THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 41 • NUMBER 1
SPRING 1998

LAW QUADRANGLE NOTES

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Upcoming Events

March 14	Women's Professional Development Workshop
March 16	Current Issues in Critical Race Theory (Fourth in the series Understanding Race: (De)Constructing Paradigms and Implications for Legal Education). Speakers: Berta Hernandez-Truyol, Professor of Law, St. John's University Law School; John O. Calmore, Professor of Law, University of North Carolina School of Law; and Frank H.Wu, '91, Assistant Professor of Law, Howard University Law School.
March 18 (tentative)	Elizabeth Long Bequest Dinner
March 20-21	Jury Reform Symposium: "Do Juries Work?"
March 26	Dean's Forum with Barrie Loeks, '79, Chairman, Sony Theatres *(by invitation)*
April 1	International Law Workshop: Michel Waelbroeck, Liederkerke Wolters Waelbroeck & Kirkpatrick, Brussels
April 2	Dean's Forum with Arnold M. Nemirow, '69, Chairman and Chief Executive Officer, Bowater, Inc. *(by invitation)*
April 4	Butch Carpenter Banquet
April 14	Dean's Forum with Robert B. Aikens, '79, Chairman, Robert B. Aikens & Associates, Inc. *(by invitation)*
April 16	Dean's Forum with Jack D. Sweet, '57, Chairman, Guardian Mortgage Co., Inc. *(by invitation)*
April 23	Affirmative Action (Final session in the series Understanding Race). Speaker: Lani Guinier, Professor of Law, University of Pennsylvania School of Law.

Continued on inside back cover

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On the Cover:
Colors abound in front of the portico at the Lawyers Club.

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LAW QUADRANGLE NOTES

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MESSAGE FROM DEAN LEHMAN

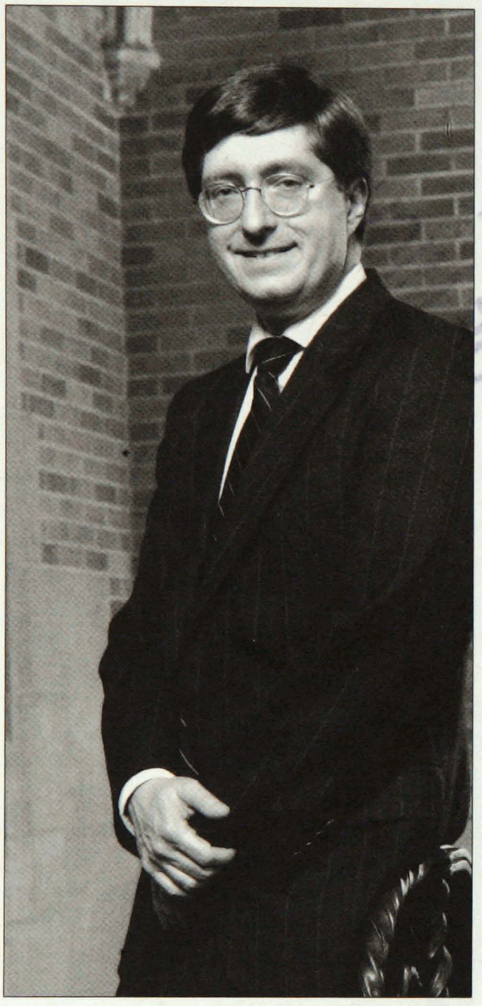
This year, I have used this column to reflect on the lawyer's role as citizen — as member of a community that extends beyond family. Recent events at the Law School offer a concrete opportunity to discuss how lawyer-citizens can draw on their training to sustain their community under circumstances that threaten to divide it.

In December, a lawsuit was filed alleging that the Law School's admissions policies discriminate unconstitutionally on the basis of race. By way of background, let me say that I believe the Constitution permits us the discretion to craft policies such as the one that our faculty adopted in 1992, and that our policy is in the best educational interest of our law school. (See story, page 17.) But that is not my point here. Rather, I would like to remark on how the coming debate about our policies can strengthen our community.

The question of affirmative action in university admissions is one of the most widely debated issues of our time, even among people with no immediate financial or family stake in its outcome. It engages us not only as self-interested individuals, but also as citizens. And it is an issue where people of good will are found on both sides.

Regrettably, the national conversation about university admissions can easily turn querulous and accusatory. At times like this, I have great faith in the ability of well-trained lawyers to take the conversation to a higher plane, where competing values are acknowledged and discussed, where intensely held beliefs can coexist with self-criticism and mutual respect.

F. Scott Fitzgerald once wrote that the test of a first-rate intelligence is the ability to hold two opposed ideas in mind at the same time. A first-rate lawyer has the allied skill of sympathetic engagement with counterargument — the ability to hold one set of beliefs while being able to imagine, articulate, and



acknowledge the logic behind an adversary's position. The cultivation of that skill is one of the most valuable elements of a legal education, and it is part of what motivates our desire to have a diverse, heterogeneous student body.

In the debate over law school admissions, the more our critics and supporters engage each other's arguments sympathetically, the more constructive the debate will be for our community and our society. Thus, we who are committed to affirmative action in admissions should acknowledge that our critics are invoking a powerful theme: that people should be treated as individuals rather than as representatives of a race or ethnic group.

At times like this, I have great faith in the ability of well-trained lawyers to take the conversation to a higher plane, where competing values are acknowledged and discussed, where intensely held beliefs can coexist with self-criticism and mutual respect.

At the same time, our critics should acknowledge that our policy is also motivated by powerful concerns. At this point in our nation's development, unflinching colorblindness would require us to disregard the ways in which race continues to shape Americans' life experiences and opportunities. As the recent experiences of law schools at Berkeley and Texas demonstrate, colorblind admissions would dramatically reduce the degree of racial integration to be found in our nation's finest law schools. And it would be significantly detrimental to the quality of education that we provide.

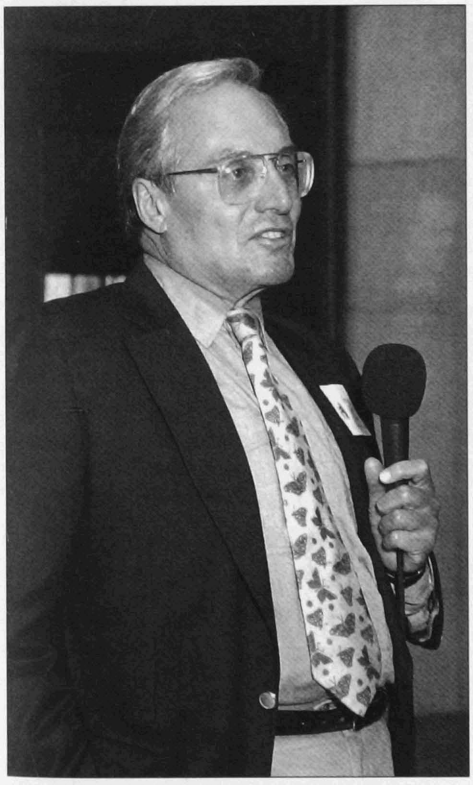
In a complex, imperfect world, we are often forced to make difficult choices among plausibly attractive values. In their roles as citizens, the best lawyers honestly illuminate these choices and thereby build understanding. Disagreement is inevitable, but distrust is not. To the extent we can help others to appreciate that fact over the course of this litigation, we will be achieving the highest ideals of our profession.

Jeffrey S. Lehman

Campaign raises $91.3 million; match grant looks to future

After seven years of intense work with the Law School's fundraising drive, Campaign Chairman Terrence Elkes, '58, knew very well that the goal-busting $91.3 million that generous graduates provided was more dress rehearsal than encore.

As he put it: "This is not just a successful end but the end of the beginning."



Campaign Chairman Terrence Elkes, '58, applauds the efforts of all those who made the Law School Campaign a success. "I believe in giving back," says Elkes. "And I believe in the quality of public education. I know the importance of private support and the uniqueness of Michigan." At the celebration banquet Elkes announced that he and his wife, Ruth, are making a $5 million post-Campaign challenge gift to establish a $10 million endowment for faculty research.

University of Michigan President Lee C. Bollinger, who was Dean of the Law School when the Campaign began seven years ago, offers congratulations on the success of the Law School effort. "On behalf of all of us — faculty, students and staff — it is a great thing you have done for this institution," he said.

Elkes and his wife, Ruth, joined others at the Law School in September to celebrate the success of the Law School's Campaign. Well aware that the official end of the Campaign does not end the Law School's needs, Terrence and Ruth Elkes added to the celebration by announcing their own post-Campaign gift to keep the giving going — a $5 million challenge match to establish a $10 million endowment for faculty research.

"I believe in giving back," said Elkes, co-owner and Managing Director of Apollo Partners, Ltd., an investment firm in entertainment and media properties, and former president of Viacom. "And I believe in the quality of public education. I know the importance of private support and the uniqueness of Michigan. It has a set of values often forgotten in this day of sound bites."

Elkes, who chaired the Campaign through its two preliminary years and its public five years, announced his gift on September 27 as Law School leaders and alumni celebrated the Campaign's success. By raising some $90 million, donors exceeded the Campaign goal by $15 million and made the fund drive the largest achieved by a public law school.

"The generosity of our graduates will allow us to sustain ourselves as a distinctive community with a unique role to play in legal education," said University of Michigan President Lee C. Bollinger, who had launched the Campaign when he was Dean of the Law School. "On behalf of all of us, faculty, students and staff, it is a great thing you have done for this institution."

The Law School's celebration of its successful Campaign followed the University's campus-wide celebration of the over-the-top success of its own five-year Campaign for Michigan, which raised nearly $1.4 billion. The original goal was $1 billion, the largest target for a fund drive ever set by a public university. The Law School's Campaign was part of the larger Campaign for Michigan.

Elkes and Dean Jeffrey S. Lehman, '81, reported that about 50 percent of Law School graduates contributed to the

Alberto Muñoz, '74, draws on his hobby of astronomy and the space-time continuum as "the fabric that links together the universe" to describe the ties that bind graduates to the Law School as he addresses the Scholarship Breakfast in September. The annual breakfast, which brings together donors who have given scholarship funds and recipients who are using those gifts to help them attend the Law School, assumed added significance this year because it was part of the Law School's weekend celebration of the success of its own fund drive.

"On behalf of the students, I want to thank you," second-year law student Hilary Taylor, a recipient of aid from the Terrence Elkes Fund, tells participants in the annual Scholarship Breakfast in September. Taylor said she was notified of her acceptance "the day after Mardi Gras. I was deeply moved" and felt "a sense of tremendous encouragement and confidence."

Law School Campaign, an unusually high participation for such a drive.

Such generosity will enhance life at the Law School for everyone, Lehman said. "The unsurpassed quality of Michigan's faculty is rooted in our public tradition," he added. "To teach and study the law is a public calling, grounded in a desire to serve. At a time when some are mistakenly using sports metaphors to describe the legal profession, the Elkes gift should remind us all that the very best legal scholars seek the environment that will best support them in their efforts to reflect, to understand, and to inspire."

Earlier in the day, Lehman had used the metaphor of the extended family to describe the ties that link together those who have been associated with the Law School: "Through this Campaign we have learned how to prosper in a more outward-looking partnership, a partnership with our extended family of 17,000 alumni," he told celebrants who had gathered for the celebration reception at Hutchins Hall.

The Law School's endowment has more than doubled since the Campaign began in 1990, Lehman noted. It was $55 million when the Campaign started. Today it is $140 million, and nearly $40 million of what was raised during the Campaign is in pledges and bequest commitments that will add to the endowment in the future.

"It is incredible to know that the graduates of Michigan are so loyal and devoted that they want the next generation of law students to enjoy what they had," Lehman said. "About 10 gifts and pledges of $1 million or more were made, but we would not have been able to reach our goal without the wonderfully broad support that we enjoyed at all levels."

Some gifts already have gone to work

Campaign donations are not just gathering interest. While some gifts are bequests, trusts and in other forms that will come to the Law School later, others already have provided tangible boosts to the school's academic life.

As Dean Jeffrey S Lehman, '81, put it:

"What have the gifts in hand meant so far?

"They mean that we are able to award $600,000 more in scholarship grants this year than we were able to award in 1990. Most of those scholarship grants are need-based grants, of the kind that Fred Leckie endowed many years ago. [Frederick E. Leckie's estate provided a $1.2 million endowment for scholarship assistance beginning in 1952-53, with the donor's hope that "such students when they become able will pay back to the Law School such financial assistance as they may have received to help establish a revolving fund which the Law School can continue to use for similar aid to future students of said School."] But many of them are now merit scholarships, awarded purely on the basis of talent, academic achievement and character, without regard to financial need.

"The gifts we have received in this Campaign mean that today's students benefit from programs in legal writing, ethics, alternative dispute resolution, the legal profession, and law and technology that simply did not exist seven years ago.

"They have meant that we have established seven new professorships to enhance what is, in my view, already the finest faculty in legal education.

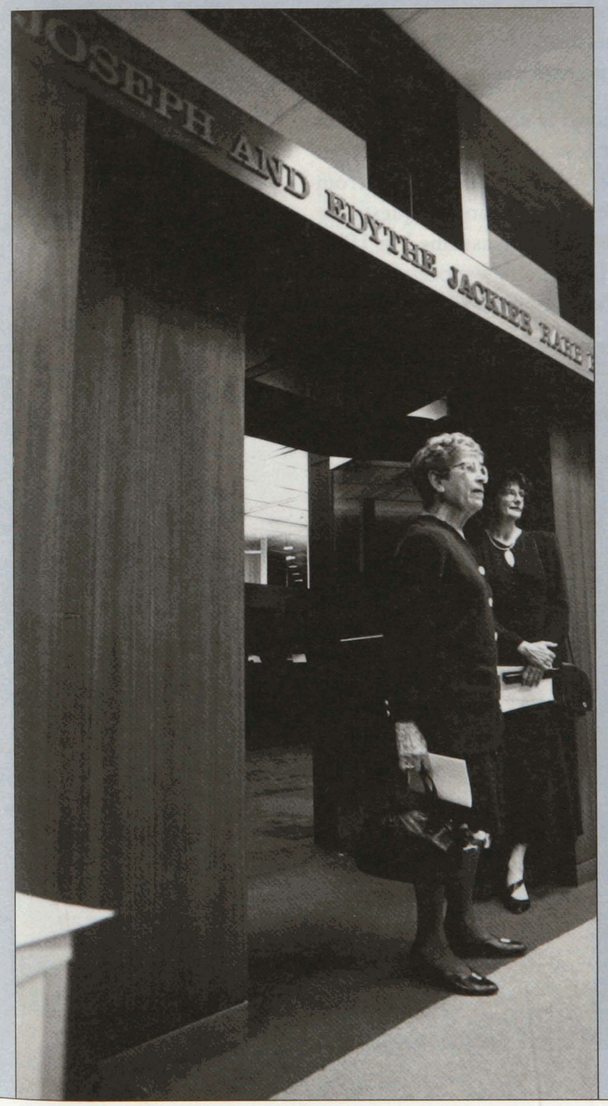
"They have meant that our library has a new Rare Book Room.

"They have meant that this fall we will be able to launch a Center for International and Comparative Legal Studies.

"These are what make for a world-class legal education.

These are the kinds of things that lead students to choose Michigan over private law schools that are wealthier than we are, and that continue to grow wealthier every day."

The kinds of gifts that keep on giving.



Edythe Jackier, left, stands at the entrance to the Joseph and Edythe Jackier Rare Book Room, which was built with funds raised during the Law School's Campaign and opened in Spring 1996. Behind Jackier is Law School Library Director Margaret Leary.

Allyn D. Kantor, '64, discusses a mediation simulation during Bridge Week in 1997. The class was part of the Thomas Ford Alternative Dispute Resolution Program, a new program launched with funds that Ford, '49, gave during the Law School Campaign. Kantor is with Miller, Canfield, Paddock & Stone. To his right are Lore A. Rogers, '83, who teaches at Wayne State University Law School and is an advocate for survivors of domestic violence, and Richard A. Soble, of Goodman, Eden, Millender & Bedrosian.

NEW ASSISTANT DEAN

'There is a passion for the place'

Kathy A. Okun, the Law School's new Assistant Dean for Development and Alumni Relations, settles into a hard wood chair in the conference room and — this is true — actually looks comfortable. Ask her a question. She answers it. Seek an explanation. She gives it.

Okun's like that, at ease wherever she finds herself, yet ready, willing and able to rocket toward her goal. A veteran fundraiser, she came to the Law School on October 1 from her post as Director of the Office of Trusts and Bequests for the University of Michigan, a position she assumed in 1994 and held through the end of the University's successful $1.4 billion Campaign for Michigan.

Kathy A. Okun

Previously she had directed development and alumni work for the University of Michigan School of Nursing and before that for the U-M School of Social Work. Her three degrees all are from Michigan, an A.B. in history and elementary education, an A.M. in educational administration, and a Ph.D. in higher, adult and continuing education.

"As we enter a new millenium, the Law School must continue to reshape and strengthen the bonds that link it with its graduates," says Dean Jeffrey S. Lehman, '81. "The Campaign has begun that process; now that Kathy is here, we will be able to complete it. Her intellect, her experience, her warmth, and her ability to listen will be of inestimable benefit to the Law School as we look to the future."

Okun knows the University of Michigan thoroughly and has been her usual quick study since coming to the Law School. You'll frequently see her walking through Hutchins Hall, chatting with faculty, students or staff and attending special lectures and other Law School activities. "Being in central development was interesting and challenging," she says. "But it was very narrow in focus. I've

missed being with faculty and being on the main campus." Okun says she quickly found that students, graduates, faculty and friends have a special affection for the Law School that weathers time and distance. "There's so much potential here, there is a passion for the place," she says.

Benefactor William Cook's gift of the Law Quadrangle in the late 1920s has given the Law School a priceless focus for that passion, she adds. In a way, the School's architecture has become the unchanging symbol of the intangible experiences that students have here. To Okun, "It's an icon.

"People want these things in their lives — a sense of continuity, a sense of stability, something you can count on."

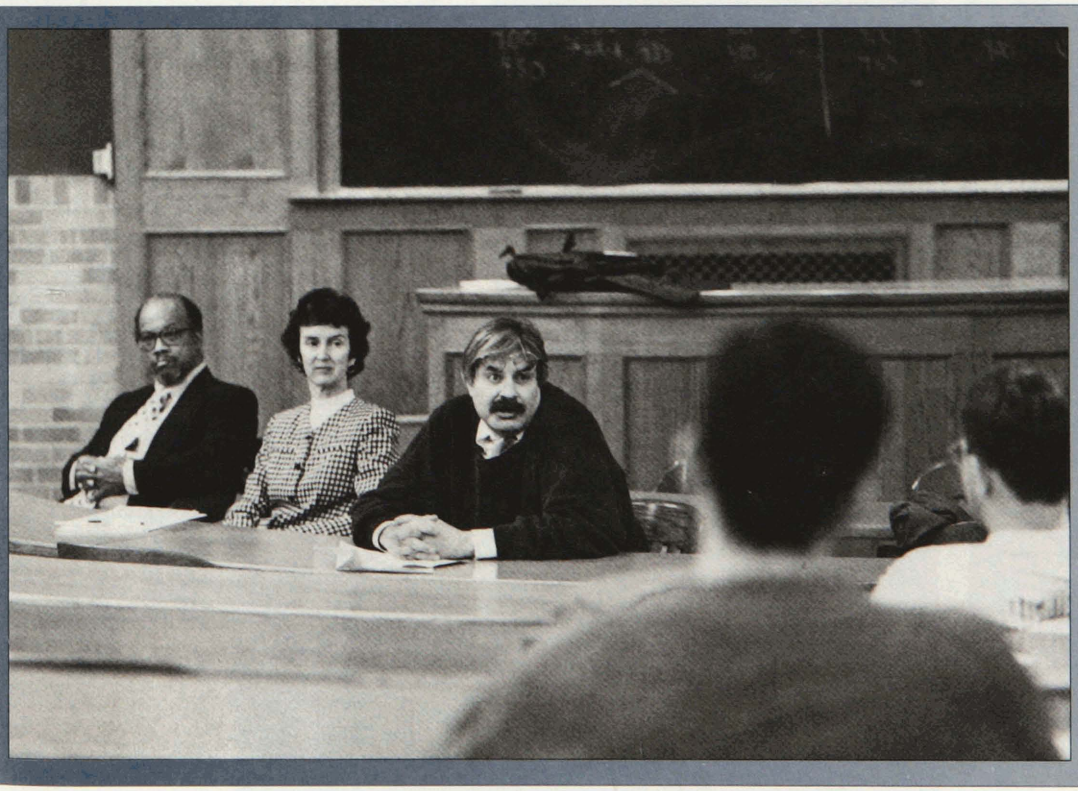
The three years of law school have a profound and permanent effect on graduates, according to Okun. "People are so tied to the Law School. It had so much impact on them and their lives, and that may be a galvanizing experience for them."

These ties became apparent in September when the Law School announced that gifts from its graduates had raised $90 million and exceeded the original $75 million goal in the Law School Campaign (see story on page 3). Okun recognizes the benefit of coming to the Law School at the end of the successful Campaign, but like Campaign Chairman Terrence Elkes, '58, she sees the successful conclusion of the Campaign as "the end of the beginning."

Like any living entity, the Law School has needs that continue beyond the conclusion of the formal Campaign, she says. "A campaign to me is just a framework to work in. It doesn't affect the needs of the school. Students still need financial support, faculty need research funds. We still want to recruit the best and the brightest. The buildings need to be maintained.

"I think the needs are clearly articulated, and at the top of my agenda is to continue to engage people in the life of the School. Sure, there needs to be a period of regrouping, reorganizing and rejuvenation," but "it's wonderful to come in on success. I came from a winning team, and I'm used to building on successful experience. I think most Michigan graduates feel the same way. I have every intention of making the most of this opportunity."

"My agenda," she says, "is the School's agenda."



Looking at the World of Work —

United Auto Workers In-House Counsel Ralph Jones, '72, Virginia Metz, '75, of Verecruysse Metz and Murray, and National Labor Relations Board representative Mark Rubin examine "Careers in Labor and Employment Law" during a panel discussion at the Law School in the Fall Term. The program was sponsored by the Employment and Labor Law Association.

MEET THE CLASS OF 2000

Many routes lead to the study of law

Like a loving parent, the profession of law welcomes people from virtually all academic fields. Sure, most newcomers to this Law School and others earned undergraduate degrees in political science or history, maybe English or philosophy. But don't leave out family relations/child development, marketing, or veterinary medicine/animal sciences.

The Law School's current class of first-year students reflects the field of law's ability to take in people from virtually all academic disciplines. There are people with degrees in all the fields already mentioned, plus art history, several kinds of engineering, a variety of social sciences, and more than 40 other areas of study.

"Our recruitment efforts, particularly the merit scholarship program, were successful in attracting some of the very best students applying to elite law schools in the country," according to the Admissions Office report to the Committee of Visitors in October. "The competition for the best talent is particularly fierce since the national pool is substantially smaller than in the early 1990s. Merit scholarships are critically important to compete successfully for our share of the best and brightest law student candidates each year and we are pleased our scholarship program produced good results this year.

"The demographic traits of the class are diverse with 41 states, the District of Columbia, and three foreign countries represented in the class. The students come from 134 different undergraduate-degree granting institutions, and they received their degrees in 54 different disciplines. Women represent 44 percent of the entering class, and students of color 22 percent. All in all, this is a very strong and diverse group of students for the Law School."

Law always has been this way, a ready receiver for people with active, inquisitive minds from just about any background imaginable. Despite law's rigor as a field of study and a profession to practice, it has a certain renewability to it. In that sense, this year's crop of first-year students is similar to those that have preceded it. As usual, it is populated with interesting, energetic people. We thought you'd like to meet a few of them:

A SNAPSHOT OF THE 1997 ENTERING CLASS

Total Entering Students	339
Male	191
Female	148
% Female	44%
% Students of Color	22%
Median LSAT Score	167
Median GPA	3.50

From the scientist's bench to the lawyer's bar

William Jenks had been working for four years as a research physicist at Vanderbilt University before enrolling at the Law School in 1997. The research work was hopeful — using his specialty in superconductors to try to develop less invasive ways to analyze the health of the lower digestive system. If successful, the work offered the promise of helping people detect internal injury or disease without the discomforts associated with traditional diagnostic procedures.

The human body produces a magnetic field, which is formed by the electrical impulses that nerves generate when they send messages, Jenks explains. He and his colleagues based their work on the hope that superconductors could be used to detect abnormalities in that magnetic field and pinpoint health problems without the usual poking, prodding or prying diagnostic procedure.

Jenks was well trained for the work. A native of Kathleen, Florida, he had earned his bachelor's degree in physics at Florida Southern College, whose striking campus buildings were designed by Frank Lloyd Wright, and his Ph.D. in physics from Florida State University, a major center for research in his specialty of superconductors.

But the research was slow and lonely, and "I began to get bored with the bench scientist's work that I was doing," he says. "I started looking for something new to do that involved people, where I can interact with people, help people, where I still can retain and use my technical expertise."

Jenks set about his search like a scientist, analyzing his own interests and following where they led him. He had minored in history as an undergraduate, and had done volunteer work with Habitat for Humanity while working at Vanderbilt. He examined the idea of a career in the business world, or in industry.

His search also led him to visit some classes at the Vanderbilt Law School, and those visits helped convince him that the field of law offers the combination of personal interaction and technically-centered activity that he wants.

For example, he says, he can combine his physics background with his legal training to execute patents for other scientists.

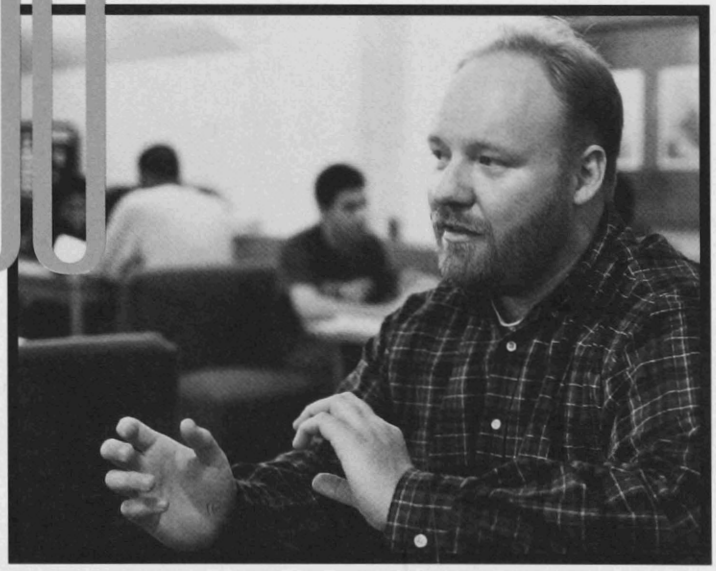
Or he might become involved in litigation over patents.

Or in the management of a company's patent portfolio.

Or as corporate counsel for a technology company.

Or. . .

2000

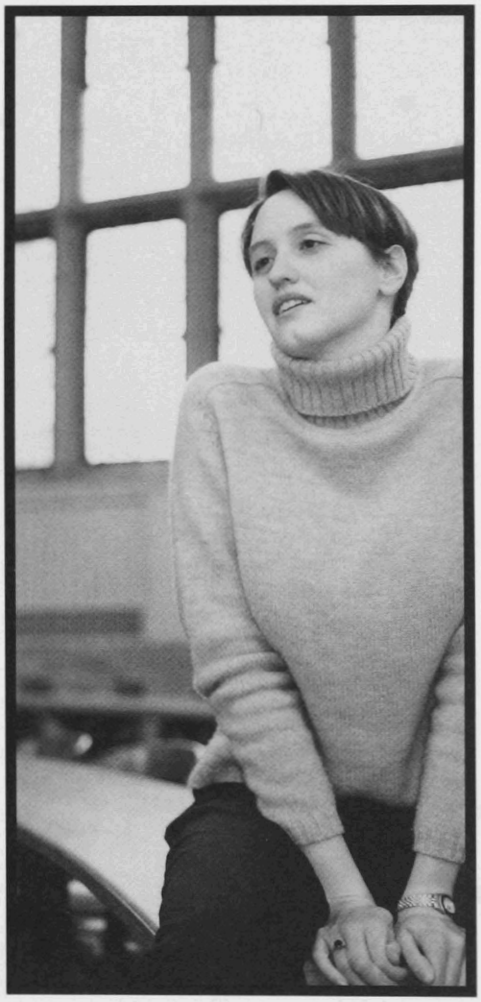


William G. Jenks

The scales of philosophy and law

Carolyn J. Frantz was only six years old when she was hospitalized, and she always has remembered and appreciated how her parents treated her at the time. They explained to her what was happening, when she would feel pain, why she was undergoing treatment. Their respect for her made the ordeal much easier, she says.

Today, three college degrees later as a first-year law student, she still believes that children should be treated with



Carolyn J. Frantz

respect more often than they are. Further, she says, other people who are denied independence under our legal system, people like the mentally ill and those who have been declared to be incompetent, too often are the victims of greater restrictions of their rights than their cases warrant.

"I'm interested in children's law, mental health law and health law," says Frantz, a native of Lafayette, Louisiana. "More specifically, I am interested in the question of incapacity — when does the law deem people unable to make decisions for themselves."

There was a time when she thought she would become a philosopher, and she earned her bachelor's degree in philosophy at Wake Forest University in Winston-Salem, North Carolina. She still was thinking of philosophy when she won a Rhodes Scholarship to study at Oxford University in England, where she earned a law degree and a master's degree in English law: "I thought it would be a nice way to see how things work, to get some legal instruction, without having to pay for and get a J.D."

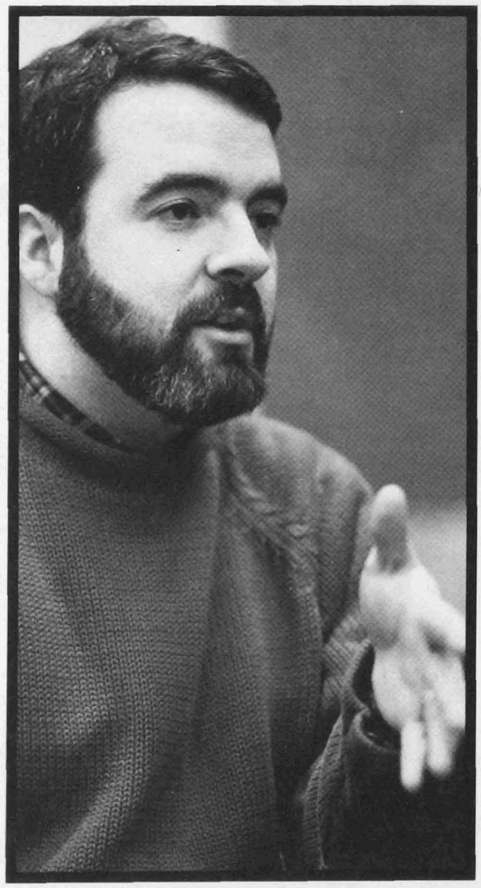
But the study of law captivated her, and she now plans to teach law as well as participate in impact litigation. "The reason that I decided that I prefer law to philosophy is that I've always believed that intellectual things do and should influence people's lives," she explains. In the field of philosophy there are plenty of ideas, she says, "but little mechanism for putting them into action. What I like about the law is that it allows you to think about things at a deep level and argue about them in a way that substantively changes people's lives."

The road to the bench

Christiaan Johnson-Green, who is named after South African heart transplant pioneer Christiaan Barnard, wants to be a judge.

The Huntington, New York, native hasn't always wanted to be a judge. For many years he thought he wanted to become a history teacher. This led him to earn a bachelor's degree from Boston College with a triple major in history, philosophy and secondary education. Then, he sharpened his focus to becoming a university history professor, which is why he studied for a master's degree in Modern German History, with an emphasis on the Holocaust, at the State University of New York at Buffalo.

"Then after my master's classes, I took a year off to decide whether to go on for the Ph.D. or to do something else," he says. "At that point, I heard a voice telling me to become a judge. At first, I ignored the voice. Nobody in my family is a judge. There aren't any lawyers in my family. We're from good blue collar Irish stock... I fought the idea of becoming a lawyer for a long time."



Christiaan Johnson-Green

During this period, Johnson-Green, who had been raised in a nominally Roman Catholic family, also was converting to Judaism. He likes the sense of community that he finds in Judaism and he shares the hope that something like the Holocaust will never happen again to anyone. In the end, it was his twin studies, Judaism and history, that brought him to the law.

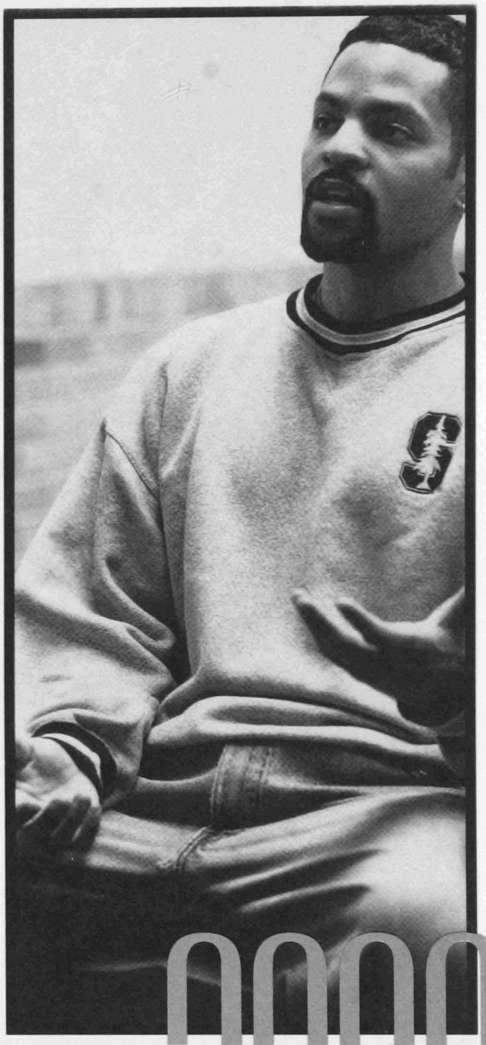
"I started to reflect on some of the lessons I had learned from studying the Holocaust," he says. "I started to realize that mentalities that take over certain social institutions can lead to what happened in Nazi Germany. For example, the breakdown of Germany's legal mechanisms was one of the reasons that the Nazis were able to take control." His respect grew for people like Oskar Schindler and Raoul Wallenberg, whose strength allowed them to resist some of the ravages of Nazism. Schindler, the subject of a book and the movie *Schindler's List*, was a businessman who protected his Jewish employees by claiming that their work in his firm was necessary for the German war effort; Wallenberg, a Swedish diplomat and graduate of the University of Michigan, helped more than 100,000 Jews in Hungary escape death at the hands of the Nazis.

"That's when I started to see that being a judge, being someone in a strategic position, would make me able to do a lot of good," Johnson-Green says. No, he quickly adds, there won't be a Holocaust-like tragedy in the United States. "But some groups within U.S. society, like gays and lesbians, are the subject of unfair treatment."

He enrolled at the Law School over the summer, and took a short break during the term to get married. His wife, Elissa Johnson-Green, is a master's candidate in musicology at the University of Michigan. Although he is a veteran of rigorous academic work, Johnson-Green says that he still finds the study of law "overwhelming in terms of the time that it demands."

"I'm amazed that I can work from 8 a.m. until midnight and still go to bed feeling guilty that I missed something. The fact that there are only 24 hours in a day is a daily obstacle."

Jaasi Munanka



Engineering a wider world view

Like electric current, which travels best when carried within a conductor, electrical engineering sometimes felt just a bit confining to Jaasi Munanka, 24. Not that electrical engineering isn't challenging, mind you. Munanka can testify to its difficulty. He's earned a bachelor's degree in the field from Stanford, and this spring will complete his master's degree in electrical engineering at the University of Michigan.

It's just that Munanka finds electrical engineering a bit limiting, so he's broadening his contacts and perspective by studying law. "Doing research [in electrical engineering] can be a very isolating thing," says Munanka, a Denver, Colorado, native who began study at the Law School in summer 1997. "I'm more of a social person. I came to ground my technology in a societal and cultural sense, to look at technology, culture, society, and the legal side of things."

Munanka has been as good as his goals. He's been involved with the Black Law Students Alliance and a student-run reading group devoted to understanding and discussing affirmative action. He's also interested in intellectual property issues.

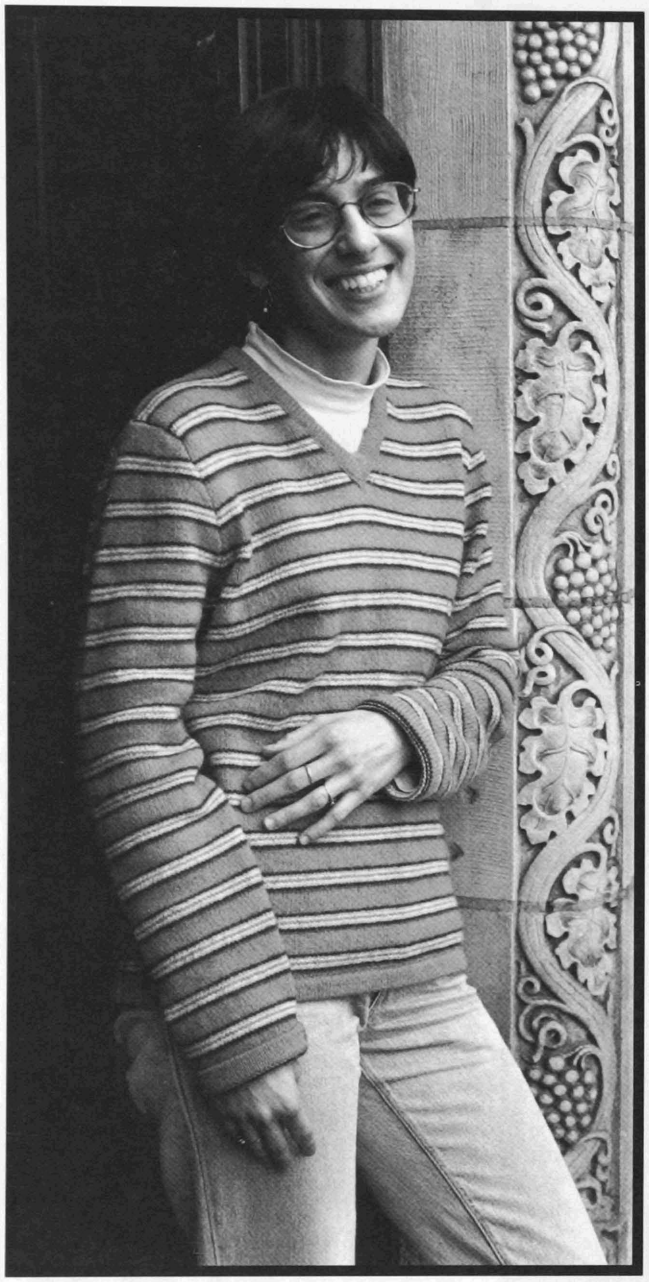
In his courses, he says, "what intrigues me most are technical issues in developing countries." He hopes to do an externship in South Africa this fall as part of the Law School program there that is overseen by Wade H. McCree, Jr., Collegiate Professor of Law David L. Chambers (see story page 30).

Munanka says he can see the evidence of societal, cultural and historical impacts on torts, contract law and property law. He's also found, he says, that some areas of law are matters of rote learning of rules that are not to be questioned. "Sometimes, it's a matter of knowledge vs. aggressive lawyering."

"I know how to question in the technology realm," he says. "I want to learn to have intelligent questions to think about in the social and cultural realms."

2000

From English literature to the law



Rachel F. Preiser

In many ways, it was 19th century English writer George Eliot who convinced Rachel F. Preiser to enroll at the Law School. "A brilliant woman, she knew at least five languages," Preiser says of the author, who wrote under a male pseudonym because she feared she would not be accepted under her birth name, Mary Ann Evans.

"She was committed to envisioning ways in which women could contribute to the community, in social conditions that required balancing competing claims on women's lives," says Preiser, a New York City native who earned a bachelor's degree in literature from Swarthmore College and a master's degree in 19th century English literature from Cornell University. "For myself, I really believe in the importance of trying to match your ultimate ambition with trying to achieve socially useful ends."

Preiser came to the Law School after teaching English in France for a year as a Fulbright Fellow and working as a science writer for three years at *Discover* magazine.

"What attracted me to law school was the possibility of using my articulateness and my ability to write to work on issues of importance to many people," she says. The law is "a very powerful system that reaches some of the most important aspects of people's lives. I hope to contribute to working on those issues in the public interest area of the law. I particularly like the idea of using class action to help communities get redress for injustices that individuals might not have the means to pursue on their own."

"I like my classes, and I spend a lot of time at them," she says. So much so that her regular swims take place early in the morning before the day's work begins. "I'm addicted," she says of the lift that the exercise provides for her.

By the end of her first term last fall, Preiser's classes in Torts and Criminal Law were emerging as her favorites. "I believe that torts is largely about individuals using the legal system for revising and re-distributing the responsibilities you have toward each other in a society," she says. As for criminal law, "It brings the state, the government into that debate. The stakes become much higher and there's a moral imperative."

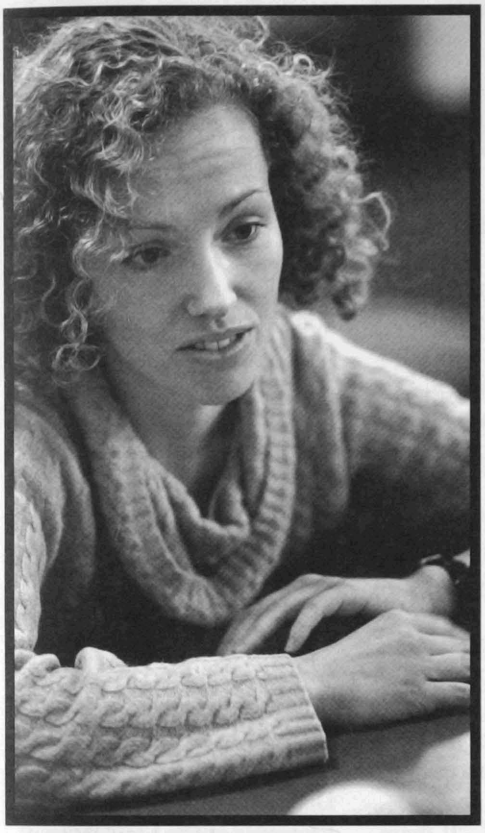
She's also interested in women's issues, and "perhaps the most important thing I've done since my arrival" is to help establish the student group Perspectives of Women. "We are a research group dedicated to looking at the Law School environment from perspectives that may sometimes get lost in the 'main stream,'" she explains.

