directed by Michigan graduates:

- Professor Carmelo V. Sisson, LL.M. '83, directs the Institute of Government and Law Reform.
- Professor Alberto Muyot, LL.M. '91, directs the Institute on Human Rights.
- Professor Lourdes "Meilou" Sereno, LL.M. '93, directs the Institute on International Law.

During his visit to the Law School (whose founder and first dean was George Malcolm, '05), Lehman also had the opportunity to spend time with Professor Raphael Perpetuo "Popo" Lotilla, LL.M. '88, a widely admired teacher who is also a prominent government advisor.

Lehman's carefully planned itinerary was primarily arranged by Cayetano, Lotilla, and Sereno. "Words can't begin to express my gratitude to René, Popo, and Meilou for their kindnesses to me during the visit," says Lehman. "I can't wait to return."

Dear Graduate:

It is with tremendous pride and camaraderie that I am writing my final appeal to you on behalf of the University of Michigan Law School's Annual Giving Program. I have had a wonderful four years in my leadership role with the Law School and was privileged to travel with Dean Lehman to visit many of you.

In all of my communications with you, whether in person or by mail, I have asked you to join me in supporting our alma mater during the School's Campaign. I am writing this before final figures are available — between the University's June 30 fiscal year-end and the September 30 close of the University's Campaign for Michigan. I can assure you, however, that with the generosity of several of you, the Annual Giving Program is growing. Please look for final reports and the FY 96-97 honor roll in the Spring 1998 issue of *Law Quadrangle Notes*.

This has been an exciting year for me to be passing on my "public" leadership role. It looks as if the unrestricted Annual Fund will exceed last year's record-breaking $2.1 million, and the Campaign is having an outstanding finish. Thank you for your generous support.

The School is in wonderful hands under the innovative and energetic leadership of Dean Lehman. Joining the Dean in building annual support for the School is James Kleinberg, '67 (a partner with McCutchen, Doyle, Brown & Enersen in San Francisco), the incoming National Chair of the Annual Giving Program. Jim looks forward with great enthusiasm to keeping you informed of the Law School's unrestricted goals during the next two years.

It is clear to me that enhancing the School's resources lies in the philanthropic hands of its graduates. One of my hopes for the future is that more of you participate in strengthening this superb Law School. I encourage *each* of you to invest, to the fullest extent possible, in the long-term future of the School. Your annual gifts really do make a difference to the School's faculty, students and programs.

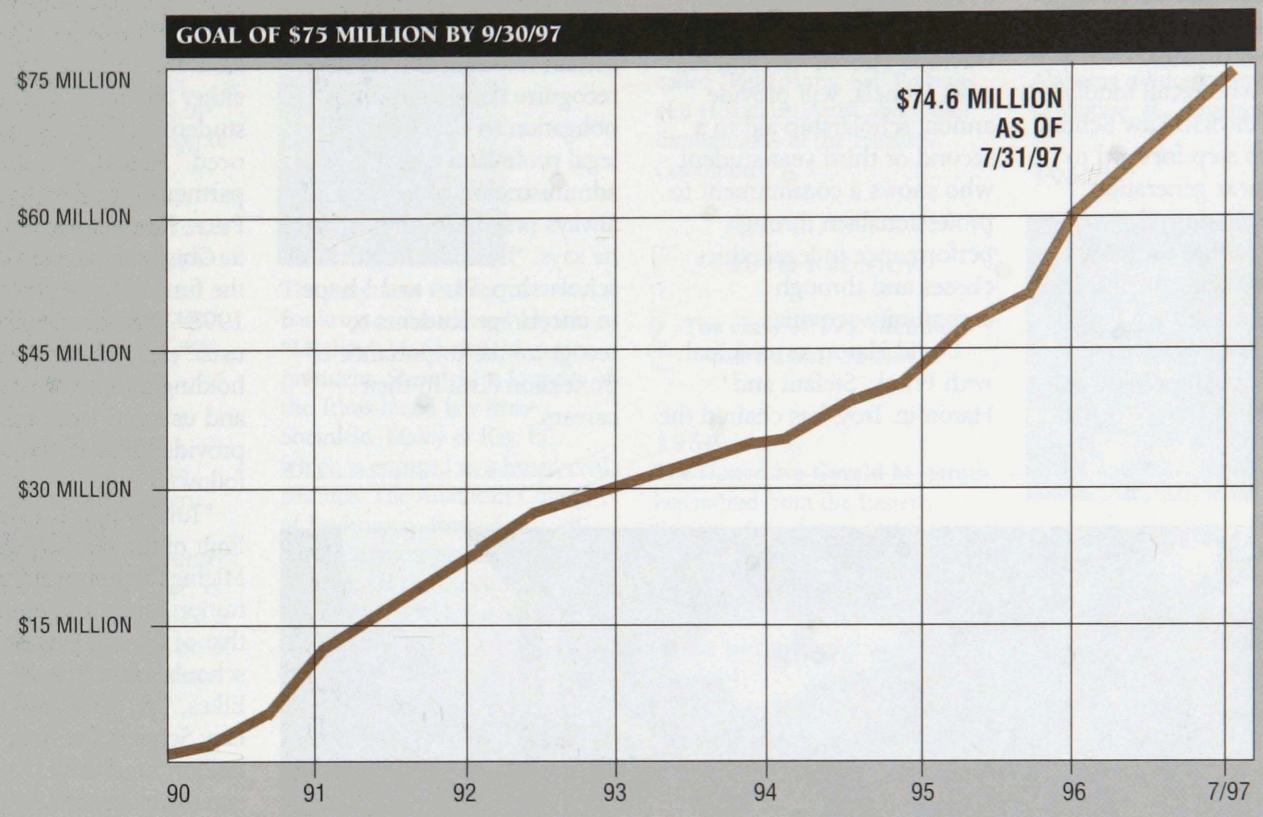
I have enjoyed meeting many of you in my four years with the Annual Giving Program, the past two years as the Chair. I wish you the best in the coming years in all that you do and look forward to joining you each year in strengthening our Law School's reputation as one of the most prestigious schools in the country.

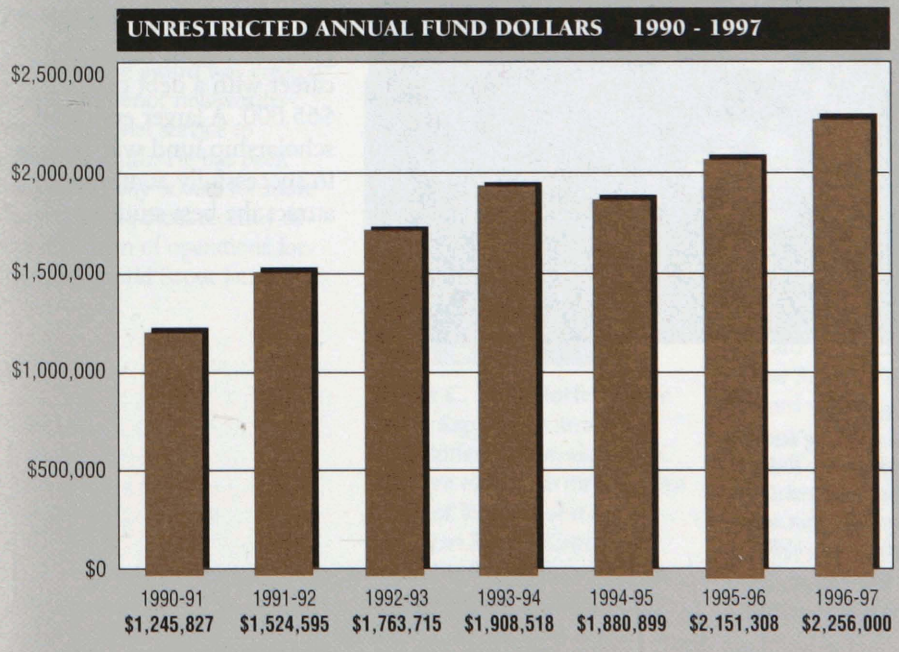
Barbara Rom

BARBARA ROM, '72
Partner, Pepper, Hamilton & Scheetz
National Chair
Annual Giving Programs

As final deadline passed, the Law School's Campaign reached and surpassed its goal of $75 million. Details will be reported in the Spring issue of *Law Quadrangle Notes*.

Campaign progress report





For additional information about the Campaign, or to inquire about making a gift, please contact:

Development and Alumni Relations
University of Michigan Law School
721 South State Street
Ann Arbor, Michigan 48104-3071
313.998.7970

Endowments aid students, battle rising costs

Despite dedicated efforts to contain tuition increases, the need for financial aid for Law School students continues to increase. Fortunately, graduates who recall fondly their own days in Law School continue to step forward to assist the next generation of lawyers. Endowed scholarships that can provide financial aid with the interest earned from a gift are especially helpful because they continue to provide aid indefinitely.

The Pamela and David Haron Endowed Scholarship Fund, established this year with a $100,000 gift from David L. Haron, '69, and his wife, Pamela, will provide annual scholarship aid to a second or third year student who shows a commitment to professionalism through performance in legal ethics classes and through community activities.

David Haron, a principal with Frank, Stefani and Haron in Troy, has chaired the State Bar of Michigan's Professionalism Committee since 1995. "Competent and successful lawyers adhere to certain fundamental values, recognize their continuing obligation to improve the legal profession and the administration of justice and always practice with civility," he says. "By endowing this scholarship, Pam and I hope to encourage students to recognize the importance of professionalism in their careers."

The Frank G. Reeder Endowed Scholarship Fund, also established this year, similarly provides "tuitiion assistance for the benefit of either incoming or continuing students who have financial need." Reeder, '62, is a partner in the firm Vedder, Price, Kaufman & Kammholz in Chicago. Assistance from the fund is to begin with the 1998-99 academic year. The usual endowment practice of holding the principal intact and using its earnings to provide financial aid will be followed.

"Tuition is at the upper limit of the market, with Michigan's non-resident tuition essentially equal to that of the top private schools," says Terrence A. Elkes, '58, chairman of the Law School's five-year $75 million fund drive. "And the gap is quickly closing between Michigan's resident tuition and the privates. On the average, a Law School graduate begins his or her career with a debt of $65,000. A larger endowed scholarship fund will help us to successfully continue to attract the best students."

Spring Seminars —
John Bos, '64, explains his perspective on a tax law question during the Michigan Spring Seminars at the Law School in late May. Bos was among more than 30 participants in the Spring Seminars. Professor of Law Douglas A. Kahn, at left side of table, and Assistant Professor of Law Kyle D. Logue organized the seminar on tax. The day's schedule also included a seminar on property that ran concurrently and was organized by Assistant Professor of Law Michael A. Heller and Assistant Professor of Law Roderick M. Hills.

1937

Retired Hamilton County, Ohio, Common Pleas Court Judge **William Andrew McClain** has received the 1997 Ellis Island Medal of Honor Award. The award was created in 1986 by the National Ethnic Coalition of Organizations to honor individuals who have made outstanding contributions to the culture, diversity, and progress of the American way of life. McClain is special counsel to Manley, Burke, Lipton & Cook.

1944

Dr. Luis Maria Ramirez-Boettner, S.J.D., has left his office of Minister for Foreign Affairs of the Republic of Paraguay to become his country's Ambassador to the Holy See. In his former position, he played a significant role in the creation of Mercosur, the South American Common Market.

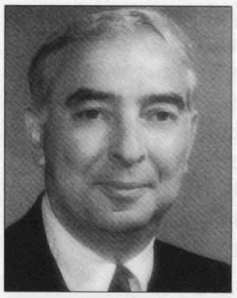
1952

Thomas D. Allen was one of eight people who received the Boy Scouts of America's highest and most prestigious volunteer honor, the Silver Buffalo Award, for 1997. The award was created in 1925 to honor noteworthy and exceptional service to America's youth. He has been involved in Boy Scouts for more than 40 years, most recently as vice chairman of operations for the 1995 World Scout Jamboree.

1954

The American College of Bankruptcy has elected **Myron "Mickey" M. Sheinfeld** as vice president. Sheinfeld is founder of the Texas-based law firm Sheinfeld, Maley & Kay, P.C., which is engaged in a broad civil practice. The American College of Bankruptcy, formed in 1989, is an honorary professional and educational association of bankruptcy and insolvency professionals designed to honor and recognize distinguished professionals, set standards of achievement for others in the insolvency community, and fund undergraduate and graduate educational projects related to bankruptcy and insolvency.

1956



Steven C. Bransdorfer, of the Grand Rapids law firm Bransdorfer & Bransdorfer, P.C., has been elected to the National Board of Trustees of the American Inns of Court. He began his four-year term as an at-large trustee on July 1.

Judith Liberman, LL.M., recently joined the Depot Square Gallery in Lexington, Massachusetts, and showed an exhibition of her paintings there called "Reflections: Self Portraits of a Holocaust Artist and Other Explorations of the Human Condition."

40TH REUNION

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

1958

The Honorable **Gerald M. Smith** has retired from the Eastern District of the Missouri Court of Appeals after nearly 30 years of distinguished service. Colleagues say his record is outstanding and he has written many significant opinions.

1959

J. Richard Emens II has joined the Columbus, Ohio, law firm Chester, Willcox & Saxbe L.L.P., as a partner. His major areas of practice are corporate law, international business law, and governmental relations. He was previously a partner with the firm formerly known as Emens, Kegler, Brown, Hill & Ritter for nearly 30 years.

1960

Clay Williams has received, for the second time, the President's Award of Excellence from the State Bar of Wisconsin. The award was presented in recognition of his efforts on behalf of the Bar before the Wisconsin State Legislature and Wisconsin Supreme Court. Williams is a shareholder at the Milwaukee law firm von Briesen, Purtell & Roper, s.c.

1961

L. Vastine Stabler, Jr., has left the law firm Walston, Stabler, Wells, Anderson and Bains. He now practices in Birmingham, Alabama, under the firm name of L. Vastine, Jr., Attorney at Law.

1962

Fred H. Miller was honored by the American Bar Association Section of Business Law for co-authoring the book *The ABCs of the UCC: Article 1, General Provisions*, the first book in a series of practical primers on each article of the Uniform Commercial Code. He teaches secured transactions, payment systems, sales and leases, and consumer law at The University of Oklahoma College of Law in Norman, Oklahoma, where he has been a professor since 1966.

The law firms of Berry, Moorman, King & Hudson, and Wright & Goldstein have announced the joining of their practices. Among the attorneys with the combined firm, Berry & Moorman, of Detroit, are: **Francis J. Newton Jr.**, **James P. Murphy, '69**; and **Gary D. Bruhn, '79**. **Thomas L. Lott, '35**, and **John L. King, '50**, have retired.

CLASS *notes*

1963

Gary R. Frink is the author of the book *Tales of Jewell Hollow, A Year In A Blue Ridge Forest,* which is being serialized in the electronic magazine *O Shenandoah! Country Rag.* The book is about his experiences month by month, in and around his family's Jewell Hollow, Virginia, cabin. The WWW address is: http://www.geocities.com/Heartland/1293.

Declan J. O'Donnell is president of the World Bar Association, which he helped found in 1980, and he is president of United Societies in Space, Inc. He also has published articles on the future of space policy and he publishes the journal *Space Governance*.

William H. Ransom has retired from the Cleveland law firm Squire, Sanders & Dempsey, L.L.P.

1964

Fred J. Fechheimer was elected to the executive committee of the law firm Dykema Gossett P.L.L.C. He is a member of the firm's real estate practice group, resident in its Bloomfield Hills office. He concentrates in general real estate law and the representation of financial institutions.

1966

David Muhlitner has taken a new position as vice president and general counsel at ReSound Corporation, Redwood City, California. ReSound develops, manufactures, and markets hearing devices both domestically and internationally.

1968

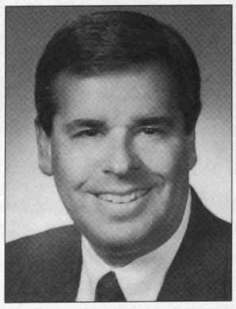
With more than 29 years experience in employee benefits law, **Robert G. Buydens** has founded the Detroit law firm Buydens & Anderson, P.C., which specializes in that area. He was previously the partner-in-charge of the employee benefits practice at Clark, Hill P.L.C., where he also served as chairman of its Retirement Committee and a member of its Finance Committee.

Lee Hornberger has become a member of the Lawyers' Advisory Board of the National Employee Rights Institute, a non-profit membership organization founded to help employees understand, enforce, and expand their rights in the workplace. Hornberger practices employment law in Cincinnati.

1969

Garfield County Judge **Victor M. Zerbi** is completing his term as 1996-97 president of the Colorado County Judges Association, made up of about 130 judges from around the state. Zerbi, of Glenwood Springs, was named Garfield County Judge in 1980.

1971



Alan R. Lepene has joined the seven-member Management Committee of the Cleveland law firm Thompson Hine & Flory L.L.P., where he has practiced for 25 years. His focus is on commercial law and bankruptcy, with an emphasis on representation of secured creditors and creditors' committees in complex Chapter 11 cases. He resides in Pepper Pike, Ohio, with his wife, Barbara, and their children, Scott and Ryan.

