THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 42 • NUMBER 2
SUMMER 1999

LAW QUADRANGLE NOTES

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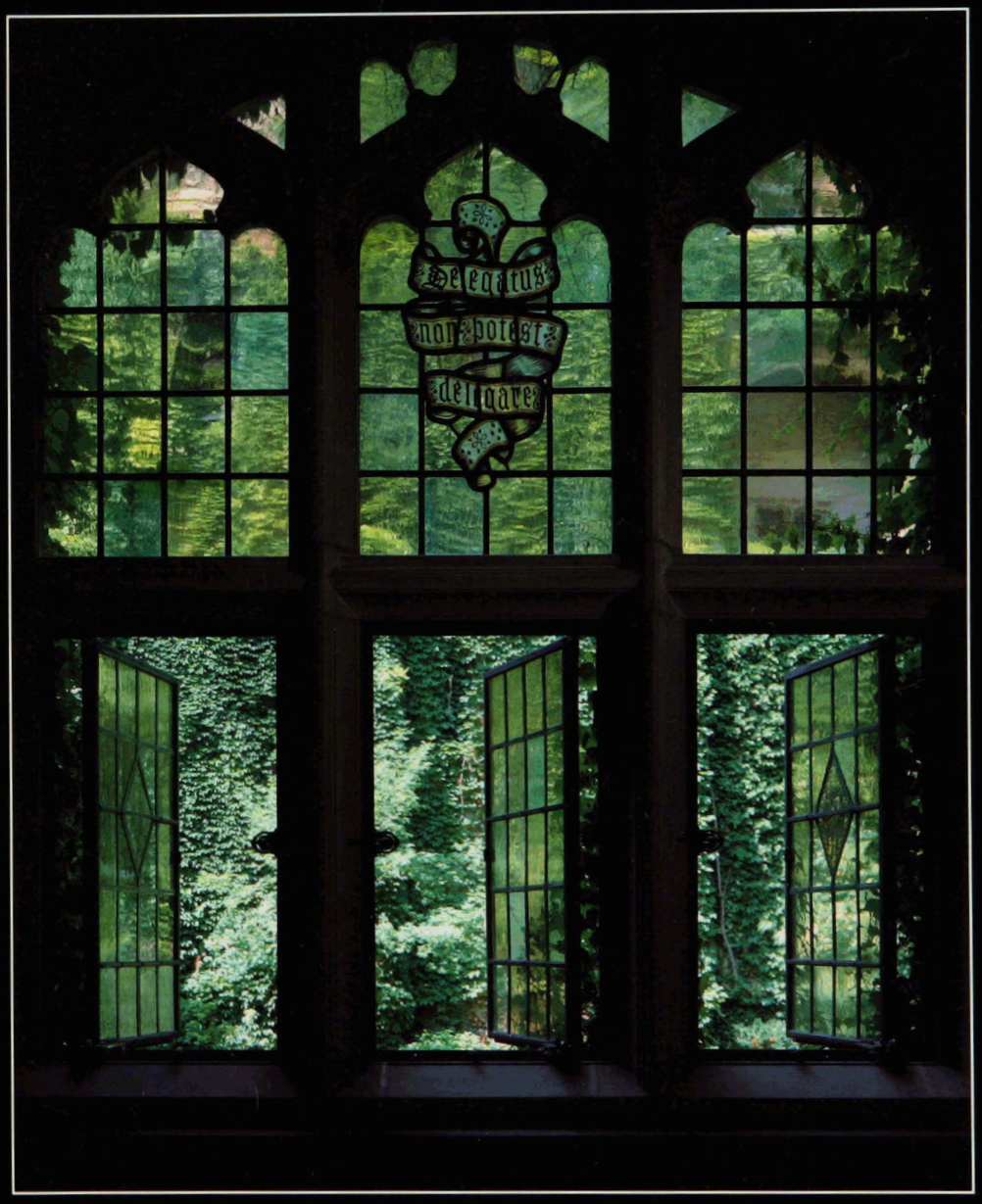

Doing Well and Doing Good: The Careers of Minority and White Graduates of the University of Michigan Law School, 1970-1996

Making Sense of Japan's *Sokaiya* Racketeers

The Individual, the Community, and Physician-Assisted Suicide

UNIVERSITY OF MICHIGAN
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Upcoming Events

July 27	All Alumni luncheon, Pittsburgh
July 28	National Bar Association breakfast, Philadelphia
	All Alumni luncheon, Philadelphia
August 6-11	Annual American Bar Association meeting, Atlanta
August 9	American Bar Association reception, Atlanta
September 15	Raymond W. Waggoner Lectureship on Ethics and Values in Medicine: "Confidentiality and Privacy Issues," Dr. Paul Appelbaum, Department of Psychiatry, University of Michigan Medical Center (lecture to be given at University Hospitals)
September 23-25	"Role and Limits of Unilateralism in International Law," Joint Symposium of University of Michigan Law School and *European Journal of International Law*
	Center for International and Comparative Law advisory board meeting
October 1-3	Reunions of classes of 1949, '54, '59, '64, and '69
October 21	Dean's Forum with Richard W. Odgers, '61, executive vice president and general counsel, Pacific Telesis Group (by invitation)
October 21-23	Law School Committee of Visitors meeting
October 23	Scholarship Breakfast
November 4	Sperling Seminar with Stephen B. Diamond, '68, managing partner, Beeler, Schad & Diamond, PC, Chicago (by invitation)
November 5-7	Reunions of classes of 1974, '79, '84, '89, and '94
November 18	Dean's Forum with Jack D. Sweet, '57, chairman, Guardian Mortgage Company Inc. (by invitation)
December 9	All Alumni reception, New York City
December 18	December Senior Day
February 2, 2000	Congressional Breakfast, Washington, D.C.
February 11-12	*Michigan Law Review* commercial law conference
April 8	Butch Carpenter Banquet
May 13	Senior Day

This calendar is correct at deadline time, but is subject to change.

Have you moved lately?

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

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Cover: Grisaille glass, along the cloister corridor, in Hutchins Hall.

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DOING WELL AND DOING GOOD: THE CAREERS OF MINORITY AND WHITE GRADUATES OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL, 1970-1996
African American, Latino, and Native American alumni have fully entered the mainstream of the American legal profession, and Law School Admission Test (LSAT) scores and undergraduate grade point averages (UGPA) seem to have no relationship to achievement after law school.
— *David L. Chambers, Richard O. Lempert, '68, and Terry K. Adams, '72*

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In the Japanese system, corporate extortion by *sokaiya* gangster-racketeers appears to be widespread. Surprisingly, Japanese executives pay sokaiya despite the fact that payment can result in civil and criminal liability.
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84 THE INDIVIDUAL, THE COMMUNITY, AND PHYSICIAN ASSISTED SUICIDE
The problem of assisted suicide forces us to carefully assess the meaning of death and dying (and by implication the meaning of life and living).
— *Peter J. Hammer, '89*

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MESSAGE FROM DEAN LEHMAN

During my tenure as dean, I have used my messages in *Law Quadrangle Notes* to explore various qualities that help to define an outstanding attorney. I have had occasion to discuss how great lawyers pursue intellectual growth and renewal, maintain integrity, teach others about the law, serve as citizens, and bolster our profession's image. In the coming year, I would like to turn my attention to a different attribute that we admire when we see it: patience.

The most memorable words I ever heard about that quality came from the late Justice Thurgood Marshall during the year that I served as a law clerk to Justice Stevens. I was meeting with one of the Marshall clerks when Justice Marshall came in to talk with him about a case. He insisted that I stay, and after the case discussion was completed we all talked more generally about the practice of law. During the course of that discussion, Justice Marshall offered the following observation: "There's only one kind of reputation that a young lawyer can get in a hurry."

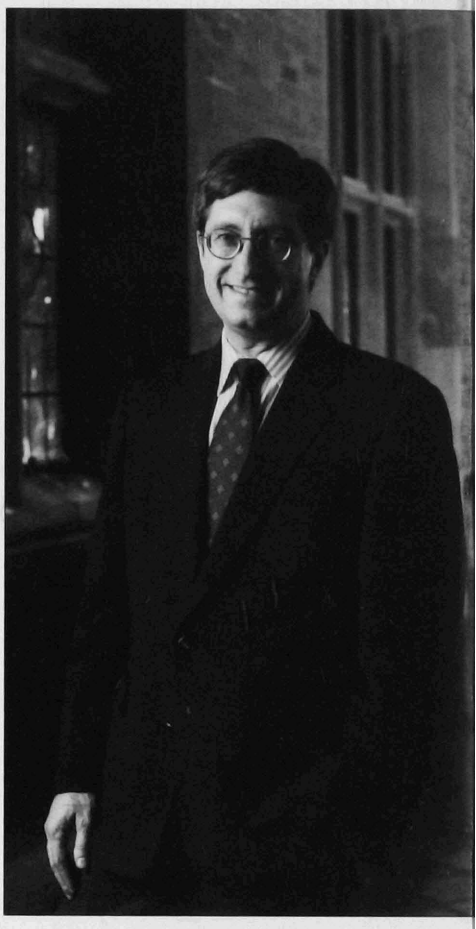
Since that day, I have often remembered Justice Marshall's comment. And I have had occasion to consider the different messages it might convey. On one level, Justice Marshall was noting how much lawyers value the quality of painstaking care. Rigor is assumed to the point of almost being taken for granted. To be distinguished, a lawyer must show a high level of care for a long time. Conversely, even one careless slip can do significant damage to a lawyer's reputation along this critical dimension.

Yet Justice Marshall's words can also be understood in a different way. I believe he was telling us that our time as students was coming to an end. We were in the midst of a transition from lives as students to lives as lawyers. From a campus world with tests and grades to a far more subtle and complex world, a world where many different human qualities contribute to success, a world with no closed-book examinations and no four-point evaluation scales. Reputation emerges slowly and painstakingly, as a lawyer demonstrates a consistent ability to perform work of the highest quality.

Reputation emerges slowly and painstakingly, as a lawyer demonstrates a consistent ability to perform work of the highest quality.

This past May 15, as we launched the Class of 1999 into their professional lives, I thought back to Justice Marshall's words. I wondered how well we had prepared our students for this transition. The pressures of contemporary practice are enormous, and today there is added allure to the dream of making one spectacular leap after another up the ladder of professional success. "Ever faster, ever onward," is a tempting strategy.

How can we let our students know, before they face such temptations, that people do not receive a special prize for reaching the end of life early? That the quality of an accomplishment is not defined by the speed of its production?

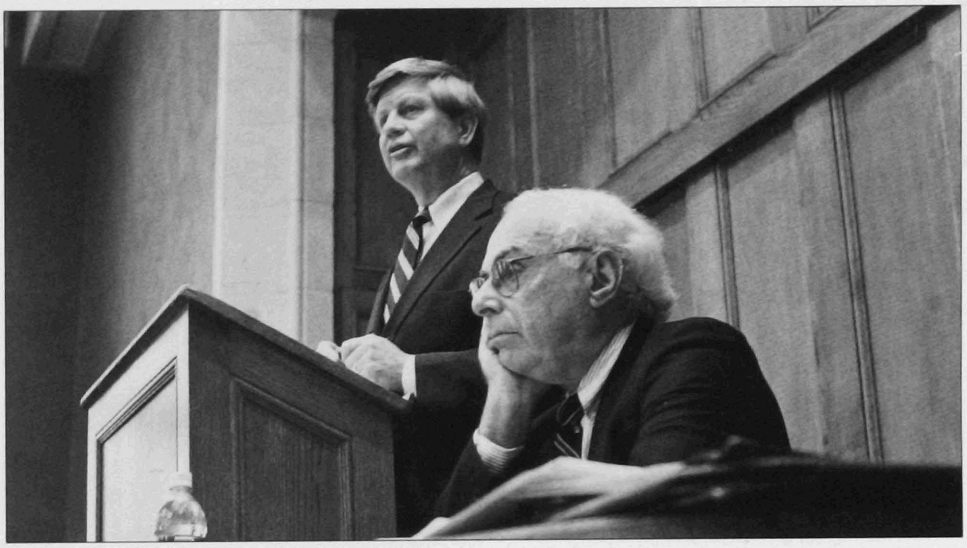


That the achievements that matter most to us invariably require a sustained period of careful attention, hard work, and patience?