"We meet every Thursday at lunch and have put together over the course of this semester a research questionnaire just distributed to law students to evaluate whether students feel that the issues that drove them to law school, issues of race and ethnicity, gender, class, etc., have been addressed in the classroom in ways that have invited productive and mind-stretching debate.

"We are interested in making the Law School the most comfortable, exciting, and engaging place for intellectual exchange on socially and personally important issues that it can be."

Mary Ann Evans would approve.

Many choices lead to law school



Caroline A. Sadlowski

Caroline A. Sadlowski's road to the Law School led her from Harvard College to Lowell, Massachusetts and Calcutta, India, back to Harvard, then to Washington, D.C. It's a path that mixed academic study with gritty real-world experiences.

A native of Fairfield, Connecticut, Sadlowski earned a bachelor's degree in comparative religion from Harvard College and a master's degree in theological studies from Harvard Divinity School. She also has been a VISTA volunteer in Lowell, Massachusetts, a worker with one of Mother Theresa's homes for dying women in Calcutta, and a pre-trial case manager in Washington, D.C.

In Lowell, she worked as a Youth Corps Leader with "people who had dropped out of High School, who were coming back to get their GED [high school equivalency], do community service, and start community college at the end of the program. A lot of them were court-involved." The work shifted her interests from education to legal reform, particularly alternative sentencing.

Her time in Calcutta brought her face to face with the world-wide nature of poverty and taught her a deep respect for grass roots efforts.

In Washington, she worked with people as young as 18 and as old as 47 to help them follow court orders that might let them avoid trial. "My job was to help them stabilize their lives," she says. "This helped me understand how to advocate for a defendant's basic needs before judges and prosecutors."

In the academic world, her interests have centered on the intersection of "religion and government, the religious and the political processes. My thesis is on California's integration of comparative religion into its social studies curriculum. I've done a lot of work on women in religion and the conflict and confluence of women's groups and religious groups in emerging democracies."

"Almost everyone asks, why come from divinity school to law school? Religious and legal traditions shape our social order and express our commitment, sometimes weak and sometimes strong, living in community. I'm trying to be sure that I neither under- nor overestimate the power and potential of our traditions as I advocate for social and economic justice."

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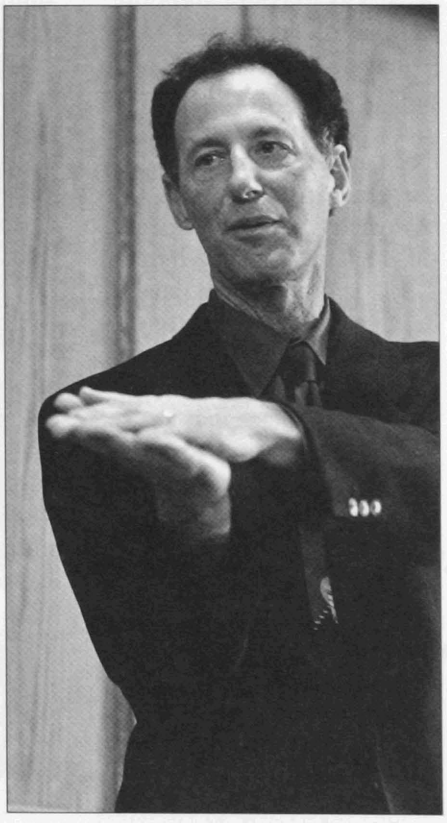
Strategy or Principle? —

Constitutional limits are "fairly paltry" on regulation or taxation, but other considerations like evenhandness and administrative costs may come into play, Mark G. Kelman, William Nelson Cromwell Professor of Law at Stanford Law School, explains as he delivers the 42nd annual Thomas M. Cooley Lectures at the Law School in October. Kelman's two lectures, delivered on consecutive days, addressed "Strategy or Principle? Constitutional and Prudential Considerations in the Choice Between Regulation and Taxation." Kelman, a founder of the Critical Legal Studies movement, works on and has written on a wide variety of issues, including learning disabilities, taxation, criminal law, job testing and domestic partner benefits. He has taught at Stanford since 1977. The Cooley Lectureship is named for a member of the first law faculty at the University of Michigan and dean of the Law Department who also served on the Michigan Supreme Court and was named the first chairman of the Interstate Commerce Commission in 1887. The lectureship is supported by the William W. Cook Endowment for Legal Research.



University of California at Berkeley Law Professor Joseph L. Sax delivers the Law School's 38th series of William W. Cook Lectures on American Institutions. Sax's topic was "Who Owns History?" Sax taught at the Law School from 1966-86.

Sax returns to Law School to deliver Cook Lectures. *Who owns history?*

"Who Owns History?"

Joseph Sax, who taught at the Law School from 1966-86 and now teaches law at the University of California at Berkeley School of Law, wrapped that title around the three talks that he delivered as the 38th series of William W. Cook Lectures on American Institutions at the Law School in November.

While at the Law School Sax "became known as America's foremost authority on environmental law," Dean Jeffrey S. Lehman, '81, said in his introduction of Sax and the lecture series. Sax "was both a reassuring and a challenging model," said Associate Dean for Academic Affairs Christina B. Whitman, '74. "He is an inspirational teacher. He was a creator of environmental law. . . . He has pursued an interest in our common heritage that leads quite naturally to the subject of our lectures this week."

Indeed, the tension between private ownership and common property that Sax so often struggled with in environmental law held a pivotal position in his discussion of "Who Owns History." His three lectures grew from detailed historical accounts to a series of recommendations for ensuring that history become the property of everyone while also protecting the privacy and private initiatives of those who make it.

"The fate of most things is of interest only to their owner" but "some things regardless of who owns them, are important to the larger community," Sax explained in his opening lecture, which he called "What George Washington Took Home." He titled the second lecture "Yes, The Library Has It, But You Can't See It," and the third "Executors, Heirs and Biographers."

Throughout the talks, Sax wrestled with the problem of ownership and control vs. access and use of the private papers of public figures, relics of ancient cultures and other aspects of the raw material of our knowledge of history and art. In most cases, he said, "you can throw darts at your Rembrandt."

Some people, like President Franklin Delano Roosevelt, had a strong regard for the historical significance of their papers. "I have destroyed practically nothing," FDR reportedly told experts he had brought together in 1938 to plan his presidential library.

But others, like the widow of President Warren Harding, wanted to control what goes into the construction of a person's historical image. She burned about half of her husband's official papers.

In the end, Sax called for:

- A "qualified ownership" that recognizes a community's right to access to objects like manuscripts, paintings and fossils. "There's no single problem," Sax said. "Certainly there's a difference between an author who destroys things himself, and a purchaser or an inheritor."
- First publication restriction. Allow the discoverer or holder first publication rights only for a specified period of time, then broaden access. "I am very doubtful about exclusivity," Sax said. "If there is to be a period of exclusivity, it should be as short as possible."
- Nothing should prevent authors from discarding their own work, but public figures should be discouraged from discarding their papers. Perhaps in the case of judges there should not be publication for 20 years or until the last sitting judge is gone from that bench.
- Heirs and executives should see themselves with a "qualified ownership" that "emphasizes stewardship" and lets history be the judge. To destroy items deemed to be embarrassing is to fail to recognize that different ideas will prevail in a different era.
- Libraries should support a "strongly worded policy against restricted access." It would be helpful if many libraries subscribed to a common policy against restricted access so that people could not shop among libraries so easily to find restrictive conditions to their liking.

Currently James H. House & Hiram H. Hurd Professor of Law at Berkeley, Sax earned his A.B. at Harvard and his J.D. at the University of Chicago. He has practiced law in Washington, D.C., taught at the University of Colorado, and was Philip A. Hart Distinguished University Professor at the University of Michigan. From 1994-96 he served as Counselor to the Secretary of the Interior and as Deputy Assistant Secretary of the Interior.

The William W. Cook Lectures on American Institutions honor William Wilson Cook, 1882, who received his bachelor's and law degrees from the University of Michigan. Cook, the author of the two-volume *American Institutions and Their Preservation,* established the William W. Cook Foundation for the lectures.

Midwest's clinical law specialists take time to **step back**

Evaluation in the workplace is like taking a physical exam: Nobody enjoys it, but nearly everyone agrees that it can reinforce what's good and preemptively identify what's going wrong. As Bob Gillett, '78, director of Legal Services of Southeastern Michigan, applies the idea to the legal office: "You can't really have a high quality legal office without some sort of evaluation."

Evaluations can look at programs, office policies and individual attorneys, Gillett says. They're important because they can build a sense of collegiality and shared goals, improve quality control, and, most important, further staff develpment. "I think it benefits anybody at any level of practice to step back and say what is working well, what is working, and what is not working."

Gillett was a speaker for the 1997 Midwest Clinical Conference at the Law School in November on "Professionalism in the Clinic: The Seat-of-the-Pants Practitioner Faces Tomorrow's Hearing."

Like many people in the legal profession, clinical law teachers often collaborate with colleagues on specific cases, but usually are so busy with those cases, teaching, and other daily duties that they seldom step back and evaluate what they are doing, how well they are doing it, and how well their co-workers are doing.

Paul Reingold, director of the Michigan Clinical Law Program (the Law School's civil-criminal clinic) and an organizer of the conference, opened the two days of programs by pointing to the need for clinical law professionals to appraise what they and their fellow clinicians do. "The premise is that the work we do we could do better and that most of the time we don't look at the work that our colleagues do," Reingold said.

Through two days of plenary sessions and small discussion groups, the clinicians stepped back to look at how they and their fellows are doing. Gillett joined Deborah Gaskin, director of administration and general counsel for Hartford Memorial Baptist Church, and Saul Green, '72, U.S. Attorney for the Eastern District of Michigan, as panelists for the plenary session on "Presentation of the Problem: What is 'Quality Control' in the Legal Workplace?"

In the conference's other two plenary sessions, participants considered:

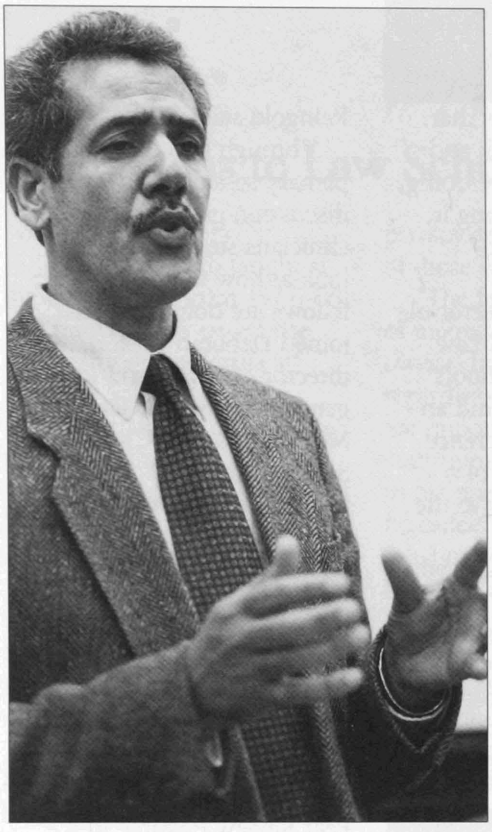
1. "Sharing Our Work: Is Peer Review Possible in a Hierarchical Setting?", with panelists Kathleen Faller, a University of Michigan professor of social work and a regular contributor to the Law School's Child Advocacy Law Clinic, and Rob Pasick, a consulting psychologist with the Ann Arbor Center for the Family.

2. "Issues Cutting the Other Way: How Can We Increase Access to Legal Services for the Indigent?", with Michael Millemann, director of the Clinical Law Program at the University of Maryland School of Law, and Louise Trubeck, clinical professor of law at the Univesity of Wisconsin Law School.

Some 60 clinical law professionals attended the conference.

Deborah Gaskin, director of administration and general counsel for Hartford Memorial Baptist Church, gestures as she speaks during a panel discussion on quality control in the workplace during the Midwest Clinical Law Conference in November. Other panelists, from right, are: Bob Gillett, '78, director of Legal Services of Southeastern Michigan; Saul Green '72, U.S. Attorney for the Eastern District of Michigan; and panel moderator Rochelle Lento, director of the Law School's Program in Legal Assistance for Urban Communities.

A 'fine line' of **censorship**



Censorship is a universal problem, but it has "exceeded all norms and forms" in the Middle East, Research Scholar Jabbar Al-Obaidi of Iraq tells an International Law Workshop audience in November. Al-Obaidi is one of several research scholars working at the Law School this academic year.

Law School Research Scholar Jabbar Al-Obaidi tells of being on the fourth floor of the Information Ministry building in Baghdad in 1990 with other journalists. The Minister of Information comes in and says "I have news. There's a presidential order, and we've decided to lift censorship."

"Can we publish that?" asks a reporter.

"No," replies the minister.

And that's how press freedom works in Iraq, according to Al-Obaidi, an Iraqi national who formerly taught at Baghdad University but left his country in 1991 after the Gulf War. At the time he was chairman of the Department of Radio, TV and Film in the College of Fine Arts at Baghdad University.

But don't misunderstand, he cautions. "Censorship is not a problem that is peculiar to the Middle East and Arab countries. It is universal, but it has exceeded all norms and forms" in the Middle East.

Al-Obaidi, a professor of communication who taught at the universities of Yemen and Jordan after leaving Iraq, is spending this academic year as a research scholar at the University of Michigan Law School working on a book about media censorship in the Middle East. He also is developing research papers that strive to re-think the copyright issue in the Middle East and examine the possible influence of the First Amendment to the U.S. Constitution in the Middle East. In November he lectured on "Flow of Information vs. Censorship in the Middle East: The Constitution and People" for the Law School's International Law Workshop.

"It's an amazing environment here," Al-Obaidi says. "The Law School library is huge. I've found a lot of cases about the media, especially in Egypt. This is a very rare opportunity to sit and write and talk with law professors." In addition to his research, he's been attending L. Hart Wright Collegiate Professor of Law James Boyd White's class on the First Amendment and Visiting Professor Jerome H. Reichman's classes in Copyright and Intellectual Property and International Trade.

The Law School's Research Scholar Program is a non-degree program that offers faculty members at other schools the opportunity to spend time at the Law School, use its resources to further their own research and attend classes if they choose. Al-Obaidi, who received his Ph.D. in communication from the U-M in 1983, is one of several research scholars at the Law School for all or part of this academic year. Others include:

Soo Hyun Ahn of Korea, doing research on corporate and international finance; Masakazu Doi of Japan, human rights, constitutional law and the right to die; Boutheina Guermazi, Tunisia, international trade law; Sathavy Kim, Cambodia, constitutional law and civil procedure; Naoko Muramatsu of Japan, administrative law; Yubo Song, China, legal theory and UN peacekeeping; Senarong Tan of Cambodia, comparative law; and Naigen Zhang of China, intellectual property law and international trade.

Al-Obaidi watched with keen interest last fall as Iraqi President Saddam Hussein created an international crisis over his opposition to U.S. nationals on the United Nations team charged with monitoring Iraqi weapons programs. The crisis nearly led to warfare before Iraqi and U.S. leaders reached a compromise that other nations also accepted. Hussein kept the issue of weapons inspections alive and heated into this year, however.

Western coverage of the crisis was less than stellar, Al-Obaidi says. "I feel the

foreign media does not know enough to give us at least a semi-real story of what is going on." Press restrictions inside Iraq restrict the news that comes out of the country, he explains, and western news analysis seldom reports the damage that sanctions have done to the people of Iraq. Sanctions don't deprive Hussein and other Iraqi government leaders of luxuries and necessities, he adds. They only deprive the Iraqi people. "Now the Iraqi people are sandwiched between the UN sanctions and their need for food and medicine. I feel bad about that."

Like most Middle Eastern countries, Iraq has a "fine line" of censorship, according to Al-Obaidi. "Censorship in the Middle East is political censorship, not otherwise. You can criticize the economic or political situation of any country, but you can't criticize the national economic or political policy." The coverage of sports and entertainment, for example, encounters few restrictions, he adds. Exceptions in the region include Egypt, Israel, Turkey, Yemen, Jordan and Kuwait, where there is more open debate of national economic and political issues.

"When I say I want a free press, I'm talking about free access to government information, finding a way to let responsible journalists and media people debate economic, political, social and cultural issues when probably they can assist the government, where the government can benefit from their opinion."

"Our problem," he says, "is a political problem and the Middle Eastern people will have to wait for a much longer time to reach a reasonable level of media openness."

Suit challenges Law School admissions policies

The Washington, D.C.-based Center for Individual Rights (CIR) filed suit in federal court against the Law School in December challenging its admissions policies. Six weeks earlier CIR had filed a similar suit against the University of Michigan and its College of Literature, Science and the Arts, the U-M's largest undergraduate unit.

"We are confident that our admissions policy is constitutional," Law School Dean Jeffrey S. Lehman, '81, responded in a prepared statement. "It conforms to the requirements of the Fourteenth Amendment as set forth in Justice Powell's opinion in *Regents of the University of California v. Bakke.* We believe that the Supreme Court should not, and will not, use this lawsuit to change the law and prohibit what is now permitted."

University attorneys responded to the suit on December 22, denying each charge and asking that the suit against the Law School be dismissed. At deadline time, no action had been taken on the dismissal request nor had a court date been announced. Information on the admissions lawsuits is available through the University of Michigan website, www.umich.edu.

CIR filed the suit for its client, Barbara Grutter, a 44-year-old graduate of Michigan State University who applied unsuccessfully for admission to the Law School. The suits against the Law School and the University of Michigan are among several recent actions to weaken affirmative action in the United States. CIR has filed suit against the University of Washington School of Law challenging its admissions policies, and in 1996 the organization successfully challenged the University of Texas Law School for using race as an admission criterion. Last year, public colleges and universities in California dropped affirmative action from admissions policies after courts declared the voter-approved Proposition 209 to be constitutional. Proposition 209 prohibits preferential treatment of anyone.

At the Law School, student organizations voiced support for current admissions policies, which use race as one of many factors in admissions criteria that are designed to produce a class that is diverse in its racial and socioeconomic makeup and geographic background. Lehman, joined by University of Michigan Provost Nancy Cantor, outlined undergraduate and Law School admissions policies for a standing-room only audience in Honigman Auditorium at the Law School in early December.

In a special gathering on December 12, two days before final examinations began, six Law School student organizations and a graduate student group announced their support for current Law School admissions practices. The groups included: Asian Pacific American Law Students Association, Black Law Students Alliance, Latino Law Students Association, National Lawyers Guild, Native American Law Students Association, and OutLaws from the Law School, plus the Network of Graduate Students at Michigan.

Speaking for all of the groups, second-year law student Dallae Chin said: "We believe that affirmative action promotes the diversity necessary to create a dynamic academic environment that will produce lawyers who can function effectively in a multicultural and global society. We value diversity as embodied in a student body that includes people of different races, ethnicities, gender and sexual orientation.

"Although our past and present struggles differ to the extent that we confront issues unique to our own communities, we share in our opposition to the continuing legacy of

discrimination. We recognize that affirmative action is a necessary means of combating prejudice, unequal opportunity, and under-representation."

CIR's suit endangers the 50-year trend toward increased racial integration in legal education and the legal profession, Lehman said. "Recent developments in Texas and California reveal the consequences for society if the CIR approach were to prevail: a dramatic reduction in the number of African Americans and Latinos, well qualified for the study and practice of law, who apply to and are subsequently enrolled at the nation's top law schools."

"For students studying law in 1997," he said, "race matters. One's racial background does not preordain one's views on legal subjects. Nevertheless, Americans of different races have different experiences that can lead them to bring different insights and perspectives to the study of issues as diverse as property law, contract law, criminal justice, social welfare policy, civil rights law, voting rights law, and the First Amendment."

"Our admissions office does not use racial quotas," he added. "The percentages of students of different races in our entering classes vary noticeably from year to year. We use diversity as a factor within the larger context of our policy of admitting only students whom we expect to go on to become outstanding lawyers.

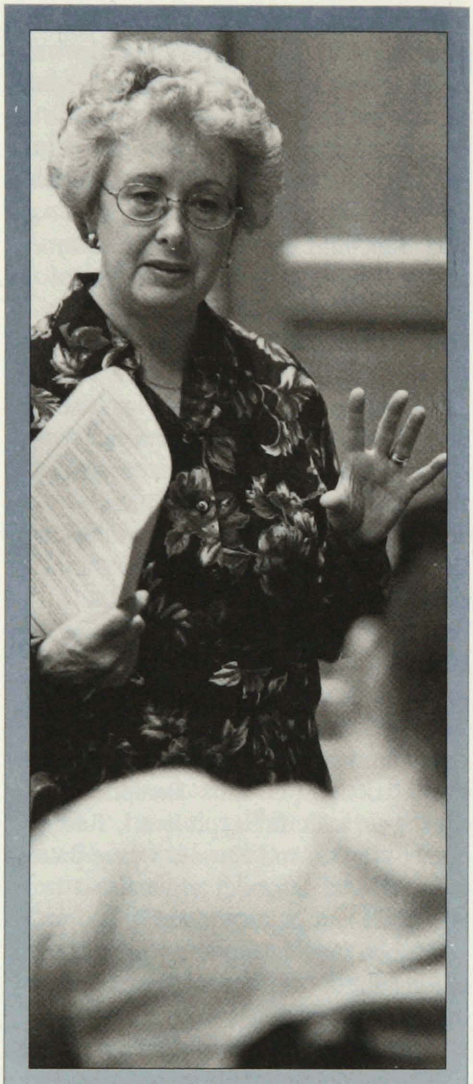
"We sympathize with the desire to imagine a world in which a citizen's race would have no impact on his or her opportunities, academic preparation, life experiences, or institutional relationships. We believe, however, that construing the Constitution to prohibit law schools such as Michigan from enrolling racially diverse classes in 1997 would arrest progress toward such a world.

"In defending this lawsuit, the University of Michigan Law School will defend the ability of law schools to make appropriate, moderate use of racial diversity as one of many factors in admissions. In doing so, we shall defend our goal of providing our society with lawyers who are fully equipped to serve as reflective and completely educated leaders."

CIR's suit against the Law School and the University's response to CIR's October 14 lawsuit both were filed on December 3. In its response, the University, like the Law School, cited the 1978 *Bakke* case, in which the Supreme Court said that public institutions of higher education may use race as one of many factors in evaluating applicants. Said University President and former Law School Dean Lee C. Bollinger:

"Race is but one of many factors that are taken into account when making admissions decisions. Any factor considered by the University in its admissions process such as residency, athletics, leadership, alumni connections, or high school curriculum, as well as race, will make a difference in the way a particular application is considered. We believe that using race in this manner is what the Supreme Court permitted in *Bakke* and we believe that this is necessay if the University is to perform its public function."

Like Lehman, Bollinger said the suits "threaten the ability of the University to bring together students from a wide array of backgrounds to create the richest possible environment for education and learning." He added, "We cannot let the University of Michigan be thwarted from playing a leadership role — as we believe a leading public university must — in building a tolerant and integrated society."



Opportunities Abroad —

Pamela Celentano, International Programs Administrator for the Faculty of Laws Bentham House, University College London, outlines opportunities available at her school for students from the University of Michigan Law School during a program in November. The program was sponsored by the Law School's Office of International Programs. University College London is one of five overseas universities linked with the Law School to provide Law School students an opportunity for a semester of study abroad. The other schools are University of Leiden, University of Paris II, Katholieke University Leuven and University of Freiburg. In addition, students may propose their own programs of study with law faculties at foreign universities.

Look beyond the obvious in Supreme Court rulings

We don't usually compare a U.S. Supreme Court decision to a pebble tossed into a pond. But sometimes the complexity of legal issues that reach the court leads to decisions that have to be measured by their impact as well as by their legal logic. Indeed, according to a law professor who spoke at the Law School in October, the ripples from two recent Supreme Court rulings may have unexpected results.

Calling his talk "What Role Now for Religions? The Supreme Court, the States, and Faith," Cleveland State University Professor of Law David F. Forte centered his comments on two religious rights cases that the Supreme Court handed down last summer. Forte's appearance at the Law School was sponsored by the Federalist Society for Law and Public Policy Studies and the Christian Law Students, with grant aid from the John M. Olin Foundation. Religious advocates praised the court's ruling in *Agostini v. Felton* and rued its decision in *City of Boerne, Texas v. P. F. Flores*, but neither case is a clearcut victory or defeat, Forte said.

In *Agostini*, the Court voted 5-4 to overrule an earlier case, *Aguilar v. Felton*, and said that public school teachers may enter religious schools to provide remedial care for students. Supporters of religious schools, Forte said, applauded the ruling because it undid the "Winnebago effect" of the earlier ruling — trailers set up outside of parochial schools for publicly paid teachers to use when working with private school students.

In contrast, religious supporters mostly have been dismayed by the court's ruling in *City of Boerne, Texas v. P. F. Flores*, which struck down the four-year-old Religious Freedom Restoration Act, Forte said. The court said that the law, which had been passed after the court had upheld a civil penalty for two native Americans who had used peyote as part of their religious rite, created a new right beyond what the U.S. Constitution guarantees.

Both cases have their flipsides, however, according to Forte.

The court's ruling in *Agostini* upheld a New York State law, and "the danger is that in the New York act there were a number of requirements — teachers can't team teach, there can be no religious symbols in the classroom where remedial courses are taught — that make up the '30 pieces of silver rule,'" Forte said.

The court interpreted the constitutional principle correctly, he said, "but the impact will be for religious schools to forego religious input to get state aid." In other words, religious schools may remove religious displays and other items from classrooms in order to make those classrooms available for public school teachers to use.

In *City of Boerne*, Forte said, the court also correctly interpreted the constitutional principle, a decision that disappointed most active religious rights supporters, but they can find a silver lining in the case that re-asserts the dominance of the U.S. Constitution. "Congress may not change the Constitution by statute. The principle harkens back to the struggle for liberty during the Revolution."

Forte cited Chief Justice John Marshall in the groundbreaking *Marbury v. Madison*: "It is a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it; or, that the legislature may alter the Constitution by an ordinary act.

"Between these alternatives there is no middle ground. The Constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it.

"If the former part of the alternative be true, then a legislative act contrary to the Constitution is no law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power, in its own nature illimitable."

The Supreme Court's decision in *City of Boerne* strikes down a law that guaranteed religious freedom, Forte said, but it also opens the way for a return to the social expression of religious and moral values that early leaders like George Washington and Thomas Jefferson advocated and that led to the great social movements of the nineteenth century like the drives for the abolition of slavery and temperance.

"I have great hope that this will change and relatively soon, and strangely the Supreme Court has given me this hope," Forte said. "I think that in the last few years the Supreme Court has extended free speech to include religious speech."

God always wins in the end, he said. "If we allow Him equal rights in the forum, He'll win."

Recently elected President of the Ohio Association of Scholars, Forte is book review editor for the *American Journal of Jurisprudence* and was editor for the forthcoming book *Natural Law and Contemporary Public Policy*. He served as chief counsel to the United States delegation to the United Nations during the Reagan administration.

A new tool for improving water quality

Environmental Law Clinic supervisor Cameron Davis and other lawyers who specialize in water pollution issues think they have a powerful new weapon in their battle to clean up U.S. Waters: Section 303(d) of the Clean Water Act of 1972.

This is the section of the Act that talks of Total Maximum Daily Loads, or TMDLs — the total maximum daily load of a pollutant that a waterway can handle without that pollutant reaching unsafe levels. The concept is similar to that of carrying capacity, a measure that biologists have used for decades to determine how many animals or plants can live well in a certain space.

"I promise you, you are going to hear a lot more about TMDLs in the next 10 years," Davis told a Law School audience in late November. Citizen groups in 25 states already have filed suits charging inadequate action on TMDLs, he said.

Davis, whose talk was sponsored by the Environmental Law Society, is one of the authors of the report "Pollution Paralysis: State Inaction Puts Waters at Risk," recently released by the National Wildlife Federation (NWF). The Law School operates its Environmental Law Clinic in cooperation with NWF.

TMDLs can be a significant help in easing non-point pollution, which comes from agricultural runoff, deposits from the air, and other sources that cannot be pinpointed to a specific source like a chimney or a runoff pipe, Davis said. The requirement that many polluters get permits for their emissions and keep those emissions at or below permitted levels has "done a tremendous job, but over time, as we've got a handle on point sources, other sources of pollution are overshadowing the point sources," he explained.

"The implementation of the U.S. Clean Water Act has gotten treacherously off track," according to Davis. "More than one-half of the United States' 2,000 watersheds have medium to high pollution," much of it from non-point sources:

- 59-89 percent of the PCBs entering Michigan's waters are from the air.
- 39-49 percent of the lead in Massachusetts Bay is from the air.
- 43 sites around the Great Lakes are on the toxic hot spots list because of contaminated sediments, including the Detroit River and the St. Clair River.

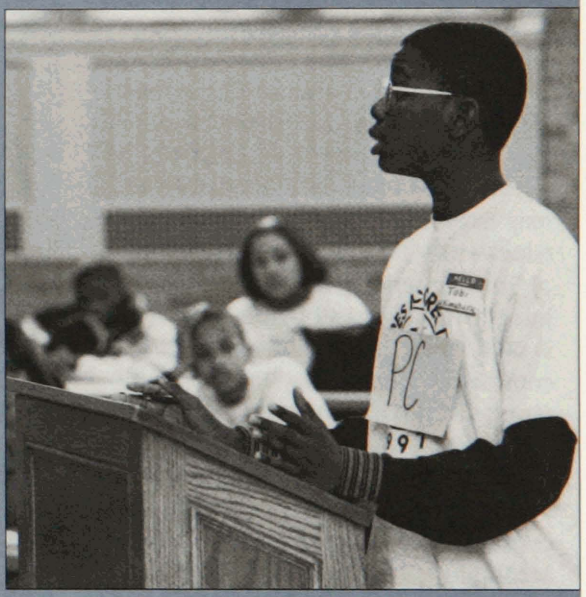
Another example is the culprit microorganism *Pfiesteria piscicida*, which thrives in waters polluted with nutrients like phosphorus and nitrogen and whose population recently has exploded in the Chesapeake Bay watershed. Davis cited several human health and fish kill impacts from *Pfiesteria*:

- In August and September last year 27 people may have been affected by contact with *Pfiesteria*, which can cause rashes, breathing difficulty, memory loss, nausea, disorientation or other symptoms.
- In North Carolina, a fish kill in the Neuse River in 1995 claimed an estimated 10 million fish, and fish kills elsewhere in the state are thought to be linked to the dumping of hog wastes into state waterways. North Carolina has responded by severely restricting the establishment of any new hog farms.
- Airborne mercury from coal burning plants has forced Ohio and Michigan to issue fish eating advisories for every body of water within their borders.

These are the kinds of problems that TMDLs can address, Davis said. The Clean Water Act requires states to draw up TMDL lists for their waterways and prioritize mitigation activities. But most states have lagged in developing or enforcing their TMDL lists and the Environmental Protection Agency has not exercised the law's "hammer provision" by drawing up the lists and taking over enforcement for the states. "Unfortunately," said Davis, "303(d) has not been implemented properly. . . . The EPA has failed to step in."

"Lawsuits have been filed in about 25 states against the EPA for failing to step in," he said. "Twenty-five states. If that doesn't tell you it's a pervasive problem, I don't know what would."

Simply drawing up TMDLs will not be enough, he acknowledged. Best management practice agreements, or independent control documents, must be negotiated with pollution producers to provide measures for enforcement. With such steps, he said, "better implementation of 303(d) will get us a long way."

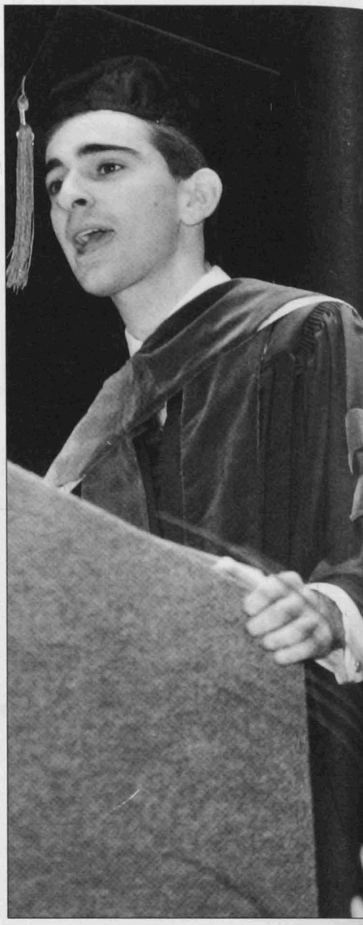


Dores McCree Day —

Dores McCree, former administrative assistant at the Law School and namesake for Dores McCree Day in November, chats with Charlotte Johnson, '88, Director of Academic Services, right, and participants in the day's program for 50 junior high and high school students from the Ann Arbor and Ypsilanti areas. McCree, widow of Professor of Law Wade McCree, Jr., retired from the Law School in 1996 after serving as confidante and mentor to hundreds of Law School students. Dores McCree Day, sponsored by the Black Law Students Alliance, included a tour of the Law School, visits with faculty members, a mock trial, a skit by law students about Law School life, and a talk by the Hon. Wade McCree, Jr., Judge of the 36th District Court in Detroit. At top, Judge McCree tells students of his practice of diverting young offenders from court if possible: "I'm not so much a lenient judge, but I like to give young people a chance." Above right, visiting student Tobi Akimusura takes the role of plaintiff's counsel in the mock trial. Right, visiting students Saina Sajjadi and Leslie Gibson, acting as defense attorneys in the mock trial, confer with "coach" William Martin, a first-year law student.

Commencement

AN END AND A BEGINNING



Excited. Enthusiastic. Energized.

Those three words describe students when they enter the Law School, and they should describe them when they graduate, advises Jeffrey M. King, whom fellow graduates chose as student speaker at the Law School commencement on December 6.

King, as is his custom, laced his talk with humor. For example, "Our professors here taught us to think like lawyers. We know they have been successful in this because we no longer can hold a normal conversation. We over-analyze everything."

He also advised graduates that just because they have completed law school they are not obligated to provide free legal advice to parents and relatives who may have helped them get their legal education.

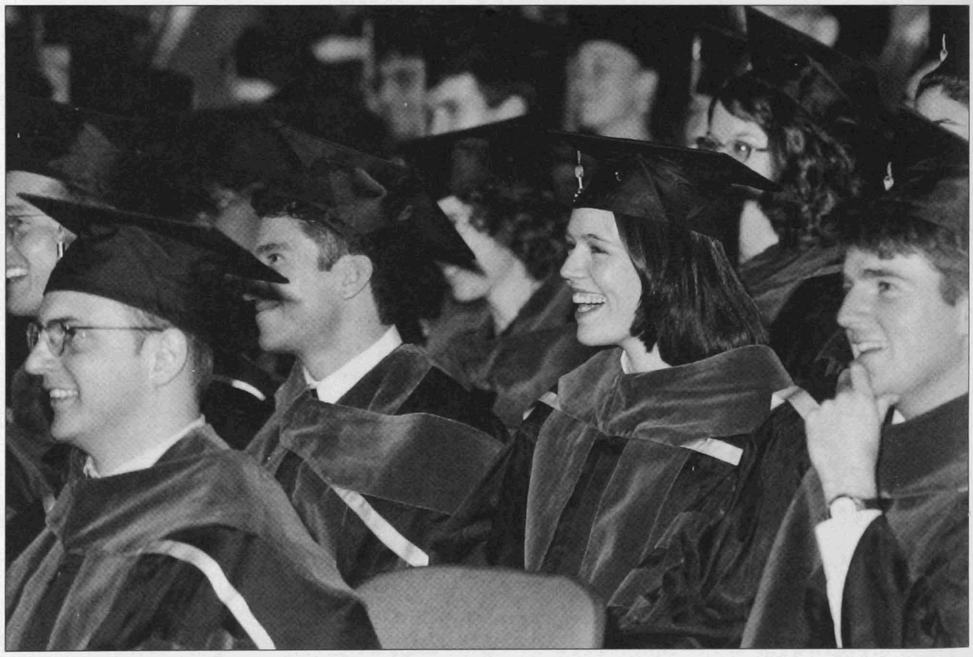
Turning serious, he noted the value of integrity on the part of graduates. "There is no doubt that our most precious commodity is our name. Our name represents not only our person but our character."

December commencement is like this, a mix of celebration and seriousness, celebration of what has been accomplished, serious thought about what Dean Jeffrey S. Lehman, '81, calls the "formality" of final examinations to begin the week after graduation, and questions about the future.

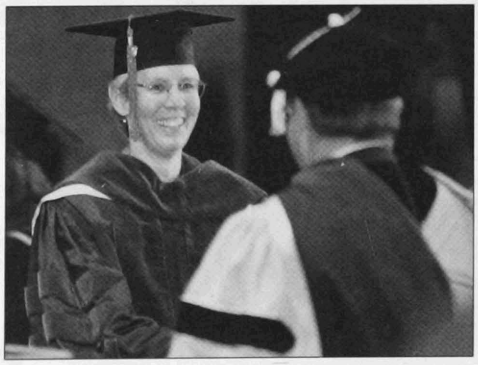
Held at the Michigan Theater in downtown Ann Arbor, commencement was for 76 graduates, most of them "summer starters" who began their studies at the Law School in the summer of 1995. By the time the larger number of "fall starters" arrived, these students already were veterans of their first round of Law School classes, professors and final examinations. They served as mentors to the September arrivals.

"In the Fall of 1995 you greeted us with your encouragement and friendship," Law School Student Senate President Susan Wood, who will graduate in May, told the graduates. "You have accomplished so much in such a short time." Congratulations, she said, "for what you have achieved, and what you are about to achieve in the future."

Commencement speaker James Boyd White, the L. Hart Wright Collegiate Professor of Law, leavened his congratulations with reality. "What will your life of practice really be like?" he



Megan Fitzpatrick, center, and her fellow graduates laugh with pleasure at Jeffrey M. King's remarks.



Teresa A. Killen receives her membership to the Lawyers Club from Dean Jeffrey S. Lehman, '81, as part of the December graduating class.

LEFT: Jeffrey M. King, chosen by his fellow graduates to address them at commencement, mixes humor and gravity in his address. No, graduates need not dispense free legal advice to those who supported their legal education, he says. But "there is no doubt that our most precious commodity is our name. Our name represents not only our person but our character."

asked. "Neither you nor I can know that, but I do know that it will be different from what you imagine now. Even if you go to a firm where you worked last summer, you will find that it is different to be there as a permanent associate, and different more completely than you can imagine to be a third-year or fifth-year or tenth-year lawyer. Your responsibilities will be different; your role in the firm will be different; your understanding of your relations to your clients will be different; everything will be different."

As practicing attorneys, White told the graduates, you will become teachers who help your clients adjust their expectations to their experiences. "In this sense, the practice of law can be a continuation of the education you have begun here, as you put to work the lesson you have learned about the nature of your own expectations, and as you help others learn that lesson, too.

"You will become an educator; this may in fact be your most important and meaningful role; and in doing so, you will establish the deepest connections between what you have done here at Michigan and what you do at the center of your professional life."

Dean Lehman reminded the graduates of two great traditions that they take with them:

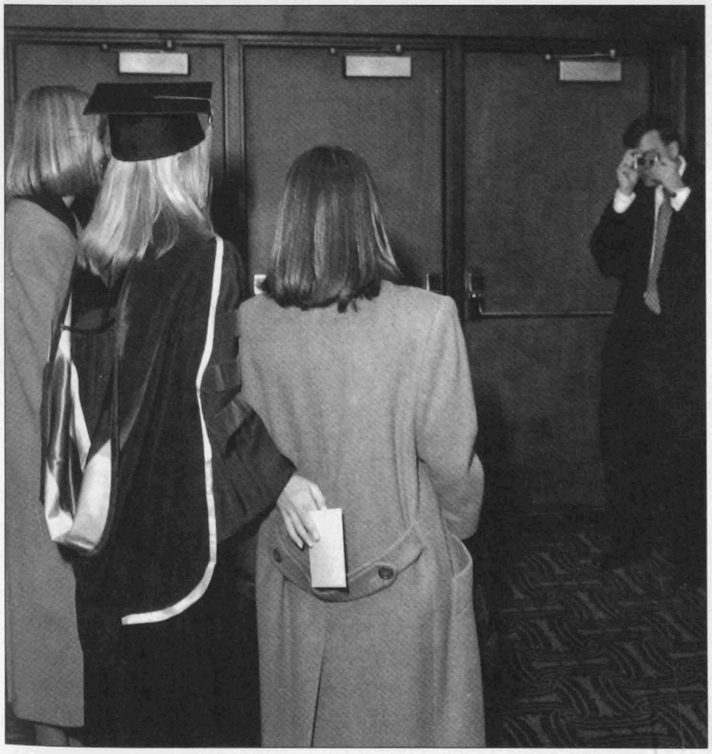
- "The greatest lawyers are able to hold two inconsistent perspectives on an issue in their mind at the same time. It is not enough to see both sides to an argument. A great lawyer truly feels three or four sides, and understands how many mutually inconsistent perspectives on an issue might each be held by good and decent people."
- The second aspect of the tradition "is the commitment to integrate your role as lawyer with your role as citizen, as an adult with responsibilities that derive from membership in a community that extends beyond family."

"We can and do take a special pleasure in our solidarity with others, with feeling personally responsible for other individual members of the community and for the community as a whole," Lehman said. "As lawyers, you will have many opportunities to demonstrate that responsibility by engaging your society *outside* the context of paying-client representation.

"I want to emphasize to you this afternoon, however, that you will also have opportunities to demonstrate that responsibility *within* the context of paying-client representation."