1972

Joseph A. Darrell has retired from the practice of law as a partner in the San Francisco office of Sheppard, Mullin, Richter & Hampton. After 25 years in private practice, he plans to travel and spend time with his wife, Pat, and his children, Todd and Craig, both 23, Kristen, 7, and Lauren, 6.

1973

Edward H. Pappas has been elected president of the 3,500-member Oakland County Bar Association. He is a partner with the law firm Dickinson, Wright, Moon, Van Dusen & Freeman. Pappas lives in the village of Franklin with his wife, Laurie, and their two sons, Gregory and Steven.

1974

Bradley Harle Giles, LL.M., has been appointed a judge of the High Court of New Zealand. He previously served as a Queen's Counsel.

John Midgley has received the 1997 William O. Douglas Award, presented by the Washington Association of Criminal Defense Lawyers. The Douglas Award, WACDL's most prestigious, is given in recognition of extraordinary courage and commitment, and outstanding achievement, in the criminal justice system. Midgley has been regional director of the Tacoma, Washington, office of Columbia Legal Services since 1996. Throughout his career he has represented individuals held in institutions, including prisoners, juveniles, and the mentally ill.

1975

Ronald S. Longhofer, a partner with the Detroit-based law firm Honigman Miller Schwartz and Cohn, is co-author of *Courtroom Handbook on Michigan Evidence*, published by West Publishing Company.

Bella Marshall was recognized at Wayne State University's 15th Corporate Leadership Awards program. Recipients are honored based on their academic and professional careers and for the leadership they provide in their fields. Marshall is president and CEO of Waycor Development Co. and president of Barden International Inc.

1976

Howard M. Bernstein has joined the St. Petersburg, Florida, law firm Fisher & Sauls, P.A., where he will concentrate in the areas of local government representation, developer land use and zoning, government litigation, eminent domain, and related issues. He was formerly the Pinellas County senior assistant county attorney.

John L. Gierak was elected president of the Troy, Michigan, law firm Dean & Fulkerson. He concentrates his practice in the areas of labor, employment, and education law.

Andrew H. Marks, of Crowell & Moring in Washington, D.C., has been named president-elect of the 66,000-member District of Columbia Bar. He will serve one year as president-elect and then become president in June 1998.

Jonathan S. Morse has become a partner at the Los Angeles office of Lane Powell Spears Lubersky L.L.P. He focuses his practice in the area of aviation law and handles matters such as defense of complex claims, analysis of insurance coverage issues, and prosecution and defense of insurance subrogation claims.

1977

The Honorable **Dana L. Rasure**, of Tulsa, Oklahoma, was sworn in as United States Bankruptcy Judge for the Northern District of Oklahoma on January 6.

1978

Ellen J. Dannin is the author of *Working Free: The Origins and Impact of New Zealand's Employment Contracts Act*, published by Auckland University Press in July.

1979

The law firm Kienbaum Opperwall Hardy & Pelton, P.L.C., in which **Theodore R. Opperwall** is a partner, has opened a new office in the historic Ford Peabody Mansion in Birmingham. The Victorian landmark was built in 1878 by banker Frank Ford. **Noel D. Massie, '78**, is an associate with the law firm.

Michael J. Rufkahr has become a partner with the Washington-based law firm Arnold & Porter, in the firm's tax practice. He has experience in the areas of corporate and international taxation, asset securitizations, mergers and acquisitions, transfer pricing and cross-border transactions, publicly issued and privately placed securities, and tax controversy.

Theodore J. Vogel has been named as vice president-taxes and tax counsel for CMS Enterprises, the holding company for CMS Energy Corporation's international energy businesses. He previously served as director of corporate taxes and tax counsel. CMS Energy is located in Dearborn.

1980

The Chicago Area Council of the Boy Scouts of America has appointed **G.A. Finch** as vice president for urban emphasis. A Boy Scouts board member for 11 years, he will lead a committee to develop a comprehensive service plan of Scouting to meet the needs of diverse populations in hard-to-reach urban communities such as immigrant and public housing youth. He is a partner in the law firm Querrey & Harrow, where he heads the Corporate Practice Group.

Jesse S. Ishikawa was elected to the American College of Real Estate Lawyers. A partner in the Madison, Wisconsin, office of Michael, Best & Friedrich, he practices in all areas of commercial real estate, including purchases, sales, commercial leasing, and mortgage lending. He has been particularly active in legal issues involving land development, including municipal contracts, tax incremental financing, restrictive covenants, and construction contracts.

The Chicago business litigation law firm Schopf & Weiss, founded in July 1987 by **Steven A. Weiss** and three other attorneys, celebrated its tenth anniversary on July 10. The firm now numbers 14 attorneys.

1981

The Miami, Florida, office of the law firm Akerman, Senterfitt & Eidson P.A., has expanded its Commercial Litigation Department by adding **Robert I. Chaskes** in an of-counsel capacity. He has an extensive background in complex commercial litigation, banking and securities law, and litigation management. He was previously a partner in a Fort Lauderdale law firm and from 1990 to 1996 was Senior Counsel for the Resolution Trust Corporation/ FDIC in Washington, D.C.

1982

Richard A. Barr has joined the Troy, Michigan, law firm Dean & Fulkerson as a shareholder. He focuses his practice on environmental, real estate, and business law. His expertise includes redevelopment of contaminated property and the utilization of federal, state, and local tools to facilitate development in the presence of environmental road blocks.

Richard W. Krzyminski, chief financial officer with Baxter Hodell Donnelly Preston, Inc., has earned the designation Certified in Financial Management. In order to earn a CFM, accountants must complete a nationwide comprehensive examination on financial management and related subjects, meet a two-year financial management experience requirement, and agree to comply with the Standards of Ethical Conduct for Management Accountants. Baxter Hodell Donnelly Preston, Inc., is a Cincinnati-based architectural firm.

Michael P. McGee has been named as a member of the first Academy Advisory Board overseeing the Michigan Municipal League's newly-established Elected Officials' Academy. The appointment was made by Municipal League President Mayor Michael Guido. The Academy, which is overseen

by the Advisory Board, is a continuing education program created to provide expanded and intensive educational programs for elected officials throughout the state. McGee is a principal in the Detroit office of the law firm Miller, Canfield, Paddock and Stone, P.L.C., where he practices municipal finance law.

1983

As president of Tobacco Control Law & Policy Consulting, P.C., **Clifford E. Douglas** serves as co-counsel in two pioneering legal actions brought against the tobacco industry in the United States: Mississippi Attorney General Michael Moore's Medicaid-reimbursement lawsuit and the *Castano* series of state class actions. He also serves as special counsel to Congressman Martin T. Meehan, co-chair of the Congressional Task Force on Tobacco and Health in the U.S. House of Representatives. Douglas received the 1997 Joseph W. Cullen award for "outstanding courage and commitment in leading the effort to eliminate tobacco-related diseases" at the Eighth World Conference on Lung Cancer in Dublin, Ireland, and has been profiled in *Legal Times*, *National Journal*, the *Chicago Sun-Times*, and, most recently, *Crain's Chicago Business* (May 19, 1997). On behalf of Congressman Meehan, he authored the 111-page prosecution memo submitted to Attorney General Janet Reno which became the foundation for the present criminal investigation into the tobacco industry.

Mark Kowalsky, shareholder at the Bloomfield Hills-based law firm Hertz, Schram & Saretksky, P.C., has been named chair of the Federal Court Committee of the Oakland County Bar Association. The committee serves as the liaison between members of the Oakland County Bar and the Federal Court. It prepares and distributes Federal Court guidelines to all association members, to provide them with a quick summary of the procedures adopted by each federal judge. It also conducts an annual seminar to provide a hands-on look at Federal Court practice.

1984

The law firm Dykema Gossett P.L.L.C. has elected **Marie R. Deveney** to membership in the firm. Resident in the firm's Ann Arbor office, she practices primarily in the areas of estate planning, probate, gift and estate tax and retirement distribution planning.

Gary M. Fremerman has been admitted to partnership in the Washington, D.C., office of Kelley Drye & Warren, L.L.P. He is a member of the firm's Environmental Practice Group specializing in regulatory counseling, litigation/enforcement proceedings, and business transactions.

Gregory K. Frizzell has been appointed by Oklahoma Governor Frank Keating as a District Judge for Tulsa and Pawnee Counties. Frizzell and his wife are the parents of three sons and three daughters, including twin boys. At deadline time, they were expecting another set of twins.

Len Niehoff was appointed to the Authors Committee of West's *Education Law Reporter*, a leading publication in the field of education and university law. Niehoff is a shareholder in the Ann Arbor office of the law firm Butzel Long, where he practices in the areas of advertising/marketing business litigation, intellectual property, labor and employment law, media law, and professional responsibility.

Jacob C. Reinbolt was named by *San Diego Magazine* as one of the top four intellectual property attorneys in San Diego. He is a partner with Procopio, Cory, Hargreaves & Savitch L.L.P., practicing in the field of computer, technology, software and Internet law, mergers and acquisitions, corporate law, securities law, and intellectual property.

1986

Elizabeth C. Koch has resigned as a partner at Ross, Dixon & Masback, L.L.P., to join several of her colleagues in forming Levine Pierson Sullivan & Koch, L.L.P. The attorneys at the new firm, located in Washington, D.C., are continuing their litigation practice specializing in media, entertainment, and intellectual property matters.

1987

Rodd M. Schreiber and **Seth E. Jacobson, '88**, have been named partners at the Illinois office of the law firm Skadden, Arps, Slate, Meagher & Flom. Schreiber, who joined Skadden, Arps in 1987, concentrates on mergers and acquisitions, corporate finance, and other corporate and securities matters. Jacobson, who has been with the law firm since 1994, concentrates on banking and institutional investing and leasing.

Reginald Turner has been named by Detroit Mayor Dennis Archer as campaign manager for Archer's 1997 re-election effort. Turner previously spent a year serving a White House Fellowship in Washington, D.C., as a special assistant to the Secretary of Housing and Urban Development. He is returning to his partnership with the Detroit law firm Sachs Waldman, where he practices labor, employee benefits, and election law.

1988

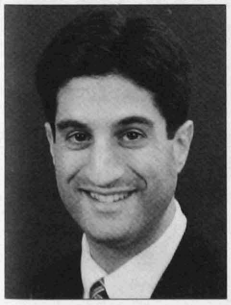
Gary W. Ballesteros has accepted a position as the Assistant General Counsel for Environmental Affairs for Rockwell International, Milwaukee, Wisconsin.

Gabriel J. Chin is the author of the book *New York City Police Corruption Investigation Commissions, 1894-1994*, published in June by William S. Hein & Co., of Buffalo, New York. He edited and wrote instructions for the six-volume set, which reprints the Knapp Commission Reports, and the reports of the five other special commissions which have investigated the police corruption scandals that have erupted in New York every two decades for the past century.

Olena Kalytiak Davis has received the University of Wisconsin Press' 1997 Brittingham Prize for her first book of poetry, *And Her Soul Out Of Nothing*. The book will be published by the University of Wisconsin Press and will be available this fall.

The law firm Dykema Gossett P.L.L.C. has elected **Andrew J. McGuinness** to membership in the firm. Resident in the Ann Arbor office, McGuinness concentrates in commercial and complex tort litigation, including federal and state trial and appellate practice.

1989



The law firm Dykema Gossett P.L.L.C. has elected **Grant P. Gilezan** to membership in the firm. Gilezan is a member of the environmental practice group. He concentrates in regulatory, transactional, and litigation matters for private and public sector clients. Gilezan resides in Grosse Pointe Woods.

Victor I. King is a business and insurance coverage litigator at Bottum and Feliton in Los Angeles. He is reportedly the youngest Asian American elected official in Southern California, serving a four-year term as a trustee of Glendale Community College (where he also works as an adjunct social science faculty member). He previously attended the Democratic National Convention as a California delegate for President Clinton and went to Oxford, England, in a Rotary Foundation student exchange.

Brandon D. Lawniczak was admitted as a partner in the law firm Sidley & Austin in Chicago, where he practices commercial litigation.

Dianne Miller has become legislative director for United States Congressman Maurice D. Hinchey, a Democrat from the 26th District of New York.

Samuel W. Silver has been elected a partner in the law firm Schnader Harrison Segal & Lewis, where he is a member of the Litigation Department, the Environmental Practice Group, and the Transvironmental Task Force. Resident in the firm's Pittsburgh office, he concentrates his practice on complex commercial litigation, including toxic torts, contract law, copyright infringement, and antitrust; environmental litigation, including private and governmental cost recovery actions; contractual and common law indemnity and contribution actions; and civil penalty actions.

1990

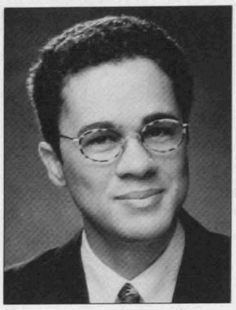
Lisa J. Bernt and her husband, David M.J. Lazer announce the April 18 birth of their daughter, Sarah Haley. She joins her sister, Liana Jacqueline. Bernt practices labor and employment law at Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano in Kenilworth, New Jersey.

Laura A. Cook has joined the law firm Loomis, Ewert, Parley, Davis & Gotting, P.C., as an associate attorney. She will work in the areas of domestic relations and probate and planning law. Cook was previously a family violence policy specialist for special projects assigned by the Michigan governor.

1991

Michael J. Haddad has become a partner in the Detroit law firm Goodman, Eden, Millender & Bedrosian.

James T. Polonczyk has been made a shareholder with the law firm Law, Weathers and Richardson, P.C., where he practices in the areas of business law, employee benefits, taxation, and health law.



Alan Seiffert has been named director, business and legal affiars, of fX Networks of Los Angeles. He will oversee negotiations of affiliation agreements with distributors of both fX and fXM: Movies from Fox, as well as talent, original programming, licensing, promotions, and marketing agreements. fX is an entertainment basic cable network. Seiffert previously served as counsel in the home entertainment legal group of Twentieth Century Fox Film Corporation.

1992

Michael David Warren, Jr., has become associated with the law firm Honigman Miller Schwartz and Cohn. He concentrates his practice in corporate law at the firm's Detroit office.

Class notes

1993

Christopher C. Cinnamon, a telecommunications attorney with Howard & Howard Attorneys, P.C., testified before the United States Copyright Office on cable television copyright reform in hearings ordered to examine copyright laws and regulations. Cinnamon's testimony addressed how current cable copyright regulations unintentionally impose higher copyright costs on smaller market cable systems.

Jennifer Nasser has joined the law firm Kim & Chang in Seoul, Korea, as a foreign legal consultant. She will be practicing in the area of international business transactions. She was previously associated with Smith Haughey Rice & Roegge of Grand Rapids.

1994

Larry R. Seegull is an associate in the Labor and Employment Law Group at the firm Piper & Marbury, L.L.P. He works out of the firm's Baltimore office. Seegull was formerly with the law firm Venable, Baetjer and Howard.

1995

Blanche B. Cook, an associate in the Detroit office of the law firm Miller, Canfield, Paddock and Stone, P.L.C., was inducted into the board of trustees for the Sojourner Foundation, a community organization that raises funds for programs to enhance the lives of women and girls. Cook is a member of the firm's Labor and Employment Group.

1996

Kimberly A. James has become associated with the Grand Rapids law firm Law Weathers & Richardson. She is focusing on commercial litigation.

Sarah G. Laverty has joined the Ann Arbor office of the law firm Miller, Canfield, Paddock and Stone, P.L.C., as an associate in the Estate Planning and Administration Practice Group and Health Care Group.

Dr. Randall L. Shoemaker of Bloomfield Township has joined the Bloomfield Hills office of Howard & Howard. He specializes in intellectual property law.

In memoriam

'24	Louis A. Buck	January 7, 1997
'28	William C. Dixon	January 10, 1997
'29	Ivan A. Challis	March 17, 1997
'30	Vernon D. Ten Cate	December 4, 1996
'34	Buford A. Upham	December 26, 1996
'37	Benjamin E. Cueny	February 16, 1997
'38	Brackley Shaw	April 8, 1997
'40	William H. Harr	December 14, 1996
'42	Louis C. Andrews	April 1, 1997
	Robert F. Ritchie	April 13, 1997
'44	Mauel-Garcia Calderon	November 11, 1996
'48	Gordon G. Carlson	January 16, 1997
'49	Evelyn Bliss Reddin	
'52	William A. Harper	April 29, 1997
'56	Thomas R. Ricketts	April 22, 1997
'61	Vincent L. Barker	June 10, 1997
'62	G. E. Oppenneer	April 1, 1997
'66	Charles E. Robinson	March 16, 1997
'67	Donald D. MacFarlane	
	George T. Stevenson	April 20, 1997
'70	Jack C. Radcliffe	June 8, 1997
'72	Charles E. Holt	January 7, 1997
'74	Barry L. Zaretsky	

Correction

The name of Louis Henkin, University Professor Emeritus, Columbia Law School, was spelled incorrectly in the Summer issue of *Law Quadrangle Notes*. Henkin was shown and identified in a photo taken during his talk as part of the Law School's International Law Workshop.