This is a challenge for all of us in the profession. It is a challenge for those of us who hope to prepare new lawyers. And it is a challenge for those of us who serve as mentors to our new junior colleagues. I look forward to exploring this theme further in the year ahead.

Jeffrey S. Lehman

Debating judicial interpretation: HANDS ON — OFF



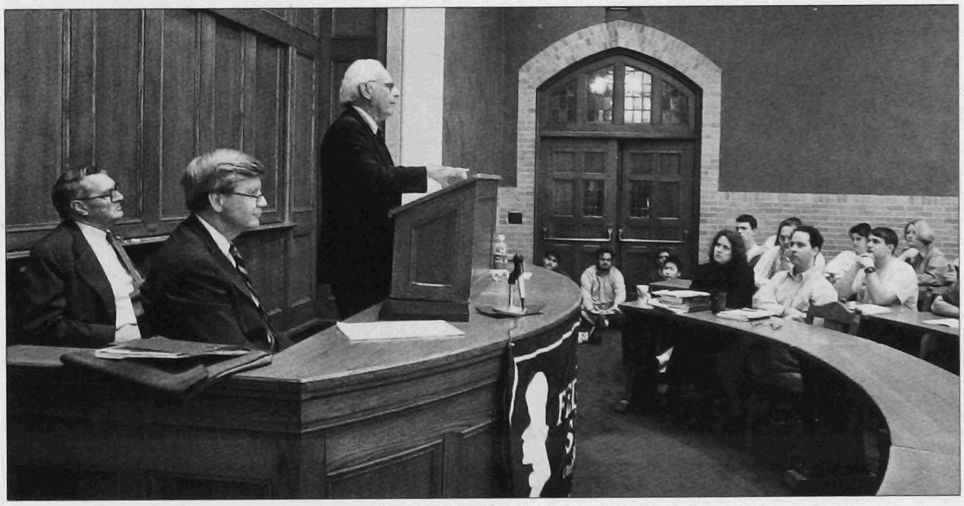
The Hon. Clifford Taylor, of the Michigan Supreme Court, explains his "originalist and textualist" approach to interpreting statutes and a constitution during a debate at the Law School in April. Listening is his debate opponent, the Hon. Avern Cohn, '49, of the U.S. District Court for the Eastern District of Michigan.

The Hon. Clifford Taylor, of the Michigan Supreme Court, and the Hon. Avern Cohn, '49, of the U.S. District Court for the Eastern District of Michigan, squared off to debate "Constitutional and Statutory Interpretation" at the Law School in April under sponsorship of the student chapter of the Federalist Society for Law and Public Policy Studies.

"All judicially enforced constitutionalism limits majority rule," said Taylor, who described himself as using an "originalist or textualist" approach to the interpretation of statutes and the constitution. Constitutions restrain the current population — unless an amendment is passed — to act within rules set by those who went before them, Taylor said.

Among Taylor's other points:

- Judges should interpret the constitution and laws to mean what they meant at the time they were adopted.
- Thomas Jefferson and James Madison said the sense in which the U.S. Constitution was accepted and ratified should be the guide in expounding it, and that we should not make it a "blank paper" by construction. Chief Justice John Marshall said constitutional limits should not be changed "at pleasure."
- As a judge, "I should attempt to figure out, what did these words mean to the ratifiers of the constitution? What did they understand to be meant by [for example] 'cruel and unusual punishment'?"
- "You want to have the interpretation of the constitution be tied to something that isn't subjective. . . . An originalist judge is trying not to be subjective. The activist judge thinks there's nothing wrong with being subjective."



U.S. District Court Judge Avern Cohn, '49, tells listeners that "there's no one answer" to how to interpret statutes and a constitution. Seated, from left, are Professor Emeritus Theodore J. St. Antoine, '54, who moderated the debate, and Cohn's debate opponent, the Hon. Clifford Taylor of the Michigan Supreme Court.

"The judge business is not so simple as Justice Taylor would have us believe," countered Cohn, who said he prefers the term "construction" instead of "interpretation" to describe his decision-making process regarding constitutional and statutory provision. "There's no one answer," Cohn said. "Law evolves."

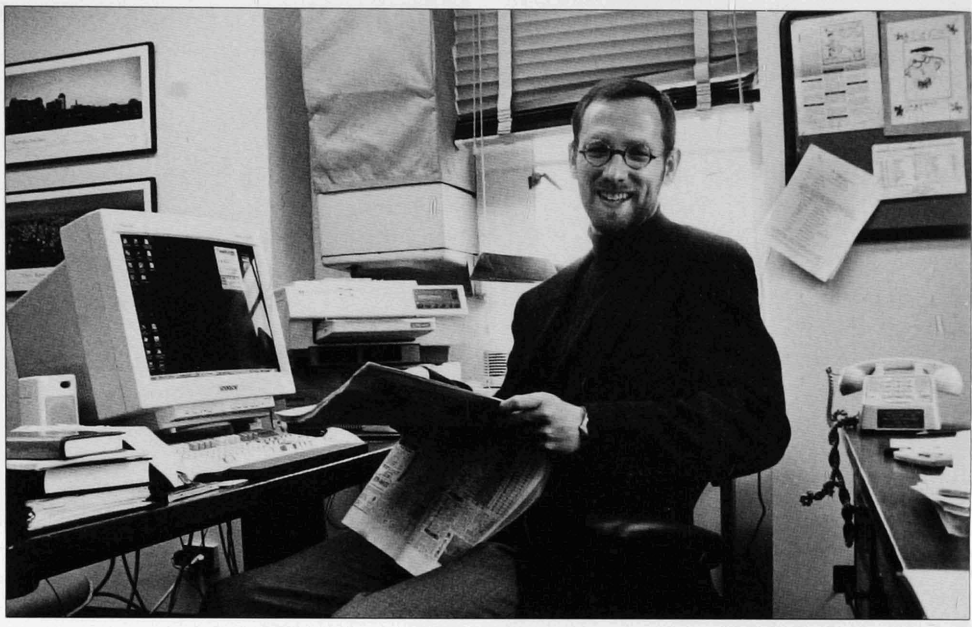
Among Cohn's other points:

- It is wise to remember that the same Founding Fathers who wrote the U.S. Constitution retained slavery and passed the Alien and Sedition Acts.
- If constitutional text is ambiguous or vague, judges must engage themselves in a construction exercise.
- The common law always has played a critical role in judicial decision making. "Having common law authority does not mean and never has meant that a judge can give personal vent" to his or her own preferences.

Both judges often referred to historical figures like Jefferson, Madison, John Marshall, and others, as well as legal scholars. Theodore J. St. Antoine, '54, the James E. and Sarah A. Degan Professor Emeritus of Law, introduced Taylor and Cohn and moderated the debate and question-answer session that followed. "A high-level disputation," St. Antoine called the debate.

Japanese law program thrives

with new joint degree, courses, alumni ties



Mark D. West

Assistant Professor Mark D. West looks back on the 1998-99 academic year as a whirlwind time that yielded significant results. Since his arrival in September 1998 to head the Law School's efforts in Japanese law studies, he has:

- Shepherded to completion a new joint degree program with the University of Michigan's Center for Japanese Studies
- Overseen compilation of a publication for students called *Job Opportunities in Japan for U.S. Law Students and Law Graduates*
- Incorporated Japanese law teachers into courses whose overall responsibility lies with a fulltime Law School faculty member
- Assisted Law Library Director Margaret Leary and library staff in expanding the library's extensive Japanese law collection
- And seen an overall increase in awareness of Law School offerings in the area of Japanese law throughout the School and the University of Michigan.

The joint degree program, approved in April, offers students the opportunity to earn joint J.D. and M.A. degrees in law and Japanese studies. "The degree offers a unique opportunity for students to work under the direction of two faculties with diverse yet complementary specializations, to learn from a closely supervised program of courses tailored to students' professional plans, and to be part of a small cohort of outstanding and highly motivated graduate and professional students," says the description of the new program.

One of the aims of the joint degree program is to "ensure that students attain an optimal level of competence in Japanese language." West, who has studied, taught, and practiced law in Japan and speaks and writes Japanese, is the first non-Japanese teacher to teach the Japanese Law course since Professor Emeritus Whitmore Gray's Japanese Legal System course more than 10 years ago. West is especially proud that during the coming academic year a seminar in Japanese Legal Documents will be taught in Japanese using Japanese materials.

This past academic year, West drew on two visiting professors from the University of Tokyo Faculty of Law — public international law specialist Yasuaki Onuma and comparative law specialist Kichimoto Asaka — who each spent about two weeks co-teaching the Japanese Law class with him. "This is the perfect arrangement for teaching a foreign or comparative law class," West said. The combination allows for an exchange between cultures and specialists within a course in which a permanent Law School faculty member can draw together its different elements.

Taking a cue from the philosophy of Law School Professor Mathias Reimann, West also will be focusing on comparative law of the corporation in his course Comparative Corporate Law, which he plans to teach during the 2000-01 academic year. Reimann has written that comparative law should be integrated into the general subject-matter curriculum, and not taught merely as a separate "comparative law" course. Professor Carl Schneider, '79, will co-teach a similarly oriented Comparative Family Law course with a Japanese professor in winter 2000.

On the employment front, the new 25-page document, *Job Opportunities in Japan*, lists every firm that appears in the Martindale-Hubbell legal employment directory as well as a few other firms. "Where possible, the list indicates the presence of University of Michigan Law School alumni and the names of those graduates who have affirmatively stated a willingness to assist Michigan students and graduates," according to West.

Japanese alumni of the Law School have been exceptionally helpful in offering opportunities for law students and new graduates, West said. In addition, many graduates in Japan who do not have ongoing programs that can incorporate students have offered to lend their help to find positions for students or acquaint them with the country.

The Law School's formal faculty exchange program with the University of Tokyo Faculty of Law, now in its eighth year, also is a boon to the program, West

said. Two or three Law School faculty members have taught in Tokyo each year since the program began in 1992, and that means that a significant number of Law School teachers can call on first-hand experience in Japan in both their teaching and their assistance to students.

Japan remains a heavyweight on the world scene, and will continue to need the services of growing numbers of lawyers, West said. The country's recent economic woes have not decreased the need for lawyers, he said. Legal work merely has shifted toward domestic needs in Japan, and the need for legal services there remains high.

The rich yield of **open discussion**

Law School and University of Michigan students, faculty, and staff members have followed closely as lawsuits, voter initiatives, and other moves have sought to dismantle programs developed over the past 30 years to promote diversity in higher education.

Since late 1997, this has been no sidelines-only watch: the Washington, D.C.-based Center for Individual Rights filed separate suits against the Law School and the University of Michigan challenging their use of race as a factor in making admission decisions. The suits are expected to go to trial later this year. (See story on page 51.)

As is appropriate for both the legal profession and higher education, the suits have generated continuing discussion throughout the Law School and across the U-M campus. Discussion has extended beyond the campus, too. In April, for example, Professor and former Dean Terrance Sandalow debated CIR Senior Counsel Terrence Pell in a program presented by the University Club of West Michigan, an alumni group, and the Muskegon County Bar Association.