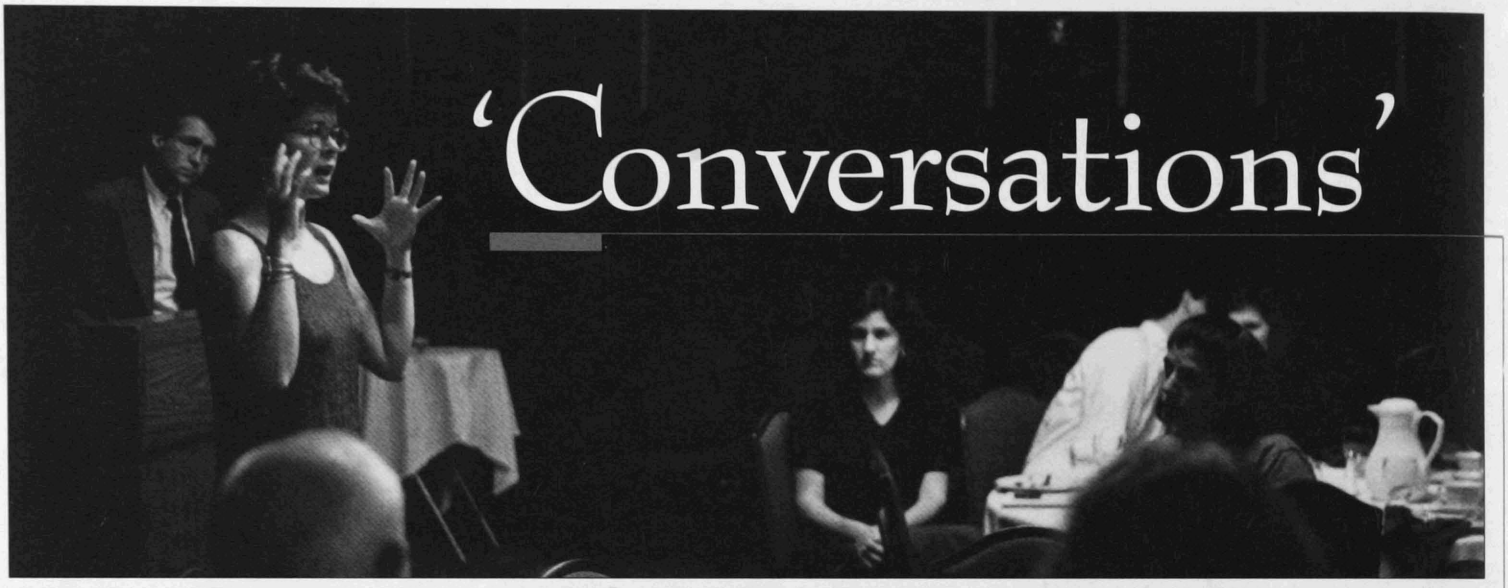
Processional and recessional music was provided by the Detroit Concert Brass Quintet. The Law School Headnotes, the *a capella* group composed of law students, also performed, including among its selections the University's alma mater and a heartfelt rendition of "I'll Be Seeing You."

ABOVE: Hugs of congratulation abound at commencement.

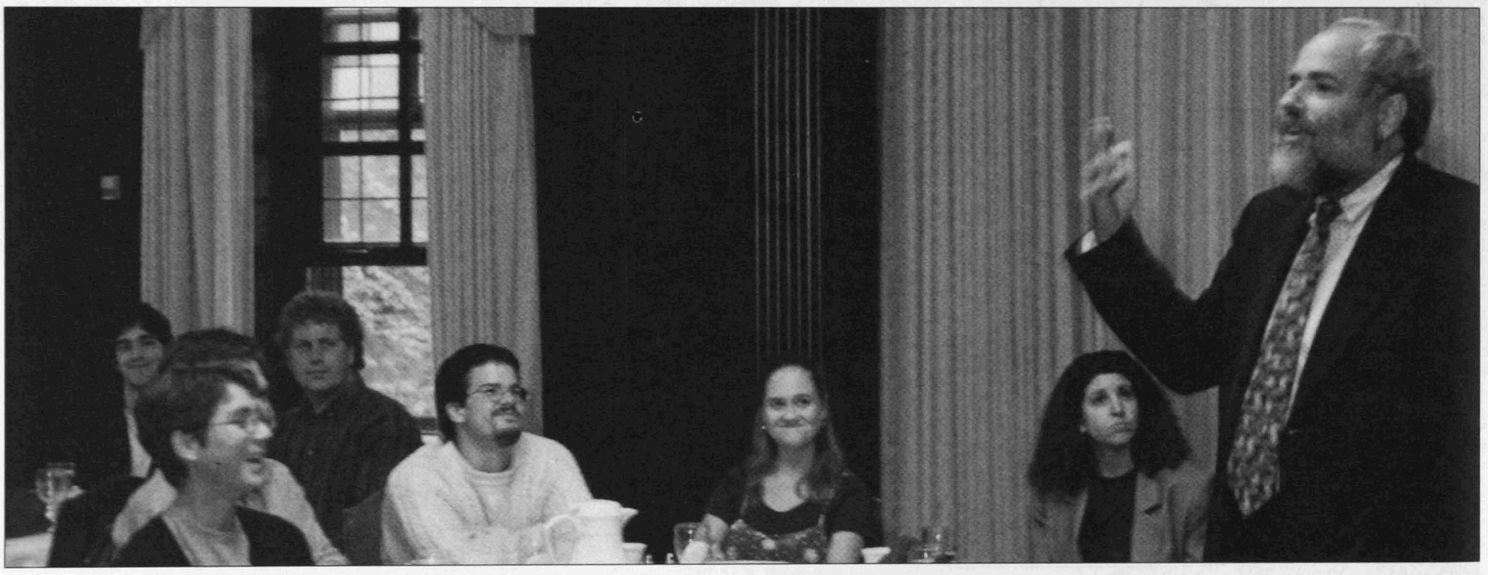


LEFT: Could that be a gift envelope in this graduate's right hand? Graduating from law school is both a gift and deserving of a gift.

MaryAnn Sarosi, '87, Director of the Michigan State Bar's Access to Justice Program, and Daniel Greenberg, Executive Director of The Legal Aid Society of New York, speak with students in September and October as part of the Office of Public Service's series "Inspiring Paths: Conversations with Lawyers."



'Conversations'



offer inspiration to future lawyers

One of the requirements of successful public interest legal work is perseverance, a trait that Office of Public Service Director Robert Precht had to call upon in launching the new series "Inspiring Paths: Conversations With Lawyers."

"It took me two years to get Danny Greenberg to come and speak here," Precht explained as he introduced the series' kickoff speaker in September. Greenberg, Executive Director of The Legal Aid Society of New York City and a former director of Harvard Law School's clinical education programs, set the tone for the new series by speaking without notes for nearly an hour, championing the role of ethical choices in legal decision making and arguing that there is no sacrifice in doing lower paid legal work if that is the work that you want to do.

The series featured four speakers during the Fall Term: Greenberg; James Brenner, '72, a partner in Clark Hill P.L.C.; MaryAnn Sarosi, '87, Executive Director of the State Bar of Michigan's Access to Justice Program; and Julie Ann Su, staff attorney of the Asian Pacific Legal Center.

Sponsored by the Office of Public Service, the series is designed to give law students a chance to hear and talk with lawyers who have devoted their careers or a significant portion of their legal practice to public service work.

Greenberg and Sarosi are typical.

In his "conversation" that launched the series, Greenberg noted that equal rights have been a phantom for poor people during all of U.S. history. "This nation was founded on inequality," he said. "There was never a good time for our clients in this country. Having said that, these are particularly mean times." It is ironic, he said, that German community businessmen founded the Legal Aid Society in the late 19th century to help poor German immigrants but that recent federal funding restrictions prevent today's Society from working with undocumented immigrants.

Pilgrims on the *Mayflower* would not have survived in the New World if the people who already were here had considered them "illegal aliens" and refused to help them, Greenberg said. They "needed the largesse of the people already here."

Unfortunately, he said, in most law schools "the message that is taught is that all things are equal — as long as you can argue both sides you're okay. Actually, just the opposite is true. It does matter what side you're on."

As to the sacrifice of doing lower paying public service work, he said, "I can't think of anything more sacrificial of my life than doing something I don't want to do." Law students should use their "incredible smorgasbord" of in-class and out-of-class opportunities "to find out who you are."

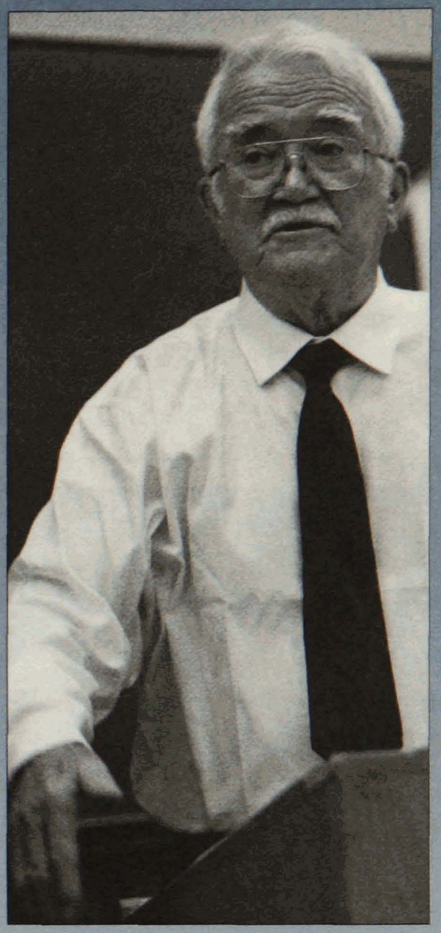
"None of this is about guilt," he said. "None of this is about sacrifice." There is no sacrifice if you are doing what you want to do. "No matter what job you take you'll have to work hard, so you might as well work hard at what you want to do."

For Sarosi, the route to public service work offered few guideposts except her own internal ones. "There are no paths," she said. The first in her family to attend law school, the Detroit native said that she had to do a few years of growing up after graduation from law school before she could focus on what she wanted to do. She worked for a Chicago law firm for a time and became a specialist in cellular telephone law. But, she said, "I thought, if this is the cutting edge of the law, if this is the most exciting part of the law, this is not for me."

She spent two more years working at the firm while hunting for something in public service. After half of the firm's corporate clients left, she found herself laid off in the fourth round of six rounds of layoffs, but her layoff came only a few months before she had planned to leave so it had little impact on her. By then, she said, she had paid off all her debts from law school. "I didn't use my debt as an excuse to keep me from doing what I want to do," she said.

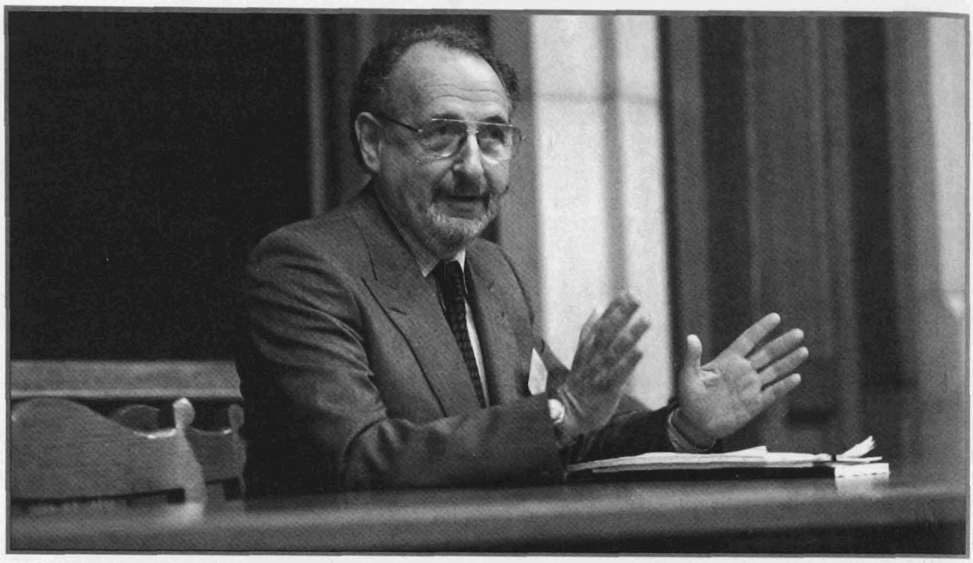
When she heard of a newly funded program that was about to begin, she jumped at the opening — and found herself hired as director of the new Coordinated Advice and Referral Program for Legal Services (CARPLS). Under her leadership CARPLS has become nationally recognized for its innovative, cost-effective ways of matching up poor clients with the legal help that they need.

She became director of the Michigan State Bar's Access to Justice Program earlier this year. According to the Law School's Office of Public Service: "The Access to Justice Project grew out of a statewide planning process in which legal services lawyers, academics, and bar and community leaders — including Robert E. Precht, Director of the Office of Public Service — met to devise strategies to deal with cuts to the Legal Services Corporation. The planning process resulted in a recommendation that a statewide program should be created to enhance cooperation among different state legal services providers and jointly to design a statewide model for delivering legal services that will take advantage of the latest technology."



Civil Liberties —

Frank Wilkinson, a veteran civil rights advocate who was among opponents of the activities of the House Un-American Activities Committee during the 1950s, tells a Law School audience in September that the new Anti-Terrorism and Effective Death Penalty Act, designed to counteract terrorism, also gives the government power to prosecute people for activities protected by the First Amendment. In 1952, Wilkinson relied on the First Amendment when he refused to provide California's "little HUAC" committee with a list of every organization he had belonged to during the preceding 20 years. His talk at the Law School was sponsored by the National Lawyers Guild.



International business investment is influenced by a country's tax rates and policies, and those policies may change to attract business, U.S. Treasury Department international economist Harry Grubert tells participants in the Moskowitz Conference on Taxation in an International Economy held at the Law School in November. The conference was organized by Assistant Professor of Law Kyle D. Logue.

Taxing tactics in an international economy

"Has 'globalization' changed the behavior of companies and governments?"

That's the question that international economist Harry Grubert, of the U.S. Treasury Department, asked himself, and it served as a launchpad for discussion throughout the Moskowitz Conference on Taxation in an International Economy, held at the Law School in November.

Organized by Assistant Professor of Law Kyle D. Logue, the conference brought together experts from the Law School, the University of Michigan's Economics Department and School of Business, the U.S. Treasury Department, Cornell Law School, the University of Minnesota Law School and other universities to examine the impact that countries' tax policies and practices can have on domestic and international businesses.

Logue explained that the University of Michigan's high standing in international and interdisciplinary programs and the School of Business' highly regarded activities in the international arena made the University the appropriate place for such a conference. In addition to the four scholars who presented papers during the conference, more than 15 specialists from the Law School, U-M departments and other schools and law firms participated.

Grubert, speaking for his own findings and not as a representative of the U.S. Treasury Department, reported that from 1984-92 business investment showed "an increased sensitivity to tax rates" overseas. Low tax countries did the best at attracting new investment, he said, and countries with 15 million or fewer people tended to cut taxes a few percentage points more than larger countries to attract investment. Grubert called his report "Tax Planning by Companies and Tax Competition by Governments: Is There Evidence of Changes in Behavior?"

Other speakers focused on dispute settlement procedures, international boycotts that are not sanctioned by the United States and taxing of international business. In addition to Grubert, the papers and their presenters were:

- "Inter-Governmental Dispute Settlement Under Tax Treaties: Why Still Anti-Legalistic?", by Robert A. Green, Associate Professor of Law, Cornell Law School.
- "Taxed Avoidance: American Participation in Unsanctioned International Boycotts," by James R. Hines, Jr., Associate Professor of Business Economics and Public Policy, and Research Director, Office of Tax Policy Research, University of Michigan School of Business.
- "U.S. Taxation of International Business: The prospect for Partnership with Developing Countries," by Karen B. Brown, Professor of Law, University of Minnesota, and Visiting Professor of Law, George Washington University Law School.

The conference was sponsored by the Law School and the U-M School of Business, with assistance from the Louis and Myrtle Moskowitz Fund, which also supports an alternating professorship that places a law professor in the business school for a year and a business professor in the Law School for a year. The Fund sponsored Robert A. Sullivan Professor of Law James J. White as the Louis and Myrtle Moskowitz Research Professor in Business and Law at the business school in 1996-97 and Cindy A. Schipani, Associate Professor of Business Law, as the Moskowitz Research Professor at the Law School in 1995-96.

Help for Alabama's death row inmates

Some of the 150 inmates on Alabama's death row once again can count on good legal representation, thanks to the generosity of Michigan law firms that were acquainted with the prisoners' plight through efforts spearheaded by the Law School.

At deadline time, at least two law firms, Plunkett & Cooney and Sommers, Schwartz, Silver & Schwartz, were providing *pro bono* legal counsel to indigent Alabama death row prisoners who otherwise would not have lawyers to petition for post-conviction relief.

"It's a situation that cries out for a *pro bono* effort on our part," says Dennis Clark, a partner in Plunkett & Cooney who is handling one of the Alabama death row cases. "We're trying to ensure that the constitutional rights of these individuals are protected before the ultimate punishment may be imposed and that they are treated in a fair and legal manner, to which all citizens are entitled."

Bryan Stevenson, a former visiting teacher at the Law School and founder of the Montgomery-based Equal Justice Initiative (EJI), outlined the problem to the law firms' representatives at a meeting in Detroit in May. Law School Dean Jeffrey S. Lehman, '81, and Robert Precht, Director of the Law School's Office of Public Service, organized the meeting and brought Stevenson to Detroit to participate.

"Every one of the 150 inmates at Alabama's death row is indigent," Lehman explained in his invitation to the meeting. "For several years, the task of providing representation to indigent capital prisoners in post-conviction proceedings was coordinated and to a great extent staffed by a network of federally funded capital resource centers.

"Bryan Stevenson directed such a center in Montgomery, until the capital resource centers program was defunded by Congress in 1995. The Equal Justice Initiative, which Bryan was able to set up with private assistance, has far fewer resources than the office it replaced, and yet the number of its cases keeps growing.

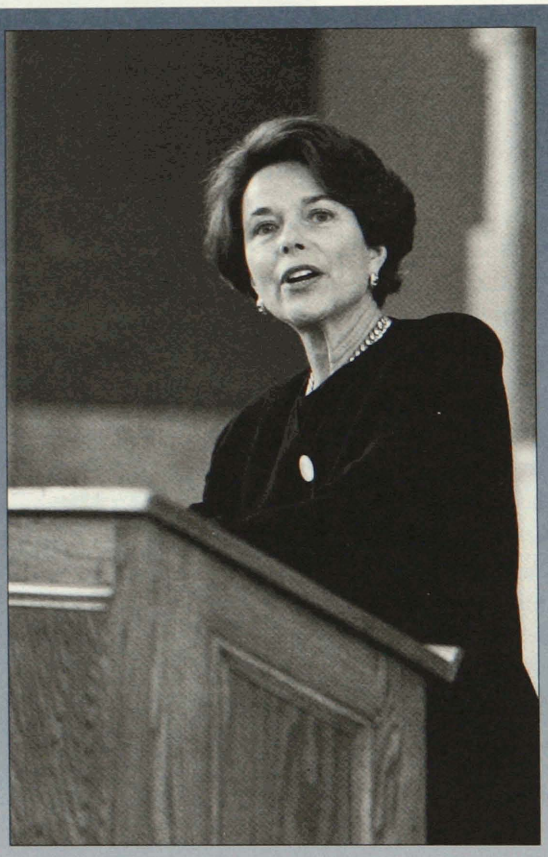
"In the past several months, the crisis has boiled over. There are now, for the first time, prisoners on death row in Alabama with potentially meritorious constitutional claims that their convictions or sentences were illegal, but with no attorneys whatever to represent them."

Pro bono participation does not reflect a pro or con position on the death penalty, according to Precht. "As lawyers we have the responsibility to represent unrepresented individuals, and these are people who are literally facing life and death issues.

"The point of the project is to help reduce the number of people who will go to their deaths without their legally meritorious claims ever being heard by the federal courts. It's a question of providing these individuals access to the federal court system before they are executed, in many cases after shockingly brief trials."

Alabama's top rate for reimbursing attorneys for out-of-court work in a capital trial is $1,000 per trial phase, according to a report from EJI in March 1997. That means many attorneys can expect to receive less than $4 an hour for such work, an amount that is below federal minimum wage and that creates trial records rife with error that can only be addressed in post-conviction proceedings.

Lehman's leadership was critical in recruiting the help from Michigan firms, according to Precht. "This would never have happened if it had not been for Jeff Lehman standing up and saying that our institution believes in equal justice for all."

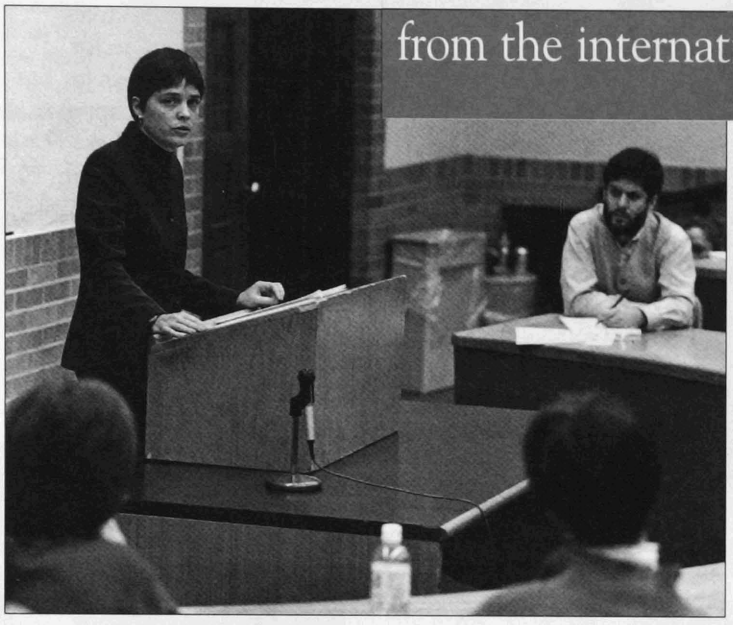


Full Commitment –

Karla Scherer, chair of the Karla Scherer Foundation, which has sponsored more than 100 Scherer Scholars, tells a Law School audience in September that corporations should be governed by boards of independent directors rather than rubber stamp trustees who are dependent on or allied to the CEO. Scherer and her brother waged a successful battle to wrest control of R. P. Scherer Corporation, which had been founded by their father, the inventor of the gelatin capsule now so widely used for medications, from a CEO and Board of Directors who were unwilling to sell it under any circumstances. She praised the lawyers who represented her for their dedication and open communication with their clients. "Every lawyer on that team loved the heat of battle and rode flat out to achieve victory," she said.

The view

from the international side



Dorothy Thomas, director of the Women's Rights Project of Human Rights Watch, tells an International Law Workshop audience that human rights abuses against women are so widespread that they often appear to be the norm. In January, the Women's Rights Project became a fully funded arm of Human Rights Watch. At right is Assistant Professor Michael A. Heller, coordinator of the Fall Term workshop.

Dorothy Thomas, director of Human Rights Watch's Women's Rights Project, pumps out examples like pistol shots.

As she told an International Law Workshop audience at the Law School in December:
— In Peruvian law, violence in the home is a private act.
— A World Health Organization survey of 26 countries on four continents found that 20-50 percent of adult women had experienced domestic violence and rape was involved in more than half of those cases.
— A 1996 American Medical Association study found that a woman is abused by her partner every 9 seconds.
— A study in India found that 40 percent of female murder victims were killed by their husbands.
— The number of female guards has not kept pace with the increase in the number of female prison inmates and only make up about one-third of the total guards in women's prisons in the United States.

"The result is a global structure in which subordination of women is so embedded in the social order that it appears to be the norm," she said in her talk on "Women's Human Rights: Challenging the Public-Private Distinction in the International Context."

(Earlier in the day, Thomas discussed human rights work and the Women's Rights Project with law students during an informal lunch gathering sponsored by the Office of Public Service. U.S.-based women's rights advocacy tends to be "insular" and national in scope, she said, but women in other countries "use international experience a lot.")

Thomas' appearance at the International Law Workshop was the final program in the Fall Term lineup. The series of talks, coordinated by Assistant Professor of Law Michael Heller during Fall Term, is designed to "introduce today's most debated issues in international and comparative law." In addition to Thomas, the Fall Term schedule included:

- Gerard Meehan, Principal Administrator for the Director General for Research of the European Parliament, speaking on "EU Amsterdam Treaty: Marking Time or Moving Forward?"
- Bruno Simma, Director of the Institute of International Law and Dean of the University of Munich Law Faculty, "Reservations to Human Rights Treaties: The Views from Strasbourg and Geneva."
- Christine Chinkin, Professor of International Law, London School of Economics, University of London, "Alternative Dispute Resolution: International Legal Developments."
- Pieter van Dijk, Judge at the European Court of Human Rights and Member of the Council of State of the Netherlands, "Judicial Review by the European Court of Human Rights: Its Main Limitations."
- Professor of Law Catharine MacKinnon of the Law School, "Gender-Based Crimes in International Humanitarian Law."
- Jerome H. Reichman, Professor of Law, Vanderbilt Law School, "Global Competition Under Intellectual Property norms of the TRIPS Agreement."
- Professor of Law Julie Roin, University of Virginia Law School, "What's Wrong with Tax Competition Between Countries?"
- Jabbar Al-Obaidi, formerly Professor of Communication at Sana'a University, Yemen; Yarmouk University, Jordan; and Baghdad University, Iraq, "Flow of Information vs. Censorship in the Middle East: The Constitutions and People."

Meehan, Reichman and Roin were visiting faculty members during the Fall Term, Simma is an annual visiting faculty member at the Law School and Al-Obaidi (see story on page 16) is a research scholar at the Law School. Van Dijk, a former research scholar at the Law School, also participated in the International Reunion in October (see page 42) as a panelist in programs on physician-assisted suicide and national supreme courts.

Time to negotiate

Here is the issue: Attorneys for a high school boy and his school district have agreed that the boy is eligible for special education services, but the boy's mother and the school district have not been able to agree on a program for him. The boy's mother wants him enrolled in a private school at the expense of the school district; the school district agrees to provide him with 2-3 hours of special education daily in its own schools or to transfer him to another district.

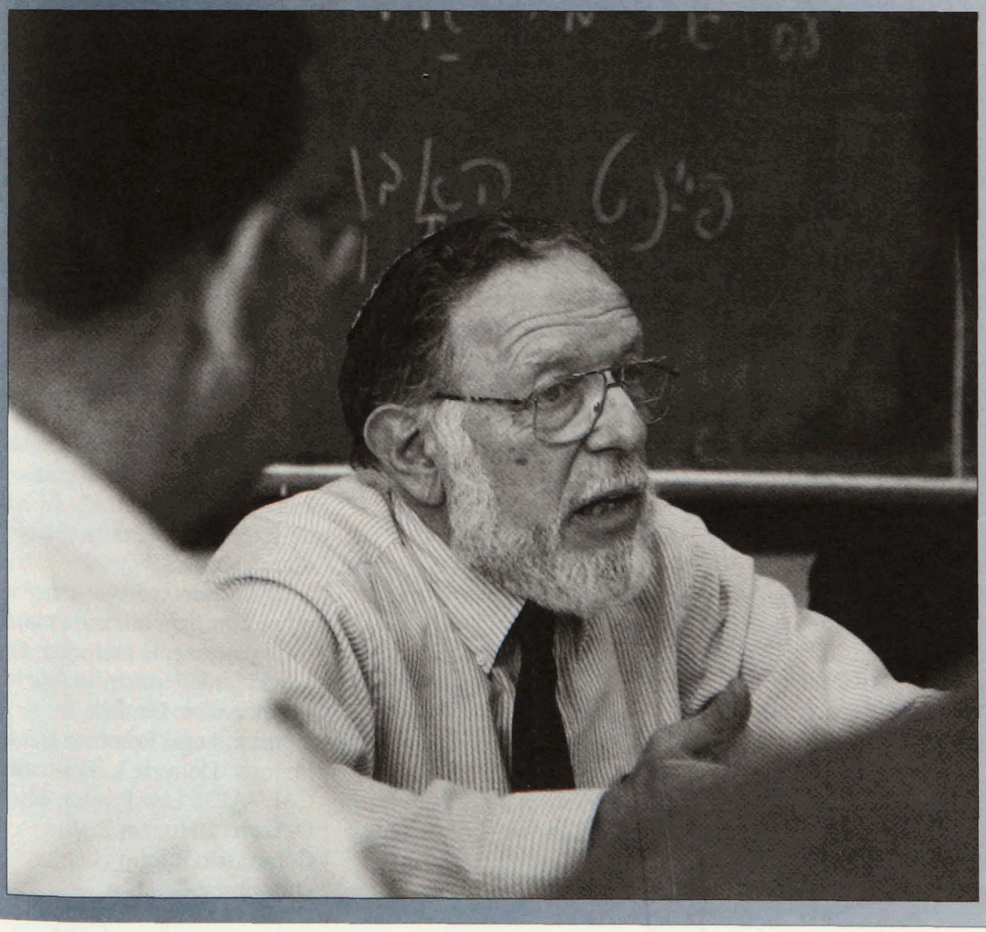
As the judges in this fictitious case are told: "The most difficult issue in this round is the question of whether Joseph should remain at Union City High School, and if so, what his educational program should look like. Ms. Harrington's top priority is to get Joseph's placement at Great Expectations Academy for the remainder of his time in high school. She is willing to give up any claim for compensation and reimbursement of the cost of Dr. Berring's report to achieve this result."

Second-year law students George Cho and Scott Varholak, representing the fictitious school district in the American Bar Association-sponsored Negotiation Competition at the Law School last fall, earned the judges' nod as best representing their clients. Runners-up, representing the mother and her son, were first-year law students Tim Hudson and Christopher Schmitt.

Four other teams of two negotiators each won honorable mention in the competition. Participants in the competition on October 24-25 also took part in a training session at the Law School on October 4. The training session was facilitiated by Clinical Assistant Professor of Law Nick Rine and Visiting Clinical Assistant Professor Tom Darnton.

In the final round, neither side in the negotiations had any pre-arranged guidelines for the negotiations. The round built upon an earlier, preliminary round and judges assumed that participants had considerable knowledge and experience with each other's position from the earlier talks. Negotiators had 50 minutes in which to reach agreement.

"The competition gives students a chance to roll up their sleeves and get a taste of what it is like to practice law," says David Baum, '89, Special Assistant to the Associate Dean for Student Affairs. "It complements nicely the high quality education that the students are getting in the classroom."



Legal Structure —

Visiting Law Professor Arnold Enker, Professor of Law at Bar Ilan University in Israel, discusses "The Structure of Jewish Criminal Law" during a program in September for the University of Michigan's Frankel Center for Judaic Studies. As Enker noted in "Aspects of Interaction Between the Torah Law, the King's Law, and the Noahide Law in Jewish Criminal Law" (12 Cardozo Law Review 1137), *"it should be noted that one of the principle difficulties encountered in researching and writing about Jewish criminal law is that only rarely in recorded Jewish history did Jewish communities have jurisdiction to enforce the criminal law. Even then, they did not generally apply the Talmudic criminal law. Almost all of the recorded historical sources available are based on the exercise of the courts' so-called emergency powers or exigency powers. The result is that the detailed legal system developed in the Talmud was never applied in practice — at least in recorded practice — while the backup exigency system designed to accommodate the ever changing practical needs of law enforcement was so sporadically applied that it never developed detailed consistently rationalized rules." Enker, who is teaching Legal Profession and Legal Ethics at the Law School this academic year, is the Founding Dean of the Faculty of Law at Bar Ilan University and former Senior Advisor to the Attorney General of Israel.*

Welcome to the family

PHOTO COURTESY TRACEY L. WHEELER

Tracey L. Wheeler, right, is shown with South African musician Hilda Tloubatla, whose family adopted Wheeler as one of their own.

Second-year law student Tracey L. Wheeler went to South Africa expecting to grapple with some of that country's toughest issues as part of the Human Rights Commission.

And she has.

She did not expect to join a South African family and be introduced to its ancestors.

She's also done that.

It all started during Wheeler's transatlantic flight to Johannesburg to begin her Fall Term externship with the constitutionally established South African Human Rights Commission, which monitors, protects and promotes human rights in the country. She is one of 12 Law School students who spent the Fall Term in South Africa working with a variety of government and nonprofit, public interest agencies. This is the second year that the Law School has sent students to South Africa in a program directed by Wade H. McCree, Jr., Collegiate Professor of Law David L. Chambers.

Wheeler's seat mate on her flight was Hilda Tloubatla, a South African musician who was returning home after a U.S. tour with her group, Mahlathini and the Mahotella Queens. "When I told Hilda that I was virtually alone in South Africa, she was insistent that I take her number and phone her as soon as I settled into my hotel," Wheeler explains.

"The very next day she came to the hotel and took me to her home to meet her family. They insisted that I go get my things from the hotel and stay with them."

"Hilda's family made me feel at home. We shared stories about America and South Africa. They introduced me to traditional homemade South African beer, taught me a few words in Sotho."

They also "adopted" Wheeler. "They had an ancestral ceremony in which I was formally inducted into their lineage and introduced to the ancestors as the newest member of the family," Wheeler says. "I was really touched by their hospitality and generosity — they wanted nothing in return, only to get to know me. This aspect of my externship experience will always be the most special of my memories in South Africa."

After a few weeks Wheeler moved back to Johannesburg because it was more convenient for her work at the Human Rights Commission. She continued to visit her "adopted" family on weekends throughout her externship and introduced them to her own family members when they visited from Detroit late last year.

At the Human Rights Commission, Wheeler worked on a variety of assignments, among them a response to the South African Law Commission (SALC) on customary marriages. She became fascinated with the issue posed by the conflict between traditional marriage practices and the South African constitution's prohibition against cultural discrimination.

"The SALC is seeking submissions from various agencies on ways in which customary laws pertaining to marriage can be harmonized with the civil law marriage code," she explains. "Historically, customary unions have not been given full recognition because of their potential to be polygamous, which was viewed by the European colonizers as repugnant to 'civilized' nations. South Africa's new constitution guarantees the right of citizens not to be discriminated against because of culture, and the right for citizens to participate and practice in the cultural tradition of their choice.

"However, the equality clause also prohibits gender and sex discrimination, and many customary practices are discriminatory against women. Therefore, the right to culture and the right to equality are often in conflict. Issues such as *lobola* (bridewealth) and inheritance laws found in customary law are very difficult to negotiate in light of the equality clause."

Wheeler also helped investigate a public school accused of racially discriminatory action, racial motivation in unfair labor practices and other issues.

"Socially, I find South Africa to be in a state of extreme odds," she says. "I attended a party in which there were whites, coloreds, Indians and blacks all dancing and getting along wonderfully. But I have also been growled at by some whites just for being in their presence in a restaurant. When out at the movies I see groups of racially mixed people and also groups who make it clear that they are not happy with having to share their space with blacks. There doesn't seem to be a middle ground of just letting people exist side by side despite whatever differences there may be."

In addition to Wheeler, other Law School externs and their placements included: Carl J. Schifferie, Human Rights Commission; Danielle B. Lemack, Legal Resource Center, Pretoria; Donyele L. Fontaine, CALS-AIDS Law Project; Elissa D. Barrett, Human Rights Commission; John G. Humphrey, CALS-

Constitutional Project; Kristen L. Schutjer, Lawyers for Human Rights, Pretoria; Nancy L. Woodruff, University of Witwatersrand Law Clinic; Paul B. Stephens, Human Rights Commission; Tracy L. Gonos, CALS-Gender Project; Tun-Ming Chan, Legal Resource Center, Cape Town; and William J. Dorsey, Lawyers for Human Rights, Durban.

Several of the externs were able to attend hearings of South Africa's Truth and Reconciliation Commission (TRC) during testimony regarding Winnie Mandela, former wife of President Nelson Mandela. The Commission is chaired by Nobel laureate Archbishop Desmond Tutu.

"I keep thinking of the analogy of sitting in on the U.S. Constitutional Convention," law student Nancy Woodruff said of the experience. "I am still shocked by the accessibility of these amazing people.

"Two days ago, Archbishop Tutu said hello to me. I feel like I somehow managed to stumble into some upper echelon of socially and politically influential people without even really knowing it at first."

Among the people she encountered was Peter Jordie, whom she knew from the University of Witwatersrand Law Clinic and often met for lunch. Jordi, she said, did much of the cross examination of Winnie Mandela at the TRC. "He introduced me around to all the other lawyers at the hearing, and pretty soon I was having tea with them all and listening to their strategies for the hearing."

Professor of Law Catharine A. MacKinnon

MacKinnon brief is part of case before U.S. Supreme Court

Early in December, Professor of Law Catharine A. MacKinnon sat in the U.S. Supreme Court listening to the arguments in *Joseph Oncale v. Sundowner Offshore Services, Inc., et al*, a case in which she has brought her experience on behalf of sexually harassed women to the aid of an oil rig roustabout who claims he was sexually harassed by a male supervisor and two male coworkers.

MacKinnon wrote an *amicus curiae* brief supporting Oncale at the request of 14 groups of men "dedicated to ending sexual violence." Many of the groups, like Stop Prisoner Rape, which says that jailhouse rape occurs about 300,000 times a year in the United States, work directly with male survivors of sexual abuse by other men. All, MacKinnon explains in her brief on behalf of the men's groups, are "united in the view that same-sex sexual harassment, no less than opposite-sex sexual harassment, violates civil rights to sex equality under law."

When it comes to sexual inequality, there are few more learned or more committed opponents than MacKinnon. For example, she has been the single strongest voice in the battle to have the rape of women by military forces in the Serbian aggression in Bosnia recognized as genocide.

Although the war crimes tribunal at The Hague has largely refused to indict the Serbian rapes as genocidal acts, MacKinnon has won a major victory in the U.S. on the issue. In *Kadic v. Karadzic*,

in which she is lead counsel, the U.S. Court of Appeals for the Second Circuit allowed a civil claim for genocidal rape to proceed and recognized that civil damages could be awarded to named plaintiffs, including a woman and her two infant sons for her rape by soldiers under the control of Bosnian Serb leader Radovan Karadzic.

The two cases are connected in viewing sexual abuse as a problem of inequality, MacKinnon explains.

"My concern for the issues in *Oncale* grew from long-term work with sexual harassment as a form of abuse," she explains. "*Oncale* was sexually abused at work. Since the early 1970s, I have learned how it works through abused women, men's most common victims — but not men's only victims."

As she writes in her brief: "Much sexual harassment jurisprudence reasons that, had a sexually harassed woman been a man, she would not have been so treated, therefore she is harassed 'because of sex.' The present case poses the question, What if she had been a man and the same thing happened? The answer is at once sex-specific and sex-neutral: both sexes are covered for injuries through their gender. Women do not have sex equality rights only because men couldn't be treated in the same way, this case suggests, but because men could be and are not. And when they are? Had he been a woman, Mr. Oncale might not have been treated the way he was. But if he were, his sex equality rights would be recognized."

Joseph Oncale worked on an oil rig for Sundowner Offshore Services, Inc., for four months in 1991. After repeated harassment and what Oncale described as an attempted rape by two coworkers, he quit his job, saying on his pink slip that he "voluntarily left due to sexual harassment and verbal abuse." He filed a complaint for sexual harassment with the Equal Employment Opportunity Commission and in 1994 filed suit for sex discrimination under Title VII of the Civil Rights Act of 1964.

The trial court and the U.S. Court of Appeals for the Fifth Circuit both threw out Oncale's claim, holding that Title VII does not apply to same-sex harassment. The U.S. Supreme Court accepted review of his case. Oral arguments before the court were December 3; a decision is expected by the end of June.

"Harassment of this kind has really been invisible, but it is a social reality," MacKinnon told *Legal Times*. "It happens to a lot of boys and a lot of men."

In summarizing the argument in her brief, MacKinnon observed:

"Men raping men is a serious and neglected social problem with deep roots in gender inequality. Courts generally permit men who have been sexually assaulted and otherwise sexually harassed by other men at work to sue under Title VII of the Civil Rights Act of 1964, as women can. The Fifth Circuit decision under review is a pernicious legal anomaly, categorically precluding equality relief on summary disposition simply because the victim and victimizer are of the same sex. Its double standard of gender justice denies men rights because they are men — with negative implications for gay and lesbian rights as well, as exemplified by the related Fourth Circuit approach, under which heterosexual perpetrators may commit acts for which homosexual perpetrators are held legally responsible. These decisions make accountability for sex discrimination turn on who one is, not on what is done.

"The better approach advanced by *amici*, building on the vast body of judicial precedent, is not abstract but concrete. Whether an assault is 'because of sex,' triggering Title VII, is a factual determination. Other legal requisites being met, if acts are sexual and hurt one sex, they are sex-based, regardless of the gender and sexual orientation of the parties.

"The Fifth Circuit decision at bar is bottomed on misconceptions about the gendered nature of the sexual abuse of men, particularly its connections to the inequality of women to men and of gays and lesbians to heterosexuals. Male rape — whether the victim is male or female — is an act of male dominance, marking such acts as obviously gender-based and making access to sex equality rights for Joseph Oncale indisputable."

The brief also argues that the Equal Protection Clause of the Fourteenth Amendment and "clear statutory principles" require recognition that same-sex sexual assault is "unquestionably actionable" under Title VII.

In March, the Supreme Court ruled in favor of Oncale.

"Male rape — whether the victim is male or female — is an act of male dominance, marking such acts as obviously gender-based and making access to sex equality rights for Joseph Oncale indisputable."

ACTIVITIES

Professor of Law **José E. Alvarez** gave a talk on the judgment in *Prosecutor v. Tadic*, the first international war crimes trial conducted since the end of World War II, at Boston College Law School in November.

Visiting Professor **John S. Beckerman** took part in Stanford Law School's Institutional Investor Forum in November. The forum brings together representatives of institutional investors with legal academics, judges and lawyers to discuss securities regulation, litigation and corporate governance to devise ways that institutional investors can make publicly owned corporations more accountable to shareholders.

Clinical Professor of Law **Donald N. Duquette**, Director of the Child Advocacy Clinic, is spending this academic year in Washington, D.C., as part of a presidential task force brought together to recommend reformation of adoption laws.

Kirkland and Ellis Professor of Law **Phoebe C. Ellsworth**, who is also a professor of psychology, has been named to the Robert B. Zajonc Professorship of Psychology. In October she gave a workshop on jury reform at the Ohio State University Law School.

Professor of Law **Merritt B. Fox**, chairman of the Business Associations section of the American Association of Law Schools, organized the section program for the AALS annual meeting in January this year.

Professor of Law **Richard H. Pildes** participated in the Conference on New Directions in Campaign Finance Reform at New York University in November; in October he lectured on "The Transformation of Judicial Control of Administration in the Regulatory State" at the conference on "The Proceduralization of Law: Transformation of Democratic Regulation" at Catholic University of Louvain, Belgium; and presented programs on "Politics as Markets: Partisan Lockups of the Democratic Process" at the University of Texas School of Law and the Stanford Law Review Symposium: Law and the Political Process.

John W. Reed, Thomas M. Cooley Professor Emeritus of Law, has been re-appointed chairman of the State Bar of Michigan's Committee on Judicial Selection. In September he lectured on evidence at the Worker's Compensation Section meeting during the annual meeting of the State Bar of Michigan, and in August he was banquet speaker for the summer meeting of the State Bar's Litigation Section at Boyne Highlands. At its reunion in September, the Class of 1952, whose members arrived at the Law School in 1949, the same year as Reed, announced an endowed annual scholarship named after Reed.