SPECIAL FEATURE

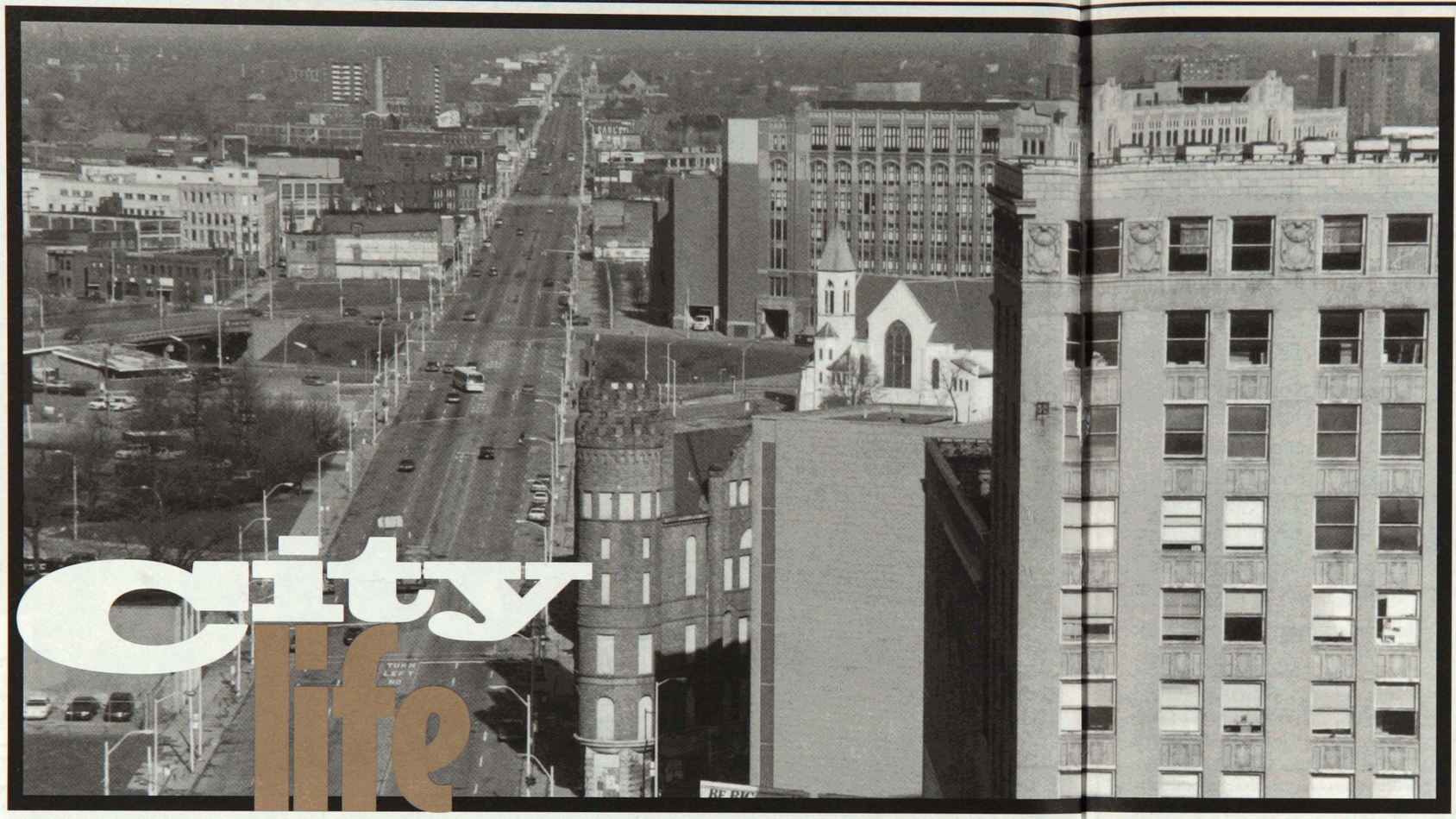
city life

The Law School in Detroit

ABOVE: *A fisherman makes his way from the Detroit River along a canal that leads to the marina in the Creekside community. For many residents of the area, a boat dock is part of their backyard. For others, being adjacent to a waterfront park is part of the appeal of living in Creekside, also known as the Jefferson-Chalmers community.*

Tom Ensign, '97, used to wonder about those narrow waterways into Detroit that he passed while sailing on the Detroit River and Lake St. Clair. He grew up at Mt. Clemens, close to Detroit only geographically, and mostly knew the perimeters of the city. It was not until after he had enrolled at the University of Michigan Law School and begun working in one of its clinics that he realized that those channels that he used to pass are canals that thread like arteries into

Continued on page 68



city life

the heart of one of Motor City's historic neighborhoods.

"Being from Detroit is not like being from anywhere else in the country," Ensign says. "I had a bad image of Detroit. Now I see things happening, and I see the economic promise in the city."

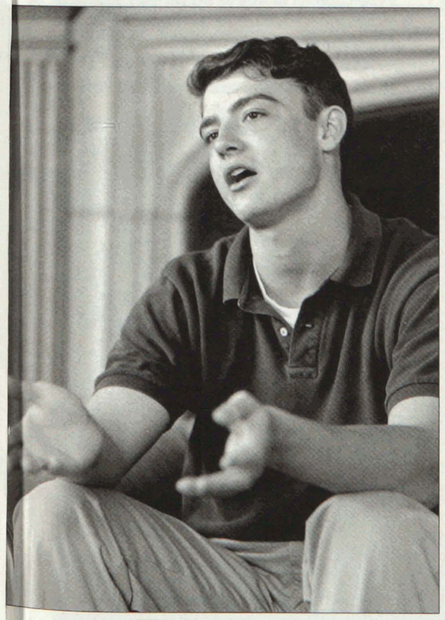
Ensign's perspective changed during his two semesters of work in Detroit as part of the Law School's Program in Legal Assistance for Urban Communities. Students who work in the Program help nonprofit agencies in many ways, usually by helping organize and work on the permits, zoning changes, tax credits and other legal activities that are part of developing affordable housing. Along the way they learn and then use the labyrinthine regulations that govern federal and local assistance for housing, the tactics of incorporation, and the need for prescience among the other skills of negotiation. In short, they learn a lot — and simultaneously help nonprofit organizations stretch their meager resources by providing free or minimal cost legal help.

Ensign worked with two clients during his two semesters with the clinic: the Emmanuel organization, an umbrella group made up of member churches that expects to build 11 single family units of for-sale housing; and Creekside Community Development Corporation, which is trying to mesh preservation and development into a symbiotic sisterhood along those waterways that Ensign used to sail.

The square-mile area of Creekside, five miles from downtown Detroit and tucked up against the western border of Gross Pointe Park, is a neighborhood of canals and boat docks that form part of many homeowners' backyards. It includes more than 200 acres of waterfront parks and blocks of solid homes built in the 1910s and 1920s when the manufacturing plants of Chalmers Motor Car Company, Hudson Motors and Continental Motor Works were neighbors and their executives and workers lived on its streets.

Clinic Director Rochelle Lento, a Clinical Assistant Professor at the Law School, sees Creekside this way: "It has a much different character than any other community in Detroit. It presents a whole series of issues that never come up in another neighborhood."

Also known as the Jefferson-Chalmers community, Creekside in many ways is the exception that defines the rule for the Urban Communities Program. Creekside's leaders don't want to build more upscale homes; they want to build affordable homes and rehabilitate and re-occupy those that have become vacant or run down. They want to preserve the park land that lies along the Detroit River and Lake St. Clair; they see the parks as jewels in Detroit's riverside crown that have been tarnished by neglect but now are drawing notice again as Detroit's political and civic leaders find growing attraction in the idea of having waterfront green spaces. Last summer, aided by students from the clinic, Creekside won a City Council nod for preserving Maheras Park as an historical site from the Civil Rights era. U-M Law School students like Ensign worked many hours with Creekside residents to achieve local historic designation for the park.



Tom Ensign

Creekside also is the proof of the rule for the clinic. Like the clinic's nearly 30 other clients, it is nonprofit and its leaders need legal help that they cannot afford to go out and hire. Many of the issues that its residents are grappling with demand familiarity with intricate federal, state and local laws and rules.

From the point of view of an educator like Lento, Creekside also offers an unusually varied menu of learning opportunities. For example, Creekside provided the rare opportunity for the Program in Legal Assistance for Urban Communities to call on a second Law School clinic, the Environmental Law Clinic, for specialized legal help. Students from the Environmental Law Clinic, which is run in conjunction with the National Wildlife Federation and maintains its office in Ann Arbor, provided the expertise that helped Creekside successfully monitor neighboring Grosse Pointe Park's sewage discharge into Fox Creek, which in turn flows into the canals that thread through Creekside.

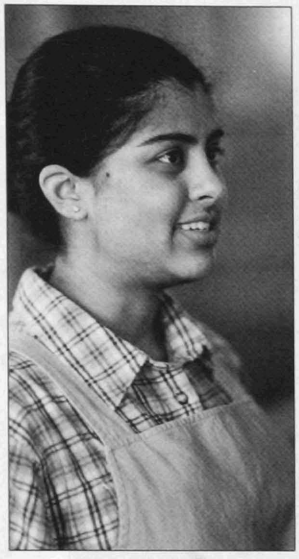
The two clinics have worked together here since 1994. Student lawyers won an administrative ruling to eventually cease the sewage discharge and require that Gross Pointe Park construct a new sewerage system that separates storm and sewer waters. Now a private environmental firm is challenging the state permit that allows discharge to continue during the construction of the new sewage system.

"I wouldn't know what Creekside would do without the clinic," says Cindy Wile, vice president of Creekside Community Development Corporation. "We're an unstaffed organization and we're all volunteers. The Law School has been great for us and with them we've just about conquered the Fox Creek issue. We've been fighting it for 50 years."

"I think that this is a great experience for students to work in the community, especially with community groups like us that need so much," Wile continued. "We didn't know how to write an FOI [Freedom of Information Act] request. For the students, it's good to learn to get through the red tape and the bureaucracy."

Assistant Clinical Professor of Law Rochelle Lento, Director of the Program in Legal Assistance to Urban Communities, discusses photos of the Program's projects at her office in Detroit.

Here are some other highlights of the past academic year's efforts, as outlined by students who worked in them:

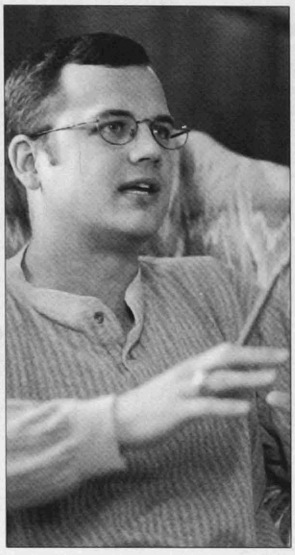


Archana Sheshardri

"Every step of the way we tried to do everything together with our clients," Archanda Sheshardi said of her work with partner Mario Tarara on behalf of their three clients, the Grandmont Rosedale Development Corporation, Ebenezer AME Church and the Jefferson East Business Association. "We learned that it takes more time than necessary," so they shifted to working individually with clients. Among their duties, they helped clients apply for loans, and helped them develop a land purchase agreement.

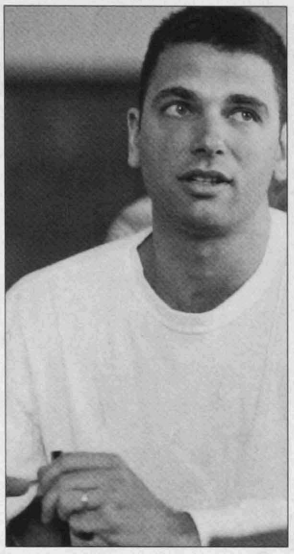
Jeremy White

"Our client is Northwest Detroit, a nonprofit housing association," said Jeremy White. Students drafted a management agreement for Northwest Detroit's 50 scattered site rental units, an agreement whose dual aims were to provide the client, the owner of the project, with oversight and control as well as give the management company running the property some autonomy in its actions. With guidance from its student lawyers, this group also set up a for-profit subsidiary that could receive federal government funds for housing.



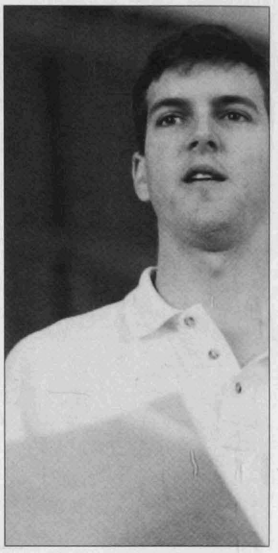
Jeremy Newman

Jeremy Newman worked with Myriam Jaidi in a neighborhood development organization in Northwest Detroit, helping to streamline its accounting procedures and to push forward a community housing project. "I really enjoyed the opportunity to work with clients," said Newman. "It's nice to have the chance to help people."



David Saslow

Reported David Saslow, who worked with the Jeremiah organization, a church-based group: The clinic set up a partnership with a construction agent for site development and permits, and established a community development corporation as a subsidiary to Jeremiah.



Michael Metz

In the Corktown area of Detroit, where students worked with Corktown Consumer Housing, "due to the loss of Tiger Stadium they're trying to look for ways to rebuild the community," according to Michael Metz. "They have a good base of current housing." Victor Cerda added that the Program began working with the community right after a contractor had quit working on a rehabilitation home. "We were letting them know what their options are, and writing the 'scary lawyer letter'," he said.

There's a lot more to the Urban Communities Program than teaching law students and others how to cut red tape. As Lento pointed out earlier this year, among the accomplishments for the Program within the past year, it:

- **Served as lead attorney on three Lower Income Housing Tax Credit (LIHTC) projects which have total development costs of $18 million.**
- **Helped to bring the first manufactured housing to Detroit.**
- **Assisted with policy development on affordable housing programs such as HOME and LIHTC administered by the city and state.**
- **Led the way for a nonprofit organization to establish a for-profit subsidiary that could qualify for government housing construction aid.**

BELOW: *An ornamental fisherman watches over one of the canals that threads through the Creekside area of Detroit. Beyond the canal runs a city street lined with the kind of solid homes built in the community during the first third of this century. Working with citizens in the community has given Law School students the opportunity to work on parkland preservation, community organization, environmental problems and other issues.*

The complexities of the kinds of projects that the clinic deals with are graphically displayed across one wall of Lento's spartan office in downtown Detroit. A hand-drawn, 66-point check list for a closing gives students a bird's-eye view of what is involved.

Such attention to the details has stood Lento in good stead since she became the Program's first director in 1990. A former aide to Detroit City Council President Mary Ann Mahaffey, Lento is known for her energy and commitment to mastering the separate pieces that fuse into a successful project. She also devotes a good deal of time to fundraising. The Program only is partially supported by Law School funds and the remaining $250,000 must be raised each year through a mix of gifts and grants.

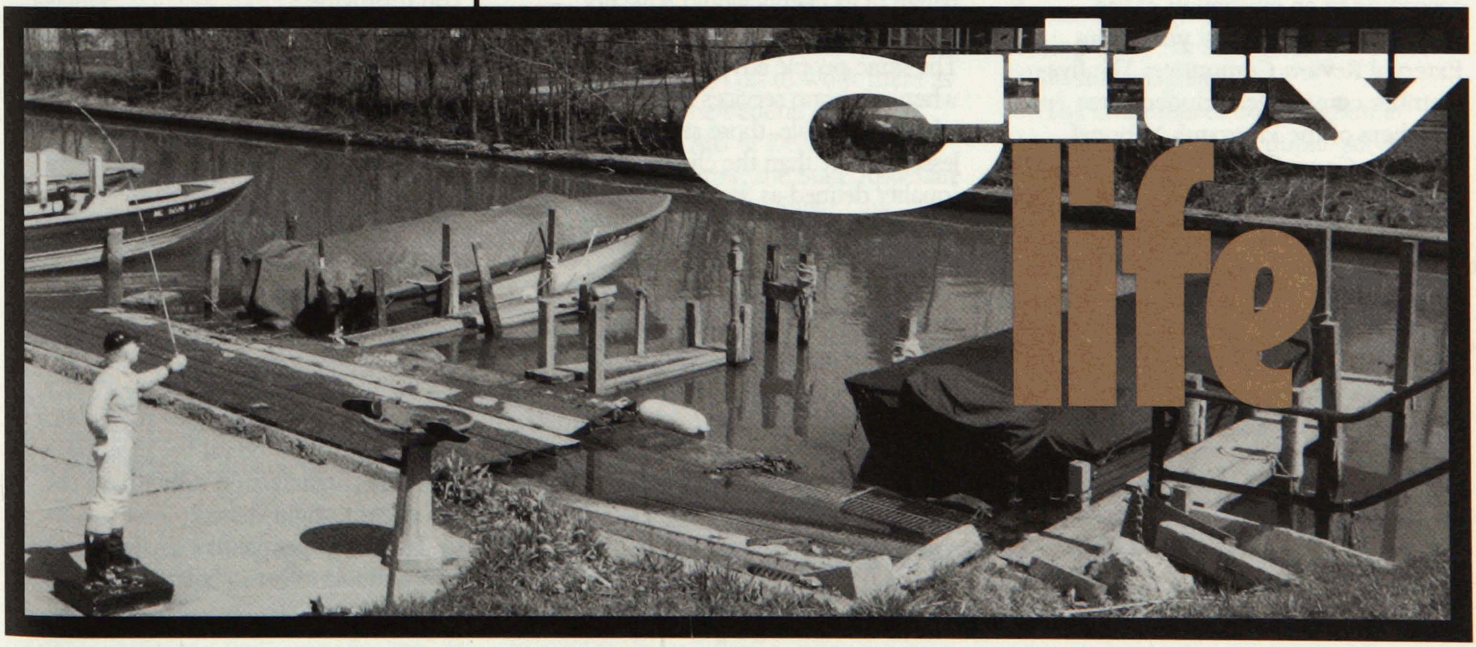
The returns are many fold. Community development corporations working with the clinic will account for nearly $100 million in construction this year, according to a clinic report last spring. Subsidies will total more than $10 million. By last April, 30 housing units had been completed and 92 were under construction. More than 1,300 were in pre-development, or planning stages.