Public programs have proliferated, and countless private and small group discussions, often informal in nature, have deepened the campus community's consideration of the role and practice of promoting diversity. Opponents and proponents of affirmative action have shared billing as members of discussion groups, and a variety of talks and other programs have explored the range of what it is to be a member — or not a member — of a variety of racial, ethnic, religious, or other groups in the United States today. Overall, these discussions have widened and deepened understanding, although they have not always brought agreement.

One of the recurring themes of these talks is that women of all races and ethnic and religious groups stand to benefit from programs that promote diversity. But in the vote on Initiative 200 in the state of Washington that eliminated affirmative action, 58 percent of white women rejected affirmative action, Visiting Professor Sumi Cho noted during a program at the Law School in February. The significant support of white women for the measure is even more surprising given the opposition's particular targeting of white women for its campaign based on data showing that white women have benefited the most under affirmative action policies, she said.

"Why would white women seemingly vote against their self interest?" asked Cho, whose home base is at DePaul University College of Law, where she is a professor of law. Exit interviews at the time of voting indicated that white women fear that affirmative action would limit the employment opportunities of their husbands, brothers, etc.," Cho said. In other words, "perhaps they see individual gains as offset by familial loss."

These kinds of insights often arise from the discussions that are taking place at the Law School and across the campus. Such insights easily could remain hidden without the free search for ideas and perspectives that makes education at Michigan truly "higher education."

Cho spoke as part of a program that also featured talks by Gail Nomura, of the University of Michigan's Program in American Culture, and Michigan State Senator Alma Wheeler Smith, a Democrat from Ann Arbor who is the daughter of the late Albert Wheeler, a civil rights pioneer and former mayor of Ann Arbor. Presented by a variety of Law School student groups, the program was part of the National Day of Action in Support of Affirmative Action.

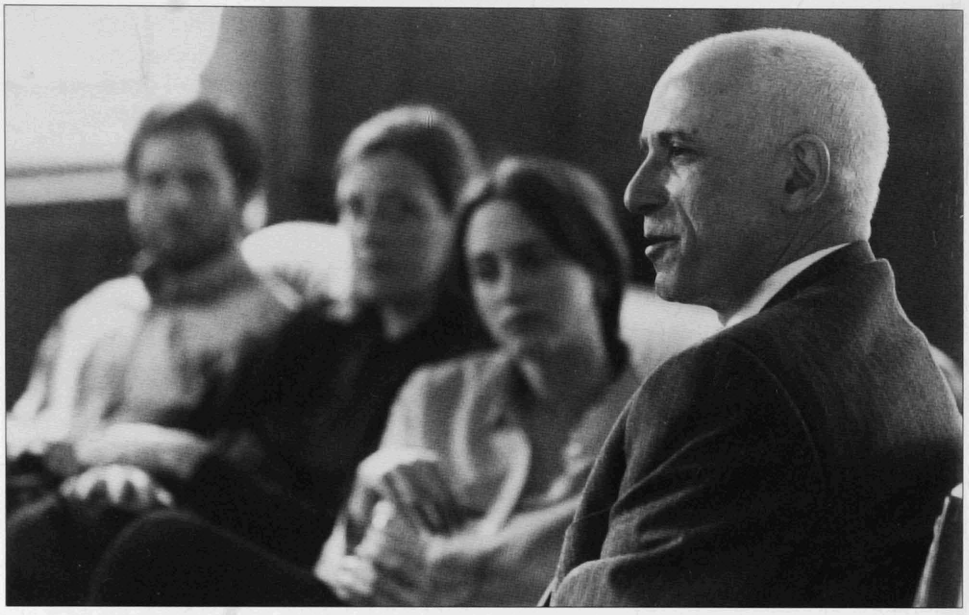
Making Policy to Meet The Winds of Change —

People's understanding of climate change remains so filled with uncertainties that the best policy to deal with it must be a flexible policy, Kenneth Green, director of environmental studies and senior policy analyst with the Reason Public Policy Institute, tells a Law School audience during a program in February. Climate is formed by many loops of natural phenomena — rain- and snowfall, air temperatures and many others — and there are many gaps in our knowledge of what drives it, he said. For example, scientists recently have learned of cycles of activity in the sun and "many people attribute 80 percent of climate change to solar activity," he said. "It's not what we know that tells us what we should do, it's what we don't know that tells us if it will be effective or not," Green said. The program was sponsored by the Federalist Society for Law and Public Policy Studies.

Some help for 'Good Samaritans'

PHOTO BY BILL WOOD/UNIVERSITY PHOTO SERVICES

Visiting Professor John S. Beckerman outlines the need for a program that eases identification of patients who have obtained out-of-hospital "Do Not Resuscitate" orders and provides legal authority for emergency medical workers to honor their wishes.



Good Samaritan laws help emergency medical personnel do their work without fear of liability for negligence, but state emergency medical services (EMS) protocols make it difficult to honor the wishes of patients who do not wish to be resuscitated, Visiting Professor John Beckerman told a midday discussion group of the Health Law Society at the Law School in March.

The laws don't allow EMS workers to honor a patient's wish not to be resuscitated unless a "Do Not Resuscitate Order" (DNR), signed by a physician, is immediately available at the scene of an emergency, explained Beckerman, who is a state-certified Emergency Medical Technician (EMT) and member of a volunteer first-aid squad in his home state of New Jersey, where he rides a 12-hour shift on an ambulance most Friday nights. Without a DNR, he said, "EMTs are required by state-imposed protocols to try to resuscitate unconscious persons, unless they are obviously and irreversibly dead." Faced with an unconscious person, there is no time to interpret a living will or to interrogate a healthcare proxy to determine the patient's wishes, so without a clear and unequivocal DNR, EMTs must try their best to resuscitate the patient, Beckerman explained.

"Most of what we do consists of stabilizing patients and transporting them to hospital emergency departments as quickly as possible," Beckerman said. "Sometimes we lose, or cannot resuscitate, a patient and that is a profoundly depressing experience, particularly if the patient is young. At other times, we know we've helped to save a life, and the feeling that brings is incomparable."

But in some cases the patient and/or his family do not want emergency workers to attempt resuscitation.

Beckerman cited two examples of the difficulty that can arise when EMTs encounter opposition to resuscitation attempts. In one case from New Jersey, a woman's husband died at home after being released from the hospital. She called the county medical examiner (coroner) to come to pronounce her husband dead and also called the local first aid squad to "help in lifting his body onto a bed where it could repose in dignity to await the coroner." Although the husband had obtained a DNR order while in the hospital, she was unable to produce it and was distressed when the responding EMTs and paramedics tried for 30 minutes to resuscitate her husband.

In the other case, which occurred in Wisconsin, the family of a dying patient who had executed both a living will and a healthcare proxy was told by her hospice nurses, "Above all, do not call 911" in event of emergency, since without a DNR order, EMTs responding to a 911 call would be obliged to attempt resuscitation.

"Imagine an EMT, answering a 911 call, perhaps in the middle of the night, faced with an unconscious person, trying to understand and apply a directive like 'I wish, in the event that I develop a terminal or irreversible condition or become permanently unconscious, that my life not be sustained by artificial means or by heroic or extreme medical intervention,'" said Beckerman. "Medical first responders simply can't investigate the facts necessary to make such language meaningful, nor have they the time to do so. The patient would always be dead before we finished. So with respect to emergency medical services, a living will is effectively useless, as is a healthcare proxy."

Instead, he proposed, people with valid DNR orders should wear a necklace or bracelet that informs emergency caregivers of the fact, and statutes should authorize EMS personnel to accept these as proof of the patient's wishes in order to honor those desires. Michigan has recognized out-of-hospital DNRs for several years and New Jersey accepted them last year, he said.

"Previously," he noted, "the Medical Society of New Jersey had perversely taken the position that anyone seeking a DNR was presumed to be incompetent; hence, the society made DNRs very difficult to obtain."

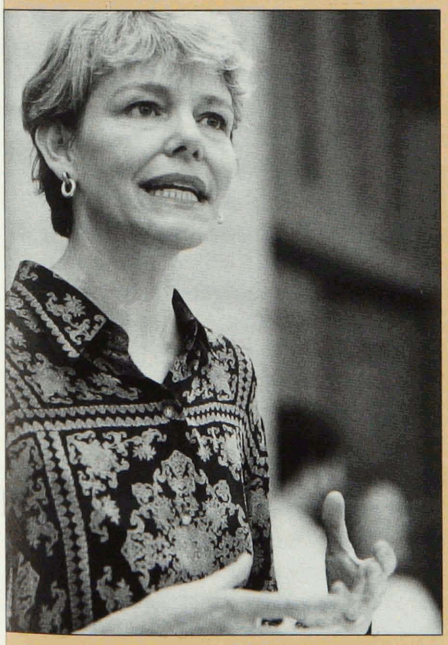
According to Beckerman, DNRs become effective when signed by patients' physicians. EMS workers "would easily become aware of them if they were accompanied by plastic or metal identification bracelets or necklaces, to be worn by the patient, indicating the existence of an executed out-of-hospital DNR."

"All that would have to be done to revoke an out-of-hospital DNR, if the patient changed his or her mind, would be to remove the bracelet or necklace and destroy the document itself. As an EMT and a lawyer, I welcome the advent of the out-of-hospital DNR/bracelet or necklace combination." It would help in respecting patients' wishes and spare relatives the emotional pain of seeing resuscitation attempts being made on a loved-one who did not want them.

Later in March, Beckerman presented his paper "Confronting Civil Discovery's Fatal Flaws and Learning to Live with Them" at the Law School's Legal Theory Workshop. (He was also selected by the Law School Student Senate as one of three recipients of this year's prestigious L. Hart Wright Award for Excellence in Teaching (See story on page 38.)

Offering Help —

"Twenty percent of prisoners are illiterate, twenty percent are functionally illiterate and there is another huge minority that are mentally ill," Kim Easter, '96, of Prison Legal Services of Michigan explained during a program on public service openings for law students in January. "I teach people about their rights." Easter was one of three speakers in the program, sponsored by the Office of Public Service and the Office of Career Services. The others were Bonnie Tenneriello, '95, of the Michigan Migrant Legal Assistance Project, and Carmen Wells of the Michigan Neighborhood AmeriCorps Program. "What I like about my job is my clients," said Tenneriello. "They are so happy to have a lawyer. They do not take having a lawyer for granted." Wells explained that her office is seeking two law students to work with Detroit neighborhoods as part of its work in the Motor City. Office of Public Service Director Robert Precht introduced the speakers and explained that his office maintains a database of openings in public service work that law students can use to help find a position.



Woman's World View —

Bringing a feminist perspective to the study of international law provides "a counterweight to the imbalances of the male monopoly" and raises different, valuable questions, Hilary Charlesworth, professor and director of the Center for International and Public Law at the Australian National University, explained during her talk for the International Law Workshop in January. In her talk, called "Feminist Challenges to International Law," Charlesworth praised the value of "searching for silences" and noted that "all systems of knowledge depend on considering something irrelevant. . . . The silence of women is a critical factor in the apparent stability of international law. Charlesworth was the first speaker in the winter term for the International Law Workshop, which is sponsored by the Center for International and Comparative Law. Other speakers in the winter term were:

- *Jennifer A. Widner, associate professor of political science at the University of Michigan, who spoke on "Building Separation of Powers in Common Law Africa."*
- *Political Science Professor Harold K. Jacobson, who also is a senior research scientist with the Center for Political Studies of the Institute for Social Research at the University of Michigan, spoke on "Using Military Force Internationally: Establishing Accountability."*
- *Mary Ellen O'Connel, a visiting professor from the University of Cincinnati College of Law, who spoke on "NATO in Kosovo: What Constitutes Security Council Authorization?"*
- *Nuala Mole, director of Advice on Individual Rights in Europe Center in London, spoke on "Immunity and International Law — From Pinochet to the Police."*
- *Professor of Law Raj Bhala of The George Washington University and a visiting professor at the Law School, spoke on "Analyzing International Trade Sanctions."*

Spencer, Zearfoss, '92,
offer counsel at Office of Career Services

Students seeking summer jobs or permanent placements are as much a part of the scene at the Office of Career Services as the books about law firms and lists of job openings that line the shelves. Likewise, making an appointment with a counselor is at least as much a part of the job search as keeping your resumé current.