Theodore J. St. Antoine, '54, James E. and Sarah A. Degan Professor of Law, spoke on "Mandatory Arbitration of Statutory Employment Rights: Unmitigated Evil or Blessing in Disguise?" in October as part of the Thomas M. Cooley Law School's Krinock Lecture Series. The lecture series is named for former Cooley Law School Dean Robert Krinock.

Harry Burns Hutchins Collegiate Professor of Law **Joseph Vining** has been appointed to the Campus Plan Advisory Committee, which is working with Venturi, Scott Brown and Associates to develop a new plan for the University of Michigan campus.

Behind The Scenes —

Assistant Professor of Law Roderick M. Hills explains the legal and political strategies that went into the case against Amendment 2 to the Colorado constitution, which prohibited any legislative, executive or judicial action at any state or local level of government to protect people of homosexual, lesbian or bisexual orientation. Eventually, the U.S. Supreme Court ruled in 1996 in Romer v. Evans, *116 S. Ct. 1620 (1996) that the state constitutional amendment violated the equal protection guaranteed by the U.S. Constitution. Hills, who wrote the respondent's brief in the case before the U.S. Supreme Court, explained the difficulties that accompany a facial challenge when there is no specific victim of injury from the law and outlined the political need for an immediate decision in the state courts.*

Hills spoke in October as the fourth presenter in the "Anatomy of A Case" series of midday talks in which faculty members discussed the legal, philosophical, social, political and other aspects of cases in which they had been involved. Other speakers in the series included Robert Precht, Director of the Office of Public Service, discussing the World Trade Center Bombing Case, in which he served as defense attorney; Associate Dean for Clinical Affairs Suellyn Scarnecchia, on the Baby Jessica Case, handled as a Law School clinic case; and Academic Administrative Intern Larry J. Cohen discussing a personal injury case. The series was sponsored by the Office of Student Affairs as "a terrific initial opportunity for first-year students to see how the concepts, rules and case law they are studying in class apply in the courtroom."

Faculty members in key roles at AALS meeting; Columbia honors Kamisar

Law School faculty members played key roles at the annual meeting of the American Association of Law Schools (AALS) in San Francisco in January and one of them received Columbia Law School's first award to a graduate for "excellence in teaching and scholarship."

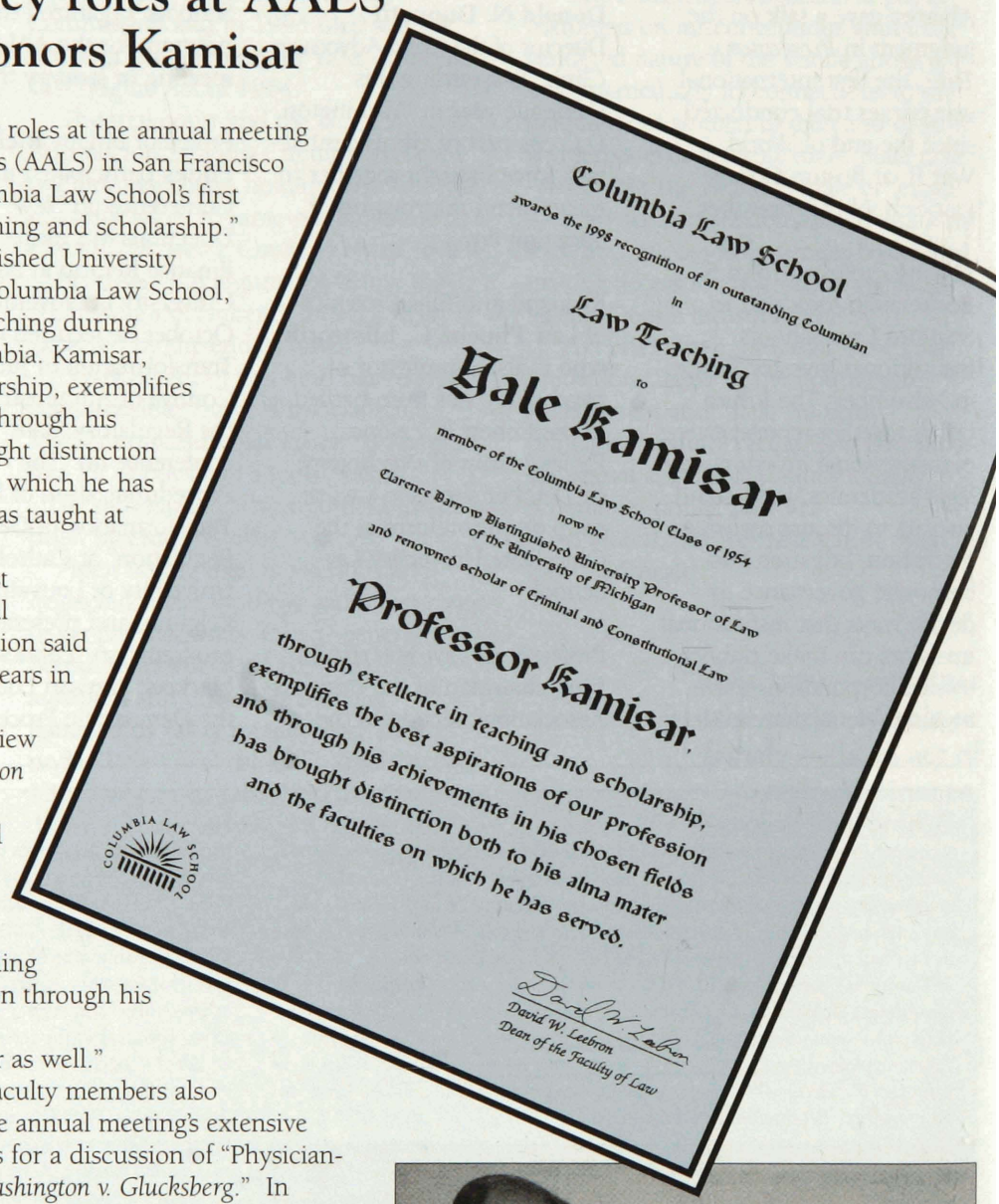
Yale Kamisar, Clarence Darrow Distinguished University Professor of Law and a 1954 graduate of Columbia Law School, received Columbia's first award in Law Teaching during ceremonies at a reception hosted by Columbia. Kamisar, "through excellence in teaching and scholarship, exemplifies the best aspirations of our profession and through his achievements in his chosen fields has brought distinction both to his alma mater and the faculties on which he has served," the award citation says. Kamisar has taught at the U-M Law School since 1965.

Kamisar "is one of the country's foremost authorities in the field of American criminal procedure," Columbia Law School Association said in announcing the award. "Over his forty years in teaching, Professor Kamisar has authored numerous books, op-ed pieces and law review articles. His books include *Police Interrogation and Confessions* (1980) and he is the co-author of major casebooks in both criminal and constitutional law.

"In 1996, Professor Kamisar received the American Bar Foundation Research Award. He was recognized for his 'outstanding contributions to the law and legal profession through his research in law and government.'

"By all reports, he is a wonderful teacher as well."

Kamisar and several other Law School faculty members also participated as panelists and speakers in the annual meeting's extensive program. Kamisar joined six other panelists for a discussion of "Physician-Assisted Suicide: After *Vacco v. Quill* and *Washington v. Glucksberg*." In discussing the aftermath of the Supreme Court's decision last summer on the paired cases, the panelists were to "critique the Court's adjudication of the issues," "explore how the debate has been changed by the opinions in the two cases" and "discuss where state legislatures, medical practice, the Court and the debate itself should go from here," according to the AALS program for the meeting.



Yale Kamisar, left, Clarence Darrow Distinguished University Professor of Law and a member of the Law School faculty since 1965, and Columbia University Law School Dean David Leebron display Columbia Law School Association's first award in law teaching, which Kamisar received at a reception in conjunction with the American Association of Law Schools' annual meeting in San Francisco in January. The award recognizes Kamisar's "excellence in teaching and scholarship."

PHOTO COURTESY COLUMBIA LAW SCHOOL

Other Law School faculty members active at the AALS annual meeting included:

■ **David L. Chambers**, Wade H. McCree, Jr., Collegiate Professor of Law and a member of AALS' Executive Committee, was one of two discussion leaders for the program on "Pro Bono and Public Service in Law Schools." Chambers chairs the newly formed AALS Commission on Pro Bono and Public Service Opportunities in Law Schools. He also was a speaker in the panel discussion on "Performance and Pedagogy: Research Perspectives on Minority Students."

■ Professor **Merritt B. Fox**, chair of AALS Business Associations section, moderated the panel discussion "High Tech Start-ups."

■ Professor **Thomas E. Kauper**, '60, was one of three speakers for the discussion of "The Regulatory Character of Modern Antitrust Policy," which focused on "the implications of the shift of litigation as the dominant means of federal enforcement" and "how academics can best teach antitrust law in an era when many vital building blocks of enforcement policy do not appear in the pages of published judicial opinions."

■ Dean **Jeffrey S. Lehman**, '81, was one of nine participants in a roundtable discussion that was part of the AALS and American Political Science Association Workshop on Inner Cities. Lehman also is a member of AALS' Committee on Nominations for 1998.

■ Francis A. Allen Collegiate Professor of Law **Richard O. Lempert** was one of four speakers on the panel considering "Is It Time to Replicate *The American Jury?*" *The American Jury,* published in 1965, summarized the (University of) Chicago Jury Project's findings.

■ Assistant Professor **Kyle D. Logue** spoke on "How Best to Regulate Cigarettes" at the Law School's breakfast for alumni. (Logue and co-author Jon D. Hanson discuss tobacco regulation and propose one solution in an article that begins on page 76.)

■ Professor **Catharine A. MacKinnon** was one of four speakers for the discussion of "Racial and Sexual Harassment and the First Amendment."

■ L. Hart Wright Collegiate Professor of Law **James Boyd White** spoke in the program "Writing and Writing about Writing."

Other Law School participants included:

■ **Larry J. Cohen**, Administrative Academic Intern, was one of five speakers for the program "Attorney Satisfaction: What Tools Can We Give Our Students to Help Them Find Personal and Professional Satisfaction."

■ **Kathy A. Okun**, Assistant Dean of Development and Alumni Relations, was a member of a plenary session panel devoted to "Daring to Be Great: Maximizing Your Law School's Potential."

■ **Ann G. Unbehaun**, of the Development and Alumni Relations Office, was a presenter at the session on "Managing a Major Gifts Program."

■ **Susan K. Weinberg**, '88, Director of the Office of Career Services, was one of two commentators to an address by four law school deans on "A Dean's View: Where Are We; Where Are We Going." The deans were from the law schools at Columbia, Northeastern and Pennsylvania State universities and the City University of New York at Queens College.

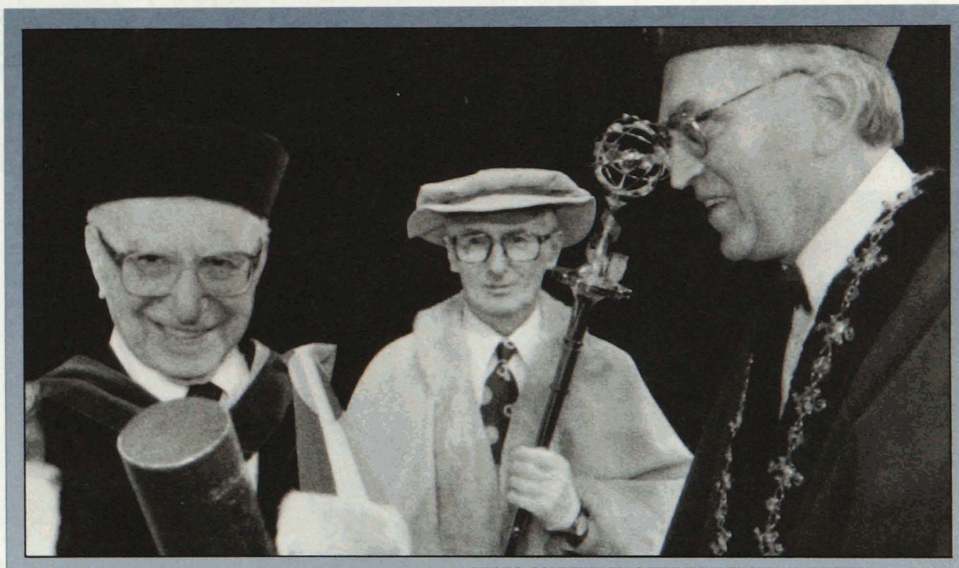


PHOTO COURTESY ERIC STEIN/UNIVERSITY OF WESTERN BOHEMIA

Honor at Home —

Eric Stein, '42, left, Hessel E. Yntema Professor Emeritus of Law, receives an honorary doctorate from the University of Western Bohemia in his native Czech Republic during ceremonies in November. At right is Western Bohemia Rector Jirí Holenda. Stein, a graduate of Charles University in Prague and an emeritus member of the Law School faculty since 1983, was honored for his help in the post-Communist constitutional negotiations, support of Czech and Slovak law students and researchers in the United States, and his assistance to the law faculty of the University of Western Bohemia. In his remarks for the occasion, delivered in Czech, Stein recounted his career devoted to the study of the art of governance and the organization of power in divided power systems like the United Nations, European Community, the American system of federalism, and the effort to restore Czech-Slovak federalism. He also delivered an "historically based strong appeal for the Czech Republic to join NATO and the European Union" and a recommendation for "a structured dialogue with Russia, which is bound to emerge again as a great power" in the next century. "This is not just a matter of security," said Stein. "Integration with the West should do for Central Europe what it has done for Spain and Portugal after the collapse of the authoritarian regimes there to strengthen democracy, rule of law, economy — and peace in Europe. The new democracies should advance the long-term prospects for an international community of liberal democratic states."

Taking the legal heartbeat of medicine

The professions of law and medicine share a great deal: like the requirement of rigorous formal preparation before you can practice; the demand for sensitivity and professionalism as you deal with people's most private, intimate concerns; and the need to cope with social and technological changes while retaining the core values of the professions.

"We have a large decision to make — and that is whether we are going to have a private sector at all," Professor of Law Sallyanne Payton tells participants in a conference on "Market-Driven Health Care Reform" in November.

TOP: Visiting Professor Christopher McCrudden, Reader in Law, Oxford University and Fellow, Lincoln College, Oxford, tells participants in the conference on "Courting Death: A Constitutional Right to Suicide," how the U.S. Supreme Court took the unusual step of seeking out and comparing experiences in other countries as it made its decision in the recent physician-assisted cases. The court usually has not compared experiences in other countries in reaching its major decisions during the past 20 years, he said.

So it is natural that Law School faculty members often become deeply involved in medical issues. And so it was during the Fall Term, when Professor of Law Sallyanne Payton helped to organize and took part in a conference on "Market-Driven Health Care Reform" and Professor of Law Carl E. Schneider, '79, organized and participated in a conference to assess questions about physician-assisted suicide that were left unanswered by last summer's U.S. Supreme Court decision in cases from New York State and Washington State. The Law School was a sponsor of the two conferences and Dean Jeffrey S. Lehman, '81, delivered welcoming remarks at both programs.

Payton set the tone for "Market-Driven Health Care Reform" by telling participants that "we are at the crossroads. We have a large decision to make — and that is whether, in the management of health benefit programs, we are going to have a private sector at all." Payton will edit the book that results from the conference, which was held in November at the Michigan League. Co-sponsors were the Law School and the University of Michigan Forum on Health Policy with assistance from nearly a dozen U-M programs and health related organizations.

Every major proposal for repairing the U.S. health care system "involves more government, more

government regulation and more government control," Payton said. The result is likely to be "flight from the private sector, as employers with health benefit programs, particularly medium-sized employers, reconsider whether they want to be responsible for managing programs whose design and administration are controlled through an essentially politicized process of government regulation."

"What happened to us?" she asked. "The economic engine of fee-for-service medicine ran the costs of the health care system up to levels that were not supportable — with continuing increases of 15 percent a year — and payors said, 'We can't do this.' They said the key is to get providers to pay more attention to cost."

The result was managed care, she said, and now many people are calling for greater regulation of managed care because it has driven wedges between patients and physicians and has made the health care system less trustworthy from the patients' point of view. The public does not like the current generation of managed care and wants to have health care it can trust.

Professor of Law Carl E. Schneider, '79, right, and Howard Brody, Director of the Center for Ethics and Humanities at Michigan State University, chat prior to Brody's presentation of his paper at a conference at the Law School in November.

"What should we do about managed care? Who should do it? 'Who' is probably the bigger question. The issue is not just the cost of increased regulation but the risk that the regulation may kill innovation because existing stakeholders are overrepresented in the political process that develops regulation. Health care needs aggressive purchasers who represent consumers and patients, which is to say, it needs a strong private sector led by large private employee benefit plans."

The nub of the issue, she said, is "how to fix the private sector without killing it."

Later in the day Visiting Adjunct Assistant Professor of Law Dana Muir, '90, spoke to participants on "Is ERISA [Employment Retirement Income Security Act] an Adequate Vehicle?" Muir is a Professor of Business Law in the U-M School of Business.

Among other speakers at the conference was Harris W. Fawell, R-Ill., chairman of the Subcommittee on Employer-Employee Relations of the House Education and the Workforce Committee, who spoke on "Expanding Self-Insurance for Small Business." Rep. Lynn Rivers, D-Mich., from Ann Arbor, also participated as a panelist.

In the conference on "Courting Death: A Constitutional Right to Suicide," held at the Law School in November, eight specialists from more than a half dozen universities discussed physician-assisted suicide (PAS) from a variety of angles in light of the U.S. Supreme Court's decision last summer that PAS is not a constitutionally guaranteed right. The program was sponsored by the Law School, the University of Michigan Medical School's Program for Society and Medicine, and the Health Law Society.

The modern legal history of the PAS issue begins in the mid-1970s with the Karen Ann Quinlan case, Schneider explained. In that case, the New Jersey Supreme Court permitted a comatose young woman to be removed from a ventilator. Quinlan lived on for nine more years, but her case set a precedent for thinking about end-of-life issues in terms of rights.

In 1990, Schneider said, the case of Nancy Beth Cruzan sounded a trumpet blast "in a crescendoing reform call." Although the Supreme Court ruled in that case that a state could constitutionally require that there be clear and convincing evidence that a patient in a persistent vegetative state would have wanted nutrition and hydration to be withdrawn, the Court seemed to suggest that there was a constitutional right to refuse medical treatment. "*Quinlan* and *Cruzan* transformed public debate" and were followed by law-making efforts in many states, Schneider said.

Last summer, the Supreme Court considered *Washington v. Glucksberg* and *Quill v. Vacco*. Those cases raised the question whether statutes in the states of Washington and New York making it a crime to assist in a suicide were

constitutional. Although six Justices wrote opinions in the two cases, they agreed that the statutes were not unconstitutional. The issue thus seems likely to return to the states.

And the states have indeed been active. A referendum to legalize PAS had passed in Oregon prior to the Supreme Court's decision but its application had been held in abeyance by litigation and the state legislature's reluctance. After the Supreme Court's decision, however, Oregon voters re-passed the proposal by a considerable margin, and Oregon thus seems likely to become the location of the first American experiment in a formalized system of physician-assisted suicide.

In his paper, Schneider outlined his reasons for considering constitutional adjudication a bad way to make bioethical policy in areas like PAS. He noted that in such areas the Constitution gives judges little guidance, thus casting judges back on their own resources. Yet those resources are not, Schneider argued, suitable for making bioethical policy. Law school prepares students superbly well to read cases and to analyze legal doctrine, but not so well to read public policy literature. Courts are well-equipped to collect information about specific events but poorly equipped to learn how a social institution like medicine works. And, Schneider suggested, a close reading of judicial opinions suggests that judges simply have failed to understand the arguments that states have made to justify their prohibitions of physician-assisted suicide.

Speaking from the perspective of his position as a Reader in Law at Oxford, Visiting Professor Christopher McCrudden noted that "there's quite a lot of indirect use of the Dutch, English and European experience in *Glucksberg*. What's curious about this is that it goes against other cases in the last 20 years or so. In other words, in landmark cases like the abortion case *Roe v. Wade* and the death penalty cases, the Court did not look to comparative experiences in other countries. In the PAS cases, however, it did."

In response to a questioner, McCrudden acknowledged that dealing with the PAS issue at the state level could lead to "a very distasteful trade."

"I'm presenting it as a dilemma," he said. "How you get out of this I'm not at all sure."

Canadian sociologist Arthur Frank, who supports "a mediation system . . . some way of taking this out of our court system," said his extensive reading of books on the subject has given him three guideposts for the debate:

1. "Families and others want to do the right thing" in end-of-life cases. "The problem is that they don't know what is the right thing."
2. "The law must not disrupt relationships — if you don't assure me that you'll help me when I need it, I'll have to go off the bridge now."
3. "Society can't allow mercy killing until all other care is a right," including palliative care.

When all is said and done, concluded Clarence Darrow Distinguished University Professor of Law Yale Kamisar, an expert on the issue and an opponent of PAS, the supporters of physician-assisted suicide suffered a serious setback in the U.S. Supreme Court last summer — at the very least they lost a great deal of momentum. That does not mean, however, that the debate has ended. There was a good deal of ambiguity in the Court's decision, according to Kamisar.

These conclusions evolved through the presentation of papers that considered sides of the issue as different as analyses of each justice's opinion to the relationship between the individual who may use PAS and the society in which he lives and dies. Here is the full conference lineup of papers and presenters:

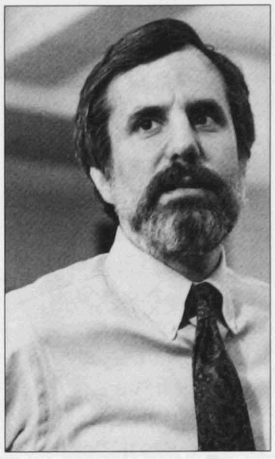
- "Ambivalent Unanimity: An Analysis of the Supreme Court's Holding," by Sonia Suter, '94, a Fellow with the Greenwalt Fellowship Program in Washington, D.C., and a former Visiting Professor at the Law School.
- "Assisted Suicide and the Problem of Individually Determined Collective Rationality," by U-M Law School Assistant Professor Peter Hammer.
- "The Supreme Court and Palliative Care: Principled Distinctions or Slippery Slope," by Rebecca Dresser, Professor of Law and member of the Center of Biomedical Ethics in the Medical School, Case Western Reserve University.
- "Death and the Constitution: Public Policy and the Courts," By Carl E. Schneider, '79, of the Law School.
- "A Part of the Main. . .? The Physican-Assisted Suicide Cases and Comparative Law Methodology," by Christopher McCrudden.
- "Eugenic Euthanasia in Early 20th Century America, Compared with Physician-Assisted Suicide Today," by Martin Pernick, Professor of History, University of Michigan.
- "Physician-Assisted Suicide in the Courts: Moral Equivalence, Double Effect and Clinical Practice," by Howard Brody, a physician and Director of the Center for Ethics and Humanities in the College of Human Medicine, Michigan State University.
- "From Story to Law: Euthanasia and End-of-Life Care," by Arthur Frank, Professor of Sociology, University of Calgary.

Winter term visiting faculty warm classroom exchanges

One of the bright spots in what can be a bleak Winter Term – weather wise – is the appearance of visiting teachers with fresh approaches to legal subjects.

This Winter Term the Law School tradition of presenting students with visiting faculty members who challenge them and excite their thinking continues. In addition to those visiting faculty members who are able to spend the entire academic year at the Law School, more than 20 visiting faculty members are sharing their expertise with students, colleagues and others during the Winter Term.

Winter Term Visiting Professors include:



T. Alexander Aleinikoff, a Senior Associate at the Carnegie Endowment for International Peace and a Professor of Law at Georgetown Law Center, is former Professor of Law at the Law School and former General Counsel of the U.S. Immigration and Naturalization Service. He also has served as a resident associate at the Carnegie Endowment for International Peace. A graduate of Yale Law School and Swarthmore College, he has taught courses in constitutional law, immigration and nationality, legislation and public law, and race and gender discrimination. At Michigan, he is teaching a short, intensive course on immigration.

Sheldon H. Danziger is Professor of Social Work; Professor of Public Policy; Faculty Associate in Population Studies; Director of the Research and Training Program on Poverty, the Underclass and Public Policy; and Director of the Center on Poverty, Risk and Mental Health at the University of Michigan. He received his Ph.D. in economics from the Massachusetts Institute of Technology; his research focuses on trends in poverty and inequality and the effects of economic and demographic changes and government social programs on disadvantaged groups. He is co-teaching Social Welfare Policy with Professor of Law and Dean of the Law School Jeffrey S. Lehman, '81.

Matthew W. Frank, '86, is a partner at Caplin and Drysdale, where he works on tax matters with an emphasis on international law. He formerly served as an Assistant United States Attorney for the Central District of California in Los Angeles. He has represented the National Football League in U.S. Tax Court and is co-editor of the *Tax Litigation Alert* newsletter of the ABA Committee on Tax Litigation. He is teaching International Tax.

Rod M. Glowgower is rabbinic advisor for B'nai B'rith Hillel Foundation, serving the University of Michigan and Ann Arbor. He has been a lecturer at Midrasha College of Jewish Studies in Southfield and a previous visitor at the Law School. He is teaching Jewish Law

Karthigasen Govender, LL.M. '88, is a Professor of Public Law at the University of Natal-Durban and a member of the South African Human Rights Commission. At Michigan, he is teaching a course on South Africa with Wade H. McCree, Jr., Collegiate Professor of Law David L. Chambers.

Scott E. Masten, Professor of Business Economics and Public Policy at the University of Michigan School of Business, is teaching Economic Analysis of the Law.

Tracey L. Meares, an Associate Professor of Law at the University of Chicago Law School, is teaching Regulation of Lawyers and a seminar on Criminal Justice: An Interdisciplinary Approach. At Chicago, she teaches criminal justice, legal profession and remedies. Meares clerked for Judge Harlington Wood of the U.S. Court of Appeals for the Seventh Circuit and served as a trial attorney with the Antitrust Division of the U.S. Department of Justice.

Roberta J. Morris is teaching Patent Law. She has a law degree from Harvard Law School and a doctorate in physics from Columbia University and previously has lectured at the Law School. She has practiced privately in New York City and served as Assistant General Counsel for Mount Sinai Medical Center.

Alan R. Palmiter, '80, a Professor of Law at Wake Forest University School of Law, is teaching Corporate Finance and Securities Regulation. At Wake Forest, he teaches civil procedure, corporations and securities regulation.

Continued on Page 40

FACULTY

Continued from Page 39

William M. Richman is teaching Jurisdiction and Choice of Law. He is a Professor of Law at the University of Toledo, where he teaches civil procedure, conflict of laws, evidence, judicial administration and jurisprudence. He received his law degree from the University of Maryland Law School, where he was Assistant Editor of the *Maryland Law Review*. Richman clerked for Judge Joseph H. Young of the U.S. District Court for the District of Maryland. He is the author of several books, including *Understanding Conflict of Laws*.

Cindy A. Schipani is teaching Enterprise Organizations. She is Professor of Business Law at the University of Michigan School of Business and was the University's 1995-96 Louis and Myrtle Moskowitz Research Professor in Business and Law. She received her law degree from the University of Chicago School of Law and clerked for Justice Charles L. Levin, '47, of the Michigan Supreme Court. She chairs the Business School's Corporate Governance project, sponsored by the Alfred P. Sloan Foundation. Her research interests include corporate governance, analysis of directors' duties and issues of liability for environmental violations.

Cynthia Starnes, Professor of Law at Detroit College of Law, is teaching Contracts and Commercial Transactions. At Detroit, she teaches commercial law, contracts and family law. She earned her J.D. at Indiana University Law School, where she was Note and Development Editor of the *Indiana Law Review*, and her LL.M. from Columbia University Law School. She has been an instructor at Florida State University, a clerk for the Indiana Court of Appeals at Indianapolis, and an attorney for the Women's Legal Clinic in Indianapolis.

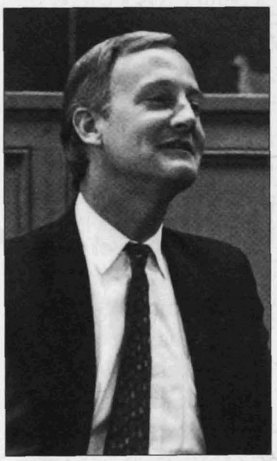
John Tiley, a Professor of Law at the University of Cambridge and a lecturer for the International Law Workshop this year and last year, is teaching Comparative Tax Law.

ADJUNCT PROFESSORS:

Elizabeth M. Barry, '88, Interim Co-General Counsel for the University of Michigan, is teaching Law of Higher Education. She formerly was Director of Academic Human Resources for the University of Michigan and University Attorney for Harvard University. She also has lectured at Harvard University Graduate School of Education.

Andrew P. Buchsbaum, principal staff attorney for the Midwest office of the National Environmental Law Center, is teaching Federal Litigation: Environmental Case Study.

Laurence D. Connor, '65, senior litigation member at Dykema Gossett in Detroit, specializes in complex business and tort litigation, trials, appeals and alternative dispute resolution. Chairperson of the Michigan State Bar Section on Alternative Dispute Resolution, he is teaching an Alternative Dispute Resolution Workshop.



Timothy Dickinson, '79, is teaching a seminar in Advanced International Commercial Transaction. A partner in Dickinson Landmeier L.L.P., he is of counsel to Miller, Canfield, Paddock and Stone, P.L.C. and maintains a limited relationship with his former firm, Gibson, Dun & Crutcher L.L.P. He practices in international commercial transactions, foreign sales and investment, economic sanctions and foreign claims, export regulations and enforcement, European Community law and public international law and has been an Adjunct Professor at Georgetown Law Center.

William E. Fisher, an estate planning specialist and partner at Dykema Gossett in Detroit, is teaching Estate and Gift Tax. A member of the American College of Trust and Estate Counsel and a frequent speaker at estate planning institutes, he also serves as advisor for closely held businesses.

Alison Hirschel, Director of Planning for Community Legal Services, Inc., in Philadelphia, is teaching a seminar on Law and the Elderly. She received her law degree from Yale Law School and clerked for the Hon. Joseph S. Lord III in the U.S. District Court for the Eastern District of Pennsylvania.

Steven Rhodes, '73, Chief U.S. Bankruptcy Court Judge for the Eastern District of Michigan, is teaching a seminar on Chapter 11 Bankruptcy.

Mark D. Rosenbaum, General Counsel for the American Civil Liberties Union, is teaching a seminar on Public Interest Litigation. He specializes in poverty and homelessness legislation, immigrants' rights, workers' rights, civil rights and First Amendment issues. He has taught at Loyola Law School, Harvard Law School and the University of Southern California Law Center.

Edward R. Stein, '66, a specialist in civil litigation with the firm of Stein, Moran & Westerman in Ann Arbor, is teaching an intensive course on Trial Practice.

Michel Waelbroeck, '69 Visiting Professor, of Liedekerke Wolters Waelbroeck and Kirkpatrick in Brussels, is teaching an intensive short course on European Community Law.

Clinics link arms in four-state prison litigation reform case

Legal cases and law school schedules notoriously run on different tracks. For clinical law professors like Paul D. Reingold, this kind of out-of-sync timing often frustrates his search for cases that are laced with useful educational material as well as solid legal substance for his students.

Reingold, who directs the Michigan Clinical Law Program, the Law School's civil-criminal law clinic, found himself in one of these time-out-of-joint situations in summer 1996 when the call came up for all four states of the federal Sixth Circuit to join in a case testing a provision of the Prison Litigation Reform Act (PLRA) of 1996. Reingold's clinic students were gone for the summer, and the case could not wait until he had students available again to work on it.

So he took the case himself — a rare opportunity to work with clinical faculty and attorneys from four states.

"When the Sixth Circuit calls and asks you to help out, it is hard to say no," Reingold says. "And once I saw that I would be co-counseling with colleagues from other schools, the decision to take the case was easy."

The case, *John L. Wright v. Terry Morris, et al.* (Nos. 95-1837, 95-4160, 95-6366, 95-6451), had arisen when judges of the U.S. Court of Appeals for the Sixth Circuit found themselves facing the question of whether the PLRA requirement that a prisoner exhaust every administrative step before filing suit applied to cases pending before the appeals court when the PLRA went into effect on April 26, 1996.

Since law school clinics often are involved in prisoner-related issues, the court contacted clinics in the four states of the circuit: Michigan, Kentucky, Ohio and Tennessee. The consolidated cases ultimately involved attorneys from the Vanderbilt [Law School] Legal Clinic and the University of Akron School of Law's Appellate Review Office, as well as the Michigan Clinical Law Program. "Because we were dealing with four states' corrections systems, administrative procedures and state laws — on an issue of first impression nationally — the case would have made a great educational tool for my clinic students if any had been available to work on it," Reingold says.

Reingold and his colleagues argued that the PLRA did not apply to appeals that already were pending when the law went into effect. "The stakes were high, because if we lost, some 1,500 cases would have been remanded," Reingold explains. He and his colleagues won their case at the appeals court in April 1997.

Because the PLRA language is "explicitly prospective and there is no reason to think that Congress intended a retroactive effect, we will not apply the new administrative exhaustion requirement to these cases where appeals were pending in this court on April 26, 1996, the day the PLRA was enacted," two of the three sitting judges ruled. "These four cases are properly before this court, and can be decided without undertaking administrative exhaustion."

Judge Gilbert Merritt dissented: "Applying the new statute to pending cases will not upset settled expectation or vested rights of any kind. All legitimate interests are served by such a rule — the prisoner with a valid grievance, the states which have created a fair process for adjudicating such claims and the federal courts which are now assigning such cases to pro se law clerks and staff attorneys because we are unable to cope with the volume of such cases or treat them in the same way that we treat regular federal question and diversity cases."

In October the U.S. Supreme Court denied certiorari in the case, leaving intact the appeals court ruling that pending cases were not affected by the PLRA administrative exhaustion provision.

AN INTERNATIONAL INTELLECTUAL BANQUET

"This promises to be an intellectual banquet, and we hope that you will feast yourselves."

With these words Dean Jeffrey S. Lehman, '81, welcomed about 200 participants from 23 countries to the Law School's second International Reunion in October — three days of speakers, panel discussions, renewed friendships and the opportunity to talk face to face with Law School family members whose legal roles embrace the world.

Keynote speaker Emilio Cárdenas, M.C.L. '66, ambassador-at-large for Argentina and former president of the United Nations Security Council, set the stage for the weekend in his description of the United Nations, the world's best known international organization, and the issues at the UN that in many ways are shared in a variety of other international arenas.

Cárdenas' insider's view of efforts to reform the UN Security Council and the Council's changing role in the post-Cold War world reflected issues of national sovereignty, developed vs. developing countries, command and control of international forces, and national vs. international priorities — issues that also bedevil trade, taxation, international law and nations' foreign policies, among others.

"When to use force?" Cárdenas asked in notes for his talk. "How much? How to gain multinational support? What should be the balance of representation and authority? Who should pay? Who should command?"

Panelists and audience members listen intently as John H. Pickering, '40, at right, Senior Counsel with Wilmer, Cutler & Pickering, offers his ideas during the program on "A Practical Approach to International Commercial Arbitration." Partcipants discussed trends in international dispute resolution, including the growing use of mediation.

Indeed, shortly after he spoke in Ann Arbor, Cárdenas was in Iraq wrestling with many of these questions. He was part of a three-member UN delegation sent to Baghdad to convince Iraqi President Saddam Hussein to reconsider his ban against Americans on the UN team that was inspecting Iraqi weapons installations.

Cárdenas was president of the Security Council in the early 1990s when the Council was wrestling with how to deal with the civil war in Rwanda. "We simply found no interest in the international community to go forward, when it would have taken very little to stop the genocide there," he said.

The UN is good at peacekeeping — when all sides want peace, but peace-enforcement is a very different task, Cárdenas said. "Robust military capabilities are required. And good information and intelligence must be either available or supplied. Decisive action requires a strong chain of command and control."

Discussions have been underway for some time to enlarge the Security Council by five permanent members, he said, but the issue is filled with questions: who will the five be, how will they be chosen, how long will they serve, will the new members have the veto, like the original five permanent members?

Reunion participants discussed these and other issues and compared different countries' approaches to a variety of questions in panel discussions and informal groups throughout the weekend. Here is a sample from the panel discussions:

■ **The Law and Ethics of Death and Dying.** With panelists Yale Kamisar of the Law School; Pieter van Dijk, '70-'71, '83 Research Scholar, a member of the Council of State of the Netherlands and Judge at the European Court of Human Rights; and John H. Pickering, '40, of Wilmer, Cutler & Pickering.

Van Dijk explained that the Dutch Parliament has refused to de-criminalize helping another person to die and that Dutch courts treat physician-assisted suicide as a crime. Recently, he said, a nurse acting under a physician's order was convicted after she gave an AIDS patient a lethal dose of medication. Physicians who assist a patient in suicide are required to report the action to the government, which will decide if the physician will be prosecuted. Few cases are prosecuted, but only an estimated 40 percent of assisted suicides are reported because of the legally-mandated procedures that must be followed, the documentation that is required and the chance that the physician may face legal charges. "If the physician has followed these procedures and met these conditions there is still no guarantee against being prosecuted," van Dijk said.

■ **Reforming the Constitution for Europe.** With Eric Stein, '42, Hessel E. Yntema Professor Emeritus of Law; Jacques H.J. Bourgeois, '59-'60 Research Scholar, of Akin, Gump, Strauss, Hauer & Fields, Brussels; Robert M. Stern, of the University of Michigan Economics Department; and Michel Waelbroek, '69, Visiting Professor, of Liedekerke Wolters Waelbroeck & Kirkpatrick, Brussels, and the University of Brussels Law Faculty.

Stein outlined the major steps over the past 40 years in the evolution toward European unity: formation of the European Economic Community and the European Atomic Energy Commission in the 1950s, the Maastricht Treaty in 1992, and the Amsterdam Treaty in 1997. "It is immensely complicated," he said, bringing smiles to his listeners. "Those of you who enjoy working with the Internal Revenue Code would enjoy this."

Stern said that it appears that the European Monetary Union will be launched on time, on January 1, 1999, which will set Europe on the road toward a single currency among Monetary Union member states. Europe's common currency, the Euro, is to be introduced in 2002.

■ **War Crimes at the National and International Level.** With Professors José Alvarez and Catharine A. MacKinnon of the Law School faculty.

Alvarez, noting that 20th century wars have claimed four times as many civilian victims as military, defended the value of war crimes tribunals like those in The Hague and for Rwanda despite their shortcomings. In Rwanda, for example, one percent of the population is awaiting trial and the tribunal has neither the money nor the personnel to handle such numbers. In the case of the tribunal considering crimes in the Balkans, he said it is "disturbing" that charges of rape were dropped in the case against Dusko Tadic, who was convicted on 11 of the 31 charges against him.

MacKinnon, however, won a decision in the U.S. Court of Appeals for the Second Circuit that victims of rape in genocide in Bosnia could proceed for damages against Bosnian Serb leader Radovan Karadzic under the 1789 U.S. Alien Tort Act. MacKinnon, working pro bono on the case, and her clients filed the action when Karadzic visited the U.S. "After fighting us hard for four years he folded. . .," she said. "He is in default now."

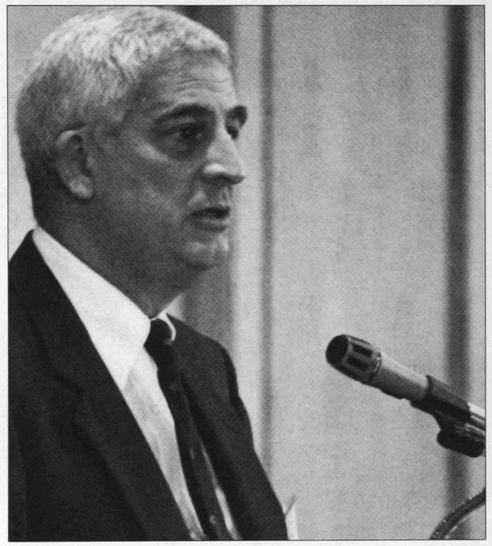
Other panels, moderators and participants, included:

■ **The WTO and Its Dispute Procedures: Appraising the First Three Years.** With panelists John H. Jackson, '59, Hessel E. Yntema Professor of Law; Marco C.E.J. Bronckers, LL.M. '80, of Stibbe Simont Monahan Duhot, Brussels; and Debra Steger, '83, Director of the Appellate Body Secretariat of the World Trade Organization (WTO).

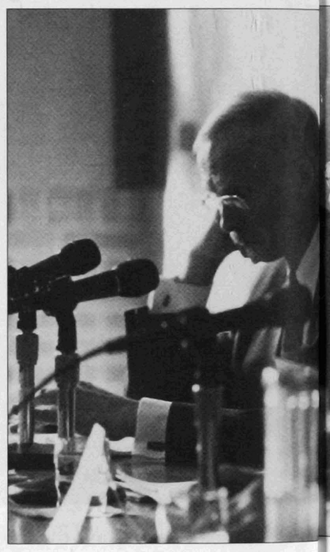
■ **Cultural Differences in Negotiation.** With James J. White, '62, Robert A. Sullivan Professor of Law; Walter Konig, M.C.L. '69, Attorney in Zurich; Yoichiro Yamakawa, M.C.L. '69, of Koga & Partners, Tokyo; and John Lonsberg, '79, of Bryan Cave, St. Louis.

■ **Globalization of Antitrust.** With Thomas Kauper, '60, Henry M. Butzel Professor of Law; Jean-Francois Bellis,

Professor of Law José Alvarez, who has served as a member of the ABA Task Force on War Crimes in the former Yugoslavia, discusses war crimes tribunals at The Hague and elsewhere during the program on "War Crimes at the National and International Level." At right is Professor of Law and co-panelist Catharine A. MacKinnon, whose pro bono work on behalf of war victims in Bosnia led to a judgment for civil damages against Bosnian leader Radovan Karadzic in the U.S. Court of Appeals for the Second Circuit. MacKinnon brought the action under the 18th century Alien Tort Statute.



Reform of the UN Security Council may take many years, International Reunion keynote speaker Emilio J. Cárdenas, M.C.L. '66, of Argentina, tells reunion participants at the Law School in October. Cárdenas, executive director of Roberts S.A. de Inversiones in Buenos Aires and Argentinian ambassador-at-large, is his country's former ambassador to the United Nations and past president of the UN Security Council.



LL.M. '74, of Van Bael & Bellis, Brussels; and Elaine Johnston, L.L.M. '87, of White and Case, New York.