Then-Professor of Law Jeffrey S. Lehman, '81, hoped for this kind of impact back in 1988 when he and others began working with law students to address the issues of poverty law. "Low-income citizens want more from life than to be maintained as dependents of government agencies," said Lehman, now Dean of the Law School.

Lehman saw the new program as a way to inject the University "directly into the center of a complex social problem. We see organizations that have the potential to provide substantial 'spill-over' benefits to their communities. But to succeed, those organizations need access to a scarce, sophisticated and expensive legal 'technology.' The program relies on students to make that technology available."

Lento was hired in 1990 and has directed the Program from the beginning. Clinical Assistant Professor of Law Melissa Worden, '94, joined Lento in 1996 to help supervise students and their work in the clinic. Worden knows the Program well: she worked in it for two semesters as a law student.

"During the 1990-91 academic year, students at the University of Michigan Law School enrolled for the first time in 'The Program in Legal Assistance for Urban Communities,'" Lento and Lehman wrote shortly after the clinic opened ("Law School Support for Community-Based Economic Development in Low-Income Urban Neighborhoods," 42 *Journal of Urban and Contemporary Law* 65-84). "The Urban Communities Program differs from other classroom educational experiences at Michigan because it involves actual clients. It differs from other clinical educational experiences at Michigan



city life

because clients are community-based organizations rather than individuals, the mode of legal practice is primarily transactional rather than dispute-oriented, and the legal issues primarily concern business and community development."

Lehman and Lento were aware of social scientists' research on low-income urban neighborhoods and "concerned that the relationship between university and community not degenerate into one of scientist and specimen.

"We wanted to find a way for the University in general, and the Law School in particular, to be a constructive participant in the process of community transformation and redevelopment. And we thought the key might lie in the School's ability to award academic credit to students who are educated in the process of providing services at no charge to community-based organizations."

Since its hopeful beginning, the Program has come to rank "among the best clinical law school programs nationally in affordable housing and community economic development" and "presents an impressive pedagogical and public service initiative in its own right," according to an evaluation of the Program conducted last year by an External Review Committee. The five-member committee included three members of the Program's National Advisory Council: John Charles Boger, Associate Dean for Academic Affairs and Professor of Law at the University of North Carolina at Chapel Hill; Marilyn Mullane, staff attorney at Michigan Legal Services; and Peter Pitegoff, Professor of Law at the State University of New York at Buffalo. The other committee members were: Donald F. Baty, Jr., '85, senior partner at Honigman Miller Schwartz and Cohn of Detroit; and Robert Solomon, Clinical Professor at Yale Law School.

The committee found that Detroit city officials, clients and students all gave the Program high marks. Students in the Program receive a solid learning experience, the quality of the legal work that clients receive equals or exceeds what they would get privately, the standing of the Program within the city is very high and the service that it provides to Detroit and its citizens and the students of the University of Michigan Law School is significant, the committee concluded.

"While the public service virtues of this program are self evident, it is worth noting two points," the committee said. "First, while our student sample was small [15 students], a majority of the students we interviewed emphasized that their participation in the Program demonstrated to them the opportunity to provide pro bono legal services after graduation. All of the students expressing this view entered the clinic with the assumption that they would not have such an opportunity in their future careers.

Second, every person we interviewed, including clients, TA [technical assistance] providers, attorneys and city employees, told us that most and possibly all of the transactions completed by the Program on behalf of its clients would have not occurred but for the Program's existence. The same people advised us that even when pro bono services are available, taken as a whole, those services are of a lesser quality than the clinic's services (quality defined as including the time, patience and availability of clinic students and faculty)."

"There is an additional intangible factor," the committee continued. "The Program has become an important player in the development of affordable housing in Detroit. Clients take pride in the fact that their legal counsel (the Program) is treated with great respect by other players, particularly city officials. In the words of the Program Director for the Detroit office of LISC — the Local Initiatives Support Corporation, a national TA provider and finance broker for nonprofit community development corporations — the Program is 'very much a key component in the revitalization of the City;' and 'You [the University] cannot make a better investment than what you are doing right now.'

"Students can see that respect, as well as the passion that faculty put into their work. As a result, students see that they are part of something important and that their work makes a difference. Not only do they work hard on their projects, but often continue on projects after the conclusion of the course, because, as one client put it, 'They put their heart and soul into it.'"

For Tom Ensign, who now practices law in Washington, D.C., the Program in Legal Assistance to Urban Communities introduced him to parts of Detroit he had not known, changed his view of the city, and offered him the blend of experience and faculty supervision that neither strict classroom work nor full time employment could provide.

"The advantage to me is that it allows me to apply what I'm learning in a classroom environment," he says. "When you're reading a case out of your text it could become just about meaningless. . . . Here, you learn the projects that are real world projects, work with real world people, deal with real world issues. That's been the positive thing for me.

"I think the positive thing for the community is that having attorneys — people with legal education — is very expensive. There are issues and battles that wouldn't be fought because the nonprofit organization didn't have the resources to fight them."

Thanks to people like Ensign and the Law School's effort to balance the scales, they don't have to.

Law School students work in Detroit in a variety of ways in addition to the School's Program in Legal Assistance for Urban Communities. During new student orientation, for example, students regularly visit Detroit to work on projects for Habitat for Humanity, as students shown here did last Fall.

SPECIAL FEATURE

An 'exciting, vibrant and legally challenging' place

Robert Precht, Director of the Law School's Office of Public Service, sees Detroit as an "exciting, vibrant and legally challenging" place. Just the kind of place, he believes, that law students will find both enjoyable and stimulating to work.

And he'd like to see more law students do just that — while they're still students.

"My feeling is that Detroit has been historically an underutilized resource by the University of Michigan," he says. It is Michigan's largest, most complex urban center. It has most of the pluses and minuses of all big U.S. cities, but it also has some very distinctive benefits: its economic importance as the birthplace of the American automobile industry, its river border with Canada, its racially and culturally diverse and dynamic population, and its historical ties with the labor and civil rights movements.

The sum of those parts makes the city a significant laboratory for legal learning and a satisfying site for public service work, Precht says. Last Spring, his office helped students sign on to work there as volunteers with the Federal Defender's Office, the Legal Aid & Defender Association of Detroit, the State Appellate Defender Office and the Sugar Law Center for Economic and Social Justice.

In addition, Precht and the Public Service Office supported Steve Tobocman, '97, in his successful bid to win a Skadden Fellowship to pursue public interst work in Detroit. Tobocman is working with Detroit agencies through Michigan Legal Services.

Tobocman, who graduated last May with a dual degree in law and public policy, did 900 hours of volunteer work with the Southwest Detroit Business Association before graduating. He also worked with clients in the Corktown and core city areas through the Law School's Program in Legal Assistance to Urban Communities.

"My goal is to service the legal needs of community groups doing economic development," he says of his Skadden Fellowship placement.

"The emphasis of our program is service and inculcating public service values which we hope will encourage Michigan students to fulfill unmet legal needs," Precht says.

"Hopefully they will get in the habit of doing service work while they are in law school. Many lawyers are starved for meaning and public service is one of the best ways for lawyers to discover the meaning of their profession."

Keeping the President

on the Fast Track

— BY JOHN H. JACKSON

The following essay is an excerpt adapted from The World Trading System: Law and Policy of International Economic Relations, Second Edition, *being published in fall 1997 by the MIT Press. It is printed here with permission.*

Imagine you are a congressman, and the president comes to you and says he needs authority to negotiate with foreign nations for the reduction of nontariff measures (NTMs) which are restricting trade. The tariff problem, although not extinguished, has been largely resolved by multiple rounds of GATT negotiations, but now NTMs are proving damaging to the principles of comparative advantage and to world welfare. The president would like advance authority for NTM negotiations along the pattern of the traditional tariff authority. The problem is that nontariff measures reach deeply into the interstices of domestic policy and regulations. The Congress has fought lengthy battles on many such issues, including environmental standards, product liability and purity requirements for medicines. The Congress does not relish the prospect of a president changing all its work through the implementation of international agreements. So you advise the president to negotiate all he wants, but to bring back for congressional approval any agreements he completes.

The president's answer is that such a procedure is not acceptable to foreign governments, who see it as a way for U.S. negotiators to get "two bites of the apple." The negotiators and their political superiors spend "political chips" by the compromises necessary to obtain an international agreement. These will cost governments some loss of votes in the next elections, but will be worth it if they can demonstrate that some advantage will ensue from the agreement. But when the delicately balanced draft agreement is submitted to Congress (or to other parliaments), then it can all come unraveled, as those bodies find clauses objectionable or feel their negotiators should have obtained more. Major portions of the results of the Kennedy Round of GATT trade negotiations were never approved by the U.S. Congress, and foreign officials remember this. They also remember the history of congressional refusal to approve the ITO and the OTC.

What should one do? Some sort of middle way must be sought. This was the thinking of the drafters in the early 1970s as they prepared the bill that finally became the 1974 Trade Act. One idea was to turn to a procedure that had a long but controversial history in the United States — the legislative veto. This procedure basically called for the president to establish an order, regulations, or international draft agreement; submit that to the Congress; and if the Congress did not — within a specified time by a specified majority — disapprove the measure, it came into effect and became valid law. But, although many foreign governments, and a number of state governments in the United States, have used the legislative veto, the constitutional doctrine of "separation of powers" has been used to argue against it.

Early drafts of the 1974 legislation provided a fairly elaborate legislative veto provision as a way to resolve the apparent dilemma of the need for U.S. NTM negotiating credibility — that is, a procedure that improved the chance that U.S. officials could "deliver" on a commitment to accept an international agreement, while not giving the president a "blank check." Under this draft procedure, the president, before final completion of a draft international agreement, would consult with the Congress, and be partly guided by their views of the draft agreement in progress. Then, when the draft agreement was completed, he would prepare proposed legislation to approve and

implement it which, if the legislation was not disapproved by the Congress, would become law.

The House of Representatives accepted this procedure, but when it went to the Senate, the political atmosphere was different. The Watergate scandal had recently been uncovered, and the Senate Finance Committee was reluctant to approve delegations of authority to a president under such a cloud. (In fact, the bill did not make much progress until after President Nixon resigned and President Ford took office.) Even though there were other legislative veto procedures which were not challenged, the one relating to nontariff measures was too significant. Consequently, the Senate committee drafted an alternative that became law, and this has been termed the "fast-track" procedure.

The fast-track procedure for approval of the results of international negotiations on nontariff measures was an attempt to retain the essential features of the legislative veto. In addition to the consultation requirement, the fast-track provided three essential rules:

- A bill, when introduced, would not be amendable;
- Committees to which the bill was referred would be required to report out the bill within a short period of time; and
- Debate over the bill in both Houses was limited.

These rules were not statutory; however, they were included in the rules of each House of Congress, and were subject to change through parliamentary procedure that excluded the president. Thus, the procedures were not quite so stable as a statutory "legislative veto" would have been.

It should be noted that this procedure is constitutionally the same as that of adopting a statute. Further, if a statute is adopted, the statute itself cures most conceivable departures from the fast-track procedure. For example, if the proposed bill were to go beyond the scope of subject matter contemplated in the fast-track procedure, but the Congress were to adopt it anyway (and the president were to sign it), then the statute would be valid because the Constitution would be fulfilled and the deviance would be "cured."

The fast-track procedure worked very well during the 1979 enactment of approval and implementation of the Tokyo Round results. Surprisingly, the relevant congressional committees developed a procedure for the consultation period, under which those committees played a role very similar to their role in normal legislation, with "non-mark up," and a "nonconference" to reconcile differences between the House and the Senate. These committees and the lawyers for the Congress actually developed the draft legislation, which they wanted the president to introduce for the fast-track procedure. The president's bill was almost identical to the bill developed by the Congress, and partly for this reason the bill was adopted by an astounding 395 to 7 in the House, and 90 to 4 in the Senate.

Subsequently, in 1983 the U.S. Supreme Court, in the case INS *v. Chadha*, held that a legislative veto procedure was not permissible under the U.S. Constitution. Fortunately, the trade act fast-track procedure was not threatened. Certain other trade act "vetoes," however, were subsequently changed because of this case. The fast-track procedure has in fact been suggested as a plausible alternative to legislative vetoes in other types of statutes.

The trade act fast-track procedure, like the tariff authority, however, has a duration limit. Satisfaction with the procedure led the Congress in the 1979 act to extend the original time of expiry from 5 January 1980 to 5 January 1988. This procedure was considered so important that in 1986, at the beginning of negotiations between Canada and the U.S. for a free trade area, Canada insisted on the fast-track application for the negotiation results. Subsequently, other nations have expressed similar views.

The 1988 Omnibus Trade and Competitiveness Act renewed the fast-track procedure for possible use in the Uruguay Round, and also in the NAFTA negotiations. It was clear that this procedure was deemed essential by foreign negotiating partners in both of those negotiations. Indeed, the deadline for the Uruguay Round fast-track motivated the negotiation deadline throughout the Uruguay Round. When the 1990 ministerial meeting scheduled to finish the Uruguay Round failed, a special procedure for extending the deadline of the fast-track was necessary (and accomplished during 1991). This fast-track then was scheduled to expire in 1993, but the newly elected Clinton administration was not prepared to move so quickly, and thus the fast-track was extended again, its final deadline requiring that an agreement be signed by 15 April 1994, and indeed that was the date of signature at Marrakesh. There is much debate about whether the fast-track should or will be used again, but it appears quite clear that it will be an essential ingredient of future trade negotiations.

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The virtue of SPEED

— BY JAMES J. WHITE

The following essay is based on testimony presented before the Bankruptcy Commission in May 1997 in Washington, D.C.

Today I address a single problem associated with Chapter 11 and propose alternative changes in Chapter 11 that might alleviate the problem. There are many ways to criticize the substance of Chapter 11 and the procedure embedded in it. Others will argue today that several of the proposed changes before this Commission are unwise. I leave those specific issues to them; I direct my attention to a change that would alleviate many of the other substantive problems with Chapter 11.

In my opinion the principal difficulty with Chapter 11 is not that it unfairly favors one group or that the priorities which it establishes are misguided. In my opinion the principal difficulty with Chapter 11 is that it gives strong incentives to various Chapter 11 players to distort the priorities that were intended by Congress.

It is wrong to think of Chapter 11's as principally judicial proceedings. A drawn out Chapter 11 proceeding is best regarded as a beehive of non-judicial activity in which each bee is attempting to seize some part of the available wealth for itself in ways that are often contrary to the priorities set down by Congress in the Bankruptcy Code. Managers (who may have run the business into the ground) profit from keeping the business on life support in Chapter 11 by being paid salary out of assets that would otherwise go to prepetition creditors. Shareholders and unsecured creditors whose claims appear to be under water preserve the possibility, however slim, of some return in a future reorganization by keeping a Chapter 11 alive. Professionals hired by the estate — lawyers, accountants, investment bankers and others — charge by the hour and so may have the strongest incentives to keep the Chapter 11 going.

By comparison with an efficient and expeditious process, the current Chapter 11 is both costly and unfaithful to Congress' mandate. The additional amounts paid to lawyers, accountants and others to get a result that could have been achieved in shorter time and with lower fees are dead-weight losses. Lingering in bankruptcy doubtless engenders much larger indirect costs, costs that are hard to measure but still palpable. These are the costs of business decisions not made and of other sub-optimal business choices that always occur when a business is under court supervision and subject to the control of warring factions.

Apart from the costs of a continuing Chapter 11, there is also a reallocation of resources among the players in what is often a zero-sum game. If, for example, a business liquidates after lingering in Chapter 11, money that otherwise would and should go to existing creditors will be diverted into the hands of the managers. If a plausible threat of even greater delay can be made by the

in bankruptcy proceedings

shareholders, they too may be able to cadge a distribution from the creditors' purse. Similar stories can be told about other postpetition creditors.

These additional direct and indirect costs and these opportunities for reallocation of one person's asset to another's pocket all rise more or less in parallel with the time spent in Chapter 11. The longer the Chapter 11, the greater the direct costs. The longer the Chapter 11, the greater the indirect costs. The longer the Chapter 11, the greater the opportunities for redirection of finite assets from the pocketbooks of creditors to the pocketbooks of managers, professionals, shareholders, and others.

I argue that much of the direct costs, a large part of the indirect costs of Chapter 11 and most of the perversion of the priorities could be avoided by speeding up the process.