With the addition of counselors Carolyn R. Spencer and Sarah C. Zearfoss, '92, job-hunting students can draw on these counselors' experience as practicing attorneys, as well as that of Director Susan Guindi, '90, who previously practiced in Washington, D.C.

The advantages to students of having a staff of three attorneys are myriad, Guindi commented. "Carolyn, Sarah, and I have experience in and exposure to a wide variety of substantive practice areas and work opportunities in both the public and private sector. Whether you're looking for a job in a mid-sized labor and employment firm in the Detroit area or want to explore working for a city attorney's office or anything in between, we'll be able to give you practical insights and a wealth of information beyond the cold resources of our library."

Spencer, who was assistant director of the Law School's Legal Practice Program from 1996-99, earned her J.D. with honors at the University of Connecticut School of Law and her A.B. from Brown University. After law school she practiced with Wiggin & Dana in New Haven, Connecticut, where she handled federal and state litigation with an emphasis on product liability, medical malpractice, and insurance defense. Subsequently, she was an assistant corporation counsel for the City of New Haven. Immediately prior to coming to the Law School, Spencer was a legal skills instructor and acting director of legal skills at Quinnipiac College School of Law and served as a magistrate for the Connecticut Superior (trial) Court.

New Office of Career Services counselors Carolyn R. Spencer and Sarah C. Zearfoss, '92, offer law students an approach to career counseling that combines the facilities of the Law School with their own experience as practicing attorneys.

Zearfoss, who earned her A.B. in psychology at Bryn Mawr College, graduated *magna cum laude* from the Law School in 1992. While in law school she served as associate editor and then editor in chief for the *Michigan Journal of International Law.* Her student note, "The Convention on the Elimination of All Forms of Discrimination Against Women: Radical, Reasonable, or Reactionary?", won the Eric Stein Award as the best student contribution to the *Journal*. After graduating, Zearfoss did a one-year clerkship for the Hon. James L. Ryan of the U.S. Court of Appeals for the Sixth Circuit and then worked for two years as a litigation associate with the Detroit office of Pepper, Hamilton & Scheetz. She then returned to Judge Ryan to serve as a career clerk for almost four years before coming to the Law School as a Career Services counselor.

In April, Spencer and Zearfoss attended the annual meeting of the National Association of Law Placement in San Antonio. Among the topics covered were the role of career services offices and current issues within law school as well as increasing visibility and outreach to law students, employers, faculty, and alumni. Spencer and Zearfoss returned from the conference excited about sharing this information with students and applying it to enhance the operation of the Office of Career Services.

Guindi and her staff continually reevaluate Career Services' information and assistance programs and keep on the lookout for new areas of service. They have continued Career Services' popular "How to Succeed" series, in which attorneys share

with students their ideas on how to succeed in different work settings. Also, during the academic year the Office invited groups of 25 first-year students to informal get-acquainted programs.

Career Services also has been working closely with the Office of Public Service, and this past March the two offices co-sponsored a well-attended panel discussion on career issues facing gay and lesbian attorneys. "These issues can be difficult and very particular," Guindi explained, "and we wanted to give students exposure to how various attorneys have dealt with them."

She added that the Office also is planning a series of luncheon programs in the fall that will focus on a variety of career choices.

Petitioners win Campbell Court Competition

Like any major trial, this one packed the courtroom. Beforehand, court watchers milled about outside the room, then filtered down the aisles to find seats. A hush settled as arguments were to begin.

When it was all over, third-year law students Lisa Douglass and Wendy Marantz, representing petitioners in the final arguments of the 75th annual Henry M. Campbell Moot Court Competition, emerged as the winners.

Counsel for the respondent, third-year students Matthew Roskoski and Randi René Vickers, marked a competition well fought but, in the end, unconvincing to the three judges who decided the case: The Hon. John Feikens, '41, of the U.S. District Court for the Eastern District of Michigan; the Hon. Karen Nelson Moore, of the U.S. Court of Appeals for the Sixth Circuit; and the Hon. Alfred M. Wolin, of the U.S. District Court for the District of New Jersey.

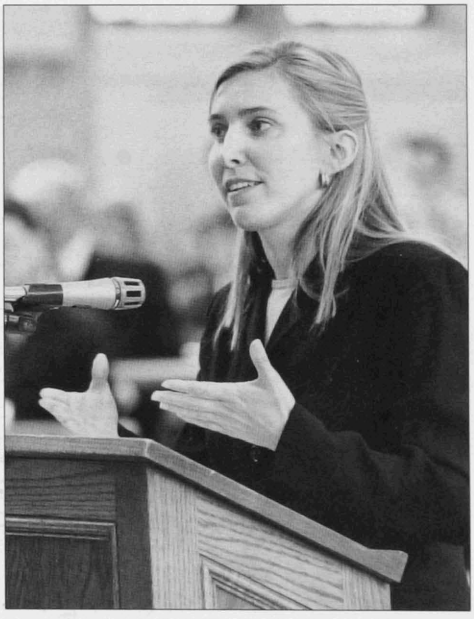
This year's hypothetical case, tried at the Law School in April, involved a small township whose public school system adopted a program of vouchers to allow students to attend private religious schools within the district. The private schools were segregated but did not have race-based admissions. "The voucher program increased private school attendance, but drained the public schools' revenue, resulting in teacher attrition, cutbacks in services, and deteriorating physical plants," according to the "facts" of the case.

Atheist parents of a biracial child sued, charging that the voucher system forced them to send their child to a religious private school or keep him in the deteriorating public system. The Supreme Court granted certiorari to hear the following issues: 1) Whether the vouchers impermissibly violate the 14th Amendment; and 2) Whether the vouchers violate the Establishment Clause of the First Amendment.

The Campbell Competition is named for Henry Munroe Campbell, a Law School graduate who in 1878 established the Detroit law firm that would become today's Dickinson Wright PLLC. Campbell, who for many years was legal counsel to the University of Michigan Board of Regents, successfully argued before the Supreme Court of Michigan in 1911 that the University and its governing body should have constitutional autonomy.

After Campbell's death in 1926, his law partners, in consultation with then-Law School Dean Henry M. Bates, established the competition to foster training in appellate advocacy. The first Campbell Competition was held during the 1927-28 academic year.

Semi-finalists in this year's competition included: Jasmine C. Abdel-Khalik, Elizabeth Burke, Christopher G. Evers, Ted A. Gehring, Charlotte Gibson, Jeffrey Gifford, William G. Jenks, Kenneth J. Pippin, Amar D. Sarwal, Dante A. Stella, Bizunesh K. Talbot, and Shani N. Warner.



Third-year law students Wendy Marantz, above, and Lisa Douglass, below, as counsel for the petitioners, present their winning presentations in final arguments of the 75th annual Henry M. Campbell Moot Court Competition at the Law School in April.

Is technological progress a runaway train?

It's a brave new (virtual) world out there, a world that is being created as you read this by the geometric expansion of computer-based activity worldwide. Do laws developed in the paper and pencil era still apply? Do concepts of ownership and privacy that predate printing have standing on this new frontier? Will credit cards evolve into "e-money" like cash has evolved into credit and debit cards for so many of us?

Experts from around the country gathered for two days at the Law School in March to discuss these and other issues in a symposium presented by the *Michigan Telecommunications and Technology Law Review*. Sponsorship came from the Law School and the University of Michigan School of Information.

The conference, "Challenging Traditional Legal Paradigms: Is Technology Outpacing the Law?", also celebrated the fifth anniversary of the *Review*. A pioneer in the field of electronic academic publishing, the *Review* is available on the World Wide Web at www.law.umich.edu/mttlr. Last spring it also became available in printed form at U.S. law libraries.

The *Review* "was one of the first law journals to champion the use of interactive media to promote informed discourse about the interrelated legal, social, business, and public policy issues raised by emerging technologies," according to Editor in Chief Devin Gensch and Managing Editor/Conference Chair Sea Ann Hutchinson, both third-year law students. "The emergence of new techniques and technologies in computing, telecommunications, biotechnology, multimedia, networking, and information services has created tensions within traditional legal paradigms. Our purpose is to examine these tensions and research the future of law in these emerging areas today."

"I think this is a big thing for business people and lawyers to understand, because to my mind, technology is outpacing what lawyers are thinking," explained Jonathan Rosenoer, director of electronic commerce readiness for Arthur Andersen's computer risk management practice and author of *The Clickable Corporation: Successful Strategies for Capturing the Internet Advantage*, published this year.

Assistant Professor Ronald J. Mann of the Law School explains that credit cards, currently the most popular means of purchase over the Internet among U.S. buyers, are not suitable for widescale Internet use. Some sort of electronic money must be developed for the small purchases that make up much of Internet commerce.

Part of the Internet's appeal for commerce is its low cost — it costs $32 for a counter agent to issue a $400 airline ticket, but only $6 to issue that ticket through an interactive Web site, Rosenoer said. But electronic commerce also is fraught with issues of business practices, privacy protection, security, regulatory compliance, business continuity, and other questions.

Rosenoer's talk was part of the conference portion devoted to discussion of electronic commerce; other discussion topics that day included money; markets and the millennium; and security, standards, and privacy protection. The second day's program was devoted to intellectual property and antitrust issues; topics included property rights in the frontiers of technology; interface of antitrust analysis and software protection; how well Congress deals with technology; and market power and competition in the information age.

Assistant Professor Ronald J. Mann of the Law School explained that Internet commerce will require an easy-to-use "money" that allows businesses to process small orders at a profit. Many low-cost items, like newspaper stories or sports scores, are not appropriate for purchase by credit card because of the processing fees and surcharges that accompany their use. In the United States, Internet buyers use credit cards for 99 percent of their purchases. "It is abundantly clear that credit cards are not effective for these sorts of things," Mann said. "Two to three percent of the Internet market will be a market with very slim margins."

In some parts of the world, Internet buyers use "electronic money" that passes through a bank to the seller, Mann explained. But such money raises questions of coverage under the Truth in Lending Act, since no credit is involved. "It's a good idea to broaden Truth in Lending Act protection" to cover the use of such money, Mann recommended.

In all, nearly 20 speakers addressed issues raised by the spread of electronic commerce. Among them were:
— Linda Markman, associate general counsel for Compuware Corporation, who said that technological advances have not made obsolete current laws regarding malpractice and breach of contract. Most businesses expect to face lawsuits stemming from the Y2K bug (in which computers that tally years in two digits will not be able to read the year 2000 because they will interpret "00" to be 1900). "The Y2K bug ultimately may make some new legal precedent. If that happens I would see it as part of a continuum." There will be some "glitches" as computers shift into the

year 2000 "but it will not be the Armageddon that some people predict and we will continue to move into the new millennium."

— Carey Heckman, a professor at Stanford Law School and a visiting professor at the University of Michigan Law School in 1996-97, compared legal changes in response to technological advances to the growth of the horseless carriage. The first horseless carriage simply was a carriage with a motor instead of a horse, but over time the automobile assumed an identity of its own. The same will happen as laws evolve from the current ones based on 19th century ideas of commerce into forms designed to deal with new ways of conducting business. Heckman co-directs the Stanford Law and Technology Policy Center and the Cyberspace Law Institute, which is a co-venture of Stanford Law School and Georgetown Law Center.