■ **A Practical Approach to International Commercial Arbitration.** With Whitmore Gray, '57, Professor Emeritus of Law; Giorgio Bernini, LL.M. '54, S.J.D. '59, of Studio Bernini Associati and Chair of International Commercial and Arbitration Law, University of Bologna; and Manuel Teehankee, LL.M. '86, Attorney in Manila and New York.

In a special luncheon talk, Assistant Professor of Law Michael Heller discussed "Property in the Transition from Marx to Markets." As it occurred in the former Soviet Union, the transition from state to private property often spread different parts of the total rights to a piece of property among many owners, creating the problem of the "anticommons," Heller explained.

For example, one "owner" might have the right to collect rent, another the right to sell the property, still another the right to renovate it. In such cases each partial owner may be able to exclude others from using the property, but cannot use it himself, thereby creating a problem of under-use.

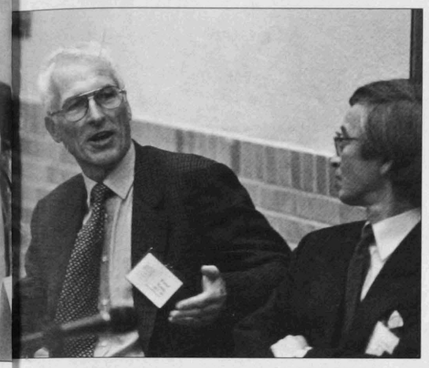
"The structure of privatization matters more than perhaps we realize," Heller said.

The reunion also included field trips to campus and nearby sites and a gala banquet at the recently renovated Michigan Union. "A truly magnificant weekend," Lehman called the gathering.

"We hope this is a weekend you will long remember," Lehman and Virginia B. Gordan, Assistant Dean for International and Graduate Programs, told attendees. "Thank you for traveling all this distance to rejoin your friends at the Law School."

Audio versions of all International Reunion programs are accessible through the Law School web page (www.law.umich.edu).

Panelist Walter Konig, M.C.L. '69, an attorney in Zurich, explains his point during a discussion of "Cultural Differences in Negotiation." At right is Yoichiro Yamakawa, M.C.L. '69, of Koga & Partners in Tokyo.



Bringing an international perspective to the debate on physician-assisted suicide, Pieter van Dijk, '70-'71, '83 Research Scholar, left, member of the Council of State of the Netherlands and Judge of the European Court of Human Rights, joins panelists Yale Kamisar, Clarence Darrow Distinguished University Professor of Law, and John H. Pickering, '40, Senior Council with Wilmer, Cutler & Pickering, to discuss "The Law and Ethics of Death and Dying." In the Netherlands, van Dijk said, physicians operate in a nether world where the action of assisting in a suicide legally is to be reported to government officials, who will decide whether to prosecute the physician. In practice, few reported instances of physician assisted suicide are prosecuted, but many go unreported.

The view from the world's highest benches

A special feature of the International Reunion was a panel discussion bringing together three of the eight members of the Law School family who currently sit on the highest courts of their respective countries:

Vojtech Cepl, a research scholar at the Law School in 1968, sits on the Supreme Court of the Czech Republic; Florenz D. Regalado, LL.M. '63, is a justice on the Supreme Court of the Philippines; and Pieter van Dijk, '70-'71, '83 Research Scholar, is a member of both the Council of State of the Netherlands, his country's highest administrative court, and of the European Court of Human Rights.

Dean Jeffrey S. Lehman, '81, moderated the discussion. "One of the truly wonderful tributes that the Law School has enjoyed over the years is its wonderful representation on the world's judiciaries," Lehman noted in introducing the justices.

The Czech Republic's Supreme Court, like those in most post-communist countries, is based on the German model and deals with constitutional complaints and petitions for the annulment of unconstitutional statutes, Cepl explained. "The majority of cases are constitutional complaints when statutory rights have been violated by a public body," and are dealt with by a three-judge panel, he said.

The Philippines' 15-member Supreme Court is patterned after the U.S. system and handles "all kinds of cases," Regalado said. The court had a backlog of 11,000 cases, including a case dating from 1932, when he was named to it in 1988, said Regalado, who chairs one of the court's three divisions and has a reputation for diligence and efficiency. Today the court has 4,000 ongoing cases on its docket.

The Council of State, the Netherlands' oldest court, must approve legislation before its goes to Parliament, van Dijk explained. The court handles 4,000-5,000 cases a year and may delegate simpler cases to a single member. The European Council of Human Rights investigates if a country's laws violate the European Human Rights Convention and only has jurisdiction over complaints against political states.

In response to questions, the panelists explained that:

■ Each justice of the Czech Republic's Supreme Court has a personal assistant who must have five years legal experience to be hired (Cepl uses two part-time assistants who are university teachers); the Supreme Court of the Philippines provides each justice with a staff of about 15 people, of whom about five are lawyers, plus the court itself has a staff of career attorneys for research, to simplify issues and sometimes to draft statements of facts; the Council of Human Rights' judges have no personal staffs for research and the Dutch Council of State has a staff of about 50 lawyers for research work.

■ The European Council of Human Rights has no enforcement powers and only can make declaratory judgments. It also can levy damages, and "so far all damages have been paid by governments."

■ The Czech Republic's Supreme Court does not do comparative constitutional research; the Philippines' Supreme Court deals with a mix of American and Spanish-derived law; the Council of Human Rights "depends very heavily" on the case law of member states but has no facilities for comparative study. "I think that it is a gap that there is no research facility to make comparative studies," van Dijk said.

■ The Czech Republic's Supreme Court only has functioned for three years, so it has not yet reversed an earlier ruling; some cases have been changed in the Philippines; neither the Dutch Council of State nor the European Council of Human Rights is bound by its precedents.

Justice Florenz D. Regalado, LL.M. '63, of the Supreme Court of the Philippines, describes the operations of the court during a special Reunion program on national supreme courts. At left is Pieter van Dijk, '70-'71, '83 Research Scholar, of the Council of State of the Netherlands and the European Court of Human Rights; at right is Justice Vojtech Cepl, '68 Research Scholar, of the Constitutional Court of the Czech Republic.

Celebrating ties with the Law School

The ties between the Law School and its graduates remain strong throughout graduates' lives, and many graduates return to the School as often as they can. Alumni reunion weekends, however, offer a special time for returns, and for three weekends last fall, the Law School became a place where time telescoped and graduates walked where they had walked as students, reveled in their recollections, and renewed ties among themselves that had loosened in the years since the Law Quad had been home.

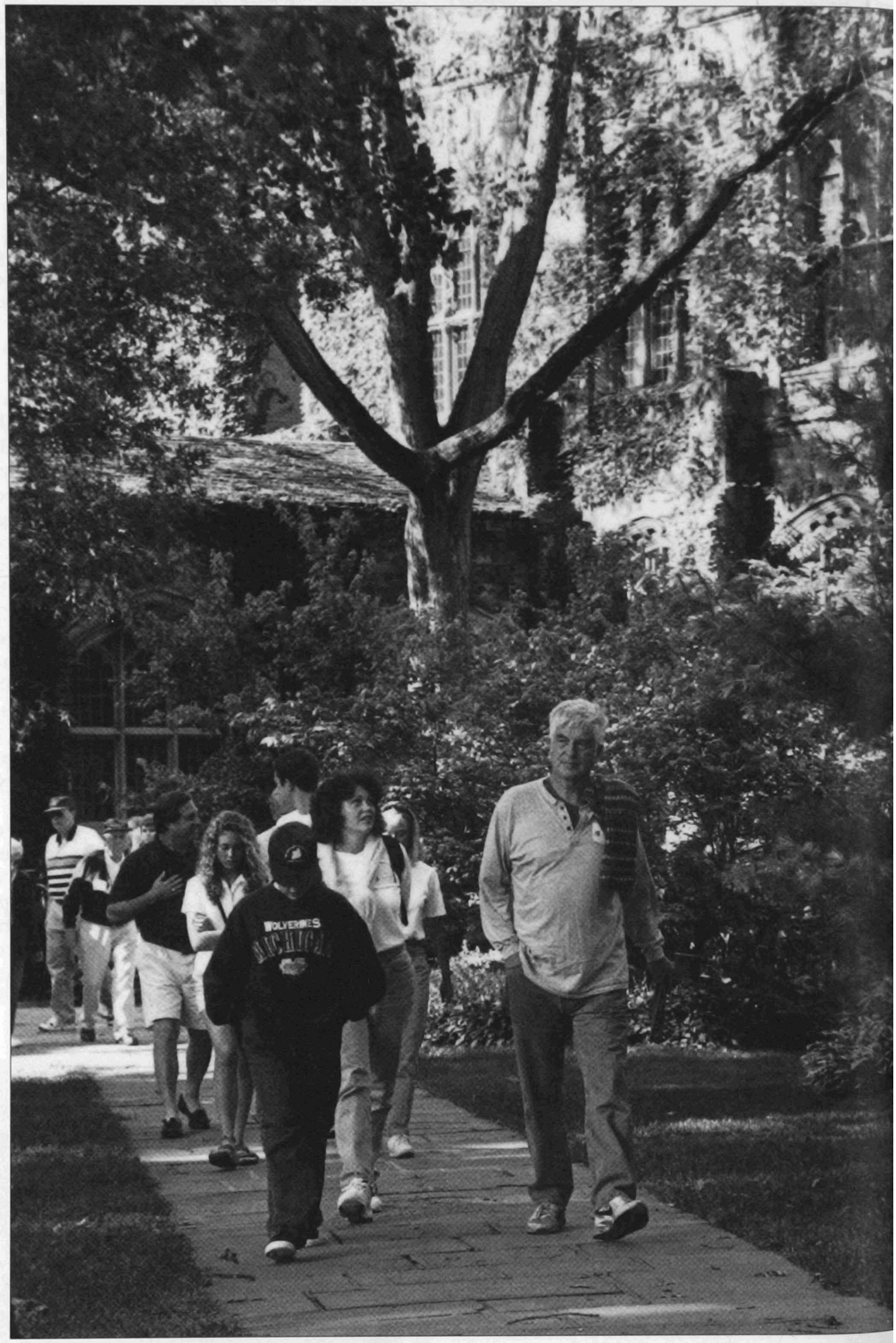
Graduates of the classes of 1942, '46/'47, '52, '62, and '67 had their reunions September 12-14; classes of 1972, '77, '82, '87 and '92 returned to the Law School September 19-21. The Class of 1957 held its reunion October 31-November 2.

Schedules included the opportunity to attend current Law School classes, tours, individual class gatherings and banquets, guest speakers, a faculty panel discussion on the goals of a legal education, and football: Michigan's Wolverines trounced the University of Colorado 27-3 on September 13, walked over Baylor 38-3 on September 20, and stalled the University of Iowa 28-24 on November 1 on their way to an undefeated season.

Dean Jeffrey S. Lehman, '81, gave each reunion gathering an overview of recent events at the Law School. "When I became dean three years ago I inherited a law school that was in magnificent condition from my predecessor, Lee Bollinger," Lehman reported.

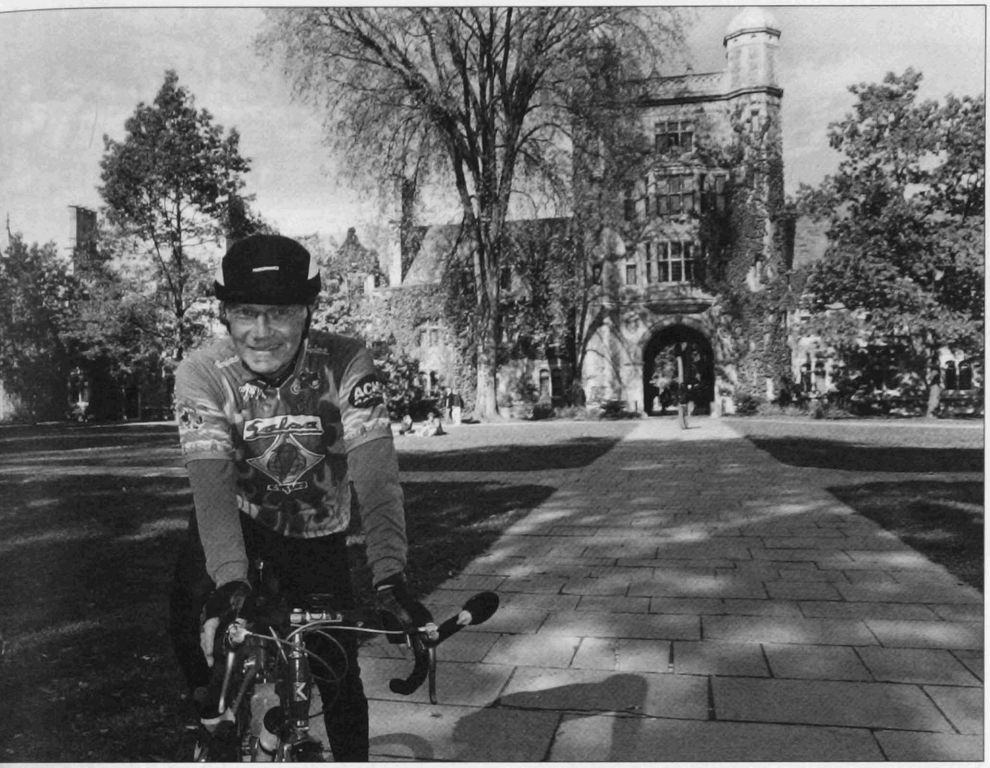
Among his other points:

■ The Law School has improved its ratio of faculty to students, partly by lowering slightly the number of first year students that it accepts, and also by



ABOVE: Jerry Fullmer, '62, and Mary Quinn, of Cleveland, Ohio, stroll through the Law Quadrangle during reunion activities at the Law School in September.

RIGHT: A doff of the hat to the past: each class group that had a reunion in September had its own session for a formal program, reminiscences and the discussion that are part of every graduate's reunion at the Law School.



Sidney C. Kleinman, '57, takes the prize for the most unusual way of traveling to his reunion — by bicycle. Kleinman, an avid cyclist who pedaled 500 miles across Montana last summer, bicycled more than 250 miles in three days from his hometown of Chicago to Ann Arbor to attend his reunion October 31-November 2. Kleinman proved his dedication when he continued with his planned bicycle route after being struck by a taxicab only eight blocks from home. Fortunately, he suffered only minor injuries. "Are you going to sue me?" Kleinman says the cabbie asked. "No," Kleinman answered. "I've got to get to Ann Arbor."

bringing in more visiting faculty and adding the Legal Practice Program and its eight professors for first-year students.

■ "A substantial portion" of the funds raised in the Law School's Campaign [see story on page 3 and the special Campaign Briefs that conclude this issue] are earmarked for financial aid to students. By the time they finish law school, graduates have an average debt of $80,000 for law school and undergraduate costs. Current Law School tuition — more than $17,000 per year for Michigan residents and more than $23,000 per year for non-residents — is "unconscionably high."

■ The Law School's international programs have continued to grow, with "a substantial externship program" in South Africa and Cambodia and expanding opportunities for students to spend a semester abroad. The faculty exchange program with Japan continues and the International Reunion (see story page 42) strengthens these bonds.

■ Conferences like the recent ones on "Making Development Work Without Forgetting the Poor: Rethinking Our Common Future" and "Constitution-Making in South Africa" enrich the intellectual life of the Law School by focusing on major issues and bringing experts from around the world together at the Law School to discuss them.

■ The Law School's web page (www.law.umich.edu), accessible by anyone able to use the Internet, expands the School's ability to communicate with people regardless of time or distance.

■ Clinical programs have continued to expand and the Law School now has an Associate Dean for Clinical Affairs (former Coordinator of Clinical Programs Suellyn Scarnecchia, '81).

■ Donations from generous alumni have allowed the Law School to launch new programs in legal ethics and alternative dispute resolution.

In one faculty panel discussion on the subject of "What Is The Point of a Legal Education Anyway?", Professors Sherman Clark, Samuel Gross and Peter Hammer agreed that they must teach the basics of

legal practice, like how to read cases and use them to bolster your position, how to present and evaluate evidence, and other skills that legal practice demands. Each also offered other goals for legal education:

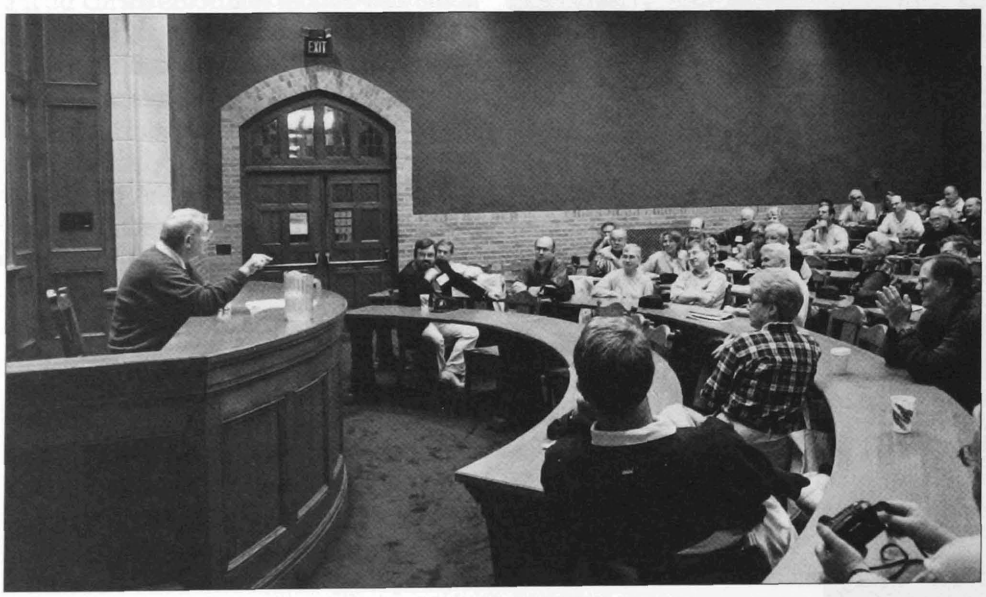
- Clark: Acquire the ability to make a "sympathetic engagement" by learning to fully understand your opponent's position and rationale.
- Gross: Learn the methods of other disciplines, learn to understand how the justice system and society interact, and learn "the habit of being honest with themselves."
- Hammer: Learn how to deal with ambiguity, "recognize that facts are as fungible and indeterminate as law," and "learn to choose one outcome from among many and advocate it."

Each reunion in September featured as a speaker who was a graduate of one of the reunioning classes. On September 12 the speaker was Eli Segal, '67, the spearhead and former CEO of the National Community Service Initiative in the Clinton Administraiton; on September 19 the speaker was Lawrence Joseph, '75, a professor of law at St. John's University in New York and a published poet who turned to prose for his most recent book, *Lawyerland: What Lawyers Talk About When They Talk About The Law* (see story on page 67).

In an often light, self-deprecating talk, Segal praised the value of volunteer service in the life of lawyers and others. Noting that he helped to manage a number of losing presidential campaigns — those of Eugene McCarthy, George McGovern, Michael Dukakis, Phil Kerry, and Gary Hart — Segal said that Clinton's call for a national service initiative was "the one campaign promise that this child of the '60s could not ignore." By the end of Clinton's second term more people will have served in Americorps than in all of the Peace Corps, he said. Using a blend of stories about Americorps volunteers and the words of a Civilian Conservation Corps worker who told Americorps volunteers in Philadelphia how that experience 60 years ago had changed him, Segal stressed the value of volunteer service work to those who give it as well as those who receive its benefits.

As for law students, he said, "I believe that if students do volunteer work in law school it is far more likely that they will do civic work during their careers."

"Great people," he said, "are measured by the lack of distance between themselves and others."



Paul G. Kauper Professor of Law Douglas A. Kahn moderates a discussion of retirement preparation for members of the Class of 1967. Note the unusual seating arrangement, in which participants in the session voluntarily occupy first- and second-row seats.

A different kind of Saturday

And how do you like to spend your Saturday mornings?

Some Law School graduates in Washington, D.C., have come up with an answer that may surprise you, given how precious weekends are to most lawyers: they become volunteer attorneys for clients who seek help from the Advice and Referral Clinic, which is run by the Washington, D.C., Bar's Public Service Activities Corporation (PSAC).

The volunteers, who are members of the University of Michigan Law School Club of Washington, D.C., devote one Saturday morning every three months to the pro bono work. "We've committed to do this quarterly," says W. Todd Miller, '86, President of the club.

Many lawyers enjoy doing pro bono work but lack the time to devote to an entire case, says Miller, half of the two-man firm Baker & Miller. "For me, at least, it's hard to take on a case pro bono because of the amount of time that it may involve."

The opportunity to devote half a day every three months to talking with clients and perhaps referring them to community agencies or other lawyers for follow-up help is tailor-made for busy lawyers like Miller, an antitrust specialist. Many times, volunteers like Miller also find themselves dealing with cases and drawing on community resources that are very different from what they encounter in their daily legal practices.

"It's challenging," Miller says. "It's something different. You're dealing with people and problems in different ways."

Most clinic clients cannot afford to hire lawyers. They bring to the volunteers cases involving bankruptcy, consumer issues, employment, family, health, housing, immigration/asylum, personal injury, probate, public benefits, taxes and just about anything else you can imagine. In November, one client wanted an amendment to a child custody agreement; another was embroiled in a disagreement with a contractor and could not get an occupancy permit for a new home.

"There are so many things that people come in with," explains Gary A. MacDonald, '88, an antitrust specialist with Skadden, Arps, Slate, Meagher & Flom L.L.P., who helped Miller organize the volunteer effort. Many times volunteers like Miller and MacDonald merely help people sort through their problem to determine if they have an actionable issue or a problem that might be solved administratively or otherwise short of legal action.

"They're totally different from my everyday practice," MacDonald said of the issues he faces as a volunteer. "I think the people who come in feel they get a lot of value out of what we do. And I feel good about being able to help — and they certainly need the help."

PSAC staff attorneys with experience in the kinds of issues raised by the clinic's clients back up the volunteers and help them identify community resources, referral attorneys and other ways to help the clients. In turn, the presence of the volunteers allows the more experienced clinic attorneys to concentrate on the thorniest cases and increases the total number of clients the clinic can serve.

Volunteers from the Law School's alumni group in Washington first staffed the clinic in August. They returned in November and will continue to return quarterly.

Volunteers for the August and November clinics included: Miller and MacDonald; Nancy Broff, '76, General Counsel for the Career College Association; Lauren Popper, '96, Staff Attorney in the Enforcement Division of the Securities and Exchange Commission; Linda Shore, '83, a Principal with Groom & Nordberg; Marilyn Mann, '88, Senior Counsel with the Division of Investment Management of the Securities and Exchange Commission; Laura Regan, '96, of Skadden, Arps; and Roopal Shah, '95, of Shearman & Sterling. Two other lawyers who received their undergraduate degrees from the University of Michigan but studied law elsewhere, also took part in the November clinic (Stephanie Napier, '93 undergrad; and Richard Gagnon, Jr., '88 undergrad).

The idea for the volunteer effort was the brainchild of John M. Nannes, '73, also of Skadden, Arps. Nannes has been active in the Law School Club and is a member of the D.C. Bar's PSAC.

"The Law School Club meets two or three times a year for lunch, but we have been looking for ways to expand our activities," Nannes says. "This project is such a logical idea: it brings Michigan alums together in a way that benefits some of the neediest in our community. To the best of our knowledge, this is the first time that a law school club in Washington has staffed a pro bono clinic in this fashion. It sure would be nice if we could export this concept to Michigan alums in other cities."

"You're dealing with people and problems in different ways," Todd Miller, '86, third from left, says of the University of Michigan Law School Club of Washington, D.C., program to provide volunteers to help staff the Advice and Referral Clinic in Washington, D.C. Here, Miller joins other volunteers who worked at the clinic in November: Gary A. MacDonald, '88; Nancy Broff, '76; Marilyn Mann, '88; Linda Shore, '83; and Lauren Popper, '96.

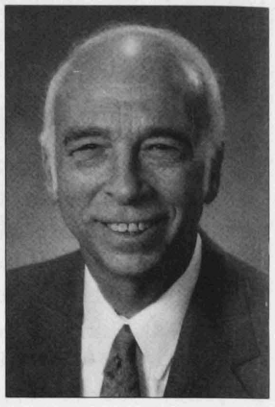
Law School graduates win top State Bar awards

Raymond H. Dresser, Jr., '56

Stuart D. Hubbell, '49

Donald L. Reisig, '58

Wallace D. Riley, '52



Robert L. Segar, '60

University of Michigan Law School graduates have won both of the State Bar of Michigan's top awards for "Lifetime achievement in the legal profession." Three Law School graduates also are among the seven attorneys awarded the State Bar's Champions of Justice Award.

Raymond H. Dresser, Jr., '56, of Sturgis, and Wallace D. Riley, '52, of Detroit, won the Roberts P. Hudson Award, which is named after the State Bar's first president and is considered the organization's highest award. Robert L. Segar, '60, of Flint, Donald L. Reisig, '58, director of litigation for Legal Aid of Central Michigan, and Stuart D. Hubbell, '49, of Traverse City, all won the State Bar's Champions of Justice Award.

Dresser, a partner in the Dresser Law Office, which celebrates 100 years in Sturgis this year, served 13 years as Sturgis City Attorney and has provided counsel to many community organizations. Son of a former State Bar of Michigan president, he has served the State Bar as treasurer and Executive Committee member and has been state co-chair of LAWPAC since 1990.

Riley, founder and CEO of Riley and Roumell, P.C., in Detroit, is a former president of both the American Bar Association and the State Bar of Michigan. He served nearly 20 years on the State Bar's Board of Commissioners and for nine years on the ABA Board of Governors. He has been president of the Michigan Supreme Court Historical Society for the past 10 years. He has served as an Oakland University trustee, chairman of the State Board of Canvassers and special Assistant Attorney General and has led U.S. delegations to the Soviet Union, Peoples Republic of China and Ireland.

Segar, a solo practitioner in Flint, has litigated several landmark cases, perhaps the most significant being *Butts v. Harrison,* which was consolidated with another case and led to the U.S. Supreme Court ruling that outlawed the poll tax as unconstitutional racial discrimination.

Reisig, is a former Circuit Court judge, Ingham County Prosecuting Attorney and Lansing City Attorney. A former president of the State Bar and former chairman of its Representative Assembly, he received the Ingham County Bar Association's Outstanding Lawyer of the Year Award in 1989. Before taking his unpaid position with Legal Aid of Central Michigan, he spent two years in the former Soviet Union helping the Ukrainian goverment write a national constitution, and he helped the government of Georgia set up a legal education system.

Hubbell, with attorneys Bruce Donaldson, former director of Thomas M. Cooley Law School in Lansing and former chair of the State Board of Tax Appeals, and Raymond J. MacNeil, who practices in Gaylord, received the award for their six-year court battle on behalf of indigent clients wrongly convicted of first-degree murder. They worked together on the 1986 Jerry Tobias murder case in Gaylord, Hubbell and MacNeil as court-appointed public defenders and Donaldson, then senior partner of Dykema Gossett in Detroit, who joined the case pro bono and worked on it for three years.

Hubbell and his three sons practice together in Traverse City. He is former prosecuting attorney of Grand Traverse County and served from 1972-78 as U.S. Magristrate for the Federal District Court of the Western District of Michigan. President Lyndon B. Johnson honored him with a special Presidential Award in 1965.

Other Champions of Justice Award winners were Myzell Sowell of Detroit and Michigan Supreme Court Justice Dorothy Comstock Riley.

The awards were presented during the State Bar's 62nd Annual Conference in Detroit in September.

PHYLLIS HURWITZ MARCUS, '93:

Helping Appleseed grow

Phyllis Hurwitz Marcus, '93, always has tuned to the muse of the public good.

"At the beginning, when I entered law school, I knew that what was going on in the classroom couldn't comprise my whole education," she says. "And I had a goal of going into public interest work from the outset."

So she spent her Law School years in action as well as academics, in what she calls "a holistic and broad-based experience" that eventually won her the Jane L. Mixer Memorial Award for advancing the cause of social justice. She worked with the Family Law Project, served as a student attorney with the Child Advocacy Law Clinic, worked on the Battered Women's Clemency Project, chaired the Law School's "Firm Commitment" Program and served as Symposium Editor and Notes Editor for the *University of Michigan Journal of Law Reform*.

She's still using that "holistic and broad-based approach," this time as Legal Director for the Washington, D.C.-based Appleseed Foundation, which was formed five years ago "to mobilize lawyers and others who have achieved a measure of personal success to apply their leverage, skills and experience for the public good."

The Appleseed Foundation, which had spawned 12 state Appleseed Centers by last fall, began at the 35-year reunion of the Harvard Law School Class of 1958, whose members include consumer advocate Ralph Nader and Harvard Law Professor/ABC-TV commentator Arthur Miller. Nader said then that the criterion for establishing Appleseed Centers is that they fight "abuses of power from the streets to the suites."

He continued: "These centers are expected to be autonomous. They are expected to be community-supported. The idea is not to provide legal service for people with individual problems, but to provide a task-force approach to problems."

In a financial version of Johnny Appleseed-style generosity, the Foundation provides seed money to a state center, which must raise the remainder of its funds on its own. University of Michigan Law School Dean Jeffrey S. Lehman, '81, is a member of the Foundation's Advisory Council. Marcus is glad to have Lehman aboard as an advisor — she recalls him as "a mentor" during her Law School student days.

"I took Welfare Law with Jeffrey Lehman, and also a seminar in The American Urban Underclass, which was eye opening to me," Marcus recalls. "I was so pleased with my time at Michigan because I found it a relatively noncompetitive environment to go to law school, and one in which I could explore my own interests in law. There wasn't an institutional agenda, it wasn't corporate minded. I found I had one on one relations with professors. And I got quickly into the Family Law Project, which led the way to numerous public interest activities."

Marcus, formerly a litigator with Crowell & Moring, LLP, joined Appleseed in September 1996 as the foundation's first Legal Director. "The thought was that the legal director should help to coordinate the setup of new Appleseed Centers, and also connect all existing centers into a true information sharing network," she explains. "So I monitor the work of the existing centers and provide a significant amount of organizational help and advice to those centers."

In Louisiana, one of the states where Marcus has helped to organize an Appleseed Center, she worked with Center leaders to identify and prioritize the issues on which they initially would concentrate. They decided their top priority should be consumer protection because Louisiana state government did not have a consumer protection arm nor was there an independent consumer watch group in the state. The Louisiana Appleseed Center also ranks housing rehabilitation as a high priority.

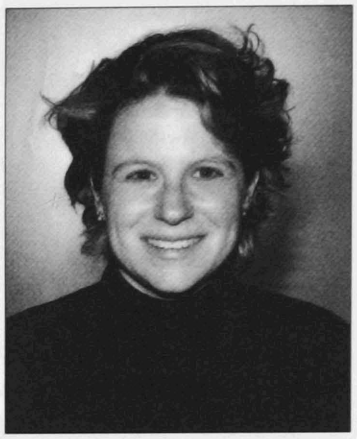


PHOTO COURTESY PHYLLIS HURWITZ MARCUS, '93/APPLESEED FOUNDATION

Phyllis Hurwitz Marcus, '93

As for the network that Marcus helps manage, it has opened the way for a variety of technical assistance to the state centers, including a recent telephone conference that linked Appleseed Center leaders in several states with Joan Bernstein, Director of the Consumer Protection Division of the Federal Trade Commission and a member of the Appleseed Foundation's Board of Directors.

The network also has shown leaders that counterparts in several states face similar issues. There are internal issues, like those of staffing, running nonprofit corporations and budgeting. And there are community issues. "New Jersey and Connecticut are working on Blue Cross-Blue Shield conversions," Marcus says. "Several centers are working on issues of juvenile justice. Many centers are doing welfare reform, and starting to look into the privatization of benefits distribution programs."

Continued on page 52

Continued from page 51

Marcus also will be involved with Appleseed's establishment of issued-based centers like the Appleseed Center for Electoral Reform, which is run by students at Harvard Law School. Among the other issues that new centers could address are immigration, government accountability and consumer law.

"We think that the best chance for a multi-perspective approach would be to establish each center within a law school that has a university attached to it," she says. "One of Appleseed's overarching goals is to provide intergenerational experiences for lawyers," and such centers bring together students, faculty members and veteran attorneys. Appleseed already has had several queries from Michigan, she says.

Such work is a far cry from the general commercial litigation that Marcus previously practiced. She says that she was uncomfortable with the process-centered nature of litigation and also found herself increasingly interested in ways to solve disputes before they go to litigation.

"At Appleseed," she says, "we use the whole range of skills that lawyers bring to the table to solve matters short of litigation."

PHOTO © ANNA NG DELORT/COURTESY STEPHEN F. BLACK, '68

Finding For The Defense —

Stephen F. Black, '68, standing at left, argues in defense of King Richard III of England before a tribunal composed of U.S. Supreme Court Justice Ruth Bader Ginsberg, Chief Justice William H. Rehnquist, and Supreme Court Justice Stephen Breyer in this scene from the Shakespeare Theatre benefit mock trial that appeared on C-Span in November. The mock trial, argued last summer at the Supreme Court as a benefit for the Shakespeare Theatre, revolved on the question "Did Richard murder or cause to be murdered the children in the tower?" The two boys being held in the Tower of London could have claimed the throne that Richard III occupied from 1483-85. Arguing in Richard III's defense, Black, a partner with Wilmer, Cutler & Pickering and a member of the Shakespeare Theatre Lawyers Committee, and his colleague Dennis Flannery won the judgment of the court.

Saxton, '52, wins Distinguished Service Award

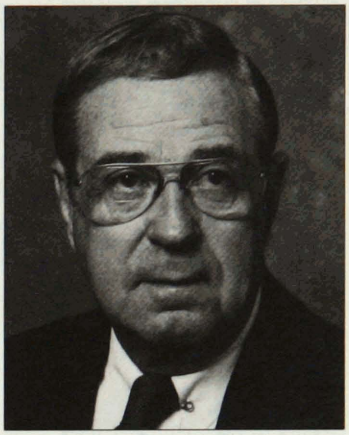
The Labor and Employment Law Section of the State Bar of Michigan has awarded its Distinguished Service Award to William M. Saxton, '52, former chairman and CEO of Butzel Long and currently a member of the firm's board of directors.

Saxton is only the second attorney to receive the award, which was presented at the Labor and Employment Law Section's mid-winter meeting on January 30.

The Distinguished Service Award honors "a labor law attorney who has truly made an outstanding contribution to the labor law field," said Sheldon Stark, chairman of the Labor and Employment Law Section. "Bill Saxton has been a good friend to me and my office and he has been the 'Dean of the Management Bar' since I have been practicing. He is universally respected and a person totally deserving of this recognition."

Over his 45-year career, Saxton has been a trial lawyer, negotiator and counselor for many public and private employers and multi-employer associations. He has a reputation among his peers for fairness, integrity and a commitment to excellence.

Saxton is a Fellow of the American College of Trial Lawyers, a Life Fellow of the American Bar Foundation, a Fellow of the Michigan Bar Foundation and a life member of the U.S. Sixth Circuit Court of Appeals Judicial Conference. A recipient of the Nathan Goodnow award for achievement in the practice of law and impact on the community from the Metropolitan Detroit Bar Association, Saxton is a Fellow Emeritus of the American Inns of Court and a 1987 recipient of the Michigan Road Builders' Association's Distinguished Service Award. He is listed in *Best Lawyers in America, Who's Who in American Law* and *Who's Who in America.*



William M. Saxton, '52

Both sides of the bench

Sometimes Law School graduates find themselves on opposite sides of cases, sometimes on the same side. And sometimes one graduate finds himself in front of the bench and the other at the bench.

This was the case with Robert A. Stein, '71, of Stein Volinsky & Callaghan in Concord, New Hampshire. Stein represented plaintiffs in *Claremont v. Governor, et al*, and argued before the New Hampshire Supreme Court that New Hampshire's state constitution obligates the state to provide adequate education to every educable child in public schools in the state. In addition, he argued, the state constitution obligates New Hampshire to provide funding adequate to provide that education.

On the other side of the Supreme Court bench, one of Stein's listeners was New Hampshire Chief Justice David Brock, '63, who would write the court's decision. "Given the complexities of our society today, the State's constitutional duty extends beyond mere reading, writing, and arithmetic," Brock wrote. "It also includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and as potential competitors in today's marketplace of ideas."

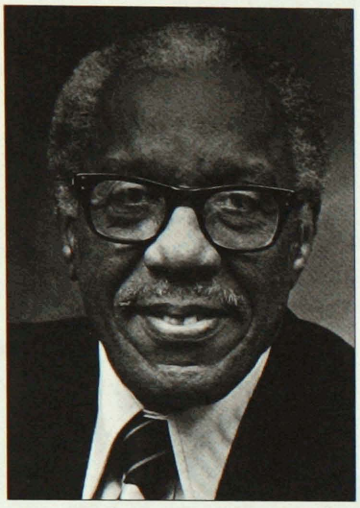
Stein recently received a plaque commemorating his work in the case.

Behind the Scenes of Clerkships —

The Hon. Cornelia Kennedy, '47, of the U.S. Court of Appeals for the Sixth Circuit, relaxes after discussing the value of court clerkships in a program in November. Kennedy, a founder in 1979 of the National Association of Women Judges, is one of several members of her immediate and extended family to attend the Law School or the University of Michigan. Kennedy and her sister Margaret, '45, now retired from the 47th District Court of Michigan, were the only two sitting judges who were sisters when the National Association of Women Judges was founded in 1979. Their mother, Margaret Groefsema, attended the Law School part-time for a year before her death in 1932; she was granted status as a special student because of her family responsibilities. In her talk, Kennedy said that clerkships provide:

- *An opportunity to see a court from the inside and to see how judges make their decisions.*
- *The satisfaction of contributing to the judge's decision. "Clerks do have real input into decision making."*
- *The chance to hone your writing skills.*
- *The benefit of seeing many different cases in a short time.*
- *Trial court clerks the chance to see liltigators in action and appellate court clerks the chance to determine what was done incorrectly at the trial court level.*

GEORGE W. CROCKETT, '34, & CECIL F. POOLE, '38



George W. Crockett, '34

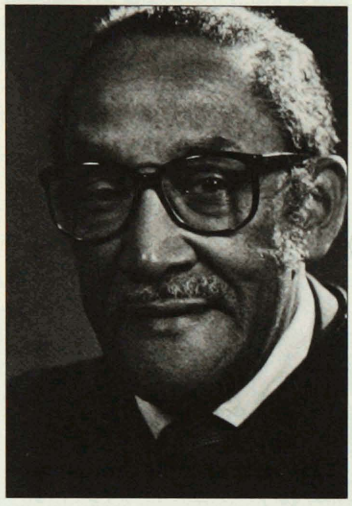
Two prominent graduates of the Law School who devoted their careers in the law and politics to improving civil rights have died:

■ George W. Crockett, '34, whose heroic efforts on the part of African-Americans earned him renown as a defense lawyer and judge and won him a seat in the U.S. House of Representatives from 1980-91, died September 7 in Washington, D.C. He was 88.

■ Cecil F. Poole, '38, the first black U.S. attorney outside of the U.S. Virgin Islands and the first black federal judge in northern California, died November 12 at age 83.

"In the quest for racial equality, Mr. Crockett often operated so far beyond the trenches that it was often decades before society caught up," *The New York Times* said in announcing his death.

During World War II, as the first hearing officer for the Fair Employment Practices Committee, Crockett demanded that companies use race-neutral hiring and promotion policies. As a judge on Detroit's Recorder's Court during the 1960s and '70s, he denounced police brutality and became widely known for handing out lenient sentences to first offenders and those he believed to have been the victims of police brutality. When Detroit police seized about 140 people in a church after a sniper fired from a church and killed a police officer, Crockett went to the police station uninvited, declared his court to be in session there and freed most of the detainees because he said they were being held without probable cause.



Cecil F. Poole, '38

PHOTO BY PAUL LATOURES/COURTESY U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

A founder of the law firm Goodman, Crockett, Eden and Robb in Detroit, Crockett helped to organize and served as director of the legal arm of the Mississippi Project, which sent 60 lawyers to southern states to defend civil rights workers. Crockett also helped to organize the National Bar Association's Judicial Council to help black judges lead in their fight for equal justice; the Council now includes some 400 black judges.

Last year he received the State Bar of Michigan's Champions of Justice award for his longtime service to civil rights and the legal profession.

Poole, who was named to the U.S. Court of Appeals for the Ninth Circuit by President Jimmy Carter, served on the court from 1979-96. President John F. Kennedy named him U.S. Attorney for San Francisco in 1961, and Poole became well known for refusing to prosecute hundreds of draft evaders. This and other actions led then-Senator George Murphy of California to block both of President Lyndon B. Johnson's nominations of Poole to the Federal District Court for Northern California. Poole then went into private practice, concentrating on entertainment law. In 1979 President Gerald R. Ford named him to the Federal District Court, making him the first black federal judge in Northern California.

Before becoming a judge, Poole had served as director of the NAACP Legal Defense and Educational Fund from 1971-76. He taught law at the University of California at Berkeley in the 1970s. He served as a lieutenant in the Judge Advocate General's office of the Army Air Corps during World War II.

Finding the Future? —

Carol Kanarek, '79, left, owner of Carol Kanarek Career Consulting for Lawyers in New York City, tells Law School students that the Big Apple is the "business and financial hub of the United States" and that most legal practice there involves "some aspect of corporate, business and banking." Above, Frank Kimball, '77, of Kimball Legal Consulting in Chicago, outlines the nature of legal work and legal employment in the Windy City. According to Kimball: "The entry level hiring picture is brighter than it has been since 1989. . . . Like all of our colleagues in the world of business, we must compete to survive. There is no reason to grow weak in the knees simply because we are now part of the free enterprise system. Lawyers should welcome the challenge, make the changes necessary to compete, and retain our spiritual commitment to what should always be a calling." Kanarek and Kimball delivered two of the five programs in a series of talks in Fall Term to acquaint law students with the nature of legal work and opportunities available to new lawyers in New York, Chicago, California, Detroit and Washington, D.C. The series was sponsored by the Office of Career Services.