At least on the surface, a proposal for speeding up Chapter 11 should be non-controversial. There is no plausible public support for delay. Those who argue that a firm should have an extended period to "reorganize" — that there is a statutory right to wait until the next upturn in the economic cycle — are surely wrong. Nothing in Chapter 11 or its predecessors suggest that a debtor should have a long time to reorganize when a quick reorganization could be achieved by greater effort and by the application of sterner measures. Some cases — those involving mass torts may be examples — may call for a longer period, but those are the exceptions.

CHAPTER 11

In my opinion the principal difficulty with Chapter 11 is that it gives strong incentives to various Chapter 11 players to distort the priorities that were intended by Congress.

Of course, the absence of public support for delay does not foreclose cynical and private support for delay. Every person who profits from the continuation of a Chapter 11 has some incentive to keep it going, even where the continuation perverts the distribution scheme. Privately, therefore, managers, shareholders, unsecured creditors, and professionals who are paid according to time spent have a selfish interest in delay at least to the extent there are assets available that will be taken from others and given to them.

Because the current law gives a substantial incentive to the managers and their agents to prolong the bankruptcy, the Commission should be skeptical about their indorsement of the status quo. As I have suggested in print, to ask Harvey Miller to attack Chapter 11 is like asking Itzhak Perlman to burn his violin. The most successful and renowned bankruptcy lawyers' virtuoso status depends upon manipulation of a complex Chapter 11; they cannot be objective analysts of its vices and virtues. A similar claim might also be made

concerning bankruptcy judges' objectivity who, but for the intricate legal issues in Chapter 11, would be condemned to live on an intellectual dunghill. I recognize, therefore, that there may be substantial silent — even unconscious — support for maintaining an elaborate and lengthy proceeding among the professionals associated with the process. I believe that this support should be challenged as potentially self-interested and motivated by incentives that the players will not acknowledge in public and may not admit to themselves.

Assume with me that Congress did not intend that Chapter 11 proceedings drag on in the hope that the economy or some newfound insight might save the firm. Assume that Congress intended that Chapter 11's proceed as rapidly as possible. Assume, too, that it is almost always in the interest of some of the parties (perhaps the unsecured creditors, perhaps the priority creditors, perhaps the shareholders, and assuredly the professionals), that the Chapter 11 proceeding be drawn out. How then can Chapter 11 practice be made to conform to Chapter 11 theory?

The most obvious but not necessarily the most efficacious attack upon delay is to modify the time limits in Section 1121. That is what the Congress did in 1994 when it established shorter dates for small business bankruptcies. The periods in Section 1121 can be and often are extended by judges who are sympathetic to pleas for more time. A simple change in the exclusivity period may be effective if the judge listens carefully and takes a firm hand, but if the judge is sympathetic to the pleas of the debtor or is busy with other things, shortening the times in Section 1121 may have little impact, for they do not change the incentives of the parties.

Successful modification of the system will require alteration of the incentives of the managers, shareholders, creditors, and their agents. Consider three possibilities, among many, that might alter those incentives.

First is the possibility of replacing the debtor in possession with a trustee. Mr. Sigal has made this suggestion, as have others, such as Professor Adams. This, too, is the French process and, of course, prior to the adoption of the Bankruptcy Reform Act in 1978 that was the invariable procedure in Chapter X.

Contrary to the assumption of the Bankruptcy Commission of the 1970s, the argument for ousting management does not depend on the proposition that the trustee will better operate the business than the existing management — though that might be the case. The trustee is a ghost, a threat; he could haunt the dreams of the managers. The statutory authorization of a trustee is the ever present reminder to management they may lose their position if they file Chapter 11, and having filed Chapter 11, that they may at any time be replaced and so lose their continuing salaries and other perquisites. In its conclusion that a trustee could not operate the business as effectively as existing management, the Congress overlooked the fact that the threat of management's removal might have a stronger effect upon the Chapter 11 than their actual removal and replacement. How many firms would have steered clear of bankruptcy entirely or alternatively would have passed directly to Chapter 7 where they belong, had management been assured that it would be ousted upon the filing? How many would have come to a speedy conclusion with new incentives?

The possibility of a trustee also has implications for the professionals who advise the debtor in possession. Presumably a trustee will bring his own lawyer, his own accountant, and other professionals. At minimum the new trustee will not be beholden to the existing professionals.

The threat of a trustee should have salutary effects on the managers of a firm contemplating or in bankruptcy and because the managers have greater control of the firm than any others, the threat of a trustee may have the largest and most salutary effect on the incentives of the players in Chapter 11. There are many ways to draft a provision for a trustee. In my view, the stronger the threat, the better the incentive. The barriers to the appointment of a trustee should not be high.

A second possibility for modifying the incentives of the various parties would be to amend section 507 (b). That provision now reads in part as follows:

"If the trustee . . . provided adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a) (1) of this section arising from the stay of action against such property . . . then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection."

In effect, the provision assures that certain secured creditors (who have been provided "adequate" protection that proves not to be adequate) will be treated as first priority claimants and will so prime not only prepetition unsecured creditors, but many postpetition creditors as well. Section 507 (b) could be modified to read as follows:

"A secured creditor shall have a claim under section 507 (a) (1) with priority over every other claim allowable under that subsection. That claim shall equal the difference between (i) the value of the secured creditor's collateral that would have been available to it at the filing of the petition and (ii) the value of the collateral made available to it during or upon the conclusion of the bankruptcy proceeding, less the value of any amounts transferred to that creditor as adequate protection."

This proposal would allow a secured creditor to have a priority claim to the extent of the decrease in value of its collateral or for the loss arising from disposition of that collateral during the pendency of the bankruptcy. Because the money would ultimately come out of the pockets of pre- and postpetition unsecured creditors — including the pockets of other administrative expense claimants — all of those persons would find their own interests aligned with the interests of secured creditors.

I am aware that a provision of the kind I suggest will make some professionals squeal like pigs stuck under a wire fence. They will argue that no

CHAPTER 11

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debtor will be able to hire a lawyer or accountant unless that person can be assured of receiving payment ahead of secured creditors to the extent there are free assets. I am skeptical of the accuracy of those assertions and, in any case, unmoved. In my view, the solution for the prospective administrative claimant is to insure a speedy resolution of the Chapter 11 or a quick conversion to Chapter 7 so that the available collateral is not dissipated.

A third possibility is to amend Section 361 to reverse that part of *Timbers of Inwood Forest, Ltd.*, 484 U.S. 365 (1988), that denies lost opportunity costs. Some, I among them, would argue that the courts in general and the Supreme Court in particular have not been true to the promises made to the secured creditors in Section 361 and in the 1978 Senate Report under 361. That section promises the "indubitable equivalent" (and the Report buttresses that promise), but after *Timbers* the section does not deliver indubitable equivalence. Secured creditors in the LTV bankruptcy that commenced in July 1986 and concluded in May 1993 were deprived of interest for the entire period, an amount that might have doubled their money. If secured creditors were assured of a proper return on the value of their collateral (after the time when they would have been able to liquidate that collateral but for the bankruptcy), we might find the unsecured creditors, shareholders — and possibly even the professionals — aligned with secured creditors in wishing for a hasty resolution of a Chapter 11.

I am certain there are other more clever ways in which the parts of Chapter 11 — particularly the administrative powers and the priority provisions in Chapters 3 and 5 — can be manipulated to modify the incentives of the players in the Chapter 11 game. I invite you to think of those and to consider them, too.

I leave you with two points. First, the Commission should devote careful thought to the question of how Chapter 11's can be speeded either to a successful plan or to a quick conversion to Chapter 7. Speed is an antidote to many of the substantive ills in Chapter 11. That speed will benefit not only secured creditors, but unsecured creditors as well. It will reduce costs and will foreclose distortions of the bankruptcy priority scheme in long-running Chapter 11's where managers, shareholders and postpetition creditors take payments that should go to others.

Second, the speed of Chapter 11's will quicken only if the proper incentives are given to the players in Chapter 11 proceedings — to the bees in the beehive. It is not enough to modify the times in Section 1121 or otherwise to depend upon a busy judge to insure that things occur on time. Far better to give the proper incentives to the managers, professionals, secured and unsecured creditors. I indorse the possibility of shortening the period in Section 1121, but I think it better to alter Section 507 (b), reverse *Timbers*, and to set up a trustee as threat to existing management.

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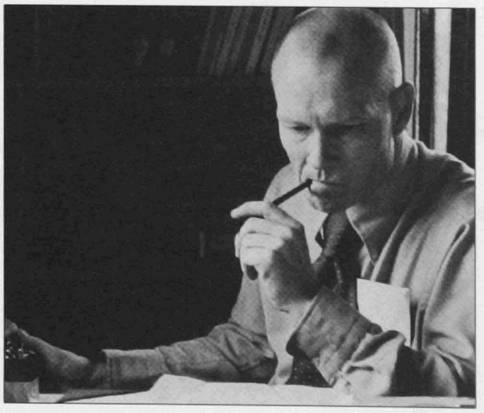
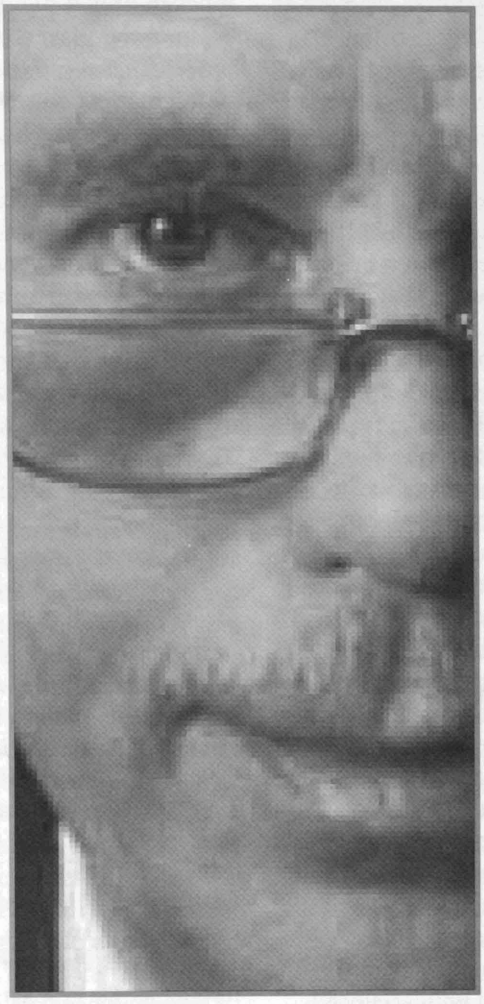


VÁCLAV HAVEL



and the Velvet Divorce

Almost five years have passed since the breakup of Czecho Slovakia on Dec. 31, 1992. It may not be too early to start the process of appraising the role played by Václav Havel in the Czech-Slovak constitutional negotiations that ended in the dismantling of the state. While most records of the last crucial phase are not available as yet, some direct participants are prepared to talk about their experience. Moreover, because the time elapsed is relatively short, the historic reality of the outcome has not settled so firmly as to make difficult a consideration of alternative choices of conduct that might have been available at critical stages of the negotiations.

— BY ERIC STEIN

The following essay is based on the book, Czecho/Slovakia: Ethnic Conflict, Constitutional Fissure, Negotiated Breakup, *recently published by University of Michigan Press, © 1997. Publication is by permission.*

With great personal courage he was able to confront the Communist regime, and after its collapse, to articulate artfully the ideals and ills of his evolving new society and of modern democracy in general.

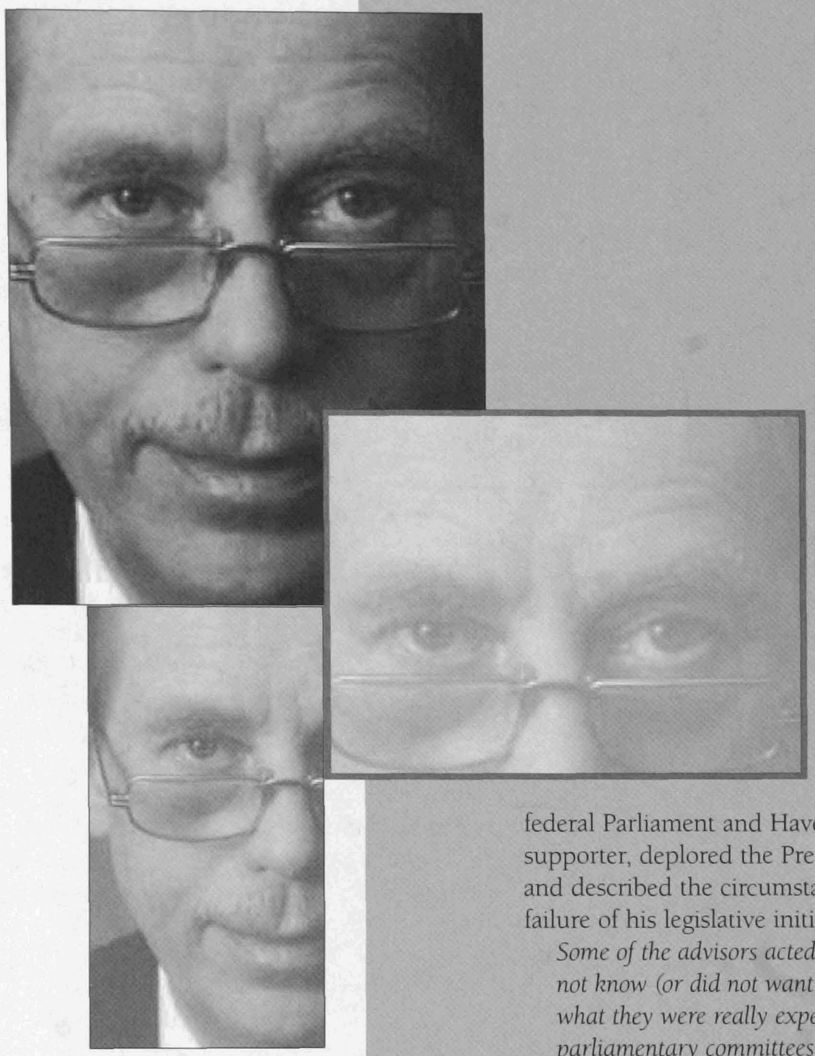
Havel's position as the last federal President bristled with paradoxes relating both to his persona and to his political activities. His performance — and his writings — disclose a deep ambiguity toward power. As a product of the Czech bourgeoisie who enjoys the small pleasures of the "little Czech man," and as an artist at heart, he denies "any desire for power or love of it," and is horrified by its temptations, according to author Marián Leško. Yet power holds a fascination for him, a gate to a great adventure in which a simple lad of the Czech folktale becomes a powerful king. Yet again, during a University ceremony at which he was given an honorary degree, he confessed to expecting at any moment one of the familiar men from Kafka's "castle" to enter, wrench his freshly acquired diploma from his hand and evict him from the aula as an impostor. Although he appears from the outside as the very "antipode" of Josef K., his sense of non-belonging and self doubt is, he suggests, the motor propelling him into the most unlikely exploits such as the Presidency. Yet again — and finally — this alienated modern intellectual believes strongly in a transcendental Being as a measure of all human values and individual responsibility; any societal change, in his view, must come from within the individual.

With great personal courage he was able to confront the Communist regime, and after its collapse, to articulate artfully the ideals and ills of his evolving new society and of modern democracy in general. He emerged after 1989 with great prestige, but with the sole experience of a dissident totally excluded from the public political process, confined to the world of samizdats, secret get-togethers of kindred souls, seminars and theatrical happenings in private apartments, all under the ubiquitous eye of the Big Brother, and in the end — a prison cell. He has described this pitiful caricature of "public life" as "anti" or "non-political politics" which allowed him to preserve his personal integrity but did not prepare him for high office in a democracy.

His critics have charged — and he has vehemently denied — that he consciously continued to adhere to the "non-political politics" in his new environment because of his aversion, on moral gounds, to the normal give-and-take of the political process. Again, Havel's critics point to his public pronouncements evidencing a degree of diffidence toward traditional political parties, which he has explained by the experience in the First Republic where the ruling political parties, with their own press, labor unions, cooperatives, sport and education facilities, exerted excessive influence over the life of the country. This posture, it is said with some justification, must have inspired the 1990 election slogan "parties are for partisans, the Civic Forum is for all." He was a founder of the Civic Forum, a dominant political force after 1989.

There has been little comment on the way in which Havel orchestrated the first phase of the negotiations for a new federal constitution, starting with his meeting in a Prague pub with Slovak Prime Minister Vladimír Mečiar and extending over the many peregrinations "from castles to manors" in 1990 and early 1991. In the nominally tripartite negotiations (the spokesmen of the federal and of the two component Republics) the "federals" and the Czechs tended toward common positions as against the Slovaks; Havel, as a high federal organ and a Czech could not be disassociated from one of the parties. He is blamed in the first place, for having promised Mečiar a re-allocation of competences between the federation and the Republics to be enacted promptly in advance of the new constitution because, it is said, he could not conceive that a parliament, elected under the Communist regime, could frame a democratic constitution. With his influence at its peak, he might have been able to force an agreement on a full constitution at that time. However, he was not given enough time to acquire the indispensable skills of working with the fragile, groping institutions which were the ultimate arbiters of the constitutional issues, or to strike out on an extra-constitutional route. He never succeeded in forming a good working relationship with Alexander Dubček, the Slovak leader of the 1968 Communist reform movement and the kindly, but not very effective, Chairman of the Federal Assembly, or with its important committees. As his staff, Havel brought with him to "the Castle" people whom he met primarily as dissident journalists, artists and musicians, who shared his beliefs and excelled in their dedication and enthusiasm rather than in competence for governmental affairs. Yet, if one listens to his first Chancellor, persons with the needed background and training were simply not available, particularly if "the ruling circles" of the old regime were to be excluded. Havel remains fiercely loyal to his "old time friends" and collaborators and — as President of the independent Czech Republic since January 1993 — promotes them to positions for which, at times, they are not suited.