— Marshall W. Van Alstyne, assistant professor in the University of Michigan School of Information, noted that a number of characteristics make the Internet unique, like its lack of geographic boundaries, its existence as a network of networks, its lack of a central administration, its low entry costs, and its diverse sources of content. He also noted that it only can be regulated where information is transmitted and where it is received. Laws are confined geographically, he said, as are community standards, but the World Wide Web is without borders.

— "In simple terms, technology has outstripped copyright owners' ability to enforce their rights," said David Haarz, '76, of Dickinson Wright PLLC in Washington, D.C. Much the same is true for patents, which are territorial in their application.

Conference proceedings were aired live over the World Wide Web and are available at the *Review* Web site.

Paul M. Killey outlines some of the issues he has faced as director of the University of Michigan College of Engineering's Computer Aided Engineer Network. He spoke as part of a discussion of "Security, Standards, and Privacy Protection." Other panelists are Virginia Rezmierski, director of the University's Office of Policy Development and Education, and Associate Professor Paul Resnick of the University of Michigan School of Information.

Law and Information offer new joint degree program

The Law School now offers a joint degree with the University of Michigan School of Information to better train lawyers and information specialists to deal with future needs in both fields.

The joint degree program is one of the few offered by comparable schools in this country. "Although the applications of this new dual degree are numerous, it is anticipated that the program will be most desirable to those wishing to develop expertise in the field of intellectual property (IP), as it relates to cyberspace and other technological advances," according to a Law School description of the program.

"Career opportunities for students who complete the program can be found in both the public and private sector, from the U.S. Justice Department to the 'boutique' IP firms across the nation. Of course, those planning a career in library science or information services will also find this new program of special interest."

Successful candidates in the eight-term joint program will receive a J.D. degree from the Law School and an M.S.I. (Masters of Science in Information) from the School of Information. The School of Information portion of the program offers the option of specializing in library information services or information economics.

As is typical of such joint programs, students must take the full first year at each school, and may mix courses in their third and fourth years.

Changes in the way information is generated, conveyed, stored, and used in commerce and other social interaction have been growing exponentially, according to Assistant Professor of Law Ronald J. Mann, who was instrumental in the discussions that led to the new joint degree program. The legal profession must keep abreast of these changes, he said. Practitioners must learn to use the expanding technology, legal concepts must change to cope with it, and new interpretations or new law must be fashioned to address it.

Should media coverage devote more than 60 Minutes to assisted suicide?

When *60 Minutes* aired the videotape of the death of Thomas Youk last November, the venerable television news magazine ratcheted up the debate over physician-assisted suicide to new intensity. Airing of the videotape, which showed assisted suicide advocate Jack Kevorkian administering a lethal injection to Youk, also heightened attention on media coverage of the issue — an attention that many experts said later pointed up serious media shortcomings.

(Also as a result of that *60 Minutes* show, Kevorkian, who had supplied the videotape to the television news program, was charged with and convicted of murder. At deadline time, Kevorkian and his attorneys said they would appeal.)

Youk suffered from Lou Gehrig's disease, a progressive, fatal illness. When Kevorkian offered the 22-minute videotape of Youk's death to *60 Minutes*, "it was immediately apparent that it was a very big news story, which is our business," *60 Minutes* correspondent Mike Wallace told an audience at the University of Michigan in February. "It was virtually unanimous that it was the kind of piece that Americans should see."

60 Minutes aired the segment "to stimulate argument, to stimulate debate, to cover the issues, but to cover them in such a way that this would be more than just the bare details of an issue," Wallace said.

Wallace was one of a panel of journalists and experts who discussed "Covering Assisted Death: The Press, the Law and Public Policy" in a symposium at the Michigan Union. The program was presented by the Michigan Journalism Fellows with the University of Michigan Law School and the W.K. Kellogg Foundation. The Journalism Fellows program awards mid-career journalists with fellowships to study at the University of Michigan for an academic year.

"The media have yet to fully report that assisted suicide is — and will remain — a story of inequality," Visiting Professor Marc Spindleman says during a program on media coverage of assisted death, held in February. Called "Covering Assisted Death: The Press, the Law, and Public Policy," the program was presented by the Michigan Journalism Fellows, the Law School, and the W.K. Kellogg Foundation. 60 Minutes *correspondent Mike Wallace sits to the left of the podium. Interpreter Joan E. Smith, foreground, translated into American Sign Language for hearing impaired audience members.*

The media took a beating from most participants, with CBS' *60 Minutes* often serving as critics' catalyst. Wallace acknowledged that *60 Minutes* should have handled the issue differently by adding interviews and additional context for what viewers saw in the videotape. He told participants that *60 Minutes* would air a segment featuring several other people with Lou Gehrig's disease who had rejected physician-assisted suicide for themselves. (This segment of *60 Minutes* aired in March.)

Keynote speaker Arthur Caplan, director of the Center for Bioethics at the University of Pennsylvania, told participants that his content analysis of 1,400 news stories on physician-assisted suicide in the period surrounding the *60 Minutes* show revealed that half of the stories reported the issue as a crime story. Many of the stories dealt with Kevorkian the man and a little more than 25 percent of the coverage centered on discussion of the ethical issues involved in *60 Minutes'* airing of Kevorkian's videotape.

In terms of discussion of the issue, he said, less than 5 percent of the stories focused on the views of ethicists. Caplan concluded that "Dr. Kevorkian hijacked the media with his own agenda. The result is a widespread discussion of end-of-life that ignores many of the points of view of people in the debate among policy makers."

Overall newspaper and television performance in covering the issue was "something close to failure," Caplan said. As for *60 Minutes'* performance in using Kevorkian's videotape of Youk's death, it was "an opportunity missed," he said.

"The media have yet to fully report that assisted suicide is — and will remain — a story of inequality," said Visiting Law Professor Marc Spindleman, who substituted for Professor Yale Kamisar.

"Assisted suicide touches on a number of different and interlocking inequalities: of race, sex, sexual orientation, class, age, and — not least of all — disability."

Spindleman, a former researcher for Kamisar, who is nationally known for his opposition to physician-assisted suicide, taught a Law School seminar on Physician-Assisted Suicide in Context during the winter term. He also has written several articles on the issue.

U.S. media have not shown a long-standing commitment to covering issues, Spindleman said. "When death hangs in the balance, the story of assisted suicide as a story of inequality cannot and should not be told in silence."

"I think there are no ready answers to these difficult, philosophic questions," Spindleman said in his prepared remarks. "But death isn't purely or merely a philosophic exercise — and there is a grave risk associated with endorsing the wrong answer. Mistakes in death cannot be undone. And mistakes, if any there be, don't occur in a vacuum, but in a social context of real inequality and misogyny.

"Perhaps what worries me most is not that the media have given us no definitive answers, but rather that the media have, on the whole, shown no long-standing interest or propensity to grapple with these questions — and they should."

(Another Law School faculty member, Assistant Professor Peter J. Hammer, '89, examines the issue of assisted suicide in "The Individual, the Community, and Physician-Assisted Suicide," which begins on page 84.)

Some participants felt media coverage of the issue had been adequate. Overall coverage of the physician-assisted suicide has been "relatively fair and objective," said Faye Girsh, director of the Hemlock Society USA. "I thought the *60 Minutes* coverage was brave, important, and something that needed to be seen by the American public. We don't see how people die anymore." Added Wayne State University Law Professor Robert Sedler: "Whatever else the CBS video has done, it forces us to confront the real-life suffering that was Thomas Youk's."

What am I Bid? —

"Pass" takes on a whole new meaning at the annual Casino Night, with faculty members like Professors Richard Friedman, top, and Douglas Kahn as dealers at the blackjack tables. The annual fundraiser, held at the Michigan League in March, is sponsored by the Law School Student Senate (LSSS). In another of its fundraisers, LSSS' annual auction to benefit the Student Funded Fellowships program raised a record $29,411, enough to fund 10 student fellowships. Top draws: dinner with Professor A.W. B. Simpson, followed (at $1 less) by dinner with Bob Dole. The auction was held in May.

Old ways light new path to justice

Few attorneys sidestep court and instead call on a grandmother, great uncle, or community role model to help solve a dispute. In the traditional American Indian system of peacemaking, however, that's exactly what might happen. From off the reservation, peacemaking looks like a kind of alternative dispute resolution. On the reservation, it's increasingly being seen as the most sensible and least harmful way to remedy wrongdoing.

Peacemaking and other traditional means of dispensing justice are gaining adherents on U.S. reservations as Native Americans struggle to cope with many of the same crime problems as the rest of the country. "There cannot be a quick fix to reverse decades of problems and the deterioration of our social systems," according to Ronald G. Douglas, '83, acting chief judge for the Saginaw Chippewa Tribal Court and a justice of the Court of Appeals of the Grand Traverse Band of Ottawa and Chippewa Indians.

"The Peacemaker Court brings one institution back into the community as a visible beginning of that process. The role models are relatives and neighbors. The Indian community values are not seen in movies or [on] entertainment channels; they are seen every day in how we treat old people, how we value the weaker person, and in what possessions we value. Children imitate, but it takes a lot of repetition and a long time to get them to imitate what we want them to copy. Peacemakers will be there every day and will eventually bring changes that the community wants to restore."

Douglas' comments were part of the American Indian Law Day 1999 program held at the Law School in March as a prelude to the annual Ann Arbor Pow Wow, "Dance to Mother Earth." Presented by the Native American Law Students Association, Law Day also included discussions of reserved treaty rights, the Indian Child Welfare Act, and gaming and Indian law.

The peacemaking approach "sees crime as something that a group commits, not as an individual thing," Douglas explained during Law Day's panel discussion of traditional justice programs.

Fellow panelist Phil Memberto, a peacemaker with the Little River Band of Ottawa in Michigan, said that peacemaking "empowers us to handle our own affairs" and seeks resolution of the problem rather than punishment of the guilty. Help may come from distant relatives, or even the clan, if the immediate family cannot handle the issue.

Memberto, who mostly deals with young people because "if we lose the youth early on it's really hard to get them back," said his training as a peacemaker reacquainted him with the wisdom of the Ottawa elders.

"A lot of times what they wanted to find was a holistic approach," he explained, "and of course in finding that holistic approach you have to take responsibility for what you did. The elders in our community really thought things through. They didn't just pass judgment. They didn't always look for something punitive. They tried to find a resolution for the problem."

Peacemaking seeks to keep transgressors out of the adversarial judicial system and the corrections system. "We do not want them to get back into 'the system'," Memberto said. "The most important thing is that we're starting to develop some healing."

However, "the gateway to tribal sovereignty . . . is the tribal courts and the police," noted panelist Robert Clinton, a University of Iowa law professor and chief justice of the Winnebago Supreme Court. "As long as you've got the adversarial courts, what should be the role of tribal tradition and custom?" Clinton asked. It's "not that simple" to apply tribal custom and tradition to adversarial proceedings.

"There are limits to its codification," he said of tribal custom. "It stops evolving when it is codified." Incorporating tribal custom into court proceedings, he added, "is a matter of being respectful."

Judge Ronald G. Douglas, '83, of the Court of Appeals for the Saginaw Chippewa, explains the use of the Peacemaker Court during American Indian Law Day 1999 at the Law School in March. Fellow panelists are, left, Phil Memberto, a peacemaker with the Little River Band of Ottawa in Michigan, and right, Robert Clinton, a professor of law at the University of Iowa and Chief Justice of the Winnebago Supreme Court.