The (Skadden) Network —

Steve Tobocman, '97, explains how he contacted Skadden Fellows in many locations, talked with potential sponsors in Detroit, and several times telephoned Skadden Fellowships Director Susan Butler Plum, left, as he prepared his successful application for a Skadden Fellowship to work with Michigan Legal Services in Detroit in community development law. "What I'm doing I don't think anyone else in the country would have funded," Tobocman told law students in September. "I think that you should go out and find something that you want to do, and make it fit" Skadden Fellowship requirements, he said. Plum, who noted that Dean Jeffrey S. Lehman, '81, is one of the trustees who determine Skadden Fellowship winners, said that half of Skadden Fellowship winners are still at the original placements up to nine years later and that 90 percent of them remain in public interest practice. Twenty-five fellowships are awarded each year. Skadden winners and applicants often call on each other for help, and the network of current and former Skadden Fellows is tightly knit. "We're trying to build a public interest law firm without walls," Plum said. The fellowships program, begun nearly nine years ago, is sponsored by Skadden, Arps, Slate, Meagher & Flom LLP through the Skadden Fellowship Foundation. In addition to Tobocman, Law School graduate Bonita P. Tenneriello, '96, won a Skadden Fellowship last year to work with the Michigan Migrant Legal Assistance Project.

Class notes

50th Reunion

The class of 1948 Reunion will be June 5-7

1953

45th Reunion

The class of 1953 Reunion will be Sept. 11-13

George R. Glass has retired as Executive Director of the Indiana Judicial Center in Indianapolis and is now living in Bloomington, Indiana.

40th Reunion

The class of 1958 Reunion will be Sept. 11-13

1959

Hans Christian Krueger has been elected Deputy Secretary-General of the Council of Europe. He was previously Secretary of the European Commission of Human Rights.

Robert C. Weinbaum, a member of the Office of General Counsel, General Motors Corporation, Detroit, was elected chair of the Section of Antitrust Law of the American Bar Association.

1960

Boris Kozolchyk, S.J.D., director of the National Law Center for Inter-American Free Trade in Tuscon, is co-editor of the first volume of the four-volume series on U.S. commercial and investment law, *El Derecho de los Estados Unidos Respector al Comercio y la Inversión*. Written in Spanish, the books are designed for lawyers, judges, law professors, students and business people involved in trade or investment in the United States and emphasize fields like property law, commercial transactions, civil procedure and international litigation, administrative law and export/import law. Koolchyk's co-editor is Judge John Molloy, secretary of the Center.

1961

The Association of American Medical Colleges has named Illinois Congressman **John Porter** as the recipient of its 1997 Excellence in Public Service award for his "support of academic medicine and leadership in championing the National Institutes of Health." Porter serves as chairman of the House Appropriations Subcommittee on Labor, Health & Human Services, and Education. As chairman, he has fought for and obtained substantial increases in funding over the last three years for biomedical research through the NIH.

1962

Thomas P. Scholler has been named director of planned giving for the Roman Catholic Archdiocese of Detroit. He is a former partner with Arthur Andersen & Co. and of counsel with the Grand Rapids, Michigan, firm Smith Haughey Rice and Roegge, P.C. He and his wife, Marcia, reside in Clarkston, Michigan.

1963

35th Reunion

The class of 1963 Reunion will be Sept. 11-13

Edward M. Dolson, an attorney with the Kansas City law firm Swanson Midgley Gangwere Kitchin & McLarney, L.L.C., has been named to *The Best Lawyers in America*, an annual listing of attorneys who have been nominated and elected by a vote of fellow lawyers within the same geographic area. Dolson specializes in corporate, banking, commercial, and franchise law.

1964

The Minnesota Justice Foundation has honored **Chuck Dayton** with the 1997 Distinguished Service Award in recognition of his substantial contributions to the community through his commitment to public interest work. The Foundation is a non-profit organization of law students and attorneys who provide pro bono services to disadvantaged persons. Dayton is an attorney with the Minnesota law firm Leonard, Street and Deinard.

John D. Tully, a partner in the law firm Warner Norcross & Judd L.L.P., has become president of the Grand Rapids Bar Association, where he chairs the Program and the Judicial Review Committees and is a member of the Diversity Committee. He practices in the areas of litigation and environmental law.

1965

Masao Arai, L.T.C. (Law Teacher), of Tokyo, Japan, and a research scholar at the Law School in 1964-65, has retired from Chuo University and has been given the Emeritus Professorship. He is now working as an attorney-at-law.

1966

Richard E. Rassel, Chairman and Chief Executive Officer of the law firm Butzel Long, has been elected to a three-year term on the Board of Trustees of William Beaumont Hospital. The board serves in an advisory and support role for the hospital. Trustees are also eligible to serve on Board of Directors committees.

1968

30TH REUNION

The class of 1968 Reunion will be Sept. 11-13

Professor **Jan H. van Rooyen**, M.C.L., has retired as editor of the *South African Journal of Criminal Justice* after 20 years with the journal and moved to Gainesville, Florida. The first director of the Institute of Criminology at the University of Cape Town, van Rooyen, with his co-editors, "consciously raised the profile of criminological studies in South Africa, regarding it as one of the functions of the journal to bridge the gap between criminal law and criminology," the journal's editors wrote last fall in their announcement of van Rooyen's retirement. "In his personal capacity he was a prominent member of the 'verligte' grouping of Afrikaners who sought to begin a process of reform of the social and political order in South Africa," the editors said. "His professional career has been characterized by a similar zeal for reform and improvement of the criminal justice system in the interests of the welfare of all South Africans. It is not surprising that this humane man should have focused his personal efforts on the abolition of the death penalty, that most inhumane of penalties. It was a campaign he conducted with eloquence, vigour and passion and which he saw come to the happiest of conclusions." Van Rooyen says he hopes to spend some time with two of his former professors, Francis Allen and Jerold Israel, who also spend part of the year in Gainesville.

1969

Charles R. Oleszycki was appointed by the United States Secretary of State as the United States Alternate Representative to the Comprehensive Nuclear Test-Ban Organization in Vienna, Austria. He will be in Vienna for a three-year tour of duty for the Department of State.

Robert M. Vercruysse was elected a Fellow of the College of Labor and Employment Lawyers at the American Bar Association annual meeting. He is a former adjunct professor at the University of Michigan Law School and a co-founder of the Bingham Farms, Michigan, law firm Vercruysse Metz & Murray. The firm specializes in labor and employment law, education law, ERISA and class action litigation, and general litigation representing private corporations, multi-employer associations and public employers.

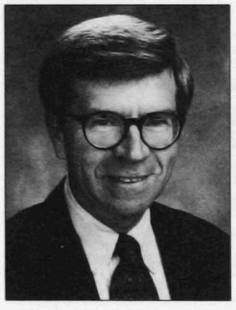
1970

James V. Gargan has announced the establishment of a general practice of law, specializing in futures, options, and securities matters, including arbitration, disciplinary and membership proceedings, and related exchange and regulatory issues. He was formerly General Counsel to the New York Cotton Exchange and New York Futures Exchange, Inc.

Walter Sutton has joined the legal team of FINA, Inc., of Dallas. FINA, Inc., through its operating subsidiary, Fina Oil and Chemical Company, engages in crude oil and natural gas exploration and production, and crude oil marketing; petroleum products refining, supply and transportation, and marketing; and chemicals manufacturing and marketing.

1972

Dennis M. O'Dea has joined the New York law firm Lowenthal, Landau, Fischer & Bring, P.C., as head of its Bankruptcy Practice Group. His practice focuses on major bankruptcy and insolvency matters, with an emphasis on restructurings, acquisitions and dispositions of business and assets of troubled companies. O'Dea was previously a partner at Keck, Mahin & Cate, where he was director of the Bankruptcy Group and managing partner of the firm's New York office.



John D. Matthews has joined the law firm Betts, Patterson & Mines, P.S., as a senior attorney, with 20 years of experience in defense litigation including personal injury and insurance defense. He was previously a staff attorney for the Washington State Legislature and the government affairs representative for the Washington State Department of Trade and Economic Development.

J. Bryan Williams, executive partner of the law firm Dickinson, Wright, Moon, VanDusen & Freeman, was elected a vice chairman and a member of the Executive Committee of the Greater Detroit Chamber of Commerce. He resides in Birmingham, Michigan, with his wife, Jane, and their two sons.

Joseph Zengerle III was hired as executive director of the Washington, D.C., Legal Aid Society. A former partner in the D.C. office of Boston's Bingham, Dana & Gould, he was one of 50 applicants.

Class notes

1973

25th Reunion

The class of 1973 Reunion will be Sept. 11-13

Rupert M. Barkoff is the editor of the American Bar Association's recently released *Fundamentals of Franchising*, a publication created to educate lawyers and non-lawyers about franchise-related legal problems. Barkoff is a partner in the Securities and Franchising Practice Section of Kilpatrick Stockton L.L.P.

John Burkoff was named to the Pennsylvania Bar Association Judicial Campaign Advertising Board, a group of 15 lawyers and laypersons which reviews and investigates complaints about campaign advertising by judicial candidates. Burkoff is a professor of law at the University of Pittsburgh School of Law and is of counsel at Marcus & Shapira.

Philip J. Ganz, Jr. was featured in the Business Section of the October 22, 1997, *Los Angeles Times* and in his local legal newspaper, in articles describing the verdict Ganz obtained in *Marcelino ("Mars") Songco v. Century Quality Management Inc., Sam Menlo*. The Los Angeles County Superior Court jury found that the real estate firm Century Capital Management Inc. and its owner wrongfully terminated an employee for discovering and reporting alleged accounting irregularities to the company's owner and accountant after he was hired. The firm was ordered to pay Marcelino Songco $4.5 million.

President Clinton has nominated **Ronald M. Gould** for the position of Circuit Judge for the United States Court of Appeals for the Ninth Circuit. He continues his practice with Perkins Coie in Seattle, while awaiting the Senate confirmation process.

Robert Hirshon has been appointed to chair the Standing Committee on Membership of the American Bar Association. Hirshon, a Portland, Maine, attorney who focuses on banking and insurance law, will oversee the group's work of offering a uniform national voice to those who practice law.

Michael L. Robinson, a partner with Warner Norcross & Judd L.L.P., was appointed Chair-Elect of the Environmental Law Section of the State Bar of Michigan. He is the chair of Warner Norcross' Environmental Law Group. Robinson resides in Spring Lake, Michigan, with his wife.

Roy M. Van Cleave has joined the Chicago-based law firm Chapman and Cutler as a partner. He concentrates his practice in the areas of securities, corporate finance, mergers and acquisitions, and securities litigation. He was previously the Chairman of Keck, Mahin & Cate's Mergers and Acquisitions Practice Group.

1974

Renate Klass, a director and shareholder in the law firm Martens, Ice, Geary, Klass, Legghio, Israel & Gorchow, P.C., has been elected to the office of treasurer. Previously known as Miller, Cohen, Martens, Ice & Geary, P.C., the Southfield, Michigan, firm specializes in employment and labor law, personal injury and workers' disability compensation.

Phil Ponce has become national correspondent for *The Newshour with Jim Lehrer*. Ponce is a correspondent for *Chicago Tonight*, a 20-minute nightly news analysis program that airs on Chicago's WTTW Channel 11. As National Correspondent, he will conduct interviews, facilitate studio discussions, and file documentary reports.

Marcia L. Proctor has joined Butzel Long as senior attorney, practicing in the firm's Professional Responsibility Practice. Her practice will be concentrated in risk management and professional responsibility matters, providing advice, policy and procedure development, auditing and expert witness services. Proctor formerly served as director of the American Bar Association Center for Professional Responsibility, and she served as counsel and directed operations for national programs involving lawyer ethics, discipline, unauthorized practice and client protection. She will be writing a monthly column on professional responsibility in *Michigan Lawyer's Weekly*.

Robert G. van Schoonenberg, senior vice president, general counsel and secretary of Avery Dennison Corporation, has been named 1997 Outstanding Corporate Counsel by the Corporate Law Departments Section of the Los Angeles County Bar Association. Van Schoonenberg heads Avery Dennison's law, patents and trademark, risk management and safety, and environmental and health departments. He co-chairs the mergers and acquisitions committee, is a member of the chairman's executive counsel, and serves as a secretary to the board of directors. He is also president and trustee of the Avery Dennison Foundation, and president and director of most of the company's subsidiary corporations. Van Schoonenberg and his family, Sandra, Blake, and Ryan, reside in LaCanada Flintridge, California.

Craig A. Wolson, formerly with the New York City law firm Williams & Harris L.L.P., is now Counsel with Brown & Wood, L.L.P., also of New York.

1975

Douglas R. Herman has been named as the new General Counsel for Great Plains Software Inc., of Great Plains, North Dakota, which provides Microsoft Windows NT client/server financial management software for the midmarket. He was previously a partner for 20 years in the Fargo, North Dakota-based law firm Vogel, Kelly, Knutson, Weir & Bye. Herman, his wife and three sons live in Fargo.

Virginia F. Metz was elected a Fellow of the College of Labor and Employment Lawyers. She is a co-founder of the Bingham Farms, Michigan, law firm Vercruysse Metz & Murray, which specializes in labor and employment law, education law, ERISA and class action litigation, and general litigation representing private corporations, multi-employer associations and public employers.

1976

Lex Mundi, a global association of independent law firms, has named **Lynne E. Deitch** of Birmingham, Michigan, to the organization's Board of Directors to finish the term of another member who has stepped down. She will be eligible for a full four-year appointment in 1998. Deitch, a shareholder in the law firm Butzel Long who practices in the Labor and Employment Group, is the first American woman and the third woman ever to serve on the board. Her law practice includes representing employers in arbitration, unfair labor practice charges, strike situations and employment discrimination and wrongful discharge litigation.

Michael B. Lewis has joined the law firm Dean & Fulkerson as a shareholder. He concentrates his practice on business, transactional and real estate law. Lewis resides in Bloomfield Hills with his wife, Kathy, and their three daughters.

1978

20TH REUNION

The class of 1978 Reunion will be Sept. 18-20

Ellen J. Dannin is the author of *Working Free: The Origins and Impact of New Zealand's Employment Contracts Act*, published in the summer of 1997. The book explores the economic, social, and legal impacts of the ECA on New Zealand. Dannin teaches employment law, labor law, and civil procedure at the California Western School of Law, San Diego.

David Hager, of Hager and Associates, Ltd., in Hong Kong, reports that "Chinese rule of Hong Kong has thus far been managed reasonably well and is a relative non-issue in comparison to the concern over regional economics. Hong Kong's massive foreign exchange reserves and largely service-focused economy have provided some insulation from the current regional turmoil, but the overall economic health of the region is of far more concern to most residents than has been the transition to Chinese sovereignty." Hager, who assists multinational companies in their expansion and other activities in the People's Republic of China, says that most investors still consider mainland China to be one of the world's best long range investment sites. Hager reported on Hong Kong's transition to Chinese rule in the Fall/Winter 1997 issue of *Law Quadrangle Notes*. In that issue his e-mail address was printed incorrectly. His correct e-mail address is hagerd@iohk.com.

Stuart Lev is working in the capital habeas corpus unit of the Philadelphia Federal Defender office, where his practice is limited to the representation of death row Pennsylvania prisoners in habeas corpus, appellate and other proceedings.

1979

Hildy Bowbeer has joined the Office of General Counself of 3M in St. Paul, Minnesota, as Senior Counsel with responsibility for the management of significant product liability litigation. She was previously a partner in the Minneapolis law firm Bowman and Brooke, where she was a trial and appellate attorney specializing in product liability defense. She and her husband, Michael Metz, and two children live in Bloomington, Minnesota.

Timothy L. Dickinson has become of counsel to Miller, Canfield, Paddock and Stone, P.L.C., in the firm's Ann Arbor office. With Lisa M. Landmeier, he also has formed Dickinson Landmeier L.L.P., which will operate out of Miller Canfield's Ann Arbor, Michigan, and Washington, D.C., offices. Dickinson also will maintain a limited relationship with Gibson, Dunn & Crutcher L.L.P., with whom he was previously affiliated, in connection with their joint representation of certain clients. Dickinson specializes in international commercial transactions and trade, public international law, and regional issues.

1980

Keefe A. Brooks, a shareholder in the law firm Butzel Long, was elected president of the Generation of Promise Program, a year-long experience in cross-cultural education and leadership training for high school juniors from Michigan's Wayne, Oakland, and Macomb counties. A member of Butzel Long's Board of Directors, Brooks practices in the areas of complex business litigation, health care matters, financial institution matters, and professional responsibilty issues. Brooks resides in Bloomfield Hills, Michigan.

G.A. Finch was elected chairperson of the Saint Joseph Seminary Board of Advisors. The seminary is the Catholic Chicago Archdiocesan College Seminary at Loyola University, Chicago. Finch is a partner in the Chicago law firm Querrey & Harrow, where he chairs the Corporate Practice Group.

Dale K. Nichols has been named Assistant General Counsel in the Legal Department at The Northern Trust Company, Chicago. He focuses on trust, custody, and fiduciary issues relating to employee benefit plans and other institutional clients of the Bank.

Indiana Supreme Court Justice **Myra Selby** was the 1997 recipient of the Antoinette Dakin Leach Award, named in honor of the first woman admitted to the Indiana bar. Selby, the first woman and the first African-American to serve on the Indiana Supreme Court, was appointed associate justice in 1995. The award is part of a series of Women and the Law Division programs to identify women attorney pathfinders and recognize their contributions to the practice of law.

Class notes

1981

Richard F. Cauley has joined the San Jose, California, law firm Skjerven, Morrill, MacPherson, Franklin & Friel L.L.P., as a senior attorney. The firm practices intellectual property and commercial law. Cauley was previously a senior associate with St. Louis, Missouri-based Husch & Eppenberger, and Palo Alto, California-based Wilson, Sonsini, Goodrich & Rosati.

Yoichi Kitamura, M.C.L., has become a member of the new law firm MINERVA, located in Tokyo, Japan.

1982

Geoffrey Bestor has been named Deputy Assistant Attorney General in the Office of Policy Development of the United States Department of Justice. He had been an Assistant United States Attorney in the District of Columbia since 1989 and had been on detail to the Office of Legal Counsel of the Department of Justice when he was appointed.

Howard A. Gutman is the author of an article entitled "Year 2000 Liability of Vendors and Consultants," published in the *New Jersey Law Journal*. He also is writing a book and giving seminars around the country on Year 2000 legal questions.

Peter M. Lieb was named to the position of chief counsel-litigation of International Paper, a worldwide producer of printing papers, packaging and forest products. He will be based at the company's Purchase, New York, headquarters, and will be responsible for the supervision and monitoring of all litigation and related matters affecting the company. He was previously assistant general counsel for GTE Service Corp.

1983

15th Reunion

The class of 1983 Reunion will be Sept. 18-20

Daniel E. Champion has opened his own law firm, Daniel E. Champion & Associates, with offices in Kansas City, Missouri; Los Angeles; and Detroit. He will continue to focus his practice on commercial litigation with an emphasis on commercial collections, creditors' rights and enforcing judgments. He was previously with the law firm Graham & James L.L.P. for 11 years.

1984

Kirk A. Hoopingarner has left the law firm Holleb & Coff, Chicago, to become an attorney with Rudnick & Wolfe, also of Chicago.

Sheri Young has been promoted to the position of Vice President, Associate General Counsel and Assistant Secretary for Budget Rent a Car Corporation. She had previously served as associate general counsel and assistant secretary.

1985

Julie Selbst has earned an M.D. from the University of Illinois College of Medicine. Following a one-year appointment as Clinical Fellow in Medicine at Harvard Medical School, she will began anesthesiology residency at the Beth Israel Deaconess Medical Center, Harvard Medical School.

Susan M. Tietjen has been named a corporate associate with Weil Gotshal & Manges L.L.P. Resident in the firm's Prague office, she will specialize in finance, securities transactions and mergers and acquisitions. She was previously an attorney with the Prague and Bratislava offices of Altheimer and Gray.

1987

Mark S. Cohen has become a partner in the New York law firm Arkin Schaffer & Kaplan L.L.P. He specializes in representing individuals and companies in white collar crime related investigations, litigations and regulatory enforcement proceedings, and complex civil litigation.

Kathleen Tyson-Quah has edited the newly-published book *Cross-Border Securities Repo, Lending and Collateralisation* (FT Law & Tax, London). The book includes chapters by leading international securities lawyers on conflicts of law, standard agreements and legal due diligence for international securities finance transactions.

Mary Jo Newborn Wiggins and her husband, Donald Wiggins, announce the birth of their son, Nathan Christopher Wiggins. Ms. Wiggins is a Professor of Law at the University of San Diego Law School, where she has been named a Herzog Endowed Scholar.

1988

10th Reunion

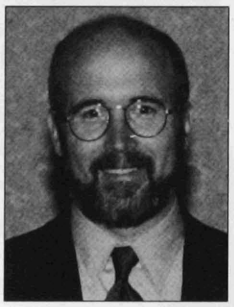
The class of 1988 Reunion will be Sept. 18-20

Michael Carowitz, formerly Legal Advisor to the Enforcement Division, Federal Communications Commission, has joined the Washington, D.C., law firm Dickstein, Shapiro, Morin & Oshinsky.

Anne M. Derhammer has transferred to the Washington, D.C., office of the law firm Miller, Canfield, Paddock and Stone, P.L.C. She first joined the Detroit office as an attorney in the Commercial Litigation Department in 1995. Previously of Grosse Pointe, Michigan, she resides in Falls Church, Virginia.

Nancie Thomas has become General Counsel to Conservation International Foundation, a non-profit environmental group. Founded in 1987, Conservation International focuses on preserving biodiveristy and ecological hotspots, and alleviating rural poverty through conservation enterprise and sustainable development.

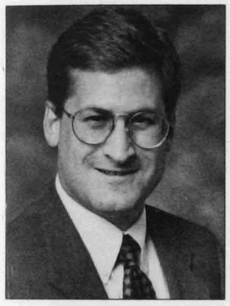
1989



Mark E. Boulding was honored by the American Bar Association Section of Business Law for being a contributing author of the new book *Web Linking Agreements: Contracting Strategies and Model Provisions*. The book is designed to help attorneys and businesses determine the possible need for a linking agreement, and then to provide them a framework to draft and negotiate an agreement suited to their needs. Boulding is

a partner in the Washington, D.C., law firm Fox, Bennett & Turner. His practice areas include representation of new technologies, computer law and online law, as well as the drug, device, biologic and biotech industries.

Timothy Reiniger was reelected to a third term as the downtown alderman in Manchester, New Hampshire. He also practices employment law in the Manchester office of McLane, Graf, Raulerson & Middleton, P.A.



Samuel W. Silver has been elected partner in the law firm Schnader Harrison Segal & Lewis, where he is a member of the firm's Litigation Department and the Products Liability and Toxic Torts Practice Group. His practice includes general civil litigation with a concentration in products liability matters. He is resident in the firm's Philadelphia office. (In the Fall/Winter 1997 issue of *Law Quadrangle Notes*, Silver was erroneously listed in the 1989 Class Notes section. The information printed in that issue about him was also incorrect. We regret the error.)

1990

Constance Blacklock and **Peter Edward Jaffe** were married on March 23, 1997, in Washington, D.C. They reside in Chevy Chase, Maryland.

Elizabeth Beach Bryant has been elected a shareholder in the Minneapolis, Minnesota, law firm Fredrikson & Byron, P.A. She focuses her practice in the area of family law.

Scott J. Campbell is serving as an assistant attorney general for the Republic of Palau, a newly-independent country located in Micronesia, where he represents the Republic in civil and criminal matters. He is on leave from the Milwaukee office of Michael, Best & Friedrich.

Brian W. Easley has transferred to the Chicago office of Jones Day Reavis & Pogue and continues to focus his practice on labor law. He and his wife, Dana Wilson Easley, welcomed their first child, Elizabeth Ann, on July 1, 1997.

Tim Ehresman has joined the Denver law firm Davis, Graham & Stubbs L.L.P., as an associate in the Transactions Department. He returns to the firm's corporate group after two years off to pursue teaching credentials in elementary education.

1991

Matthew Harris and **Philip McCune** are founding members of the Summit Law Group, a full service, 17-attorney law firm in Seattle. Both lawyers concentrate on complex litigation. Harris also focuses on energy law, while McCune advises clients on environmental and land use issues.

Edmund W. Sim, an associate in White & Case, is now resident in the firm's Singapore office. His practice is in international trade and policy, with a specialization in antidumping and countervailing duty law, servicing clients in Asia.

1992

Brian J. Masternak has joined the law firm Warner Norcross & Judd L.L.P. as an associate in the litigation area. He was previously associated with the Chicago law firm Jenner & Block. He and his wife, Jennifer, reside in Grand Rapids, Michigan.

1993

5TH REUNION

The class of 1993 Reunion will be Sept. 18-20

Nicolette G. Hahn was recently reelected to a second term on the Kalamazoo City Commission. She is employed as an associate in the law firm Early, Lennon, Peters & Crocker, P.C.

Roshunda L. Price-Harper, an attorney with Howard & Howard Attorneys, P.C., was elected vice-chair of the State Bar of Michigan's Young Lawyers Section. She specializes in public finance and business law in the firm's Bloomfield Hills office.

1994

Tamilla Ghodsi has joined the Fixed Income, Currency and Commodities Division of Goldman, Sachs & Co. in New York. Ghodsi was formerly a tax associate at the New York law firm White & Case.

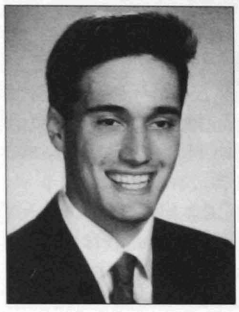
Stacy L. Kelly has joined the Pittsburgh office of the law firm Reed Smith Shaw & McClay L.L.P., as a member of the Intellectual Property Group. She was previously an associate at Fish & Neave in New York.

1995

Deborah L. McKenney has become associated with the law firm Blanco Tackabery Combs & Matamoros, P.A., where she will concentrate her practice in commercial transactions. She was previously Associate Counsel

Class notes

with Alexander Hamilton Life Insurance Company of America and an attorney with the Legal Department of Jefferson-Pilot Life Insurance Company.



Anthony R. Montero has joined the bankruptcy practice group of Snell & Wilmer L.L.P. as an associate. He was previously a law clerk to the Honorable John E. Ryan, United States Bankruptcy Judge sitting in Santa Ana, California.

Jan Dejnozka is the author of *The Ontology of the Analytic Tradition and its Origins: Realism and Identity in Frege, Russell, Wittgenstein, and Quine*, published in June 1996 by Rowman & Littlefield. His invited book review of *Bertrand Russell and the Origins of Analytical Philosophy* appeared in 18 *History and Philosophy of Logic* (1997). He also has published 10 articles in philosophy journals in five countries. He is a Visiting Scholar in Law and Philosophy in the Rackham School of Graduate Studies, a Research Fellow in Philosophy at Union College, and law clerk to the Honorable Bill Calahan, Third Judicial Circuit, Michigan. He and his wife, Chung Wha, have two daughters, Julie and Marina.

1997

Laura K. Adderley has joined the Detroit office of the law firm Miller, Canfield, Paddock and Stone, P.L.C. As an associate in the Public Law Department, she will be involved in local and national municipal bond matters. She resides in Birmingham, Michigan.

Michael G. Brady and **Gregory E. Schmidt** have joined the law firm Warner Norcross & Judd L.L.P. as associates. Brady previously worked as a summer associate for the Grand Rapids law firm Varnum, Riddering, Schmidt & Howlett L.L.P. He lives in Grand Rapids, Michigan. Schmidt was previously a summer associate with Warner Norcross in 1995 and 1996, and he was a summer clerk with the law firms of Mayer, Brown & Platt, Chicago, and Baker & Botts, Austin, Texas. He and his wife, Jennifer, reside in Kentwood, Michigan.

Correction

The e-mail address for David Hager, '78, was printed incorrectly in the Fall/Winter issue. Hager's correct e-mail address is hagerd@iohk.com.

In memoriam

'27	Walter A. Kleinert	
'33	George L. Gisler	November 24, 1997
'34	Honorable George W. Crockett	September 7, 1997
'38	Honorable Cecil F. Poole	November 12, 1997
'40	Irving M. Edelberg	May 1, 1997
'41	Honorable James M. Teahen, Jr.	June 1, 1997
'48	Richard C. O'Connor	
'50	Dick Buddingh	July 14, 1997
'51	John B. Barney	
	Nolan W. Carson	
'52	Arthur S. Bond, Jr.	
'57	E. Dexter Galloway	June 28, 1997
'58	Henry D. Baldwin	
'61	James B. Bradley	
'62	David N. Brook	
'66	William A. Herman	June 4, 1997
'72	James L. Harlow	
'74	Barry L. Zaretsky	
'77	Stephen Michael Gatlin	
'79	Ray McNulty O'Hara	September 9, 1997

the rites of Writing

LAWYERS WRITE A GREAT DEAL — CLEARLY, CONCRETELY, IN A WELL-RESEARCHED, WELL-DOCUMENTED WAY. THERE IS NO ROOM IN LEGAL WRITING FOR NUANCE, INTUITIVE MEANING, ETYMOLOGICAL RESONANCE, SYMBOLISM OR MANY OF THE OTHER HALLMARKS OF LITERARY WRITING. NOR IS THERE LATITUDE FOR THE FANCIES OF FICTION OR THE DISTILLATIONS OF POETRY.

FOR ALL THESE REASONS, AND OTHERS, MANY LAWYERS TRY THEIR HANDS AT WRITING THAT IS DIFFERENT FROM WHAT THE LEGAL PROFESSION REQUIRES. WE OFFER YOU TWO EXAMPLES HERE: POETRY OF **OLENA KALYTIAK DAVIS**, '88, AND SAMPLES OF LAWYERS' DIALOGUE FROM POETRY WRITER/ LAW PROFESSOR **LAWRENCE JOSEPH**, '75. WE ALSO DISCUSS THE WIDE-SPREAD, INTERNATIONAL INTEREST THAT HAS BEEN PIQUED BY *THE ANATOMY OF DISGUST*, BY PROFESSOR **WILLIAM IAN MILLER**, '77, AND THE PLAY WRITING AND FILM MAKING WORK OF **NAT COLLEY**, 79.

AND THERE ARE OTHERS. Here are some other Law School graduates who have turned their hands to writing outside of the legal profession:

GARY R. FRINK, '63, has written *Tales of Jewell Hollow, A Year In A Blue Ridge Forest*, which was serialized in the electronic magazine *O Shenandoah!* Country Rag (http://www.geocities.com/Heartland/1293). The book tells of Frink's experiences in connection with his family's Jewell Hollow, Virginia, cabin.

JOSEPH T. KLEMPNER, '64, of New York, published his first novel, *Felony Murder*, in 1995.

JAMIL NASIR, '83, a practicing attorney in Washington, D.C., whose literary output centers on science fiction, with books like *Higher Space* (1996) and *Quasar* (1995).

MATTHEW R. PIEPENBURG, '95, whose first novel, *Time and the Maiden*, was published in 1997. Piepenburg was a 1996 Hemingway First Novel Contest Finalist.

Sports historian **BERT SUGAR**, '60, who got 20 "Dallas haters" to speak up for his recently published book, *I Hate the Dallas Cowboys, and Who Elected Them America's Team, Anyway*. Among his 55 books, he's also written *The Great Baseball Players: From McGraw to Mantle* and *The Caesars Palace Book of Betting*.

The following poems are from
And Her Soul Out
of Nothing, *by Olena Kalytiak Davis, '88*
(University of Wisconsin Press, 1997).
Davis, of Juneau, Alaska,
won the 1997 Brittingham Prize
from the press for the book,
her first volume of poetry.
Publication is by permission.

Writing of Olena Kalytiak Davis

But, It's Jazz

HE'S DOING HIS BEST
DEXTER GORDON, HE SCRATCHES
IT OUT OF HIS THROAT: "MUSIC,"
IN A RAGGED WHISPER
"IS MY LIFE."
LIKE A MAN ON HORSE
HE HEARS THE GALLOPING INSIDE HIM,
TURNS IT UP LOUDER, HE'S FOUND HIS CRAZY RHYTHM, BUT SHE,
SHE NEEDS A REFILL ON HER PAIN
OR A COMPRESS TO LAY ON HER PANIC.
SHE IMITATES THAT SOPRANO SAX
UNTIL SHE IS AS MAD AS THAT ONE NOTE

She Was Just A Sketch

A THIN GIRL UNDER A THICK SKY

SO THIN, EACH RIB STOOD
FOR SOMETHING

SOMETHING TO WHICH THIS GREAT
TENDERNESS,
A MERE IRRATIONAL LOVE
TOWARD CERTAIN FLOWERS
AND TREES,
COULD ATTACH

It Was A Coffin That Sang

MY MOTHER DANCED THE CZARDAS ALL NIGHT
SHE HELD UP THE EDGES
OF HER LONG RED SKIRT, A POPPY
IN HER TEETH, ITS SEEDS
FRECKLING HER WHITE
WHITE FACE. AND WHAT A GYPSY
GOD WAS: STAMPING HIS BOOTS
AND TYING HIS SCARVES
ACROSS ONE EYE, LIKE A LUNATIC CRAZED
BY WHAT HE HAD SET GOING:
EACH WILD DRUNK
DANCER, THE HEEL-TO-TOE
OF EACH RECKLESS LIFE.

ALL NIGHT DEATH WAS JUST A DANCE
SHE COULD RISE TO.
IT WAS A COFFIN THAT SANG

A ROUGH RUSSIAN MELODY:

THE WORLD WILL END
AND THE WORLD WILL END
AND THE WORLD WILL END ON
SOME BRIGHT MORNING.

I SUFFERED
A TERRIBLE HANGOVER
OF FAITH.

NOW I'M TIRED, AND MY MOTHER IS STIFF
WITH THE IDEA OF BENDING, BUT SHE MAKES
ONE LAST EXTRAVAGANT GESTURE:

A THROWING UP OF THE ARMS.

This Is The Way I Carry Mine

FOUR HOURS' SLEEP TUCKED
BEHIND MY EYELIDS AND THIS SMALL CITY
STARTS INTERROGATING ME
UNDER A STREAM OF THICK MORNING LIGHT:
As if you had any business shaking
the hands of the insane.
As if you were doing somebody
a favor.

LAST NIGHT I KNEW WHAT I COULD TELL IT,
I COULD DEFEND MYSELF, BUT THIS MORNING,
THIS MORNING IT'S HARD TO TELL
IF WHAT'S MELTING IS THE SNOW
OR THE TREES. AROUND THE CORNER,

INSIDE THE WHITE SPOT,
THE CIGARETTE MACHINE GLOWS
LIKE IT'S MIDNIGHT, LIKE IT'S MIDNIGHT AGAIN
AND I STILL DON'T KNOW WHAT TO SAY
TO THE UNAFFECTED, TO THE TRUSTING
DRUNKS, TO THE WOMEN WHO HAVE LOST THEIR WAISTS
BUT NEVERTHELESS STICK THEIR FEET
INTO STRAPPY SANDALS, WHO HANG EARRINGS
AS IF THEY WERE HANGING LIGHT.
Have you seen the pure white rage
of the sky?

I DON'T KNOW WHAT TO CALL OUT
TO THE POOL PLAYERS: TO THE THIN-MEN, WIDE-EYED,
AND I DON'T KNOW HOW TO ADDRESS THE SIMPLE-
HEARTED BARTENDER: EXCUSE ME, SIR

as far as I can see we're calling this day
a wash.

IT'S MORNING AND THE CITY DEMANDS TO SEE
THE WAY WE WILL CARRY OURSELVES
INTO THE NEW LIGHT. THE CITY INSISTS
ON RECEIVING OUR DIGNITY.
THE CITY EXPECTS TO HEAR OUR BEAUTIFUL STUTTER.

IT'S TIME TO GO. TIME TO TUCK THE NIGHT
LOVINGLY, LIKE A SKATEBOARD, UNDER THE CROOK
OF OUR CHILDLIKE ARMS.

OUTSIDE, THE THIN LINE LEFT IN THE SKY
IS EXHAUSTING ITSELF.

Olena Kalytiak Davis, '88

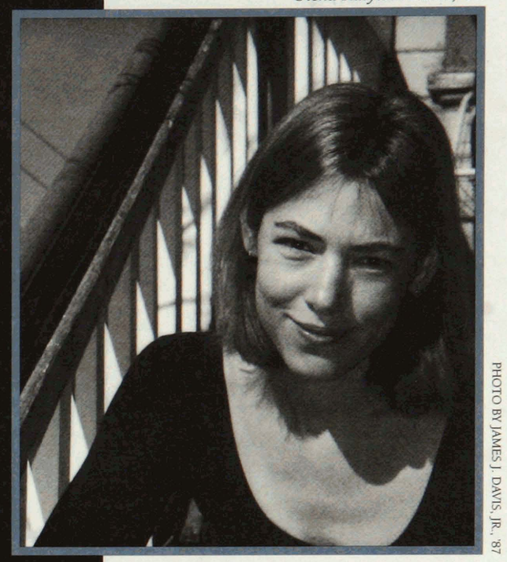


PHOTO BY JAMES J. DAVIS, JR. '87

the voice of the poet

The recorded telephone message plays through — the voice and then the music of strings and harmonicas. Then the beep sounds, you give your name and . . .

"Hello," interrupts Olena Kalytiak Davis, '88, who explains that she seldom answers the telephone because if she did she would get very little done. And for a poet like Davis, it is tragic to get very little done. In the first 11 months of 1997, for example, she wrote three poems. There was a time, she says, that she might also have written the dozen or so poems that were not fated to survive her self-critical scythe, but now she finds herself concentrating on "the poems that need to be written."

Davis, author of the award-winning poetry collection *And Her Soul Out of Nothing*, often ignores the ring of the telephone and lets the message machine complete its task. But she's just back home in Juneau, Alaska, after a lower-48 tour of readings and autograph signings, and she's still feeling comfortable with the talkative, gregarious side of herself. "I'm just back a couple of days ago from this trip, so I'm still transforming from that to my completely introverted self," she says. "Sometimes I just can't pick up the phone."

And Her Soul Out Of Nothing, which the University of Wisconsin Press awarded its 1997 Brittingham Prize in Poetry, is Davis' first book. Many of its poems previously have been published in journals like *Field, Indiana Review, Michigan Quarterly Review, New England Review* and *Poetry Northwest*.

"There is an eerie precision to her work — like the delicate discernment of a brain surgeon's scalpel — that renders each moment in both its absolute clarity and ultimate transitory fragility," contest judge Rita Dove wrote for the Brittingham Prize citation. "Her language is quirky in the very best sense of that word; her use of syntax is brilliant."

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Davis shrugs off the idea of her poetry as highly structured — "I was anti-form in my youth," she says, but her three newest poems are "fairly long and fairly complicated." She's also become more economical in her writing and concentrates on those poems that seem most urgent to her to write. "I think it's my job to write them, and after that you're on your own, your exegesis is probably just as good as mine," she says.

"I'll take everything as fodder," she says of her poetry. "I love all the great stuff. I love the Romantics, Dickinson, Hopkins, John Donne. You can spend years getting to the bottom of that stuff. I also love philosophy. Right now I read a lot of poetry because I'm trying to catch up. It's only been since 1993 that I got serious about poetry. I don't even know if this is bottomless."

The daughter of Ukrainian immigrants who fled from the Ukraine during World War II, Davis majored in English at Wayne State University before attending the Law School. She and her husband, James J. Davis, Jr., '87, practiced law in California for a few years, but left their jobs to visit the Soviet Union and then spend some time in Chicago before choosing to move to Alaska.

"When we both got out we worked for corporate firms, we both needed a little cushion," she recalls of their years right after law school. "It took us a while to get to what we really want to do with our lives."

For James Davis, as he wrote for his Class of '87 reunion in September, that decision led to becoming a poverty lawyer with Alaska Legal Services Corporation, "during which time I argued and won two cases in the Alaska Supreme Court, caught my first moose, learned where the caribou like to travel, found a few good fishing holes and felt the coldest, cleanest, sweetest air I ever felt or wanted to feel."

"He's still got his revolutionary zeal," his wife says. "He loves law and loves finessing it for his goals of helping the underprivileged."

For herself, Olena Kalytiak Davis chose to devote herself to writing poetry. Now she works part-time — she's headed for her job at the public library shortly after this interview — and spends as much time writing poetry as possible. In the process both her poetry and her knowledge of the world of poetry have become more complex.

"With law, I always thought law was so terribly political, all this stuff going on, and the many sidedness of it. And I thought poetry was pure integrity, and that you could just do whatever you wanted.

"When I first started getting published I didn't send out cover letters, I didn't know anybody. . . . Now that I'm in it, I know some people, and it's the same thing — who's going to pull for whom, a lot is who you know.

"But that doesn't mean you necessarily have to play it that way."

She doesn't. "For me," she says, "writing means reading, taking notes, messing with things, wasting time sometimes, going for walks. It's all work toward that next poem."

This time out Lawrence Joseph, '75, has turned to prose for his most recent book, *Lawyerland: What Lawyers Talk About When They Talk About the Law* (Farrar, Straus and Giroux, 1997).

Joseph, a Professor of Law at St. John's University School of Law in New York City, previously has published three acclaimed books of poetry: *Before Our Eyes* (1993); *Curriculum Vitae* (1988); and *Shouting at No One* (1983). *Lawyerland*, as Phillip Lopate observed in a glowing review in *Esquire*, "defies category — [it is] part anthropological report, part performance piece . . . part prose poem."

Joseph says that in *Lawyerland* he wanted to do something that hadn't been done before: write a book in which only lawyers — representing a broad spectrum of the profession — speak to one another about their practice, other lawyers, clients, themselves, and the law. Because he encouraged complete candor from the lawyers with whom he spoke, Joseph notes that "in many instances the names, circumstances and characteristics of the persons and places portrayed have been changed." *Lawyerland* is "truthful rather than factual, but solidly based on facts."

The exchanges in the book take place in lower Manhattan, where Joseph lives and practiced law in the early 1980s, a place, he says, of rich historical and literary presence. Critics have praised *Lawyerland* for the liveliness and accuracy of its talk, as well as for its insights into the social, moral, and personal pressures and realities that lawyers, by necessity, confront all the time.

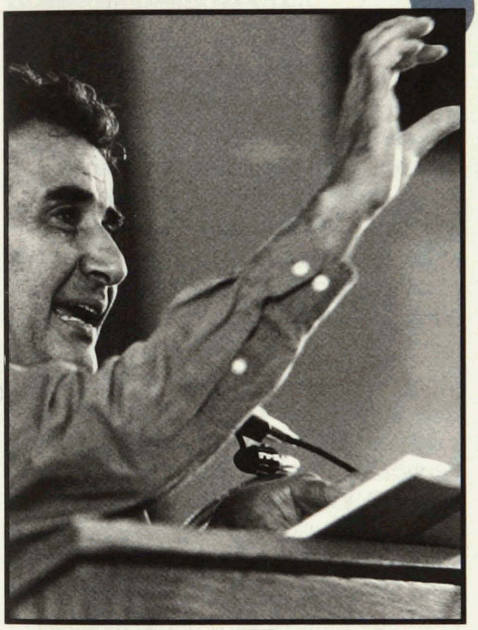
Joseph did two readings from *Lawyerland* at the Law School in September, one for a University-wide audience and one as a speaker for Law School alumni reunion activities. Listeners' ears quickly picked up on the off-the-record lawyer-like high-energy cadence and vocabulary of the book.