When he first came into federal office, Havel was impressed by "the unusually extensive powers of the President, almost as extensive as in the so-called presidential system" and he felt that in a new constitution "the power of the President could still be somewhat weakened." Not long thereafter, however, when in the course of his learning process he became aware of the increasing divisions in the Parliament and of the serious threat of an unresolvable deadlock due to the unworkability of the prevailing Communist Constitution, he proposed a series of legislative measures including a bill for increasing his powers. With one exception, all of these proposals failed of adoption. Heřman Chromý, a former deputy in the



In July 1992, minutes after the Slovak Parliament adopted the so-called Declaration of Sovereignty of the Slovak Republic, admittedly a purely symbolic gesture, Havel resigned from his office. He was accused of "having left the sinking ship" and thereby hastened the breakup of the state because he had already accepted it as inevitable and wished to avoid being placed in a position that might compromise his chances for election to the presidency of the new Czech state.

federal Parliament and Havel's ardent supporter, deplored the President's isolation and described the circumstances of the failure of his legislative initiative:

> *Some of the advisors acted as if they did not know (or did not want to know), what they were really expected to defend in parliamentary committees . . . . The high distinction and erudition of Professor Klokočka (a Czech emigré law professor at the University of Munich and a consultant to the President) were for a number of deputies . . . unintelligible talk. Most of the deputies shunned his seminars on . . . the premises of the Parliament.*

When the negotiations under the President's patronage ran into the ground and the representatives of the two Republic Parliaments took over, Havel continued to "intervene" at the margin. Concerned about the lack of progress in the talks between the parliamentarians, Havel offered his own draft of a federal constitution and, in November 1991, proposed that the Czech side accept the Slovak demands on the deadlocked formal issues relating to the parties and legal nature of a treaty to be concluded by the two component Republics as a new foundation of the common state. The Czech side, however, almost unanimously recoiled against this suggestion with varying degrees of sincere or feigned horror.

Finally, in November 1991, when another series of his constitutional proposals was in dire distress in the Federal Assembly, Havel decided to appeal to the citizens over the heads of the parliamentarians. He was encouraged to take this risky route by more than two million signatures (mostly Czech) on a petition urging the preservation of the common state. Some thousands of Prague citizens responded in a manifestation at the historic Václavské Square. It was perhaps at this point that the President had to decide whether to come out openly in support of a looser, "confederate" structure of the state demanded by the Slovak negotiators. Such a move would have brought him into a direct confrontation with the newly emerging Czech team lead by Václav Klaus. Shortly after the first mass meeting, Havel declared that there was no need for further demonstrations, leaving behind a feeling of disappointment and — more important — an irritated Parliament, which then proceeded to defeat again his proposals for breaking the constitutional logjam. With the bulk of the Czech population more or less indifferent and the Slovaks generally distrustful of him, it is not at all clear what would have happened if Havel had decided to continue his campaign for popular support.

When the President ran for reelection in the summer of 1992 he was repeatedly defeated in the Federal Assembly by the Slovak vote. His relationship with Slovakia was not an easy one. His original eight advisors included only one Slovak, who left after six months. At the outset, Havel was no less ignorant of the Slovak situation than any other Czech intellectual and no less surprised at the outburst of Slovak nationalist rhetoric during the early parliamentary debate on the new name for the federation. On one of his visits to Bratislava he was forcibly prevented from speaking by Slovak separatists. More important, he earned the undying hostility of the Slovak Prime Minister Mečiar, first, because he was said to have opposed Mečiar's appointment to a high federal office, then because of the alleged involvement of "the Castle" in Mečiar's "first" removal from the office of Slovak

Prime Minister, and finally because in his appeal before the 1992 elections he abjured the voters by clear implication from voting for Mečiar's new party, which nevertheless received the highest number of votes in Slovakia. Mečiar, "who never forgets or forgives," tried to use Havel's office as a bargaining chip with Václav Klaus, by then leader of the strongest Czech party and his negotiating protagonist, but Klaus refused.

In July 1992, minutes after the Slovak Parliament adopted the so-called Declaration of Sovereignty of the Slovak Republic, admittedly a purely symbolic gesture, Havel resigned from his office. He was accused of "having left the sinking ship" and thereby hastened the breakup of the state because he had already accepted it as inevitable and wished to avoid being placed in a position that might compromise his chances for election to the presidency of the new Czech state. Yet under the circumstances his withdrawal a few weeks before the expiration of his term appeared understandable. This, many of his friends thought, marked the end of the politician and the rebirth of the artist. However, after a period of "summer meditations" in his country cottage, private citizen Havel plunged into energetic consultations with both the new coalition parties and the opposition on the left. He sought to facilitate the passage of the constitutional legislation on the termination of the state in the deadlocked federal Parliament, at one point briefly suggesting an extra-constitutional procedure, not to save the common state but to end it quickly and peacefully. With that objective in mind, he abandoned his earlier commitment to both the common state and to a national referendum.

At the same time, he intervened actively and with limited success in the ongoing negotiations for a new Czech Constitution, often airing the views of the opposition. Contrary to the position of Klaus' party, he advocated a direct election of the Czech President by the people in order to strengthen the authority of that office. His view did not prevail, but he carefully avoided an open confrontation. Having decided to run for the Czech Presidency, he was well aware that Klaus' support was essential. In January 1993, he was in fact elected President of the newly independent Czech Republic by a large majority of the Czech Parliament.

Although sincerely dedicated to the preservation of the Czech-Slovak state, Havel was unable to sustain that objective. This, however, is only one perspective from which to view his role. His is a moving story of a courageous struggle to preserve personal integrity under the Communist regime, learning and adapting with some difficulty and mixed success to the post-Communist world, of living with internal conflicts, of coming to terms with his own limitations, of making difficult judgments of "the reality" calling for often distasteful compromises.

One might think about a parallel with Abraham Lincoln, the consummate lawyer-politician. Could Havel have done more to uphold the "union"? Lincoln acted from a solid political base established by his party's victory in the national elections of 1860. Havel's great prestige was reduced by a series of failed initiatives and missteps in Slovakia, and his influence was gravely impaired by the 1992 elections, which swept most of his supporters from the political scene. Lincoln seized on a compelling idea, the necessity to salvage the novel American experiment in governance, the federal republic, "the city on the hill" of the early tradition, beckoning the people longing for freedom everywhere. He employed this theme, buttressed subsequently by the call for the abolition of slavery, with great skill. Havel, with no experience in politics, had no program of comparable potency, no nationally based political party. Perhaps the most apt analogy is to the position held by the aging King Oscar II in 1905 as he presided over the peaceful dissolution of the Swedish-Norwegian state when Norway decided to leave the union.

Today, as President of the newly born state, Havel remains the most respected public figure in the Czech Republic. He and the Czech Prime Minister Klaus have established a delicate but apparently stable relationship. The Prime Minister, both because of his constitutional position and his assertive ways, has been the undisputed leading force. But Havel has made full use of the prerogative of his office, having vetoed several bills adopted by the Parliament. Unlike the German Federal President, who keeps aloof from daily squabbles, he has commented with abandon on any issue before the public, even castigating the bureaucrats for overcharging Tom Cruise's *Mission: Impossible* film crew for the rent of a palace in Prague. Some believe he is trivializing the high office, yet the people at large applaud and deluge him with petitions. He has not hesitated to criticize the government at the risk of exacerbating divisions within the coalition. This evidently has posed a challenge to the Prime Minister's self restraint. With Havel articulating the moral values and Klaus, "the pragmatist," the Czechs have enjoyed a remarkable political stability during the important early years of the independent Republic.

Historians will have to address the question of whether Havel — in the face of prevailing reality — could have done more to save the Czech-Slovak state, and whether his efforts would have made a difference in the outcome. If I am cornered with a demand to answer this question, I would respond that it was not within Václav Havel's power to avert the breakup. The structure prevailed over the "hero" even though in the final phase the drama was played out by other heroes (or villains, depending on the beholder's view).

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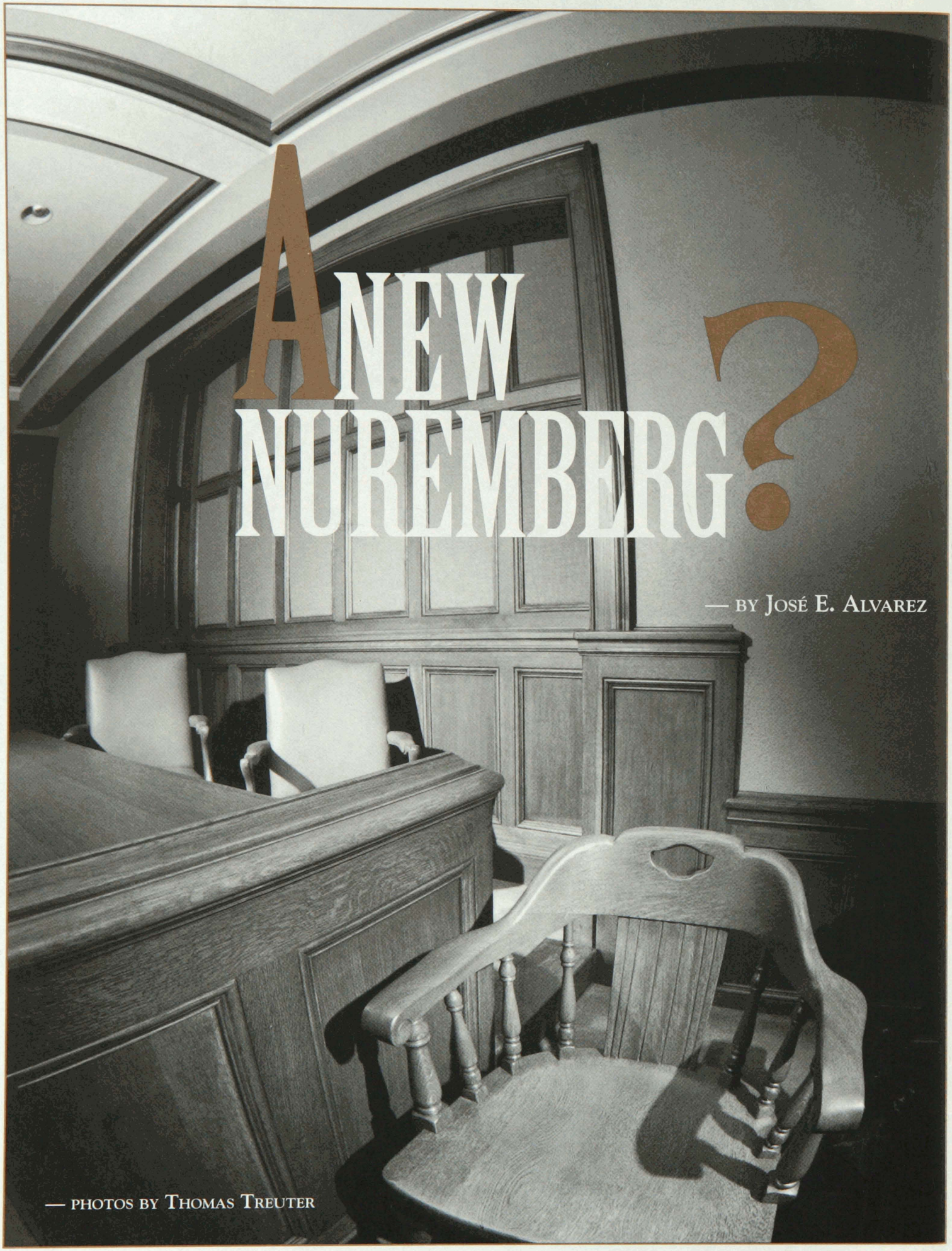


A NEW NUREMBERG?

— BY JOSÉ E. ALVAREZ

— PHOTOS BY THOMAS TREUTER

The following essay is based on presentations given recently at the University of Michigan, Harvard Law School and the Fletcher School of Law and Diplomacy. While most citations have been removed for publication here, the author gratefully acknowledges the work of Mark Osiel, whose article, "Ever Again: Legal Remembrance of Administrative Massacre," 144 University of Pennsylvania Law Review *463 (1995), inspired much of the analysis here.*

On May 25, 1993, acting under the same powers it had used to authorize the Gulf War, the United Nations Security Council established the first international war crimes tribunal since post-World War II trials at Nuremberg and Tokyo. This "independent" international tribunal, with jurisdiction to prosecute persons responsible for grave violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, was soon followed by a similar one for recent atrocities in Rwanda. In both cases the decision to bypass the arduous and probably inconclusive path of attempting to negotiate a multilateral treaty in favor of acting by Council fiat was taken on the ground of "necessity," namely, the fear that any other alternative would have taken such a long time that any hope of convicting the guilty would have perished along with the evidence of their crimes.

Although the setting up of the judicial, prosecutorial and secretariat organs for the Balkan tribunal took considerable time, today, in accordance with a 34-article "statute" proposed by the Secretary-General and adopted by the Security Council, two trial chambers and one appellate chamber consisting of a total of 11 judges are in session at The Hague. The judges, elected by the General Assembly from a list prepared by the Security Council, consist of nationals of Egypt, Italy, Canada, Nigeria, France, China, the United States, Costa Rica, Pakistan, Australia, and Malaysia. The judges approved rules of procedure and evidence in February 1994 and, by the spring of 1997, a three-judge trial chamber had successfully concluded the first international "war crimes" trial in 50 years. In *Prosecutor v. Dusko Tadic* (Case No. IT-94-1-T, Opinion and Judgment, May 7, 1997), the tribunal rendered a guilty verdict on 11 of 31 counts originally charged against a Bosnian Serb and former cafe owner. Portions of the Tadic trial were televised on Court TV (which billed it, with some justice, as the "real trial of the century").

While other trials are now going on at The Hague, at the time of Tadic's conviction fewer than 100 individuals had been indicted — compared to the thousands likely to have been involved in the massive "ethnic cleansing" in the Balkans. Moreover, of those indicted, only seven are in custody, while the most prominent, Milosevic and Karadzic, remain free. Nor are the prospects for improvements on these numbers great — given the continuing reluctance of relevant government authorities to cooperate with the tribunal. Nonetheless, there is now renewed hope that NATO-led forces will seek out and arrest at least some indicted individuals.

While it is too early to assess the likely legacy of the Balkan war crimes tribunal, it is clear that both its creation and its goals have been inspired by the perceived "lessons" of Nuremberg. My thesis is that the Nuremberg model, while instructive, is misleading and that an overly faithful attempt to replicate Nuremberg may be a mistake.

EMULATING

Nuremberg's Goals

From the start, this tribunal has embodied the long-frustrated hopes of many international lawyers for the application of the rule of law to notorious crimes of state. For many of the disciples of Grotius, proceeding with these ad hoc courts in Rwanda and in the former Yugoslavia is but the first step toward an eventual permanent international criminal court (now under serious negotiation within the United Nations). The mythic goals for the Balkan tribunal, drawn from those that inspired the high profile trials of 22 major Nazi figures at Nuremberg, go far beyond the aims of the ordinary criminal prosecution. It is said that these trials, properly conducted, further the aims of:

General Deterrence — to threaten those in positions of power and make them stop the threat and deployment of violence to achieve national ends;

Punishment — to make atonement possible for the culprits and honor the dead;

Compensation and Rehabilitation — to provide mechanisms, along with the criminal proceedings, to enable victims and their families to receive needed

psychological counseling, identify remains, restore lost property, and otherwise help heal wounds;

The Restoration of Public Order — to channel the thirst for revenge to more peaceful dispute settlement;

The Reinvigoration of the International and National Rule of Law — to affirm the Nuremberg Principles at the international level while restoring faith in law generally;

The Preservation of Collective Memory — to preserve an accurate historical account of barbarism in the hopes of preventing its recurrence;

and, perhaps most important,

National Reconciliation — to restore the lost civility of torn societies.

Nuremberg has also inspired the vision of how the Balkan prosecutions would accomplish these aims. Advocates of Balkan war crimes prosecutions, in government and in academia, argue that the purpose of making war criminals answer for their crimes is, as Ted Meron wrote in *Foreign Affairs* ("Answering for War Crimes," Feb. 1997), to "assign guilt to individual perpetrators, rather than allowing blame to fall on entire groups and nations." By punishing the guilty (and only the guilty), all the Nuremberg-inspired goals are expected to come into place: those in positions of power will be deterred from further violence; the guilty will be given the chance to atone; the injured a way to be mollified; public order and respect for the rule of law will be restored.