Debating domestic violence laws

Cathy Young, vice president of the Women's Freedom Network and author of CEASEFIRE!: *Why Women and Men Must Join Forces to Achieve True Equality* (The Free Press, February 1999), and Clinical Assistant Professor Andrea Lyon, author of "Be Careful What You Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence in Two Cities in Michigan," *Michigan Journal of Gender and Law,* Vol 5, Issue 2, 1999, met in front of a packed audience in March to debate domestic violence laws. The debate was sponsored by the Federalist Society for Law and Public Policy Studies.

"I would like to see domestic violence laws reformed, but I don't want to see them discontinued," said Young. Her concept of reform would not go back to the times when the police had to witness the violence before they would take it seriously, but she would like to see responding police officers have more discretion over whether to make an arrest or not. She also believes that mandatory prosecutions and personal protection orders, where complainants are not allowed to drop charges, "can interfere with the possibility of reconciliation . . . . They can dis-empower women, and can be paternalistic toward women."

"Women are no less likely to abuse power than men," she said. "We need to be concerned for the rights of all people involved." Domestic violence should not be a gender issue — it is an individual issue. Young is concerned that "domestic violence laws are being applied to cases that are actually trivial," and she would prefer to see domestic violence treated more like any other assault.

PHOTO BY BILL WOOD/UNIVERSITY PHOTO SERVICES

The video monitor captures Clincal Assistant Professor Andrea D. Lyon as she tells a standing-room-only audience that "I think that to say that domestic violence is not an issue of gender is just blind." In a program held in March and sponsored by the Federalist Society for Law and Public Policy Studies, Lyon and Cathy Young, vice president of the Women's Freedom Network, debated the question "What's Wrong with Domestic Violence Law?"

Although both Young and Lyon agreed that there have been horror stories of abuse toward women, Young's interviews with women have led her to conclude that the problem is overstated.

And then — from Lyon.

"Do I think that domestic violence law the way it exists now is perfect? — The answer is 'No.'

"Do I think the system is working great? No I don't.

"Do I think therefore that we should stop thinking about domestic violence as a serious issue for women and about women? — No I don't," Lyon declared in her opening response to Young.

The horror stories we hear about are closer to the norm, and women do, indeed, need all of the protection the law has to offer, Lyon stated. Because there are problems with the law and how it gets applied doesn't mean that we should get rid of the laws. "I think the laws always need fine tuning and we need room for discretion," Lyon said.

"Domestic violence is an extremely serious problem for women," according to Lyon — based upon her many years of representing batterers and their victims. "If you don't take it seriously early, the level of violence moves up."

Lyon is concerned that "history matters — the fact that it was considered to be okay for men to beat their wives, for many years, by men, the police, the courts. . . . It may not be 'safe' to still say that wife beating is okay, but there are people who still believe it."

Today's security threats *v.* yesterday's rules

The end of the cold war has heated up national security issues because the old enemies are gone and the current ones are moving, ever-changing targets. No longer can those who threaten national security be identified by the borders within which they make their headquarters. No longer is there a shared national understanding of who the good guys are and who the bad guys are.

"The threats are out there and we are not sure exactly where or when we must confront them," according to Elizabeth Rindskopf Parker, '68, former general counsel for the Central Intelligence Agency (CIA) and currently general counsel for the University of Wisconsin. "We really are not well-informed as a nation. The national consensus has been broken."

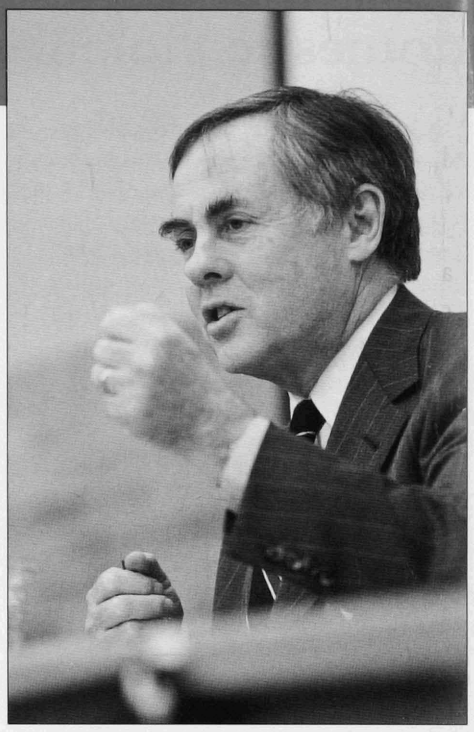
She opened the symposium "Post-Cold War International Security Threats: Terrorism, Drugs, and Organized Crime," held at the Law School in February; her support and assistance were significant in organizing and presenting the two-day program and her presence and questions throughout the formal and informal discussions reflected her abiding interest in the issue of changing security needs and methods.

The conference celebrated the 20th anniversary of the *Michigan Journal of International Law.* Papers from the program appear in 20.3 *Michigan Journal of International Law* (Spring 1999).

Panel discussions ranged widely: defining terrorism and the financial aspects of terrorism; law enforcement and evidence gathering in the international arena; weapons of mass destruction as tools of terrorism.

"These issues are highly important to our world," Dean Jeffrey S. Lehman, '81, emphasized in his welcome to participants. "The array of talent that has been assembled in Ann Arbor [to discuss them] in the next two days is without parallel."

Organizers presented the symposium to "contribute to the discussion of the intersection of international law and



The rhetoric that compares opposition to drug production and distribution to a war is "extremely unhelpful," Anthony C.E. Quainton explains during a panel discussion on the security threat posed by drug trafficking. "Wars can be won. The practicality of the war on drugs is that as long as there are consumers it's unlikely that the war on drugs in the Andes, Asia, etc. will come to an end," said Quainton, president and CEO of the National Policy Association. During his 38-year career with the U.S. Foreign Service, Quainton served as ambassador to Peru, Kuwait, Nicaragua, and the Central African Republic, headed the U.S. government's counter-terrorism program, and most recently was director general of the Foreign Service and director of personnel. Quainton also delivered the two-day program's keynote address.

Elizabeth Rindskopf Parker, '68, and Assistant Dean for International Programs Virginia Gordan confer during the symposium on international security threats held at the Law School in February. Parker, former general counsel for the Central Intelligence Agency and now general counsel for the University of Wisconsin, and others at the two-day program noted that changing international conditions are blurring the distinctions between intelligence gathering and law enforcement agencies.

"It's not at all clear anymore that all of the players in international relations are government officials — witness the efforts to eliminate land mines. I think you will see foreign relations of the United States increasingly impacted by NGOs (non-government organizations)."

— ANTHONY C.E. QUAINTON

international security concerns," said third-year law student Joshua Levy, editor in chief of the *Michigan Journal of International Law.*

There was national consensus on security issues after World War II, Parker said. Americans knew the threats to them, knew who to watch, and knew their own weak spots. International laws and security practices were formed during this period and functioned well until the national consensus on security "fractured a bit" during the Vietnam era. Then, during the mid-1980s, there came a burst of "transnational threats" like drug trafficking, terrorism, and international crime. Often, these new threats were of a mixed character that incorporated parts of each.

The demise of the Soviet Union in 1989 "created yet another dramatic change in the world" and a "real challenge to legal structures of the world," she said.

For example, today the separation of traditional intelligence gathering from law enforcement is blurring. U.S. embassy staffs now include intelligence gatherers like CIA agents as well as law enforcement personnel like those with the Drug Enforcement Agency (DEA).

As David Bickford, former under-secretary of state and chief counsel to the British security and intelligence agencies MI5 and MI6, noted: U.S. intelligence sources apparently provided information to Turkish law enforcement personnel that the Turks used to capture an Armenian resistance leader in Africa recently, but the U.S. intelligence people had no guarantee that the resulting trial in Turkey would be fair.

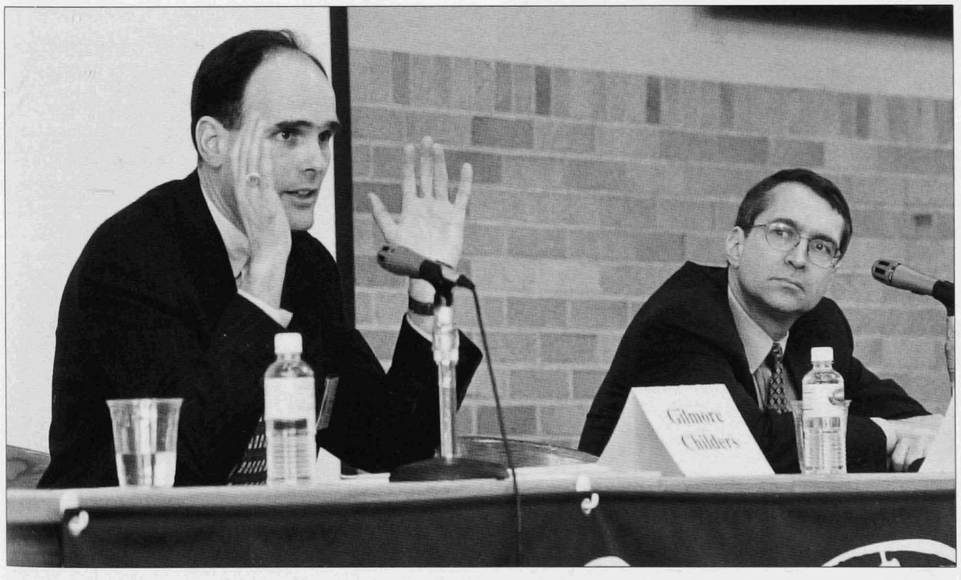
The "cultures" of law enforcement and intelligence gathering are very different, Bickford said. There are "grave concerns expressed, and rightly so," over intelligence operatives being turned into an international police force, added Fred Hitz, former CIA inspector general and now a professor at Princeton University's Woodrow Wilson School.

In addition, the rise of International Criminal Organizations (ICOs) that operate in many countries has outstripped solely national ways to cope with them, Bickford said. He suggested that the international community adopt toward ICOs an approach similar to what it uses for "rogue" nations.

ICOs are a significant part of the new reality of diplomacy and international security, according to Anthony C.E. Quainton, president and CEO of the National Policy Association and a 38-year veteran of the U.S. Foreign Service.

"What we wanted were allies and friends" after World War II. The world's lines were defined by the United States and the Soviet Union, explained Quainton, the conference's keynote speaker and a member of the panel that discussed drug trafficking. Now, "the world has obviously changed, and as we have responded to those changes we have begun to realize that we have to deal with highly pluralistic solutions.

"It's not at all clear anymore that all of the players in international relations are government officials — witness the efforts to eliminate land mines. I think you will see foreign relations of the United States increasingly impacted by NGOs (non-government organizations)."



J. Gilmore Childers, who was the prosecutor in the World Trade Center bombing case, explains how he and his team had to squeeze their case into a short time span because his opponent, Robert Precht, right, then lead attorney for the defense, insisted on insuring his client's right to a speedy trial. Childers, senior trial counsel for the U.S. Attorney of the Southern District of New York at the time of the trial, now practices with Orrick, Herrington & Sutcliff in New York. Precht, a federal public defender in New York City at the time of the trial, now is director of the Office of Public Service at the Law School. The two appeared on the panel "Prosecuting and Defending a Foreign Criminal."

First refugee law colloquium unites experts, students

Experts in refugee and asylum law from around the world joined forces with law students in April at the Law School to wrestle with the growing issue of nations' attempts to contain refugees within their countries of origin. After digesting background papers that students in Professor James Hathaway's Comparative Asylum Law seminar had spent a term preparing, trading comments, and defining their areas of agreement, the group of overseas visitors and students spent two intensive days formulating recommendations to distribute to a wide range of policy makers, refugee work leaders, and scholars.

Daily headlines of the rush of refugees out of Kosovo accented the urgency of the participants' work. Their discussions also coincided with the fifth anniversary of the genocide in Rwanda that killed 800,000 people in about eight weeks in 1994. (See story on page 22.)