As reviewer Vijay Seshradi wrote in *The New Yorker:*

"*Lawyerland* has the texture of a documentary, with bits of scene-setting and shots of lawyers savoring Chinese food, refreshing themselves with espresso, and

Lawyers' language

spoken in *Lawyerland*



Lawrence Joseph, '75

stretching their aching backs while they talk about what they do, but each vignette is so artfully composed, and the testimony being elicited has so much verbal drama, that it isn't long before we begin to wonder whether we're in the hands of a writer driven by the occult agendas of fiction rather than the more straightforward ones of journalism."

Or, as Joyce Carol Oates says of *Lawyerland*:

"Lawrence Joseph has written an amazing 'Notes from the Underground' of . . . American law of our time. Lawyerland is rapid-fire dialogue, unmediated by conventional analysis and summary; it's startling and original and irresistibly readable."

Some samples follow.

ROBINSON, A STUDENT RADICAL TURNED CRIMINAL LAWYER: "But if you really must know," he said, "as a rule I shy away from clients with money enough to put me on a retainer. If you have a criminal problem, and enough cash to put me on retainer, chances are you just might be involved in — what does R.I.C.O. mean again? Chances are you might just be involved in a racketeer-influenced corrupt organization."

URGUART, AN ASSOCIATE COUNSEL FOR A SECURITIES FIRM AND WORKING MOTHER: "The acceleration. Everything's moving so fast! The mind has to be so fast! It takes so much energy just to find time — any time — to just slow it all down a little. I know that sounds a bit dire, but that's not how I mean it. There's a lot, there really is a lot, of money around — no one has any idea how much. But things are contracting at the same time, too. Sometimes I image it. All these pools of money floating around out there — wherever 'there' is. All of us trying to attach ourselves to some part of them whatever way — by ourselves, with others — we can."

DAY, A FEMALE JUDGE: "Someone once asked me what the strangest thing I'd ever seen in my courtroom was. Well, I've seen a lot of strange scenes, but do you know what came to mind? A government witness on the witness stand snorting cocaine. Matted hair, bloodshot eyes, specks of something or other on his shirt, he's sitting five feet away from me making this snorting sound into his handkerchief. He'd put the coke in his handkerchief. There he was, inhaling away."

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Lyrical Dialogue

of Lawrence Joseph

Continued from page 67

RAO, A PERSONAL-INJURY ATTORNEY: "They make mistakes, you know, doctors. They also watch each other make mistakes. There are doctors who overdiagnose, like lawyers who overbill — they create work for themselves. I have a lot in common with doctors. Pain, for example. Doctors try to take it away. I try to get compensation for it. I'm in the business of pain — bodily pain. The dichotomy in this culture between bodily injury and mental pain — anyone who knows anything about it knows it's ridiculous."

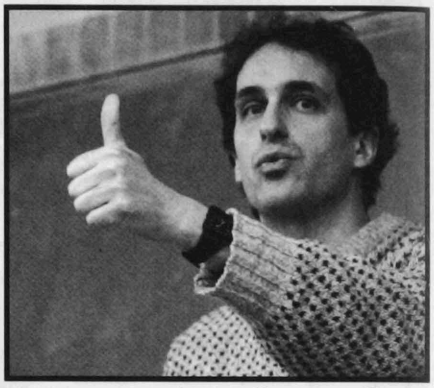
THARAUD, A TOUGH-TALKING LABOR LAWYER: "What it's like to be a woman in this business? I'll tell you what it's like. I can't even remember all the indignities. It makes a difference now that there are more of us — but, at another level, it only means that the indignities change form, and in some instances even multiply. A whole lot of women disappear in this business. Where do they go? Is anyone trying to figure out what happens to them? Why not? Tell me, why not?"

BELL, A LAW PARTNER DIAGNOSED WITH CANCER: "But lawyers make money off the poor, too. I'm not saying what you do isn't exemplary, Charlie. I'm *glad* you do it. I'm glad you do what you do for people. I'm just saying that you make money from it, too."

Writing

Reviewers reflect widespread interest in Miller's

Anatomy of Disgust



Professor William Ian Miller, '77

Professor of Law William Ian Miller, '77, is both "amused" and "confused" by the attention that his most recent book, *The Anatomy of Disgust* (Harvard University Press, 1997), is drawing from reviewers in the United States and overseas.

"I'm a medievalist; I'm used to writing for 200 people," Miller says in a self-deprecating assessment of his considerable scholarly work on Icelandic sagas, which he wrote on in *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (University of Chicago Press 1990; paperback 1996).

Increasingly, his interest has been in what he calls "the emotions that arise under circumstances of social and moral failure." He first addressed them in *Humiliation* (Cornell University Press, 1993; paperback 1995), and, most recently, in *The Anatomy of Disgust*.

Miller admits that he takes some delight in the attention the book has been getting but he is still somewhat skeptical: "I want to believe that the attention is deserved, but when you see so many good books arrive stillborn and so many bad ones made into movies, you are not sure, really, how to take it all. I just hope that I can consider this a lucky good book that survived its birth trauma rather well."

By last fall more than 40 reviewers here and abroad had written of the book, most of them favorably. Calling the book "beautifully written," *Times Literary Supplement* reviewer Andrew Stark said: "While *The Anatomy of Disgust* does disgust, it also enthralls, enlightens, dazzles and entertains. It 'anatomizes' disgust — which Miller defines as a 'strong sense of aversion to something perceived as dangerous because of its powers to contaminate, infect or pollute' — by exploring it as both a physical sensation and a moral sentiment. In both cases, it turns out, disgust has enormous political and social implications."

Joseph Epstein, writing in the *New Yorker,* called *Anatomy* "a most useful book" and noted that "the day disgust is conquered may be the day the game is up. 'If you were casually to enumerate the norms and values, aesthetic and moral, whose breach prompts disgust,' Miller writes, 'you would see just how crucial the emotion is to keep us in line and minimally presentable.' That one can still find reserves of disgust for hypocrisy, cowardice, and cruelty is no minor matter. Without our capacity for disgust, in other words, we might feel more free but, in the end, be less human."

And Anthony Storr in the United Kingdom's *Observer:* "Miller rightly perceives that disgust helps to define our identities, create hierarchies, and order our world; but I remain puzzled about its biological significance. If animals can do without it, why can't we? Miller is courageous in tackling a subject that few authors have approached, but this is not a book for the faint-hearted."

Miller's next book? He'll be examining "cowardice."

Freelance lawyer turns hand to theater, films

"I just like telling stories. I like trying to make a point in an artful way that isn't didactic and doesn't hit people over the head."

– NAT COLLEY, '79

Nat Colley's professional story starts with the law and moves to theater and film. His short film, *The Abortion of Mary Williams,* aired on Showtime on February 9 as part of the Showtime Network's annual salute to Black History Month.

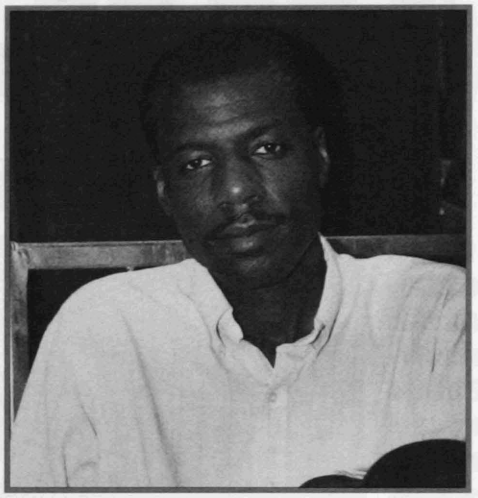
Billed as "a psychological drama in which a woman confronts and resolves the guilt she feels for having to make the choice to keep or abort her fetus," the film combines contemporary angst and ancient Christian symbols to distill conflict, resolution, reconciliation and re-commitment into its 16 minutes and 38 seconds. Based on Colley's play of the same name, it was a finalist in Showtime's Black Filmmaker Showcase and Grant Program.

After earning his bachelor's and law degrees from the University of Michigan, Colley worked for a decade as a full-time attorney in California, where he practiced for much of that time with his father. The elder Colley died in 1992. The firm "had a very heavy duty litigation practice" and the high profile of some of its cases helped Colley become an on-air commentator on both the first Rodney King trial and subsequent civil disturbance as well as the later trial of O.J. Simpson. Later, in an ironic professional twist, Colley went to work with the firm that represented King in his resulting civil suit against the City of Los Angeles.

Colley also served internships in Congress and the California State Legislature, was president of the Sacramento chapter of the NAACP and served for three years on the NAACP's National Board of Directors. He also served as Executive Dean of the University of Northern California Lorenzo Patino School of Law, where he taught law and paralegal students.

But the childhood love of storytelling never left him, and by the early 1990s he began shifting from his legal career to a play writing career. "I still work as an attorney," he says. "I freelance now. I make appearances. Or I draft pleadings or other documents, whatever lawyers need."

PHOTO COURTESY SHOWTIME NETWORKS



Nat Colley, '79

The income from his freelance legal practice has let him concentrate on his play writing and screen writing, which have been drawing increasing attention. In 1995 he was one of six playwrights selected nationally for the Mt. Sequoyah New Play Retreat. The next year Moving Arts premiered his play *A Sensitive Man* to praise from the *Los Angeles Times* and *DramaLogue*, which also awarded the play five DramaLogue Awards. And last year he was a finalist for Playlabs at The Playwrights Center in Minneapolis.

Colley currently attends the David Henry Hwang Writer's Institute at East West Players, where he is adapting his one-act play *Seat Selection* into a feature screenplay called *The Road to Casablanca.*

Set during World War II and the era of Jim Crow laws, the story concerns a cross-country ride on a bus by three women, one black, one white, and one a Japanese-American who is headed for an internment camp. Last year, in a Cornerstone Theater Company production of the play at Los Angeles' Geffen Museum of Contemporary Art, Colley directed *Seat Selection* as an audience-interactive performance piece.

The action of the play "took place on a bus mounted in the museum," he explains. "Audience members were randomly assigned to 'black' or 'white' seats, which led to some consternation, while many patrons old enough to remember those days left the performance in tears."

Sometimes, Colley uses his legal expertise to shape his stories. For example, he now is seeking money to make a film of his play *A Dozen Innocents,* which deals with "a jury in deliberations on a case of patricide where incestuous abuse is asserted as the defense." No remake of the film *12 Angry Men,* Colley's *A Dozen Innocents* uses a racially diverse jury of seven women and five men. "I am not concerned with 'whodunit,' but with the problem of passing judgment on someone who, it turns out, really is one's peer on one social demographic or another," he says.

"I guess if you were going to categorize my work —ooh, that's dangerous — the stuff that we're talking about now are social dramas," he says. "But I have romantic comedies, and I'm working on a horror thriller. I don't think I would do slapstick or sitcoms. I can't go in that direction, but other kinds of things, sure. I want to try to explore the whole range of subjects."

In theater or in film?

"I think I'm leaning more toward film," he answers. "I don't think I'll ever leave theater entirely — there are certain pieces that just fit better in the theater. But I really enjoy working with actors in film. I think of it as a kinetic sculpture. You take a flat piece of paper, which is your script, and make it three dimensional. There is so much more that you can do in terms of camera movement, closeups, all those things that go into film making."

His goal?

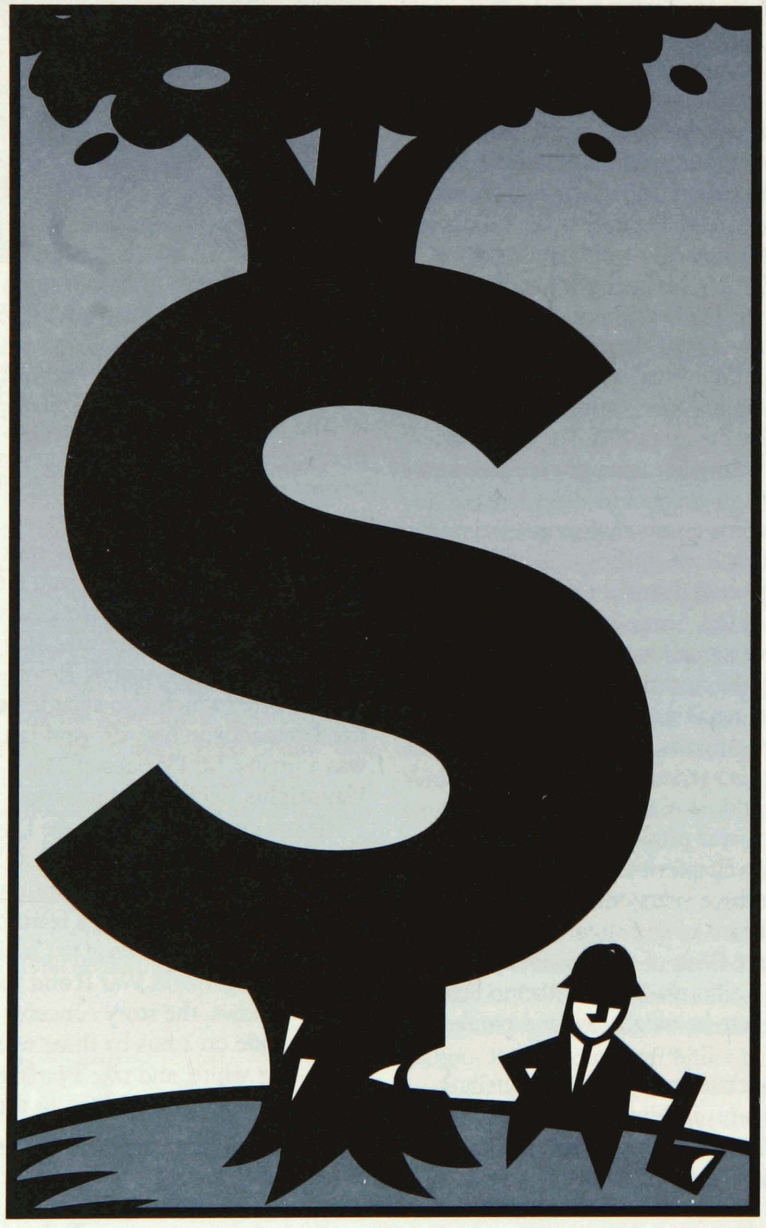
"To be provocative. To get people to think, to think differently and sort of be expanded. I always liked movies that you come out of and talk about and debate."

This essay is based on "Explaining the Pattern of Secured Credit," *111 Harvard Law Review* 625 (1997) and "Strategy and Force in the Liquidation of Secured Debt," 96 *Michigan Law Review* 159 (1997).

Why SECURED CREDIT?

— BY RONALD J. MANN

Secured credit is a dominant feature of the U.S. economy: institutional lenders (including federally insured depository institutions, insurance companies and nonbank finance companies) in this country currently hold more than $2 trillion dollars of secured debt. Although the practice of secured lending is widespread, we know astonishingly little about what motivates commercial borrowers and lenders to use secured credit. Conventional wisdom offers an answer that seems obvious. Lenders take collateral because it provides a method of ensuring repayment if the borrower defaults. The converse, of course, is that borrowers grant collateral because it lowers the interest rates that they must pay to their lenders as compensation for the money that they borrow. Thus, the commonplace answer focuses on force: a grant of collateral to a lender enhances the lender's ability to collect its debt by enhancing the lender's ability to take possession of the collateral by force and sell it to satisfy the debt.



In an effort to test the accuracy of that conventional wisdom, I recently undertook a series of three case studies (one each at an asset finance company, a commercial bank, and a life insurance company) designed to provide a picture of what actually happens when secured loans to businesses fall into distress. Each case study was designed to collect as random a group as practicable of problem secured loans in the portfolio of an institutional lender and to study what happened to those loans. At each lender, I reviewed files covering about two dozen distressed commercial loans and interviewed the executives who had been responsible for dealing with each loan during its time of distress.

Although my case studies do not involve anything approaching a random sample of all distressed loans, they do provide a rich picture of secured credit in action. The results of these case studies suggest that the conventional wisdom is wrong. Indeed, I maintain that, in *practice*, strategy, not force, is the most important element of secured credit. The most important effects of the use of collateral arise from the ways in which a grant of collateral influences the actions the parties take short of forced liquidation of collateral.

The most direct support of my thesis is the surprising rarity with which lenders resort to forced liquidation of collateral. In my case studies, for example, lenders took their borrower's collateral in only six (8.3 percent) of the 72 loans that I studied. And all six of those transactions were real-estate loans; none of the distressed personal-property loans was resolved by a repossession and foreclosure.

The natural response to those results is to ask why lenders were so reluctant to foreclose. Assuming that the lenders were acting rationally (and it is hard to believe that large institutional lenders act with a consistent lack of rationality in something that affects their profitability so directly) the only justification for the consistent practice of forbearance would be the availability of some alternate course of action that produced a greater recovery for the lender than foreclosure. But given the conventional perception that it would be easy for a lender to recover most or all of its debt by means of foreclosure, it is not immediately apparent what a lender would do to force a defaulting borrower to pay that would be superior to foreclosure.

The answer has two parts: the relatively high transaction costs of liquidation and the relatively effective alternative ways for debtors to repay their loans. On the liquidation side, my profiles produced so few foreclosures that my evidence is largely anecdotal. On those few transactions, however, the recoveries were shockingly low. In the six transactions in which the lender took the collateral (all of which involved the insurance company), the lender's net recovery after it resold the property resulted in a loss of about $135 million, more than 75 percent of its original loans on those projects of just over $170 million. Interviews with executives at the lenders that I visited indicated that those loans were not unusual. Lenders generally expect to lose very large portions of their investment whenever they resort to foreclosure.

Although the recoveries in the foreclosure cases were quite poor, the results for the lenders in the other cases (cases in which the lender decided not to foreclose) were quite good. All of the loans that I studied involved transactions in which the lender had decided to terminate the relationship based on a serious default or (when the lender was entitled to terminate a loan relationship at will) some other basis for dissatisfaction with the borrower. Nevertheless, in the cases in which the lenders did not take possession of the property, the lenders obtained payment in full (including interest and any other fees or charges) about 70 percent of the time.

The ways in which the lenders obtained payment reflect a variety of mechanisms that combine to give a commercial borrower a thoroughly realistic chance of protecting its investment in property on which it has granted a lien. For example, in more than 20 percent of the loans, the borrower satisfied the lender with the proceeds of a refinancing, funds that the borrower obtained from another lender. The striking thing about those transactions is the ability of the borrower, faced with an imminent foreclosure by its existing lender, to convince another lender (often a bank or other institutional lender) to extend a new loan.

Another 20 percent of the loans were repaid through cash flow from continued operations. In those cases (all of which involved retail businesses), the lenders (notwithstanding their determination that the borrowers' financial situations were so precarious that the lenders were unwilling to continue their financing relationships) left the borrowers in business to sell the inventory (the lender's collateral) in the ordinary course

Thus, even though the right to foreclose certainly is part of the reason lenders take collateral, it cannot explain the institution as a general matter. That leaves the root question: if not foreclosure, then what? In my view, two significant effects motivate the use of secured credit in commercial lending, both of which focus on the effect that the grant of collateral has on the borrower's behavior before the loan falls into distress, not on the lender's ability to collect after the loan falls into distress.

of business. The rationale of the lender in those cases was that repossession would be senseless, because the borrower could sell the inventory for a higher price, with lower transaction costs than the lender. The pervasiveness of that rationale is evident from one transaction that I studied in which a random audit by the finance company revealed that a computer retailer for whom the finance company was financing inventory had been lying to the lender about its sales and inventory practices. Notwithstanding the patent fraud on the part of the borrower, the finance company left the retailer in possession, operating its business, selling the collateral. The value of that approach was underscored by the results of that transaction: the lender was paid in full through sales in the ordinary course of business less than three months later. The lender's internal projections suggested that it would have recovered only about 20 percent of the loan amount if it had repossessed the collateral and liquidated it at the time of the default.

A third approach, slightly less common but still significant, was to let the borrower sell the business as a going concern, with the lender obtaining payment of its loan from the sale proceeds. That was the result in another group of the loans that included slightly more than 10 percent of the whole sample. The rationale of the lenders in those cases resembled the rationale in the continued-operations cases: the lenders generally thought that the borrower would be able to obtain a better price for the business than the lenders would if the lenders foreclosed and tried to sell the business themselves. Accordingly, the lenders generally were willing to forbear and allow borrowers to pursue any realistic possible sales that might produce funds to repay the lender.

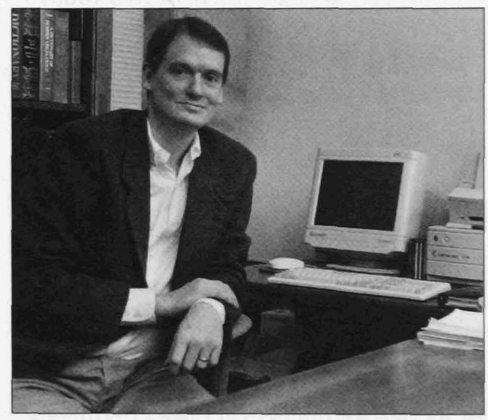
As I stated above, these findings suggest that lenders often refrain from foreclosure in the face of serious defaults based on a justifiable perception that less adversarial responses generally produce a better recovery than foreclosure. If foreclosure is so rare, and produces such poor results when it occurs, it is difficult to accept the conventional view that the most important feature of secured credit is that it allows a lender to foreclose on the collateral. To be sure, there are contexts in which the foreclosure option is important, but most of those (home mortgages and automobiles being the most obvious) involve loans to consumers in which the likelihood of consistently rational actions is much smaller.

Thus, even though the right to foreclose certainly is part of the reason lenders take collateral, it cannot explain the institution as a general matter. That leaves the root question: if not foreclosure, then what? In my view, two significant effects motivate the use of secured credit in commercial lending, both of which focus on the effect that the grant of collateral has on the borrower's behavior *before* the loan falls into distress, not on the lender's ability to collect *after* the loan falls into distress.

The most important answer is that a grant of security to one lender limits the borrower's ability to overleverage its business by obtaining loans from some other lender at a later time. Imagine a small-business borrower that obtains a loan from First Bank. If First Bank did not take a security interest, it would be relatively easy for the borrower, shortly after borrowing the money from First Bank, to go to Second Bank and borrow the same amount of money from Second Bank that the borrower just obtained from First Bank. Absent the public filing associated with the security interest, Second Bank would have no reliable way to discover that the borrower already had borrowed money from First Bank. Thus, Second Bank might make the loan to the borrower even if the borrower's financial position was inadequate to support both loans.

Of course, First Bank could respond to that problem by requiring the borrower to promise that the borrower would not borrow money from Second Bank (or any other lender), but the law provides no effective remedy for a violation of that covenant: once Second Bank has loaned the money to the borrower, it hardly would be fair to invalidate Second Bank's loan as a remedy for the borrower's deceit in hiding the First Bank transaction from Second Bank. And if the law does not invalidate the borrower's obligation to repay Second Bank, then the law can do nothing to repair the damage that First Bank suffers from its borrower's overextended financial condition. Interestingly, that problem does not arise for public companies, because it is so easy for lenders to discover prior significant loan transactions by public companies. That distinction helps explain the rarity of secured debt issued by public companies.

In addition to its capacity to limit excessive subsequent borrowing, secured credit also aids a lender by enhancing the ability of the lender to control the borrower's day-to-day conduct. Essentially, a grant of collateral gives the lender leverage over the borrower that motivates the borrower to refrain from risky activities that threaten the likelihood that the business will survive long enough to repay the loan. The leverage arises from the ability of the lender to take the collateral from the borrower promptly upon a default. When the collateral is necessary to continuation of the borrower's business, as it often is, action by the lender to repossess the collateral could destroy the borrower's business overnight, inflicting a loss that far exceeds any plausible valuation of the collateral standing alone. The possibility that lenders would inflict such losses gives borrowers a strong motivation to run their business on a daily basis in a way that conforms to their lenders' expectations. By enhancing the ability of the lender to control its borrower, secured credit decreases the likelihood that the borrower will engage in activity harmful to the lender, and thus indirectly increases the likelihood that the borrower will repay the loan as agreed.



Assistant Professor of Law **Ronald J. Mann** *joined the University of Michigan Law School faculty in 1997 after teaching at Washington University School of Law. He received his J.D. from the University of Texas at Austin, where he graduated first in his class and was managing editor of the* Texas Law Review. *After law school he clerked for Justice Lewis F. Powell of the U.S. Supreme Court and was an assistant to the Solicitor General of the United States. Mann also practiced as a commercial real estate lawyer in Houston, where he represented both developers and lenders. His current research focuses on the dynamics of secured lending and he is working on a textbook. He teaches courses in real estate transactions, commercial transactions and intellectual property.*

The right to PARTICIPATE

— By Samuel Issacharoff,
Pamela S. Karlan
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Constitutions are often viewed today as constraints on majoritarian power in the service of minority interests. But constitutional ground rules also create the possibility of ongoing democratic self-government; constitutions establish relatively stable and non-negotiable precommitments that enable generally accepted structures of political competition to emerge and endure.

Despite the centrality of this role for the American Constitution, however, there is paradoxically little that the text or its history offers in the way of directly relevant guidance. In part, this results from the great silences of the Constitution regarding the structure of electoral politics — a silence that often reflects America's peculiar federal structure, in which so much regarding the ground rules of political competition was left to be settled at the state level. Thus, neither the original Constitution nor the Fourteenth Amendment secured even the basic right to vote.

In its original form, the Constitution contained scant mention of voting. The only organ of the national government that was elected directly was the House of Representatives, and Article I, section 2, clause 1 provided simply that "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." Thus, the entitlement to vote in the only popular federal election was entirely dependent on a state's grant of the franchise, and all states limited the right to vote to only a subset of the population. The most widespread limitations involved age, sex, race, property ownership, and length of residence within the jurisdiction, but there were others as well. Nonetheless, the franchise was extended more widely among white males than in any other country at the time. In a series of nineteenth century cases, the Supreme Court reiterated that "the Constitution of the United States has not conferred the right of suffrage upon any one" [*United States v. Cruikshank*, 92 U.S. 542, 555 (1875)]. And yet, since the Civil War, a majority of the ratified constitutional amendments have dealt in whole or in part with voting and they have marked a consistent expansion of the franchise. Not only has voting come to occupy a more prominent place in the written Constitution; it has also come to be treated by the Supreme Court as a central, and fundamental, right of citizenship.

As with the right to vote, the Constitution is also silent about much else regarding the structure of democratic politics. The text does speak in quite general terms about the terms of federal elected officials and even more generally about qualifications for election. But in addition to voting rights, the Constitution also does not explicitly address most other important issues regarding elections — from how ballots are to be cast, to the electoral system for all public offices save the president and Senate, to issues of how elections are to be run and financed, and so forth.

The failure of the Constitution to offer much specific guidance also reflects the premodern world of democratic practice and the long-since rejected assumptions of that world on which the Constitution rests. Most important for present purposes, the Constitutional structure was specifically intended to preclude the rise of political parties, which were considered the quintessential form of "faction." Yet political parties have long become the principal organizational form through which mass democracy can be mobilized and effectively pursued. No constitutional framework for enabling modern democratic self-government can neglect the role of political parties, yet the Constitution not only is silent about parties, it was designed to preclude their emergence. Similarly, the original Constitution reflected a particularly elite conception of democratic politics, one in which, as author Gordon Wood puts it in *The Radicalism of the American Revolution* (1992), the leading history of the period, "Madison hoped that the new federal government might restore some aspect of monarchy that had been lost in the Revolution." But this more aristocratic conception of democracy was already being displaced by the 1790s, and was utterly supplanted as early as the Jacksonian era — developments that led virtually all the Framers who lived that long to a pervasive but underappreciated pessimism because democracy had fallen "into the hands of the young and ignorant and needy part of the community," Wood writes. This transformation in the conception of democracy eventually culminates in certain structural changes, such as the Seventeenth Amendment's shift to direct senatorial elections, and the various franchises-expanding amendments. But these changes are layered onto a document and set of institutional structures that reflected the premodern vision of democratic politics. For example, while voting for public officeholders was the quintessential attribute of representative government, the act of voting quickly changed its social meaning and significance from what the Framers originally envisioned. Initially, the open ballot played the role of ratifying social and political hierarchies; as another important historian, Robert H. Wiebe, notes in *Self-Rule: A Cultural History of American Democracy* (1995), "leaders still assumed political office as their right and instructed the people as their duty." Elections focused on personal qualities, not political issues; a striking example was that in the elections to the Virginia Ratifying Convention for the Constitution, many districts would elect their two leading men — even though they held opposing opinions on whether the Constitution should be embraced. Already by the early 19th century, though, the open ballot had come to symbolize a kind of political equality and independent choice of citizens, with genuine sovereign power, that had not been originally contemplated in the election-as-ratification conception.

With respect to democratic politics, then, the American Constitution is a curious amalgam of textual silences, archaic assumptions that subsequent developments quickly undermined, and a small number of narrowly targeted more recent amendments that reflect more modern conceptions of politics. Particularly in this arena of democratic institutional design, the American Constitution reveals its age. More modern constitutions invariably devote considerable space to the institutional framework for politics and tend to reflect the structures now associated with democracy, such as political parties.

In light of this history, American courts facing contemporary questions of democratic principles today often have to construct a conception of democracy with less textual and historical foundation than in some other areas of constitutional law. Yet the pressure on courts to do so is great, given the self-interest existing powerholders have in manipulating the ground rules of democracy in furtherance of their own partisan, ideological, and personal interests. Throughout [this book], we will see the problems facing the Supreme Court as it struggles to work out a democratic theory of the Constitution to deal with numerous specific issues. To what extent should the Constitution's premodern assumptions preclude the Court from taking on this task itself? To what extent do those assumptions instead require that the Court assume this role?

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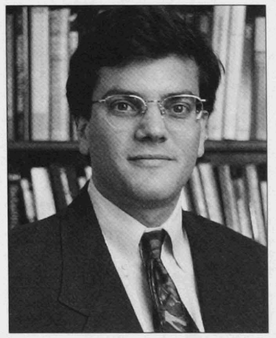
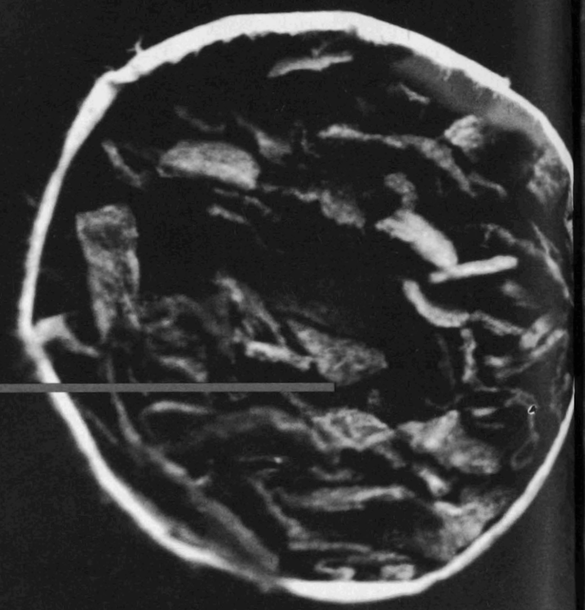
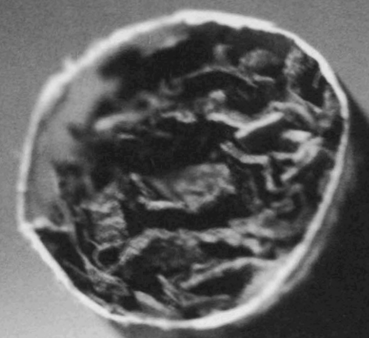


A CRITIQUE of the proposed National Tobacco Resolution



The following essay is adapted from testimony presented to the Senate Democratic Task Force on Tobacco in Washington, D.C., on Oct. 9, 1997, which in turn is based on the authors' forthcoming article, "The Costs of Cigarettes: The Economic Case for Ex Post Incentive-Based Regulation," 107 Yale Law Journal (March 1998).



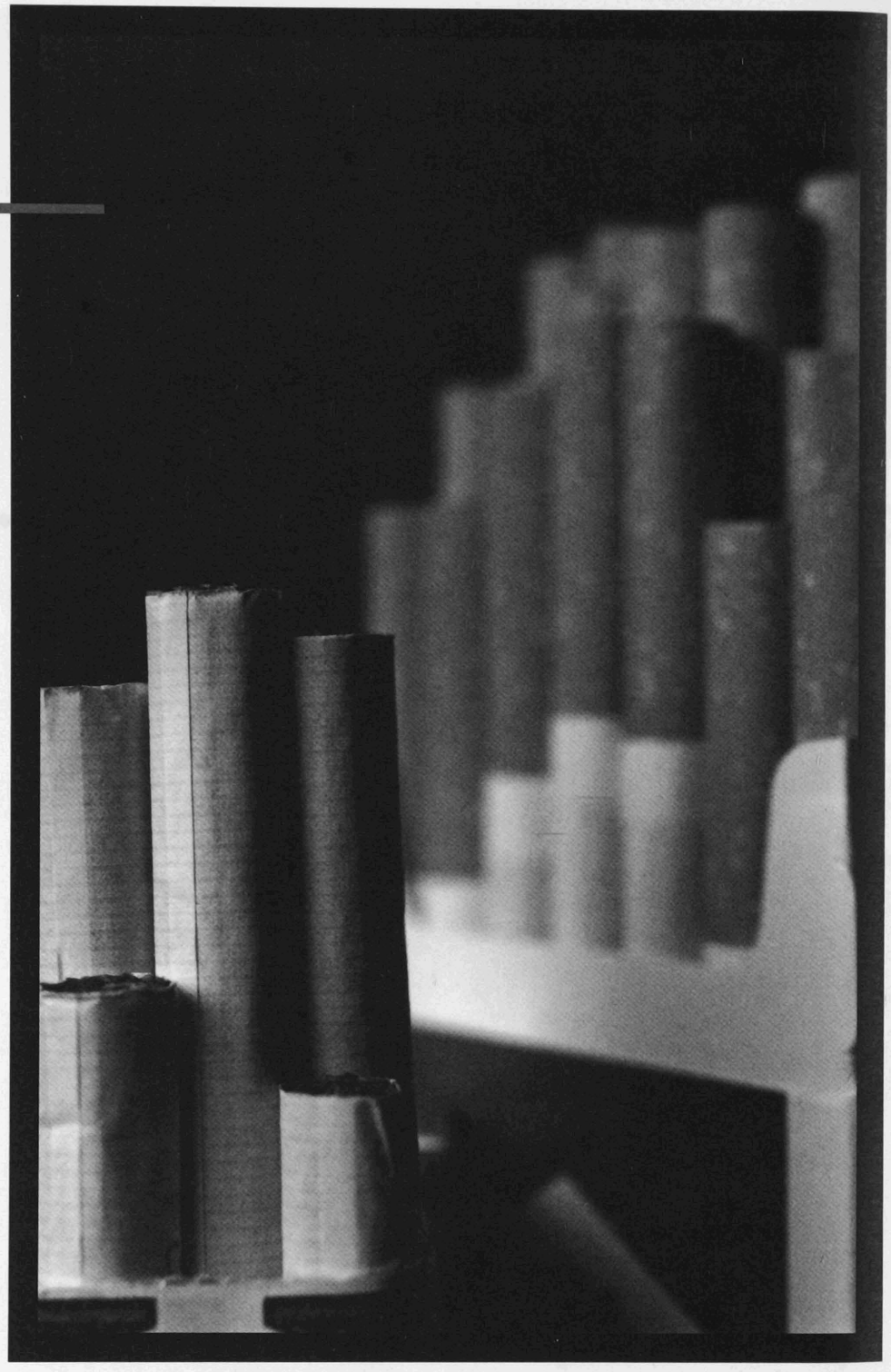
AND A SUGGESTED ALTERNATIVE

— By Jon D. Hanson and Kyle D. Logue

IF THE GOAL OF CIGARETTE REGULATION is either to reduce substantially the public health problem created by cigarette smoking or to allocate the costs of smoking more equitably, there are significantly better alternatives to the regulatory regime than would be created by the state attorneys general's Proposed Tobacco Resolution. Indeed, from either perspective, we are doubtful that the current proposal represents an improvement over the status quo. Our study of the issue leads us to make two largely independent criticisms of the proposed resolution. We will only mention the first here and will focus our attention on the second.

PHOTOS BY THOMAS TREUTER

the COSTS OF CIGARETTES



The first criticism is that the proposed resolution would not require manufacturers and, in turn, consumers to pay anything approaching the true total costs of cigarettes, costs that we estimate to be at least $7 per pack, a number that is considerably higher than other estimates that have been reported in the media. Our estimate includes some, but not all, of the costs borne ultimately by smokers themselves, by smokers' insurers, and by individuals injured by second-hand smoke. It includes only future costs and excludes many of those. So, for example, the figure includes neither the health-care costs that have previously been caused by smoking nor the future pain-and-suffering costs borne by smokers or family members of deceased smokers.

Unlike most economists who have previously attempted to measure the costs of cigarettes, we do not reduce our estimate of cigarette costs to take into account the "savings" resulting from cigarette-induced premature deaths. Those savings — measured mostly in the form of smokers' unclaimed pension and nursing-home entitlements — may not in fact be real, and in any event, are not relevant to the questions of whether and how best to regulate the market for cigarettes.

We should make clear that the purpose of the $7 per pack figure is not to suggest that a tax of $7 per pack should be imposed or that, following the introduction of the sort of regulatory regime we suggest below, cigarette prices will rise by $7 per pack. Rather, it is meant only to suggest the magnitude of the need for some type of regulatory intervention. In fact, under the smokers' compensation regime that we recommend, we would for a number of reasons that we cannot pursue here expect cigarette prices to rise by no more than $3 per pack.

IDENTIFYING the APPROPRIATE REGULATORY RESPONSE

The proposed resolution is implicitly premised on the assumption that some form of intervention in the cigarette market is necessary. In light of evidence that smokers typically begin their habits at a very early age, tend not to be well informed of the long-term health risks of smoking, often underestimate addictiveness of cigarettes, and often do not bear many of the costs associated with smoking, we agree that the market for cigarettes should not be left unregulated. Our second criticism of the proposed resolution, however, is that the regulatory regime that it would implement is almost exactly the inverse of what it should be. To understand that criticism, it is helpful to step back from the proposal itself and ask a more general question (a question that, curiously, has evaded scholars and commentators to this point): What is the best approach to regulating cigarettes?

A. Three categories of regulation

Regulatory scholars have, in broad terms, identified three general categories of regulation: *command-and-control* regulation; *performance-based* regulation; and *incentive-based* regulation. The distinctions we draw among the three types of regulation are not perfect and can, in some instances, begin to blur. Thus, some examples of performance-based regulation begin to look like incentive-based regulation. In fact, it is probably most accurate to understand the three categories of regulation as demarcating three points along a continuum, with command-and-control regulation at one end, incentive-based regulation at the other end, and performance-based regulation somewhere in between. Nevertheless, it is useful to maintain the conceptual distinctions among the three types of regulation to enable us to identify the costs and benefits of moving in one direction or the other along the continuum.

Under *command-and-control* regulation, sometimes called "input regulation," the regulator imposes specific requirements on the firm. The regulator in effect tells the regulated firm how specifically to run some aspect of its business. In regulating pollution, for example, the command-and-control regulator might prescribe specific steps that manufacturers must take, or specific technologies that they must use, in order to reduce the level of pollution that is emitted by their manufacturing processes.

There are many examples of command-and-control regulation in the proposed resolution. For example, the warning requirements and the advertising restrictions that would be imposed on manufacturers are best characterized as command-and-control regulations. Similarly, if the Food and Drug Administration exercised its limited authority under the proposed resolution to mandate particular "technically feasible," "less hazardous tobacco products," it would do so in the form of command-and-control regulations.

Under *performance-based* regulation, by contrast, the regulator presents manufacturers with a target of some sort, which the manufacturers are encouraged to meet. That target is sometimes called a "performance standard." The manufacturers are then left to decide how best to achieve that target. One performance standard, for example, might be a maximum quantity of pollution that a firm is allowed to emit over a given period of time, such as that allowed by tradeable pollution permits. Failure to achieve the relevant target, however, would result in a fine or additional regulation. The proposed resolution contains a couple of performance-based standards. The best known example is the so-called "look-back" provision, which would set target levels of underage smoking that the industry would pay a fine for failing to meet.

Performance-based regulation, when compared to command-and-control regulation, reflects a greater degree of humility and skepticism with regard to how much the regulator can be expected to know about the cutting-edge technology in a given industry and a greater degree of reliance on the industry (or the market) to have and act on that information. Nevertheless, both types of regulation make substantial informational demands on the regulator.

If there is a performance standard or target that is *assumed* to be desirable, performance-based regulation can be superior to command-and-control regulation as a means of achieving that standard, for the reason already described — manufacturers have better information. In addition, if we know what the target standard is, then enforcement of such a standard is relatively easy (because of the ease of monitoring compliance) compared to enforcement of command-and-control regulation, where the regulator must constantly defer to the informational advantage of the manufacturer.