The advocates of today's Balkan prosecutions argue that we need to emulate, as much as the differing conditions in the Balkans will allow, the forceful application of the "rule of law" of the victorious allies in war-torn postwar Germany. Our task, they argue, is to convince the peoples of the former Yugoslavia that the tribunal is as serious an enterprise as Nuremberg was. Thus, it is argued that we must get NATO-led forces to use force as necessary to arrest those who local authorities refuse to give up and that the tribunal's prosecutors must courageously indict the highest leaders responsible regardless of the political repercussions since the conviction of only inconsequential "small fry" delegitimizes the entire process. The foremost supporters of the tribunal argue that criminal prosecutions need to reach deeply into all levels of Balkan society to identify and punish all those who have been complicit with evil — even if such a thorough-going search for the truth requires interminable trials and expensive investigations. It is argued that only a serious, "even handed" effort which spares no expense and no individual can expect to live up to the expectations set by Nuremberg.

Like Nuremberg, the Balkan tribunal is built on the premise that criminal convictions help achieve national reconciliation because they exonerate those not in the dock; that is, because war crimes trials unite the population in collective revulsion against the barbarism of a few and encourage collective solidarity in support of the civilized nature of the process itself. Convictions are seen as providing "cathartic group therapy" to reestablish a lost national (and international) consensus: the contrast between the rules of law by which the defendants are judged and the barbarity of what they are shown to have done is said to encourage a unified sense of outrage against the guilty, with corresponding simultaneous satisfaction toward the civilized process that branded the criminals.

The Nuremberg model assumes that everyone will agree with the legitimacy of the tribunal and its verdicts; that social solidarity will be restored through invocation of shared values. The premise, in short, is that a forum issuing verdicts with universal legitimacy will restore lost civility — at least for the torn countries directly at issue and perhaps for the international community as a whole. It is assumed that war crimes tribunals achieve "closure" by convincing all those of good faith of the guilt of those convicted, by channelling communal anger solely at those individuals, and by keeping retribution safely inside the courtroom. In the words of a former prosecutor at the Balkan tribunal, Minna Schrag, by finding identifiable individuals accountable, the rest of the community is not "associated with collective guilt . . . ." As she puts it, the trials help prevent generations growing up saying "it's the Serbs or the Croats or any other group that did this to my father . . ." (*Columbia Law School Report*, at 25, Autumn 1996). Ted Meron of New York University agrees, asserting in *Foreign Affairs* (Feb. 1997) that the process will thereby diffuse "ethnic tensions and assist in peacemaking."

AVOIDING

At the same time, the creators of the Balkan tribunal have sought to avoid the perceived "flaws" of Nuremberg and Tokyo. Fifty years of revisionism have taken a toll on the perceptions of Nuremberg's "success" and the creators of today's tribunals were acutely aware of the critiques. Prominent critics, especially German lawyers but including the chief deputy prosecutor at Nuremberg, Telford Taylor, have complained that the Nuremberg process was tainted by "victor's justice" since its rules, bench and prosecution team were all dominated by lawyers from the United States and arrogant notions of "American exceptionalism." Those trials were said to be marred by the application of "double standards" since no charges were brought against the Allies despite evidence of violations of humanitarian war (including the fire bombing of Dresden, the destruction of Hiroshima and Nagasaki, and the Katyn Forest massacre of Polish POWs by the U.S.S.R.). Many have suggested that the noble goals of the Nuremberg tribunal were compromised from the outset by the "irony of August 8, 1945": the date that the allies signed the London Charter to establish the Nuremberg tribunal was also the date that the United States dropped its second nuclear bomb on Nagasaki.

Nuremberg's critics have also argued that those trials were otherwise unfair and biased since some defendants were convicted in absentia, while others encountered "trial by ambush" — i.e., an expedited criminal process on the basis of unfamiliar rules and based on documentary evidence primarily in the control of the prosecution with defense lawyers being accorded minimal time for preparation. There have been recriminations that these defendants were charged with "newly minted" international crimes, in violation of the universal principle against ex post facto imposition of criminal penalties. Nuremberg defendants were, after all, essentially the first individuals to be convicted on novel theories that international law prevails over domestic and

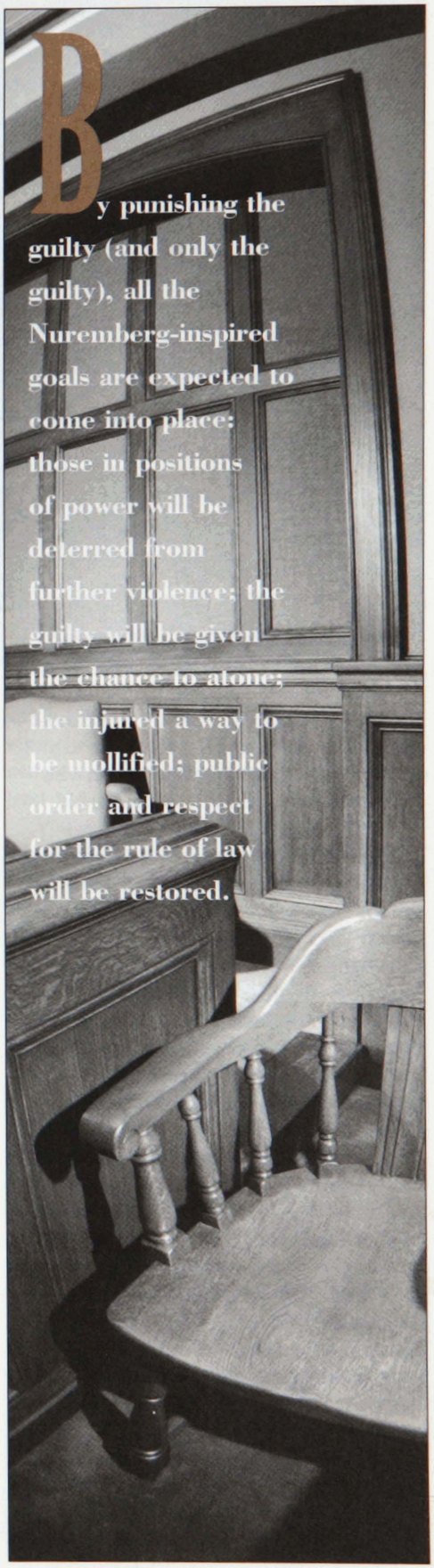
that individuals in the service of their government may nonetheless be subject to individual criminal liability. Moreover, critics complained that these defendants were the first to be charged with crimes of "aggression" (premised dubiously on violations of the Kellogg-Briand Pact), "crimes against humanity," and other "international" crimes that seemed particularly novel from a civil law perspective, such as "conspiracy." Even graver charges of overly hasty, and perhaps even racist, judgments have since been leveled against the Tokyo trials organized by General Douglas MacArthur.

Revisionists have even questioned the premise that the Nuremberg trials did much to preserve collective memory in the service of history. To at least some critics, the Nuremberg trial records make for a fundamentally flawed, even false, historical account that is grossly unfair to the victims of the Holocaust. Some attribute the problem to Chief Prosecutor Justice Robert H. Jackson's decision to make the waging of "aggressive" war the linchpin of all Nuremberg charges, a theory of the case that seemed to make the Holocaust merely "incidental" to the waging of World War II instead of making Nazi horrors the focus of attention. By, for example, arguing that Nazi concentration camps were effectively tools of the German war effort and by failing to bring charges or to present evidence of Nazi crimes committed before the official onset of interstate aggression (such as under the pre-1939 racial purity laws), the Nuremberg prosecution, it is argued, obscured the real scope and depth of the Holocaust. By focusing exclusively on the theory that Nazi war criminals were merely an especially evil collection of "gangsters" bent solely on aggressive conquest, Nuremberg, it is argued, glossed over the ethnic, religious, and racial underpinnings of the Holocaust. In part because the testimonies of victims were deemed unnecessary, the anti-Jewish, anti-gay, anti-gypsy aspects of German policies were rendered less visible. These have been only rediscovered by revisionist historians who have been aided by, among other things, more victim-oriented trial prosecutions (such as Israel's prosecution of Eichman).

For creators of the new Balkan tribunal, for whom Nuremberg loomed as an inescapable precedent, each one of these Nuremberg-inspired critiques — the problems of victor's justice, unfairness to defendants, and historical inaccuracy — needed to be remedied. They responded by creating a body that they believed would not be subject to the charge of "victor's justice" since it would be established by the "world community" and not merely the action of vengeful victors. To further deflect charges of "double standards," they attempted to ensure that *all* those who committed crimes in the former Yugoslavia, regardless of national origin, ethnicity or religion, would be subject to prosecution — and by an international bench and prosecution teams that could not be accused of national bias.

To prevent charges of unfairness, modern international human rights standards on behalf of criminal defendants were expressly incorporated into the tribunal's statute and into its rules of procedure and evidence. To further level the playing field between prosecution and defense, the Balkan tribunal borrowed considerably from the orality of common law proceedings (including its procedures for cross examination), incorporated the possibility of appeals, and anticipated the need for lawyers' training in the tribunal's novel procedures. In response to the illegitimacy of ex post facto imposition of criminal liability, they restricted the tribunal's jurisdiction to crimes based on "rules of international humanitarian law which are beyond any doubt part of customary law," thereby attempting to limit the tribunal's reach to international crimes that, while novel at Nuremberg and Tokyo, now have a fifty-year-old pedigree. Gone were the most criticized aspects of Nuremberg from a modern human rights perspective: the death penalty, liability for membership in a "criminal organization," and the possibility of trials in absentia. On the other hand, rules providing for the counselling of victims, the protection of witnesses, and the possibility for court ordered restoration of stolen property responded to modern sensitivities toward the rights of victims.

The Balkan tribunal's emphasis on victims also responds to the criticism that Nuremberg had "dishonored" the memory of Holocaust survivors. Perhaps with this critique in mind, the prosecutors in the Tadic case spent what seemed to some



courtroom observers an inordinate amount of time at the outset placing their case against the defendant within the broader context of the modern history of the former Yugoslavia. In addition to the usual "perpetrator"-driven story which prosecutors are required to present, the prosecutors in the Tadic case seemed aware of their debt to history: they began their "historic trial" with a six day-long history lesson presented through the testimony of learned academics.

Despite all the ostensible "improvements" vis-a-vis Nuremberg and Tokyo, the legitimacy of the Balkan tribunal remains very much in doubt. In one sense the shadow of Nuremberg still looms large — as each one of the criticisms faced by that earlier body finds a contemporary echo. Despite (or because of) the attention paid to the rights of defendants, the Balkan tribunal faces unresolved tensions with respect to the proper balancing between the rights of defendants and victims. Thus, an August 1995 preliminary ruling in the Tadic case that permitted the prosecutor to withhold from the accused or his lawyers the identity of some witnesses who would otherwise refuse to testify has led to considerable criticism, especially from common law lawyers for whom the right of confrontation is sacred. On the other hand, victims' groups anxious for the tribunal to effectively cope with mass rape charges (involving as many as 20,000 women) have found the tribunal's steps to protect potential witnesses and victims timid and inadequate. Some may also find troubling the relatively "light" prison sentences likely to be imposed on even the most serious offenders. (Tadic himself, though given a 20-year prison sentence, is likely to serve only 10 years.)

On the defense side, there are likely to be continuing fears that "ex post facto" problems persist despite the assurances given in the Balkan tribunal's statute. Already, in the course of the Tadic case, debates have emerged about the appropriateness of certain charges — especially if one sees the underlying conflict as an "internal" civil war and not an "international" conflict. Even in that first case, the tribunal has, in compliance with its statute, gone beyond Nuremberg precedents (strictly understood) to permit charges for "crimes against humanity" in the absence of charges for "aggression." The tribunal is also likely to make "new law" on other matters, including the degree of responsibility owed by "non-governmental" paramilitary units and the nature of international criminal responsibility incurred for mass rape. Should the latter be charged as crimes against humanity, grave breaches of the Geneva Conventions, violations of the laws and customs of war, or even "genocide," "conspiracy to commit genocide," an "attempt to commit genocide," or "complicity in genocide" (all possible charges under the tribunal's jurisdiction)? It seems difficult for the tribunal to avoid charges that it is making new law — and imposing "ex post facto" criminal liability.

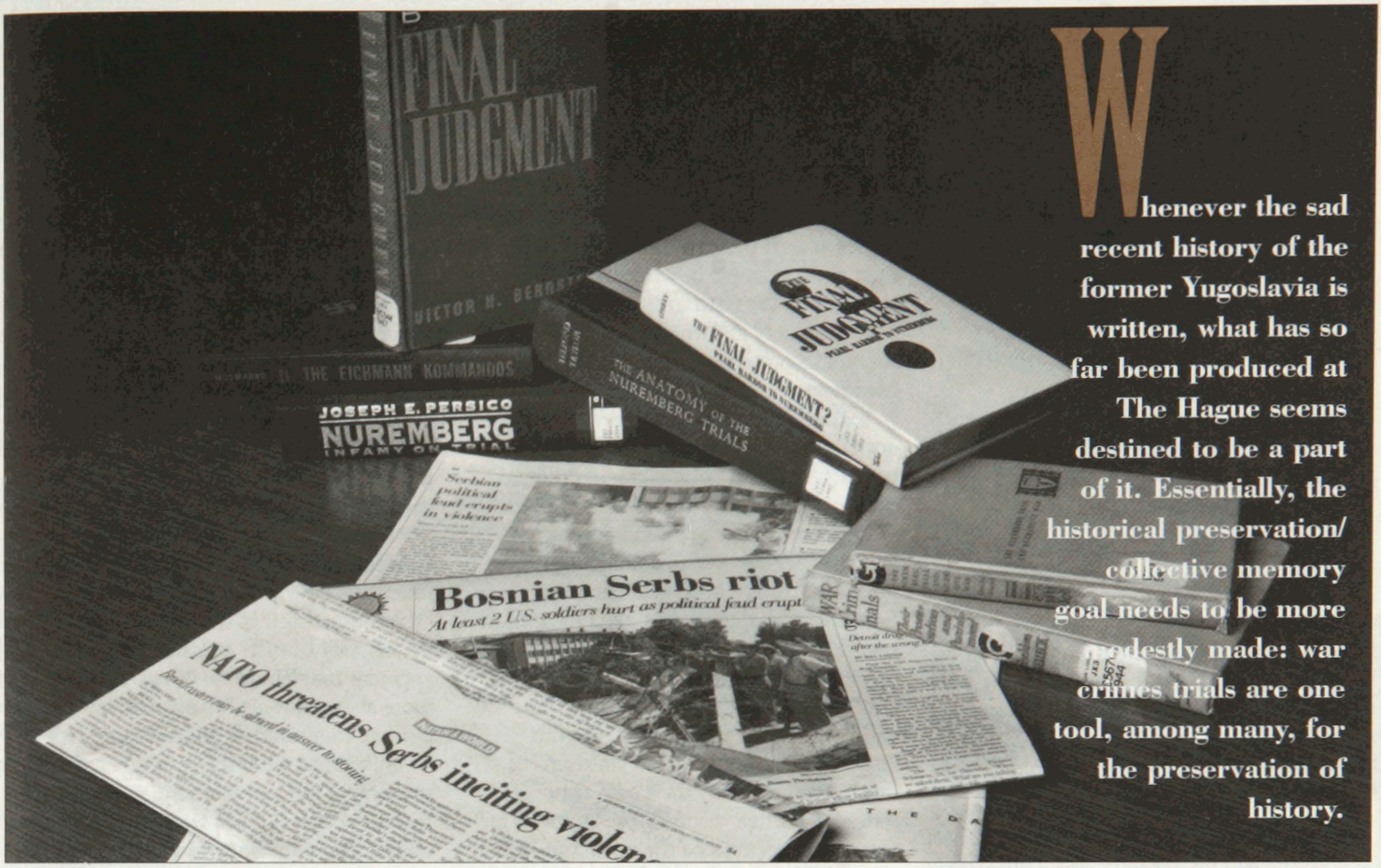
Nor is it clear that the creators of the Balkan tribunal have successfully mediated the treacherous divides between east and west or north and south any better than the Nuremberg or the Tokyo tribunals. Charges of "double standards," "American exceptionalism," and "victor's justice" have been deflected but not altogether avoided. After all, this tribunal was established through the innovative reinterpretation of the Chapter VII powers of the Security Council under the UN Charter, a decision taken by an organ dominated by the Permanent Five, and especially by the United States. Developing countries, not entitled to a Council veto, have expressed some discomfort with the resulting risks to national sovereignty and they have not been altogether placated by the assurances that the tribunal will remain "independent" from the Security Council. No one knows whether or to what extent a truly "independent" international criminal tribunal has been created. No one knows whether the Security Council retains residual authority over the tribunal; can the Council, for example, direct the tribunal not to prosecute someone among Serbia's current leadership "for the sake of international peace and security"? Can the tribunal tell the Council that such an interference with the tribunal's functions would be null and void? Further, no one, not even the tribunal, has given a satisfactory answer as to why the Security Council can, legally, displace prosecutions by national courts. No one knows whether the tribunal has the power to order governments to turn over witnesses, defendants, or documents — or what happens if it tries and fails. To date, the tribunal has given nearly as many answers to such fundamental jurisdictional issues as there are nationalities represented on its bench. Judicial unanimity has been understandably elusive given the novelties of the tribunal's creation and the yawning gaps in international criminal practice.