This was the first colloquium of this kind to be held at the Law School since Hathaway, director of the Law School's program in refugee and asylum law, founded the program last year. At deadline time, the group's recommendations had not been finalized for distribution; they will be discussed in a later issue of *Law Quadrangle Notes*. The thrust of the gathering was clear, however. As Hathaway, put it: "It seems to me that in the field of refugee law that intellectual conversation in the field of refugee law ought, if at all possible, to lead to concrete results for the people who need them — and that is the goal of this colloquium."

"We couldn't be meeting at a better time, in the sense that the world is talking about refugees," said moderator Philip Rudge, who was spending his final weekend at the Law School after co-teaching with Hathaway. Rudge, who has taught at the University of Tubingen in Germany and worked for the British Ministry of Overseas Development in Southeast Asia, most recently was the founding general secretary of the European Council on Refugees and Exiles.

In a talk to Law School faculty a few days before the colloquium, Rudge had decried attempts by growing numbers of nations to keep refugees within the countries they wish to flee. Referring to the Kosovo crisis, he said in notes prepared for that talk, "I am sure you noticed that because there was no plan, no preparedness, the first instinct of the European countries was to close their frontiers. And below the immediate anguish, the rush to help, the genuine humanitarian action, is in my view a deeper and more insidious process, which is about the growing evasion of responsibilities for refugees and a falling off in what you might call ethical internationalism."

International experts who took part in the colloquium included:

- Deborah Anker, of Harvard Law School, head of the immigration and refugee clinic located at Greater Boston Legal Services and co-founder of the Women Refugees Project
- Jean-Yves Carlier, professor at the Université catholoque de Louvain in Belgium, and author of several books and articles on refugee law, among them *Who is a Refugee?* (Kluwer Law International, 1997)
- Lee Anne de la Hunt, director of the Legal Aid Clinic at the University of Capetown, South Africa, and a member of the team that drafted South Africa's new refugee protection legislation
- Rodger Haines, deputy chairperson of New Zealand's Refugee Status Appeals Authority, a lecturer in immigration and refugee law at the Faculty of Law, Auckland University, and a court lawyer who specializes in administrative law, immigration law, citizenship law, refugee law, customs law, and extradition law
- David Martin, University of Virginia professor of law who teaches immigration, constitutional law, and international law, and from 1995-98 general counsel of the U.S. Immigration and Naturalization Service
- Veerabhadran Vijayakumar, who introduced refugee and humanitarian law as an undergraudate seminar course at the National Law School of India University and now holds the school's Chair in Refugee Law endowed by the UN High Commisioner on Refugees.

Law student participants included: Deborah Benedict, Jonathan Chudler, Anne Cusick, Michael Kagan, Rachel Lessem, Sheila Minihane, Lakshmi Nayar, Ali Saidi, and Kathryn Socha. Student Frank Richter contributed to the research but was unable to attend the colloquium.

In a circle of cooperation, refugee/asylum law experts from around the world and law students join forces to forge recommendations to deal with the growing issue of internal flight/relocation/asylum during a two-day colloquium at the Law School in April.

Rodger Haines, deputy chairperson of New Zealand's Refugee Status Appeals Authority, makes a point as law student Anne Cusick takes notes on her computer for one of the periodic briefings that colloquium participants used to focus earlier discussion and continue progress. Listening are Deborah Anker of Harvard Law School and Veerabhadran Vijayakumar of the National Law School of India.

PHOTO BY PAUL JARONSKI/UNIVERSITY PHOTO SERVICES

Liberia-Bound —

Second-year representative Patricia Kim and third-year representative David Smith sort donated law books that the Law School Student Senate collected for the law school in Monrovia, Liberia, where law students have few books or other supplies for their studies. American law books are especially useful because Liberia's legal structure is modeled after the U.S. system. As one American working with the law school in Monrovia reported, "There are two books per class, one for the teacher and one on reserve for the students — in most classes." The Liberian law system is "an exact replica of the U.S. system," so "every book that is supplied here is of immediate and absolute value."

Butch Carpenter weekend
features discussions, banquet

The Black Law Students Alliance's annual Butch Carpenter Scholarship Celebration extended over three days in March this year, with two discussion programs leading up to the 21st annual banquet and the keynote address by the Hon. Victoria Roberts of the U.S. District Court for the Eastern District of Michigan.

Roberts, a University of Michigan graduate and former president of the State Bar of Michigan, recalled that when she arrived at the U-M in 1969 it was "a time when this University was just beginning to look beyond test scores and grades in identifying minorities with merit to enter the University. A risky proposition then, and now, but a risk that would ultimately contribute to a stronger black middle class, a risk that would insure paths to success."

Slavery and legal segregation have been eliminated in the United States, but a racial divide still exists that puts a "value added" premium on being white, Roberts said.

The Hon. Victoria A. Roberts of the U.S. District Court for the Eastern District of Michigan delivers the keynote address at the 21st annual Butch Carpenter Scholarship Banquet in March.

"With the elimination of official segregation, the challenge of the 21st century is to reconcile laws and public proclamations with how we really treat people, and to eliminate the 'value added' mindset that has caused an intrinsic value to be placed on whites and led to a devaluing of blacks — still a vestige of slavery."

She quoted Theodore Shaw, head of the NAACP Legal Defense Fund and a former member of the Law School faculty: "When white people would trade places with black people and not feel like they're giving something up, then we can say we're done."

"This movement — to get us to a place where race no longer matters — will need *your* energy and creativity, and the support of whites," she said. "While there is no blueprint to follow, the alliances that led to the successes of *this* century, and the last, must be forged again. As part of the emerging, burgeoning, educated black middle class, the obligation — to get us to a place where race no longer matters — is yours, is ours."

The banquet and associated activities honor Butch Carpenter, a law student who was known for his dedication and commitment to community development, whose life was cut short during his tenure as a law student. The Butch Carpenter Scholarship, given in his honor each year, this year was awarded to first-year law students Alaina C. Beverly and Michael Caine.

Olati Johnson, assistant counsel at the NAACP Legal Defense and Education Fund Inc., makes a point during discussion of "The Legal Significance of Affirmative Action in Society," a part of Butch Carpenter Weekend in March. Her fellow panelist is Godfrey Dillard, '73, of Evans & Luptak, P.L.C. in Detroit and head of the Center for Affirmative Action Preservation (CAAP).

The three-day weekend also included programs on the two days preceding the Saturday evening banquet.

Friday's program, devoted to discussion of "The Political Significance of Affirmative Action in Society," featured Democratic State Senators Alma Wheeler Smith, of Ann Arbor, and Virgil C. Smith, of Detroit.

"Thirty years [of affirmative action] might have been enough if Congress and the [state] legislature had done their jobs and made affirmative action work," Alma Wheeler Smith said. "When affirmative action was put in place, the legislature sat on its hands. It didn't support education, [or] counseling for students, didn't make a dysfunctional village functional so that when students went to school they were prepared to function. . . . We use higher education as the point at which the cycle of poverty is broken. . . .

"Does the University of Michigan need to maintain affirmative action? I think it certainly does, until the legislature of Michigan begins to do its job, which is to spend dollars so that when a child begins school the support is there so the learning process that we expect takes place. Until we live up to our responsibility, I think affirmative action will be needed for a long time."

Said Sen. Virgil Smith: Affirmative action was meant to be "a goal of equal opportunity" and "I think that that need continues today." He added that "to our country, our classroom, and our workplace, I think that diversity is the strength of our country. . . . We are a melting pot, and the strength of our country is in that melting pot."

The Butch Carpenter programs kicked off on Thursday with a discussion of "The Legal Significance of Affirmative Action in Society." Speakers were Olati Johnson, assistant counsel of the NAACP Legal Defense and Education Fund Inc., and Godfrey Dillard, '73, of Evans & Luptak, P.L.C. in Detroit and head of the Center for Affirmative Action Preservation (CAAP). Both the Legal Defense Fund and CAAP tried unsuccessfully to become intervenors on the University of Michigan and Law School sides in lawsuits against the schools' admissions policies.

"What we have happening in recent years, in my opinion, is the phenomenon of the reverse discrimination case — the majority claiming they are being discriminated against," said Dillard. "Basically, you have white folks suing white folks about black folks." In response to a question, he added: "We must get the majority community to see that this (affirmative action) is something beneficial to them."

Said Johnson: "Affirmative action is a very mild remedy" for past inequities. Efforts to promote diversity are "worth fighting for and worth defending." She added: "You have to examine, without being too defensive, what is behind the debate."

Affirmative action programs must continue until lawmakers fulfill their obligation to properly fund K-12 education and other programs that will even the playing field, Michigan State Senator Alma Wheeler Smith of Ann Arbor tells listeners during a discussion of "The Political Significance of Affirmative Action in Society." Seated next to her is State Senator Virgil C. Smith of Detroit, her co-panelist. In background are Robyn McCoy, affirmative action chair for the Black Law Students Alliance (BLSA) and BLSA President Delmar Thomas.

Speaker: Rwandan massacre could have been prevented

In six weeks in 1994, some 500,000 Rwandan Tutsis and politically moderate Hutus were "butchered to death by their neighbors"; by the time the killing ended about 800,000 Rwandans had been massacred.

That's the situation that Gary Haugen stepped into as chief investigator for the United Nations in Rwanda in 1994. The task was enormous, taking reports, visiting massacre sites and mass graves, amassing evidence. "It has been five years since this happened, and it has been the most tortured process to bring justice," Haugen reported in a talk at the Law School in March. His appearance was sponsored by the Christian Legal Society.

"I believe that genocide overwhelms justice," Haugen said. "I am not going to get justice for the murder of 800,000 people. . . , which is not to say that you shouldn't try. It is to say that you should prevent this. Justice — reconciliation — after genocide is a pretty dubious proposition.

Gary A. Haugen, executive director of the International Justice Mission in Washington, D.C., tells a Law School audience that the international community could have prevented the genocide that killed 800,000 Rwandans in the mid-1990s.

"The genocide could have been stopped [but] the United States and the international community chose not to, and we need to digest that."

"I think there's a need for a new foundation of costly responsibility, the notion of being your brothers' keeper even if they are beyond your borders."

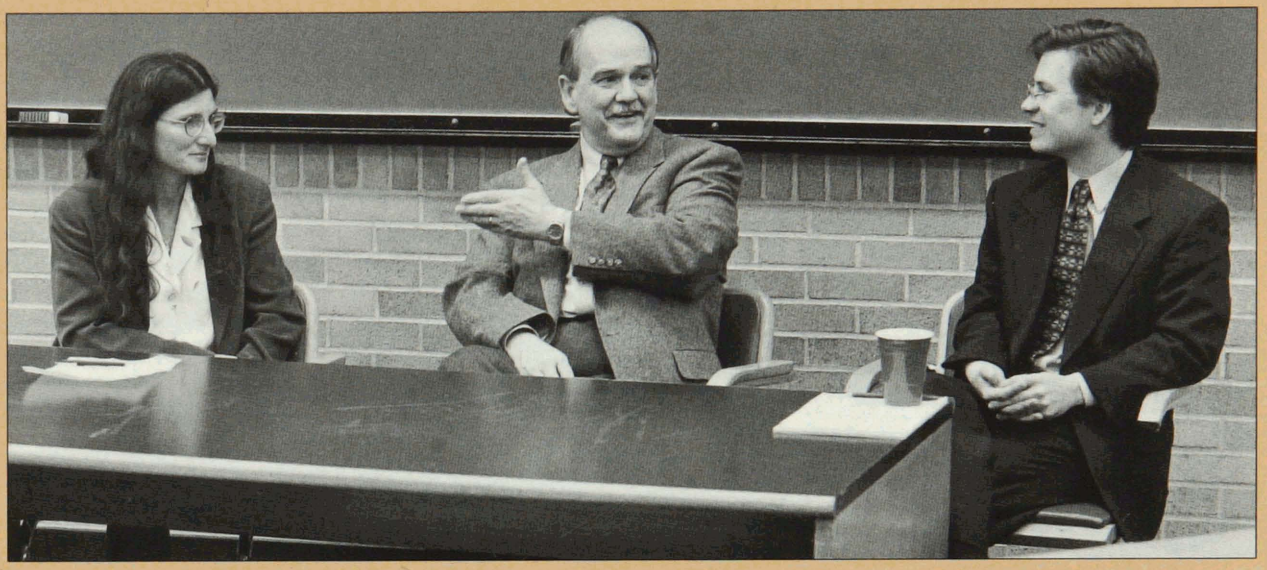
Haugen now heads International Justice Mission (IJM), a Washington, D.C.-based organization that works internationally to seek relief for victims of genocide and other wrongs. Among Haugen's investigations are probes into police-run child prostitution rings in the Philippines and child slavery operations in India. Most reports to IJM come from church-affiliated workers like doctors, nurses, and teachers who seek larger venues to address these issues.