Although there is something to be said for performance-based regulation over command-and-control regulation, it is our view that they both impose roughly the same informational demands on the regulator. Although we develop that argument in considerable detail in

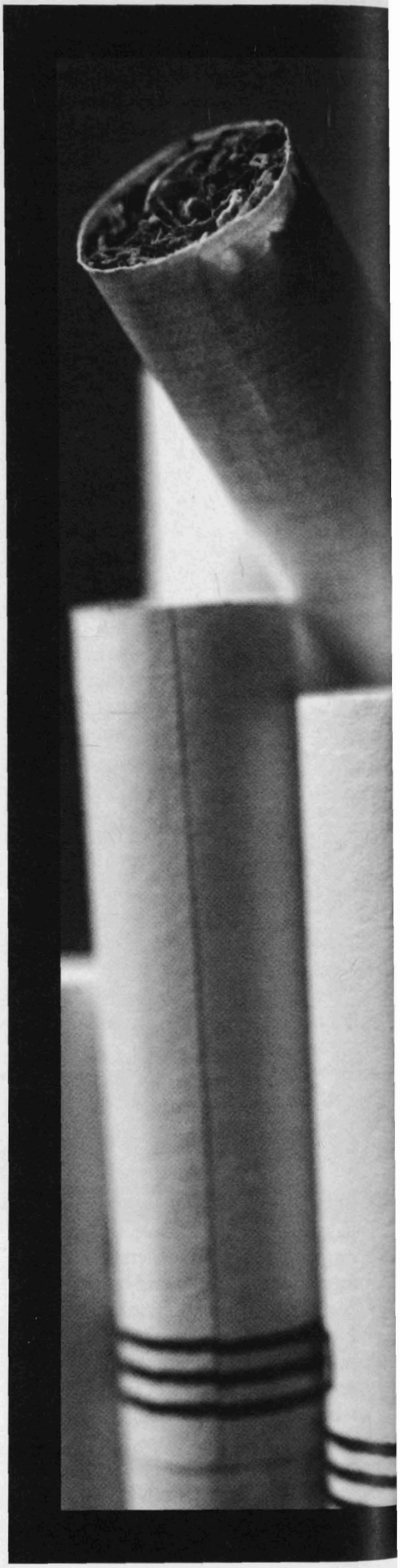
our Article, the general idea is captured in the following question: How is the performance-based regulator supposed to choose the appropriate target level of performance (or the appropriate fine for failing to meet that target)? For example, how does Congress or EPA determine the aggregate level of air or water pollution to permit? To answer such questions the regulator must have information about not only the level of harm caused by different levels of pollution but also the total social costs and benefits of the activities that give rise to the pollution.

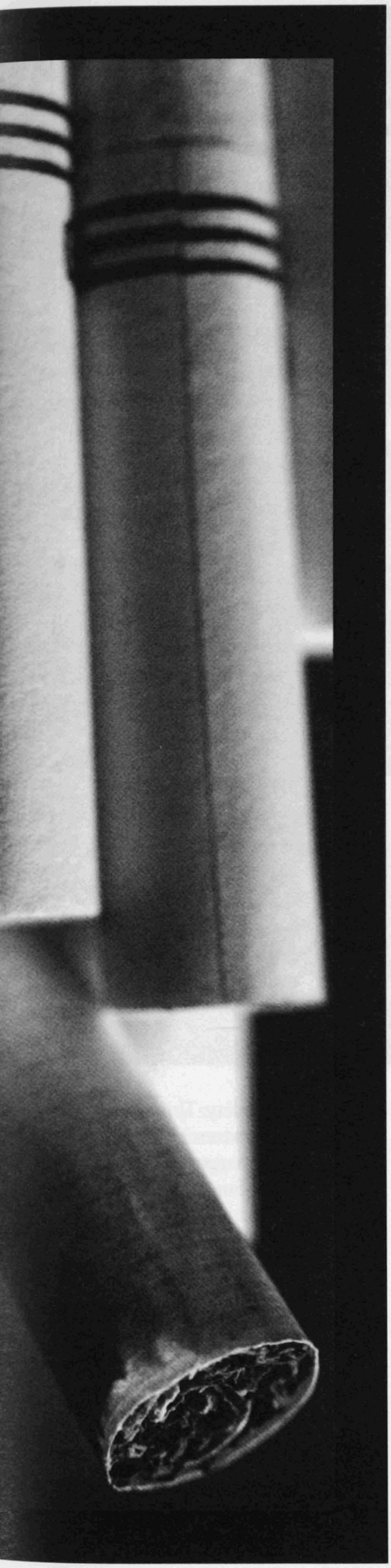
Incentive-based regulation is superior to command-and-control and performance-based regulation inasmuch as it requires less information of the regulator, and it relies more on the market to generate the desired regulatory outcomes. Under incentive-based regulation, the regulator simply forces the manufacturers to pay the total costs of their manufacturing activities. The manufacturers are then left to decide what to do about those costs, if anything. Thus, incentive-based regulation does not tell manufacturers how to run their business (as command-and-control regulation does). Nor does it require the regulator to choose the ideal regulatory target (as performance-based regulation does). It simply makes the industry pay its costs, and lets the market sort things out. The general superiority of incentive-based regulation over command-and-control regulation in most settings is fairly widely accepted among scholars and is increasingly recognized by policy makers. Indeed, most of the important debates in environmental regulation seem to be over, not whether to use market forces, but how best to use market forces as a means of reducing pollution.

It is *not* our position that command-and-control and performance-based regulation should never be used. There are circumstances in which those types of regulation may be useful supplements to ex post incentive-based regulation. We do take the position, however, that those types of regulation, especially in the cigarette context, are not viable *substitutes* for ex post incentive-based regulation. Still, those regulatory alternatives can serve a complementary function. Even in the cigarette context, for example, those forms of regulation might prove helpful as a means of reducing underage smoking. In addition, in some non-cigarette situations (for example, in dealing with the problems of air pollution created by automobile emissions), either command-and-control, performance-based, or perhaps an excise tax ("ex ante incentive-based regulation") may be the only available options. This would be true if ex post incentive-based regulation (of the type we describe in greater detail in the text below) were considered impractical, perhaps because the harms associated with generalized air pollution are too widely dispersed to give rise to ex post damage claims brought by individual victims. It should be emphasized, however, that the cigarette market presents a setting in which ex post incentive-based regulation is available as a regulatory option.

B. The problem with the proposed resolution

Given this consensus in favor of incentive-based regulation, one would hope that any proposal to regulate cigarettes would rely most heavily on incentive-based approaches, with little emphasis on command-and-control and performance-based regulation. In fact, however, the proposed resolution takes just the opposite approach. It is dominated by a renewed and strengthened emphasis on command-and-control regulation, including everything from new warning requirements to new FDA control over the level of nicotine and other ingredients in tobacco products. And the proposed resolution is especially remarkable for its lack of incentive-based regulatory approaches. In fact, by sharply curtailing products liability law as a means of regulating manufacturer behavior, the proposed resolution would eliminate the only existing incentive-based system with any potential for internalizing the external costs of smoking.





In addition, the settlement contains the occasional performance-based approach — such as the "look back" provision designed to achieve specific targets of underage smoking by various points in time — but those provisions, by virtually all accounts, involve penalties for failure to achieve the relevant targets that are too weak. Moreover, as we will show in the text below, even if the penalties are increased, the way in which the penalties would be apportioned among tobacco companies (essentially on a market-share basis) would undermine each company's incentives to reduce underage smoking.

To get a clearer picture of the limits of the command-and-control and performance-based regulations outlined in the proposed resolution, consider the following questions:

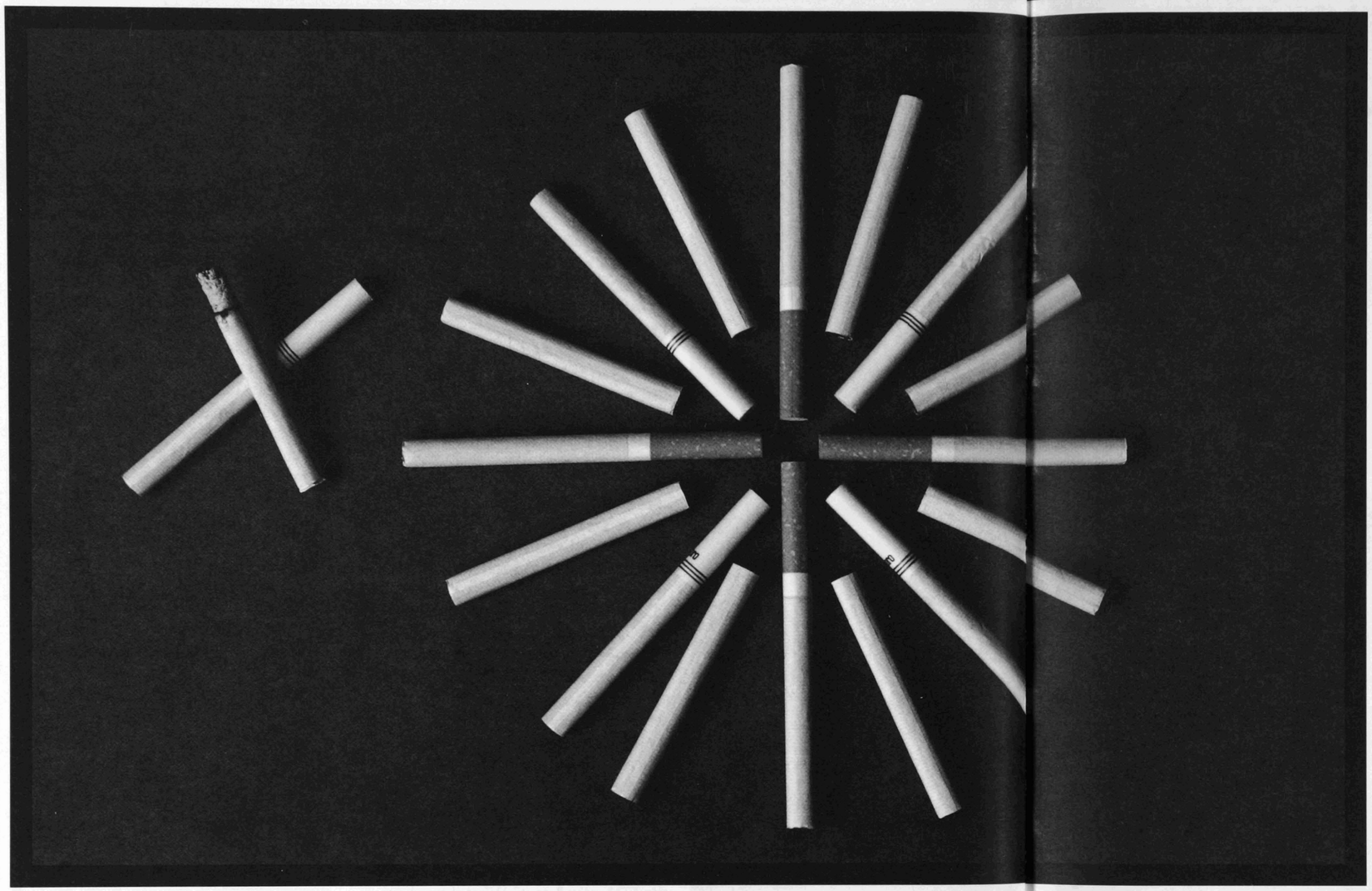
- What if the proposed cigarette warnings and advertising restrictions are ineffective, as they have been in the past?
- What if, in response to requirements that they must turn over to the FDA all research regarding potential alternative, potentially safer, cigarette designs, cigarette manufacturers stop conducting such research?
- What if the FDA does identify a cigarette design that appears likely to be safer than conventional designs? Should the FDA mandate it? What if smokers increase their overall consumption of cigarettes because of the new design? What if the safer cigarette is unpopular because of, say, unpleasant taste attributes? Should the FDA require that all cigarettes adopt the new design? If not, will the FDA require that cigarette manufacturers market cigarettes with the safer design as aggressively as they market their conventional brands?
- What about the look-back provision? Why is the target reduction level set at 60%? What if the look-back provision is successful in encouraging the industry to reduce underage smoking to target levels, but many individuals who do not begin as underage smokers simply pick up the habit at age 18?

C. The benefits of incentive-based regulation

Incentive-based regulation would significantly reduce the problems suggested by the preceding set of questions. It would do so by taking government regulators out of the role of trying to make complex economic and scientific determinations and by relying instead on the expertise of manufacturers and on the power of market forces.

The proposed resolution arguably includes an incentive-based component, insofar as the costs imposed on manufacturers are required to be passed through to consumers in the form of a price hike. That mandated price hike would, like an excise tax, force manufacturers to bear at least some of the costs of their products. Viewing the proposed regulation in that light, some scholars have complained that the price hike is too small. According to Jeffrey Harris, for instance, the proposed agreement would, if adopted, have the effect of a $0.62 per pack excise tax on cigarettes. In addition, some senators and the Clinton administration have recently suggested the possibility of increasing the price hike to some amount closer to $1.50 per pack. (See Jeffrey Taylor, "More Senators Seem to Back Increasing Cigarette Prices Beyond Level in Accord," *Wall Street Journal*, A4, Sept. 17, 1997.) There appears to be an emerging consensus among commentators and policy makers, in other words, that the regulatory effect of the de facto excise tax needs to be enhanced and will have a greater regulatory effect than that of other aspects of the proposed resolution.

With that conclusion we agree. An excise tax probably does have certain advantages over command-and-control or performance-based regulation. However, as an incentive-based system of regulation an excise tax has distinct disadvantages when compared with what we refer to as "ex post incentive-based regulation." *By an ex post incentive-based system we mean a regime in which each cigarette manufacturer is forced to pay the external costs caused by its brand of cigarettes as those costs actually become*



manifest — that is, manufacturers pay damages ex post.

An excise tax, which can be thought of as an "ex ante incentive-based" regime, has two important disadvantages when compared with an ex post incentive-based regime. First, choosing the appropriate rate of tax requires the regulator (as in the case of command-and-control and performance-based regulation) to have an enormous amount of information up front (at the time the tax rate is set) about the costs and benefits of cigarettes, including the costs and benefits of alternative cigarette designs. In contrast, under an ex post regime, costs would be imposed on cigarette manufacturers only as the external harms caused by cigarettes actually became manifest. Thus, although the regulator would be responsible for sorting out after the fact what harms had been caused by cigarettes and should be charged to manufacturers, it would be the cigarette manufacturers who would decide up front how to make and market cigarettes to minimize those costs.

The second disadvantage of an excise tax, compared with an ex post approach, is that an excise tax does not create incentives for cigarette manufacturers to compete over safety. This is a very basic point, but it is extremely important and is central to our argument for an ex post regime (and to our critique of the proposed resolution). At best, an excise tax (and the de facto excise tax contemplated in the proposed resolution) would impose on each manufacturer the average per pack external costs for the whole industry. Such a tax, however, provides no incentive for manufacturers to make investments in developing and manufacturing safer cigarette designs (such as nicotine-free cigarettes or low-carcinogen cigarettes) or in identifying relatively low-risk smokers (people who are least likely to suffer harmful effects from smoking). Any such innovations would cost a manufacturer money — the research and development costs among others — but would provide essentially zero benefit to that manufacturer given that the taxes are fixed (or, if variable, are assessed on a market share basis).

If the taxes are fixed, then, of course, nothing that a manufacturer does can lower them. Even if the taxes vary to reflect the changes in the average costs of cigarettes, however, manufacturers will not invest to lower those costs, because the benefit of such investments would be shared with the whole industry in the form of a reduced industry-wide excise tax. Again, each manufacturer would have a strong incentive to make no such safety-enhancing investments. This phenomenon is a special case of what policy scholars call the "common pool" or "free rider" problem. We sometimes refer to it as the "unraveling problem," because, under such a scenario, the market for safety improvements may unravel, as each manufacturer realizes that making investments in safety enhancements is not in its financial best interest.

D. The smokers' compensation alternative

An ex post incentive-based regime can, at least in theory, overcome the unraveling problem associated with an excise tax and can thereby create the market incentives for manufacturers to compete over safety. Such an ex post regime can force each manufacturer to bear the harms caused by its brand of cigarettes specifically and not just the average harm caused by the industry as a whole. To achieve that goal, one of the essential elements of any ex post incentive-based regime would be an ability, even if imperfect, to trace harms to specific brands.

The specific form of ex post incentive-based regulation that we will emphasize here is a regime that we call "smokers' compensation." One of many possible versions of such a system would rely on a newly created administrative board with authority to adjudicate the compensation claims. Someone suffering from a smoking-related illness would bring a claim to that board and present evidence regarding his or her injury and smoking history. If necessary causal links were established, the board would award compensation to the claimant and then charge the manufacturer or manufacturers for the amount paid out. But, whatever form it might take, a smokers' compensation system is distinguishable from an excise tax in the following ways:

- Fact finding with regard to harms caused by cigarettes would be based on evidence of actual harms after they have occurred rather than on speculation regarding possible future harms.
- Manufacturers, rather than regulators, would conduct the ex ante cost-benefit analysis regarding what safety investments to make, what product design changes to consider, and how those changes will affect product demand.
- Costs would be imposed on manufacturers on a brand-specific, rather than on a fixed, industry wide, or market share basis.
- Incentives to compete over increased safety would be created, rather than dulled or eliminated.
- Victims of smoking-caused harm themselves would voluntarily come forward with information regarding harms caused by cigarettes, thereby providing useful information regarding brand-specific risks.

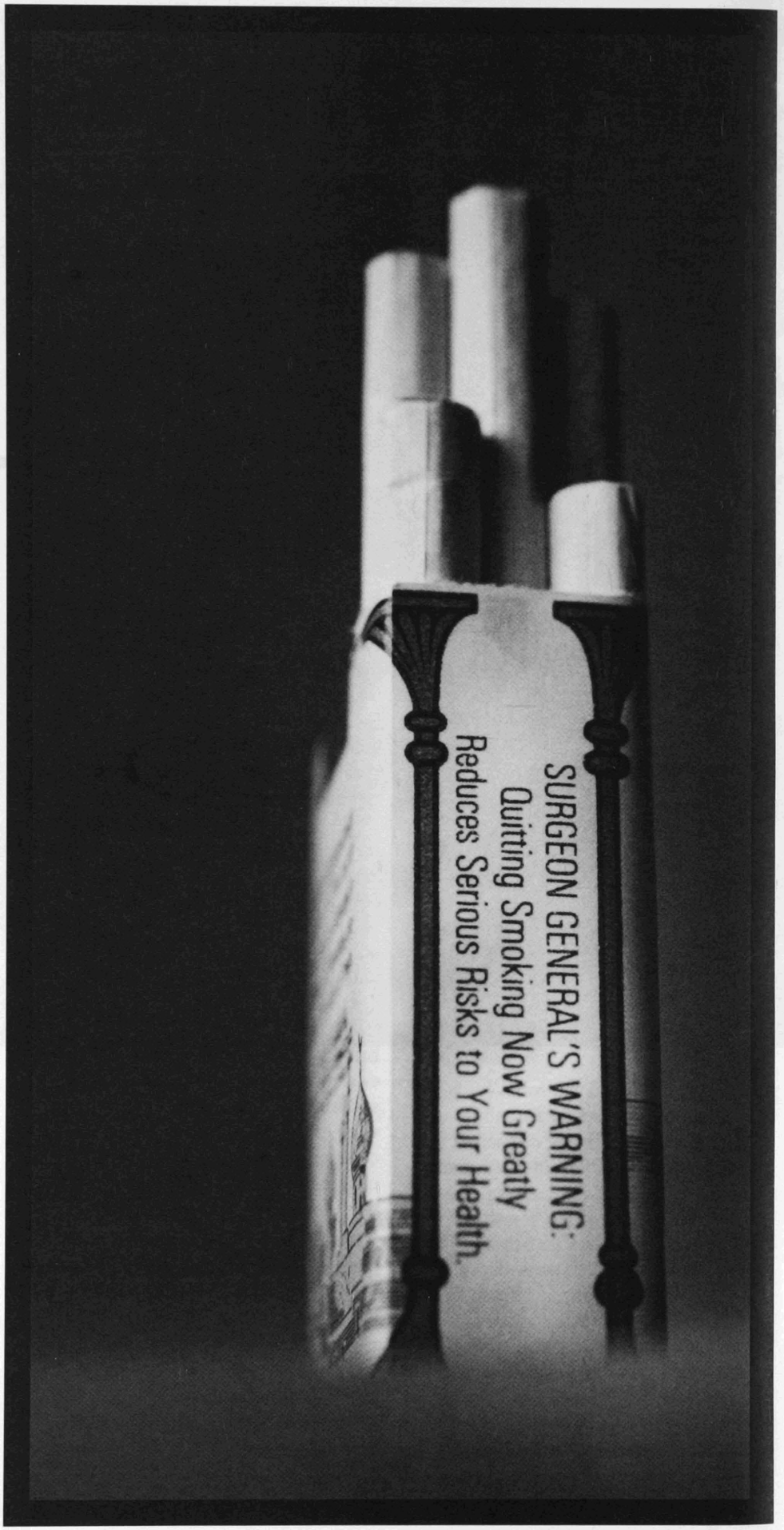
The smokers' compensation system can also be distinguished from products liability law — another ex post incentive-based regime. Under the current rules, products liability law is the only existing ex post incentive-based regulation of cigarettes. Some commentators complain, however, that that regime has been wholly ineffective, a complaint we challenge below. Other commentators and industry officials may worry that products liability law, in its current form, presents the tobacco industry with an unacceptable level of uncertainty as to what the industry's overall liability for smoking-caused harm will be. It is also sometimes argued that the tort system entails relatively high administrative costs compared to other systems of deterrence. In response to such concerns, consider the following ways in which the proposed smokers' compensation model might be cheaper, simpler, and more certain than its tort law alternative:

- The fact finding determination would be conducted by an administrative board or an administrative law judge rather than by a lay jury.
- This fact finder could be specially trained in dealing with scientific evidence, or could be authorized to solicit advice from experts or a blue-ribbon panel of scientists.

- The damages for each type of smoking-caused harm could be predetermined based on some type of grid system, whereby a given harm produces a given (i.e., certain) level of damage payment from the manufacturer.
- The only fact finding question would be causation. Hence there would be no need for expensive fact finding on such questions as product defect, industry standards, assumption of risk, and the like.
- Although the need for litigation in hard cases would not be eliminated, the claims adjustment process could become more routinized than is the case with current product liability claims, thereby reducing administrative costs.

If the above-listed aspects of the proposal do not provide enough certainty, it might be possible to impose an overall cap or budget on the amount of damages that can be paid by the cigarette industry in a given year, *so long as the damage payments within that cap are allocated among manufacturers according to each company's relative causal share of the harm, and not just according to market share.*

This has been a necessarily sketchy outline of a smokers' compensation approach to regulating cigarettes. We have made no effort here to work out all the details of such a program, nor do we expect that that task will prove easy. Still, there are a variety of ways in which such a regulatory regime might be adjusted or tailored without eliminating its beneficial effects. We would note, moreover, that there are existing regulatory regimes to which policy makers may usefully look for guidance regarding how to implement a smokers' compensation regime. The most obvious analogy, given the name we have chosen, is workers' compensation. Another analogy would be no-fault automobile insurance. The smokers' compensation regime that we have in mind, after all, is essentially a no-fault system with the cigarette companies acting as the insurers of smoking-caused harms.



possible OBJECTIONS

There are two possible objections to an ex post incentive-based system, such as a smokers' compensation system, as compared to an ex ante incentive-based system of regulation, such as an excise tax.

A. Strategic avoidance of regulatory incentives

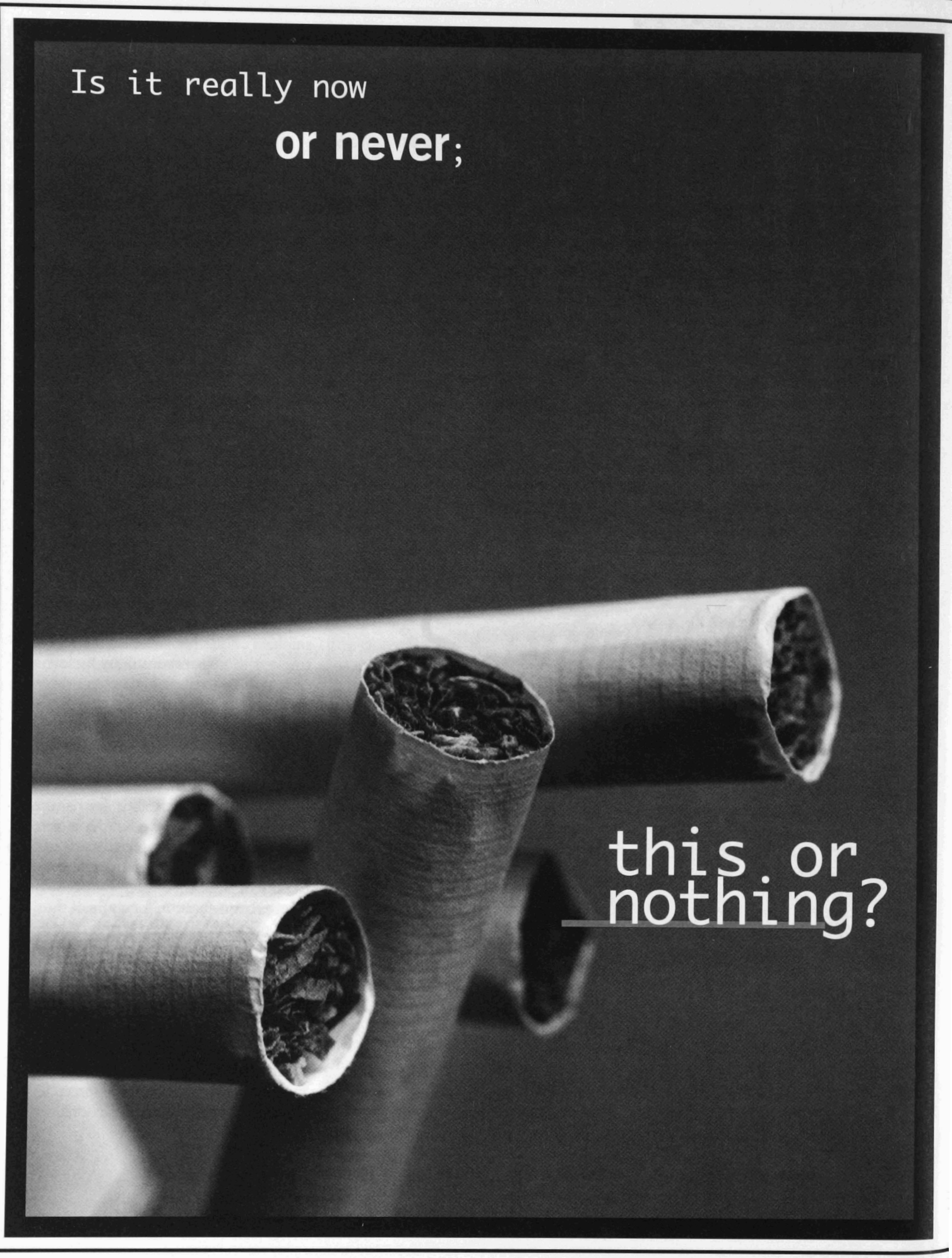
First, an excise tax might be presumed superior because it would be charged as the cigarette is sold rather than when the injury occurs. Because, under a smokers' compensation system, manufacturers would be liable for the harms of cigarettes sold many years earlier, a smokers' compensation system would arguably create opportunities for cigarette manufacturers to evade the regulator's incentive-creating sanctions. For example, after profiting for twenty years or so, a new entrant to the cigarette market might simply distribute its assets to its shareholders, rendering itself largely immune to the threat of smokers' compensation claims. To be sure, the manufacturer would then be bankrupted by the smokers' compensation claims, but only after many years of profiting substantially and distributing those profits to shareholders. Legal scholars sometimes describe this as a "judgment-proofing" or "hit and run" strategy.

There are several reasons why such judgment-proofing strategies are unlikely to be adopted by manufacturers. For example, sophisticated long-term creditors would — and, in other industries, do — include covenants prohibiting (or, more generally, increasing the costliness of) such strategies. Also, opportunities for strategic avoidance of regulatory incentives exist for virtually *all* forms of regulation. For instance, manufacturers could avoid the effect of an excise tax by directly or indirectly selling their brands on black markets, as may be common in other countries that have substantial cigarette tariffs. That evasion strategy would be less effective under a smokers' compensation system because manufacturers would have to pay for the harms caused by all of their cigarettes, even those purchased on black markets. Indeed, for that reason, manufacturers would have a strong incentive to discourage the emergence of black markets in their own cigarettes. Finally, there are regulatory policies that could be adopted that would prevent manufacturers from evading the threat of future liability. For instance, as is provided for under the proposed resolution, manufacturers might be required to put up a substantial bond, to ensure that some assets are available in the future. Similarly, as is the case for virtually all European corporations, manufacturers might be required to meet minimum capitalization requirements, which would serve the same purpose as a bond. Finally, as is true of automobile drivers in most of the states in this country, cigarette manufacturers could be required to purchase a minimum amount of liability insurance which would cover the costs of future potential liability.

B. The personal responsibility question

Others might object to a smokers' compensation system (or to any other type of victim-initiated ex post incentive-based system) on the ground that it compensates smokers for the harms caused by cigarettes and thus removes from them any responsibility for their own decisions. The goal of a smokers' compensation system is to enhance public health. But if the goal were to force individuals to own up to, or take responsibility for, their actions, we are aware of no policy response that would be superior to a smokers' compensation system. That's true for several reasons.

For starters, smokers would have to pay when purchasing each pack of cigarettes, in the form of higher product prices, for their right to make a claim later, when a smoking-caused illness occurs. The arrangement is no different from that between insureds and their first-party insurers. Thus, smokers would not be getting something for nothing and would not be evading responsibility. Indeed, the whole goal of this type of incentive-based system is not to let smokers off the hook but to force smokers to take responsibility by forcing each smoker to place his money where his mouth is. Absent such a price increase, smokers would continue to disregard the substantial costs that their smoking poses to themselves and to others; and smokers would continue to have to "take responsibility" for risks that they were not fully aware of. Moreover, the harms caused by cigarettes are, of course, often quite serious. And even to the extent smokers or their families receive compensation for some of the costs of cigarette-caused harms, it is difficult to say that the dead or seriously ill smoker ever fully evades the ultimate responsibility for her smoking decisions. Finally, of course, smokers are not the only actors who should be accountable for their actions. Under an ex post incentive-based regime, tobacco *manufacturers*, too, would be forced to bear responsibility for *their* actions.


Is it really now
or never;
this or
nothing?

Those who are interested in the cigarette problem might ask questions such as: "Doesn't the proposed resolution represent a step in the right direction?"; and "In light of the fact that the apparent momentum in Washington to enact a comprehensive federal regulatory response to the cigarette problem might die, shouldn't we embrace the proposed resolution or something substantially similar to it while we have the chance, rather than be returned to the status quo?"

In our view, the answer to both questions is "no." Taking public health as the overriding goal, we would, if forced to choose, pick the status quo. To understand why, it is necessary first to understand that critics and supporters of the proposed settlement share two flawed premises, which nevertheless seem to be dictating the terms of the policy debate. First, both sides assume that the primary purpose of products liability law in this context is, not to serve public health goals, but simply to compensate those injured by smoking. Second, both sides seem to agree that civil liability laws have, to date, failed to serve that or any other worthwhile goal. Consequently, most participants in the debate have indicated in one way or another that the elimination of tort law would be no big loss, even for smoking plaintiffs. The proponents of the proposed resolution, for instance, point out that, even if $368.5 billion does not cover all the harms, past and future, caused by cigarettes, it is a lot more than nothing, which is what manufacturers have paid in tort damages to date. Critics of the proposed resolution are typically less explicit. They make their views known either by not mentioning the effect of the proposed resolution on tort law or by indicating that they would not challenge that effect if only the proposed resolution could be adjusted to better serve public health goals.

Arguably, however, the principal goal of products liability law is, broadly speaking, *public health*, not compensation. In the cigarette context in particular, the question then becomes whether the public-health goal is better achieved through products liability law or through the types of regulation envisaged in the proposed resolution. Those who would sacrifice products liability law to accept the proposed resolution implicitly assume that the public health benefits of the latter would outpace the public health benefits of the former. But, perhaps because of the general anti-tort sentiment in this country, that presumption has been largely unexamined and is, for several reasons, highly questionable.

First, products liability law comes far closer, at least in theory, to providing an ex post incentive-based type of regulation than any alternative form of regulation now being considered (other than the smokers' compensation regime we are proposing). Moreover, products liability law could have more than just a theoretical impact. It is true that no substantial product liability judgments have been won against the tobacco industry. Nevertheless, products liability law is currently in a state of flux or disequilibrium; and the growing likelihood of many large civil judgments against the industry is a big part of what pushed the industry to the negotiating table and thus what made the $368.5 billion settlement offer possible. In other words, to say that the settlement agreement would produce $368.5 billion while product liability law has produced nothing is to misunderstand what motivated the agreement in the first place.

It would be more accurate to claim that administrative regulation, not tort law, has failed those who have been harmed by cigarette smoking. The FDA has long declined to exercise its authority in this area, presumably because of the political power of the cigarette industry and because of the FDA's lack of expertise regarding how best to regulate. Furthermore, it has been administrative regulation that has effectively derailed otherwise viable products liability claims against cigarette manufacturers. For example, the FTC-promulgated warning labels have given rise to the preemption defense and greatly strengthened the assumption-of-risk defense in tort law. Those defenses have until very recently proved an insurmountable barrier to tort recovery. Thus, in light of this past experience with administrative regulation, it is not clear that we should have much confidence in the expanded role for administrative regulation contemplated in the proposed resolution.

PLACING the PROPOSED RESOLUTION IN CONTEXT

That brings us to our final observation. The history of tobacco regulation makes clear one very disturbing fact. The cigarette industry has, using a variety of strategies, successfully managed to protect itself throughout this century against any form of meaningful regulation. By far, its most successful strategy has been to meet the threat of tough regulations with preemptive, command-and-control-style, anemic regulations. The experience with FTC warning requirements is a case in point. But there are many others. Within the last several years, that practice has been especially evident at the local level, where the industry has supported some state tobacco control legislation in an effort to preempt the authority of city, town, and county governments to control the sale and use of tobacco. With that historical backdrop in place, it is illuminating to look briefly again at the promises and the likely effects of the proposed resolution. As will become clear, the proposed resolution appears to be just one more example — this time on a grander scale — of a very successful long-term tobacco-industry strategy.

CONCLUSION

The proposed resolution states that "[a] key element in achieving the Act's goals will be forcing a fundamental change in the way the tobacco industry does business." With that assessment we completely agree. The proposed resolution also claims that it would "provide for means to ensure that the industry will not only comply with the letter of the law but will also have powerful incentives to prevent underage usage of tobacco products and to strive to develop and market less hazardous tobacco products." As our analysis has indicated, however, that claim is unfounded.

Indeed, as already emphasized, the mix of regulatory regimes chosen by the proposed resolution — mostly command-and-control; some qualified performance-based; and virtually zero ex post incentive-based regulation — is precisely the reverse of what most policy-oriented scholarship would recommend. Moreover, it is, from the tobacco industry's perspective, ideal. In light of the industry's track record, therefore, the choice of that mix of regulatory regimes was probably no accident.

As noted above, command-and-control is the least effective form of regulation in this type of setting. It requires the regulator to have an enormous amount of information about the product, information that the regulator often must rely on the industry to provide. Insofar as the industry is the source of the regulator's information, it becomes relatively easy for the industry to manipulate the process and avoid really having to bear the costs of its actions. Furthermore, the regulations themselves are severely limited by the inability of the regulator to anticipate every counter-move that the industry might make in its attempt to thwart the regulator — or, more accurately, to save the money that would otherwise have to be spent in complying with the spirit of the regulation. As we have argued, those criticisms certainly apply to the settlement's numerous command-and-control regulations. To be sure, the agreement also contains some elements of performance-based regulations, which, in theory, might pose somewhat of a regulatory threat to the cigarette industry. As other critics have noted and our research shows, however, the performance-based aspects of the settlement are rendered quite anemic by the substantial ex ante and ex post loopholes and the relatively minor surcharges for failing to meet performance targets.

Considering the big picture, therefore, we have no trouble rejecting the suggestion that the proposed settlement would somehow substantially alter the culture or incentives of the tobacco industry. To the contrary, the basic incentives of manufacturers would remain. They would still seek to find and to create loopholes in the regulations. They would still seek to misrepresent the risks to consumers and regulators.

Our very strong sense at the end of the day is that the proposed resolution would accomplish precisely what previous efforts to regulate the cigarette industry have accomplished. Specifically, the proposal would create the illusion of regulation (at least initially) while simultaneously protecting the industry and smokers from having to bear the costs of cigarettes.

Based on our analysis, we would recommend that Congress reject the proposed resolution and start over from scratch, this time beginning with the following question in mind: How can we design an effective ex post incentive-based response to the cigarette problem? In our forthcoming *Yale Law Journal* article (cited above), we discuss the framework for beginning that analysis, although much work on the details remains to be done

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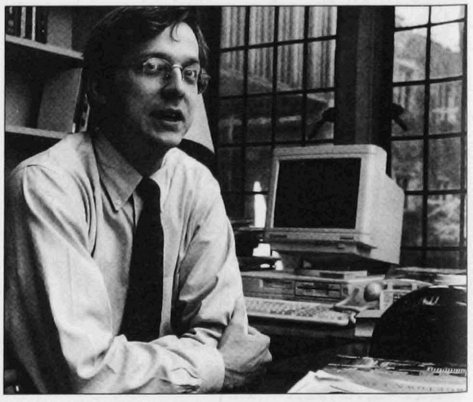
Assistant Professor of Law **Kyle D. Logue** *earned his J.D. at Yale Law School, where he was an Olin Scholar and an articles editor for the* Yale Law Journal. *Following law school, he spent one year as a law clerk to the Honorable Patrick E. Higginbotham on the U.S. Court of Appeals for the Fifth Circuit and two years as a tax lawyer for the law firm of Sutherland, Asbill & Brennan in Atlanta. Professor Logue writes in the areas of federal tax law and policy, insurance regulation, and products liability theory. He teaches courses in the areas of tax, insurance and regulation. Jon D. Hanson is a Professor of Law at Harvard University.*



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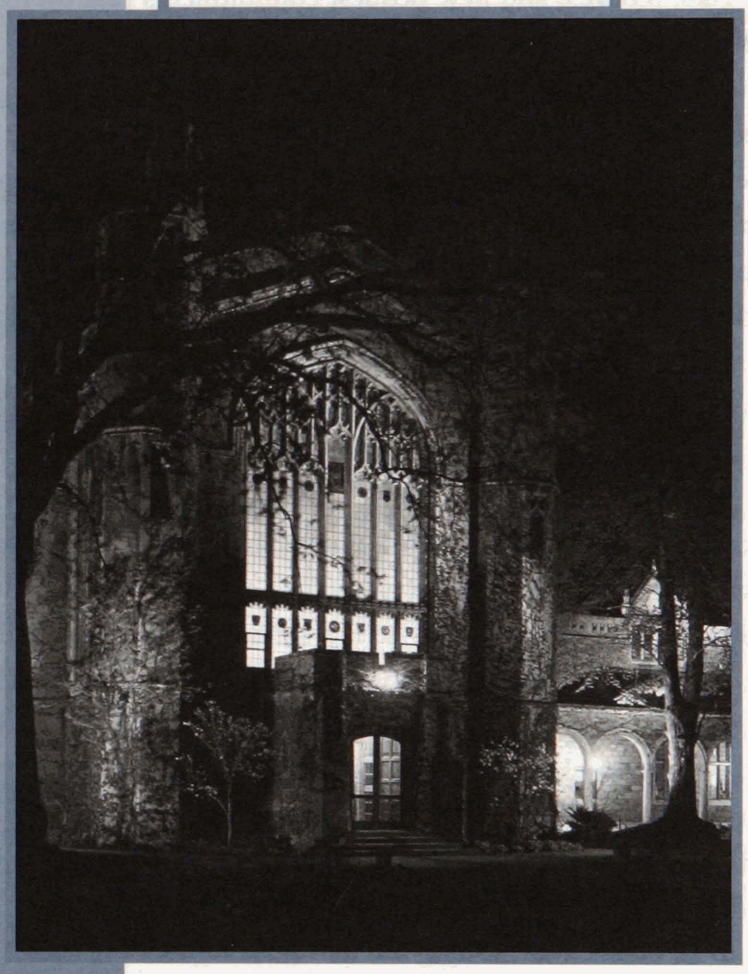

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I hope that this Campaign brings great pride to the Michigan Law family. Your generosity and devotion over the past seven years have brought about a profound change in our Law School. The additions to our endowment and the continual increase in the level of annual expendable contributions have enabled us to pursue the very best faculty and students, and to provide them with exemplary programs. And that is true even though the era when we could count on substantial state financial support for our work is long behind us.

It is profoundly important that this country have a public law school of unsurpassed quality. At a time when cynicism about public institutions is rampant, our nation needs a public law school at which the finest students, regardless of wealth, are able to study with the very finest teachers, and to pursue the broadest, most rigorous, most innovative curriculum in the world of legal education. This Campaign has enabled Michigan to continue to meet that need. As a Michigan graduate myself, I feel tremendous satisfaction in that knowledge, and gratitude to all those who brought it to be.

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The success of this Campaign is a watershed event for the Law School and for me personally. As a product of public schools, I believe that strong public education is central to the future of our society. The Law School has long stood as a shining example of the profound positive influence that public institutions of the highest quality can have on people and on society. It made that difference in my own life. And I know that it has made that difference in many other lives as well.

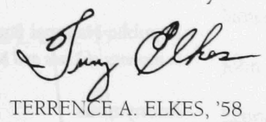
I agreed to chair this Campaign because I knew that it was the only way the Law School I love could continue to be a public beacon for all legal education in this new environment. During the early 1980's, changing needs and priorities in Michigan called into question the long-term financial security of the Law School. We needed to ensure the legacy of William Cook, of providing resources to continue to offer educational opportunities of unsurpassed quality.

The triumphant success of the Campaign is profoundly gratifying to me. I am grateful that so many of my fellow graduates have stepped forward to support the Law School in a time of great transition and growth. And the tangible achievements of our work — the new scholarship support, the new professorships, the new educational programs — underscore Michigan's position of leadership.

It is critical that we not rest on our laurels. Like so many other aspects of society, the world of legal education is profoundly competitive. Public institutions can no longer remain at the top without ongoing private support.

This is not the end; it is only the end of the beginning. That is why Ruth and I chose to celebrate the success of the Campaign by making a new, post-Campaign gift, a five-year challenge grant, to stimulate a new faculty support fund that will help attract and retain the world's finest legal minds.

I know that you join us in celebrating the School's success, and I hope that you will continue to join us in our support for the Law School in the years to come.



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45th Reunion

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45th Reunion

Reunion Participation.....40%
Gifts, Pledges & Bequests..... $1,029,411

35th Reunion

Reunion Participation.....50%
Gifts & Pledges.....$546,000

30th Reunion

Reunion Participation.....43%
Gifts & Pledges.....$392,725

25th Reunion

Reunion Participation.....34%
Gifts & Pledges.....$575,000

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Class of 1977
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Class of 1992
5th Reunion

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GIFTS & PLEDGES

20th Reunion

Reunion Participation.....28%
Gifts & Pledges.....$115,000

15th Reunion

Reunion Participation.....23%
Gifts & Pledges.....$67,344

10th Reunion

Reunion Participation.....17%
Gifts & Pledges.....$20,040

5th Reunion

Reunion Participation.....8%
Gifts & Pledges.....$4,785

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ANNUAL HONOR ROLL

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