GETTING PAST

But the specter of Nuremberg is deceptive. While it is true that the Balkan tribunal faces many issues reminiscent of those faced by earlier war crimes prosecutions, its greatest challenge is unique: the Balkan tribunal is expected to fashion Nuremberg-styled justice in the absence of D-day.

Victor's justice had its merits. Whatever else might be said about Nuremberg, the trial of the major Nazi war criminals and the proceedings that followed were not solely directed at "small fry." Tadic, the Balkan tribunal's first defendant, is, however, no Hermann Goering. In contrast to Nuremberg's impressive line-up of defendants, the Balkan tribunal's list of indictments is likely to be distinguished by the number of high profile defendants that it will not be able to reach. Its "selective" prosecutions are already drawing complaints that the process "mocks justice."

This difference, more than any other, casts doubt on the Nuremberg-inspired hopes for this tribunal. Deterrence is rendered doubtful by doubts about the viability of the criminal law to cope with the sheer enormity of likely culprits and the absence of an effective police power to capture them. Even if a NATO "strike force" to capture war criminals were created, how would the rest of the Balkans be pacified without massive military occupation? Moreover, the detention of even prominent leaders will not always deter fanatical followers; a charismatic leader can just as easily inspire continued violence from



Whenever the sad recent history of the former Yugoslavia is written, what has so far been produced at The Hague seems destined to be a part of it. Essentially, the historical preservation/ collective memory goal needs to be more modestly made: war crimes trials are one tool, among many, for the preservation of history.

inside a jail cell. Is effective deterrence possible when whole societies have been complicit in genocide — in the absence of military occupation by an alien power? Even national governments, with considerably more effective control over their own territories than the UN now exercises over the Balkans, have often demurred in the face of such dilemmas and granted general amnesties. But if deterrence is unlikely, so are the prospects for effective punishment.

For the same reasons, the goals of compensation and rehabilitation seem scarcely attainable. Victims are not likely to get much relief from these criminal prosecutions since the tribunal does not now have and is not likely to ever have the resources to comfort, much less provide real psychological counseling for survivors. The few trials that do occur are not likely to do much to restore public order and sporadic prosecutions are not likely to forestall acts of vengeance or mob violence as victims come across their former torturers and rapists. Nor will many victims and witnesses willingly come forward if they live in areas where retaliation remains likely; significantly, none of the prosecution's witnesses in the Tadic case lived in areas under Serbian control. For these and other reasons, the conditions in the former Yugoslavia prompt skepticism about the likelihood that the tribunal will inspire renewed respect for the Nuremberg Principles or the rule of law.

Given the realities it faces, the prospect that the Balkan tribunal will secure national reconciliation through "closure" seems particularly farfetched. How can a process that is likely to convict only a handful of those culpable and that is not even likely to reach their superiors, "exonerate" anyone? Further, unlike Nuremberg's prosecutors, this tribunal's accusers need the cooperation of willing witnesses; relatively few documents attest to the atrocities committed. But such witnesses pose challenges that prosecutors did not face at Nuremberg. In the former Yugoslavia (and in Rwanda as well), live witnesses are likely to replicate, inside the courtroom, the religious or ethnic divisions that have characterized the underlying conflict. The Tadic case pitted Serb witnesses for the defense against Moslem witnesses for the prosecution. In this context — a trial judged in the absence of a jury and solely by learned judges — convictions or acquittals will be largely based on credibility findings rendered by a group that does not include a Serb, a Moslem or a Croat. Reactions to these verdicts are likely to fall along familiar ethnic/religious lines; they are not likely to generate unified societal consensus — at least not in all cases.

Worse still, the Balkan tribunal cannot rely on the universal legitimacy of its establishment or its procedures to overcome the doubts of the skeptical. It was created by a super-power-dominated UN organ viewed with some suspicion by the rest of the world. It adheres to novel procedures that constitute an untested melange of rules borrowed from both common law and civil law traditions whose interpretation divides the judges charged with their application. It should not surprise if verdicts in these cases fail to draw universal praise or inspire instant consensus.

Indeed the very notion of "closure" through judicially created legitimacy seems dated today, the product of rapidly vanishing legal romanticism. For many people in the United States the idea that courts and lawyers stand as a socially unifying bulwark to protect civilization seems a bit naive in a post-modern, post-Rodney King, post-O.J. world. Many see what goes on in courtrooms as only rarely praiseworthy attempts to secure neutral justice and more often as thoroughly calculated, cynical, preconstructed

maneuvers that reflect (and sometimes inflame) society's prejudices. Many doubt that all are really equal before the law; skeptics openly question the notion that race does not count in our courtrooms.

The prospect that the international community, with all *its* divisions, can render "neutral" justice en mass in instances involving thousands of possible defendants inflamed by religious or ethnic hatred seems, in this light, terribly quixotic. Trials, whether here or abroad, do not often generate instant social consensus.

THE HARD CASE

What then is the argument for war crimes trials in the Balkans under prevailing circumstances? What is the case that can be made to justify *sporadic* international war crimes trials, often of "small fry" like Dusko Tadic, while the majority of wrongdoers, including most of those who gave the orders, go free? Is there any justification, in law or policy, for such "selective" prosecutions?

The hard case for the Balkan war crimes tribunal needs to be made on the basis of redefined goals — not the mythic ones inspired by Nuremberg.

First, with respect to deterrence, it is necessary to remember that the starting point is not, before war crimes indictments are issued, an entirely blank slate. Long before the Balkan tribunal was established, the media, individual governments, and the UN Commission of Inquiry had already identified numerous crimes and likely culprits. The question is not whether war crimes will deter crimes that no one would otherwise know about but whether punishing some crimes and some individuals people already know about is at all important. If nothing is done about known or rumored crimes and culprits, does this not induce or encourage further violence by those who are not prosecuted as well as by those seeking vengeance? Whether or not war crimes trials can be said to "deter," the punishment of known crimes at least prevents them from being cited as an example of what one "can get away with." We need to ask whether, given what is already known, the *failure* to attempt to prosecute those we can reach encourages or induces violence.

Second, with respect to punishment, the question is whether those who are likely to be reached by the tribunal merit criminal sanction or whether the failure to reach those who are presumed to be "more culpable" renders the punishment of "small fry" illegitimate. Those who complain about "selectivity" in this context need to be more precise about the nature of their complaint.

Punishment for war crimes is undoubtedly "selective" at many levels. National courts have varied tremendously with respect to their reactions to violations of humanitarian law by their own nationals; indeed "selective" national prosecutions for war crimes seem to be the norm (see, for example, the United States and the treatment of alleged atrocities by its troops in Viet Nam). The international community is certainly not better. The Balkan tribunal's statute (like Nuremberg's Charter itself), is limited in scope: it only deals with acts which occurred after 1991. Does this temporal limitation — and the underlying failure to reach anyone guilty of comparable acts before that date — undermine the legitimacy of punishing those guilty of post-1991 acts? Further, the UN has seen fit to establish tribunals only for the former Yugoslavia and Rwanda but not for Haiti, Iraq, Cambodia or any of a number of other places; does its failure undermine the legitimacy of its efforts in the Balkans? More broadly, international humanitarian law seems to reach only some acts — such as indiscriminate targeting of civilians by scud missiles but apparently not, for example, aerial bombardment (as by the United States over Baghdad in 1991), nor, at least in the view of nuclear powers, the threat or use of nuclear weapons. Is all of humanitarian law therefore suspect because it is "selective" along north/south lines? The Balkan tribunal is likely to remain selective in that it may actually prosecute only some of those who committed the brutal acts and not many others, including politically well connected "higher ups" who gave the orders. Is the last kind of "selectivity" so much worse than the others? Is this kind of selectivity so fatal that the tribunal should close up shop?

I suspect that many do not find the conviction of actual torturers, murderers, and rapists (whatever the context) to be unfairly illegitimate. In fact, victims may derive considerably more satisfaction from seeing their actual torturer in the dock than from seeing that person's commander who gave the impersonal order. Some may even claim that there is *greater* merit to devoting scarce resources to punishing low level functionaries who actually inflict crimes on other human beings since exposing both the banality of such individuals and their apparent indifference to others' pain tells us more about how such barbarisms can become routinized or widespread.

Quite apart from these arguments, what precisely is the moral or legal argument that makes this last kind of selectivity more objectionable than any of the others? Why is it so illegitimate to punish the actual torturer simply because we do not reach his/her superior? Surely the reasons for selective prosecutions also matter. It is one thing to accuse the tribunal or its prosecutors of not fairly and evenly applying the law through the issuance of indictments in one case but not another; it is quite another matter where "selective" prosecutions result not from biased indictments or investigations but from the failure to secure arrests of some individuals or from the inability to collect evidence from unwilling government sources. Even within effective domestic legal systems such failures of "political will" occur frequently, without necessarily undermining the legitimacy of those prosecutions which do occur.

Third, the prominence of Nuremberg need not lull us into giving international criminal prosecutions greater significance than they deserve. Neither after World War II nor at any time before have nations relied exclusively or even primarily on international criminal trials to achieve the mythic but worthy goals that have been articulated for modern international tribunals. Even after World War II, the

number of such prosecutions have been dwarfed by a myriad of other efforts in pursuit of deterrence, punishment, national reconciliation, et al. It is self-defeating to rely on the Balkan trials alone to achieve what is being sought in a number of other fora and through a variety of other processes — from the diplomatic level (as through the Dayton peace process and beyond), to the World Court (as in Bosnia's case against Serbia and Montenegro and the latter's counterclaim); from other international organizations (including the Security Council, its sanctions committees, and numerous human rights bodies), to non-governmental organizations (such as the Red Cross). Attaining some of these goals may even be possible through national courts. Thus, some of the rape victims of the conflict in Bosnia are now seeking damages from Karadzic through a civil suit in New York district court (*Kadic v. Karadzic*, 70 F3d 232, 2nd Cir. 1996). While it is fair to ask whether all these goals are equally furthered by simultaneous actions in all of these fora, it is also reasonable to consider whether some of the mythic goals enumerated for the tribunal can be better achieved elsewhere.

Consider, for example, the prospect of securing compensation and rehabilitation for victims. The Balkan tribunal seems ill-equipped to provide victims much in the way of recompense, either in damages or lost property. The tribunal may not even provide victims with significant psychological relief since it is not clear that very many of its trials (even if "many" occur) will provide occasions for the large numbers of survivors of "ethnic cleansing" to unburden themselves and tell their stories. Whatever else might be said of it, the civil lawsuit in New York against Karadzic seems a more likely venue for such matters. Certainly the issue presented in that case — proving damages caused by Karadzic's alleged acts to a potentially large number of claimants — seems much more suited to the telling of victims' stories and the appropriate expression of judicial solicitude toward their plight. Such a proceeding, driven by a need to at least *pronounce* the amount of compensation which in justice is owed to victims (compared to a proceeding seeking primarily to identify the culprit), is less susceptible to judicial timidity for fear of imposing ex post facto criminal liability and is more receptive to airing at least some of the consequences of the gendered nature of "ethnic cleansing."

International criminal prosecutions need to be seen as only a part, perhaps not even a very significant part, of the spectrum of activities that have always been pursued to achieve the goals inspired by Nuremberg. WWII's tribunals cannot be credited with achieving all or even a significant part of the goals which were articulated for their creation — and this was not merely because those tribunals contained severe flaws. Within nation states, the judicial branch, traditionally the weakest, is not expected to carry the weight of governance; this is all the more true internationally. (See David P. Forsythe, "Politics and the International Tribunal for the Former Yugoslavia," 5 *Criminal Law Forum* 401, at 421 [1994]). International criminal tribunals should not be expected to carry as much freight as their advocates suggest. Attempts to make them do so — whatever the cost — may endanger alternative processes and undermine possibly competing goals for the international community and the United Nations.

Fourth, we need a more realistic account of what the ciminal process can be expected to achieve to preserve collective memory. Despite the attempts made at the Tadic trial to provide a history lesson during the course of a trial, a criminal trial is ill-suited for this purpose. As Mark Osiel has noted, the adversarial nature of the courtroom and the need to play to the public (if not to a jury) leads to the telling of diametrically opposed, over-simplified stories by both sides — tales told with an eye to the restricted nature of rules of evidence and the precise charges at issue. The whole purpose of the prosecution's case is to make it appear that the individual defendant in the dock is uniquely responsible; the defense attempts the opposite. The prosecutor certainly does not have a motive to indict the broader society, to truly examine the moral complexity involved in even horrific crimes, to tell more than one linear story at a time. And while the defense may try to mount a broader indictment, such a one-sided attempt is not likely to lead to balanced history. Criminal trials inevitably produce individualist/perpetrator accounts filled with the bright lines skilled historians try to avoid — indeed, that is their point.

It is true, nonetheless, that war crimes trials provide one way in which an accurate collective memory is rendered more likely. While Nuremberg presented a one-sided picture of the Holocaust, it presented, *and more important, preserved* an important record of some aspects of those years. Whether one agrees or disagrees with such revisionist accounts of the Holocaust as Daniel Goldhagen's — whose recent portrayal of *Hitler's Willing Executioners* is diametrically opposed to the perpetrator accounts portrayed at Nuremberg — the fact remains that Goldhagen's efforts might not have been possible but for the collection and preservation of documents necessitated by Nuremberg and post-Nuremberg trials. Goldhagen's and other historians' revisionist accounts are as much a product of Nuremberg as they are responses to it. It seems equally clear that the effort to bring indictments in the former Yugoslavia has led to the preservation of at least some evidence of barbarism that would otherwise have perished. Whenever the sad recent history of the former Yugoslavia is written, what has so far been produced at The Hague seems destined to be a part of it.

Essentially, the historical preservation/collective memory goal needs to be more modestly made: war crimes trials are one tool, among many, for the preservation of history.

Fifth, we need to reexamine our concept of how war crimes trials help bring about national reconciliation. As Mark Osiel again reminds us, trials are occasions that initiate conversations between otherwise unwilling antagonists. The value of trials *actually increases* the greater the pre-existing antagonism between the parties since the greater their mutual hatred the less likely such opponents are to seek occasions for dialogue *except* when forced to in a court of law. Trial confrontations may be, at least in

the short run, the only occasions for ongoing conversations between sworn enemies. Further, the constricted nature of trials, though not always conducive to accurate history, is better at channelling disputes into narrow, legalistic grooves. A criminal trial is necessarily about whether certain acts have or have not been committed; about whether particular evidence does or does not exist. It is not about, for example, finding the "truth" about ethnic or racial stereotypes. When convincingly reached, a conviction can help terminate debates about whether a defendant is guilty, but even a conviction does not close off other debates. A trial may instead *provoke* other disagreements totally at odds with notions of "closure."

For these reasons, as Osiel has noted, the prosecution of war criminals should not be portrayed as "group therapy" intended to secure instant closure or societal consensus. Especially when such trials involve ethnic or religious conflicts, the prospects for such broad "consensus" are slim to none. Such conflicts are complex events requiring a lengthy cooling off period, a thorough airing of grievances. Such grievances are not likely to be aired, much less satisfactorily resolved, in the course of a trial or even a lengthy series of trials. On the contrary, with respect to such complex societal problems, trials may usefully promote, not close off, thorough discussion between participants and government officials, and, if the trial is important enough and publicized enough, among the general public. Whether here or abroad, criminal (and some civil) trials may be better seen as discursive phenomena that provide an occasion for, and inspire, public debates.

The purpose of the Balkan tribunal may be precisely the opposite of what has been suggested by Minna Schrag or Ted Meron. What we achieve in prosecuting war criminals may not be to convince anyone that we have managed to capture the only culprits. Such trials may force continuing discussions of "collective guilt," they encourage, not discourage, questions about the comparative "group guilt" of Serbs and Croats. War crimes trials may keep alive difficult issues of the meaning and scope of complicity. They may encourage youngsters in the former Yugoslavia to ask their parents a few years hence, "what exactly were *you* doing in 1992 mom and dad? Did you support the people doing these terrible things?" Even the trial of one "low level" local torturer can be the start of a national conversation.

Trials and verdicts that rile people up, that prompt accusations and counter-accusations among neighbors and even within families may be justifiable. In societies as fractured as the former Yugoslavia they may even be necessary. The argument for Balkan tribunals based on the prospect for national reconciliation needs to be made not on simplistic assumptions that trials encourage "closure" but on Osiel's more counterintuitive premise that contentious courtrooms prompting outrage are preferable to sweeping issues under the rug where they simmer and ultimately explode in less controllable settings.

In this view, the actual verdicts, their number, who stands accused, and even the legitimacy of the forum may ultimately be less important than that some institutionalized process exists to assure public discussion of how such events happened and who might be responsible. In some cases, the resulting verdicts may even inspire attempts to retaliate on one side or another. As we have seen within the United States (fortunately at a much less bloody level) trials — and their verdicts — can inflame. They may even prompt riots. But the alternative — societies where racially divisive issues are not raised in the relatively safe confines of a courtroom — seems even less likely to achieve national reconciliation.

Finally, we should do well to remind ourselves who "small fry" are in this context. In most countries of the world someone charged with the acts Tadic has been convicted of would be on par with the worst serial killer. No, he is not Goering, but it is difficult to see an enduring society being built on impunity for such crimes. This last, the argument from morality, may be the most compelling reason for continuing to press for these prosecutions despite the evident difficulties.

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