Haugen also is the author of *Good News about Injustice: A Witness of Courage in a Hurting World* (InterVarsity Press, 1999).

PHOTO BY BILL WOOD/UNIVERSITY PHOTO SERVICES

The Many Worlds of Environmental Specialists —

Attorneys from the public and the private sector explain their duties and the preparation that led them to their current work during the Environmental Law Society's Career Panel, held at the Law School in March. Here, Assistant State Attorney General Peter Manning, '91, left, who coached the U-M's women's soccer team during his study at the Law School, explains that he is one of 20 lawyers with the Attorney General's Natural Resources Division, which handles litigation and legal counseling for the state departments of Environmental Quality and Natural Resources. Other panelists included: Chris Bzdok, of Olson, Noon & Ringsmuth, P.C., of Traverse City (shown); and Neil Kagan, head of the Law School's Environmental Law Clinic and Lake Superior Project attorney for the National Wildlife Federation's Great Lakes Natural Resource Center; Grant Bilezan, '89, partner in the environmental law group of Dykema Gossett, PLLC; and William Grier, mobil source emissions attorney in the general counsel's office of Ford Motor Company.



Labor and Employment Law —
Top, Stuart N. Dowty, of Pitt, Dowty, McGehee & Mirer, P.C., of Royal Oak, Michigan, explains that his specialty of representing plaintiffs in employment cases demands that "you've got to believe in what you're doing" and "you've got to have a long-term perspective." With Dowty are fellow panelists Adele Rapport, '80, regional attorney with the U.S. Equal Employment Opportunity Commission, and Martin C. Brook, '96, of Miller, Canfield, Paddock and Stone, P.L.C. in Detroit. The three spoke at the Law School in February in the first of two complementary programs sponsored by the Employment and Labor Law Association. The first program dealt with employment law, the second with labor law.

Rapport, the chief legal officer for the EEOC's regional office in Detroit, said that her office picks "cases that are cutting edge." Judges hold government attorneys to a higher standard than others, she said, and government attorneys tend to earn less than their counterparts in private practice but more than lawyers with advocacy groups. Brook, who mostly represents corporations in employment cases, said that in his type of practice attorneys "work with clients to try to get the right results from inside." Left, in the second of the two programs, Georgi-Ann Bargamian, associate general counsel for the International Union, UAW, explains that Michigan has a "heavily unionized labor force" and "some of the best labor-side law firms in the United States. If you care about labor law at all, it's a wonderful place to work." With her are, from left: Stephen M. Kulp, '92, of Ford Motor Company's general counsel's office; Reginald Turner, '87, of Sachs, Waldman, O'Hare, Helveston in Detroit; Bradford L. Livingston, '79, of Seyfarth Shaw Fairweather & Geraldson in Chicago; and William Schaub Jr., regional director of the National Labor Relations Board. Kulp said much of his work is in collective bargaining, "a huge process that has a lot of fun and challenge to it." Turner said his practice is "heavily weighted" toward representing police, fire, and teachers groups in public sector labor law and involves many cases of grievance arbitration. Livingston, whose labor practice takes him "where the plants are," said that "somtimes we lead... other times we follow our clients." Said Schaub: Doctors, nurses and other professionals are organizing as labor groups. "While union membership may be down in traditional sectors, it certainly is growing in these areas."

Juan Tienda Banquet speaker: CLIENTS PROVIDE THE STRENGTH TO CONTINUE

Patricia Mendoza draws her strength from the people she helps. Sometimes, the Chicago-based regional counsel for the Mexican American Legal Defense and Educational Fund (MALDEF) confessed, the setbacks are daunting, as was the case with the Federal District Court's refusal to let MALDEF and other groups intervene to defend affirmative action in the suits against the University of Michigan.

(The University of Michigan and the U-M Law School are defendants in separate suits brought by the Center for Individual Rights to challenge the schools' admission policies to achieve diversity among students. The cases are expected to go to trial later this summer and in the fall. (See story on page 51.)

"It's times like this that I feel I'm fighting an uphill battle, and I start to question if it's time to get out," Mendoza confessed to the more than 200 people attending the 15th annual Juan Tienda Banquet in March. The banquet and related scholarship awards are presented each year by the Latino Law Students Association in honor of Tienda, a law student who died in an automobile accident in 1976. This year's record-setting banquet attendance included 13 members of Tienda's family.

"What has kept me in is the memory of the people I have met along the way," Mendoza explained. For example, among those who sought to intervene in the U-M suits was a Latino man, one of eight brothers, the son of migrant workers. Mendoza wondered if the family would stay in the suit after she told the man's mother that as the single Latino among the intervenors he, and his family, would draw attention and become the target for questions from reporters.

Was she ready for this? Mendoza asked. "We don't have a choice," the woman answered. "We want something better for our children and we will do whatever we can to make this possible."

Mendoza also noted that although affirmative action programs are facing growing attack in the public sector, attempts to diversify are becoming increasingly common in the private sector. Business leaders appreciate that the exponential growth in the Latino population means that they must embrace that growth to protect and enlarge their profits.

"The reality is that as a group Latinos are making huge inroads into America," Mendoza said.

Latinos were undercounted by five percent in the 1990 census, and MALDEF has launched a nationwide drive to ensure that they are not similarly undercounted in the 2000 census, Mendoza said.

Mendoza received the Latino Law Students Association's J.T. Canales Award "for her excellence not only in the legal field but also for her community spirit." The Canales Award is named for the first Latino graduate of the Law School, who later became a Texas state lawmaker and a staunch defender of Latino rights.

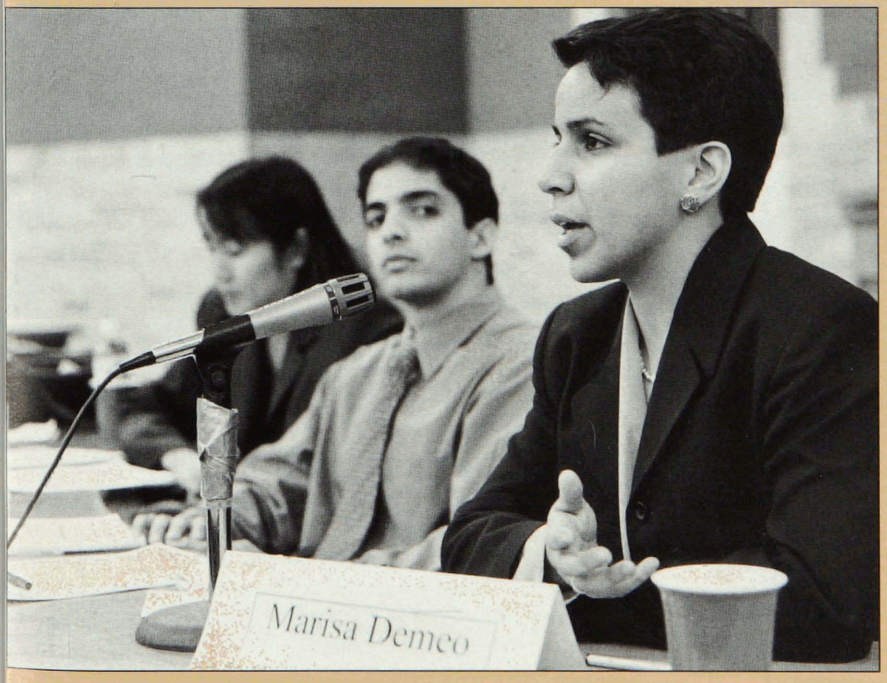
First-year law students and Juan Tienda Scholarship winners Angelica Ochoa and Marcela D. Sanchez take a moment from banquet activities with Juan Tienda Scholarship Committee Chairman Martin Castro, '88, of Baker & McKenzie in Chicago. "The empowerment of our community is based on education," Castro said in introducing the winners. "Use your degree, especially your law degree, to help your community."

Thanks to the generosity of supporters, two first-year law students received Juan Tienda Scholarships this year: Angelica Ochoa, from Wyoming, and Marcela Sanchez, from New Mexico. Both are members of the Latino Law Students Association and are volunteers with the Law School's Family Law Project. Sanchez also is an associate editor with the *Journal of Gender and Law.*

A mariachi band provided dinner music for the event. Following dinner, attendees watched a performance by the undergraduate group Ballet Folklorico Estudiantil de la Universidad de Michigan. Participants wound up the evening dancing to the live salsa music of Orquestra Sensacional.

PHOTOS BY PAUL JARONSKI/UNIVERSITY PHOTO SERVICES

By the year 2020 Latinos will have profound economic, political, and cultural impact, keynote speaker Patricia Mendoza, regional counsel of the Chicago office of the Mexican American Legal Defense and Educational Fund, tells attendees at the 15th annual Juan Tienda Scholarship Banquet in March. More than 200 persons attended the banquet, sponsored by the Latino Law Students Association.



Trying the System —
Panelist Marisa J. Demeo, regional counsel of the Mexican American Legal Defense and Educational Fund office in the District of Columbia, explains that de jure *segregation of the past has been replaced by* de facto *segregation and that "proxies" like culture, language, and "comfortability" can take the place of race as the basis for discrimination. Demeo and panelist Muneer Ahmad, center, a staff attorney with the Worker Rights Unit of the Asian Pacific American Legal Center in Los Angeles, were speakers at the Law School in January in the first of the spring 1999 Speakers Series presented by the* Michigan Journal of Race & Law. *Ahmad said that his Asian background creates "a wonderful platform" from which to deal with the issues of Asian Pacific Islanders and other Asian people. Their program was called "Trying the System: Lawyers and Racial Justice." At far left is moderator Sumi K. Cho, a visiting professor from DePaul University College of Law.*

Speakers 'rechart' the role of race in law

The speakers had gathered to discuss "New Directions in Social Justice: Recharting Race in Law." Four speakers took turns in the program, each coming to the topic from a different viewpoint: Asian Pacific Island American; Hispanic; African American; and Native American. The result was a rich, varied view of how race or ethnic background affect lawmaking and interpretation, and how the law in different places and at different times reflects that background.

Held at the Law School in January as part of the University's Martin Luther King Jr. celebration, the program was sponsored by the Asian Pacific Law Students Association, the Black Law Students Alliance, Latino Law Students Association, and the Native American Law Students Association.

Speakers included Donna Budnick, of the Michigan Commission on Indian Affairs; Maria Montoya, assistant professor of history and American culture and Latino studies at the University of Michigan; Professor of Law Sallyanne Payton; and Leti Volpp, a professor at Washington College of Law at American University. Clinical Assistant Professor of Law Lorray Brown of the Law School moderated.

"How many of you have been to a reservation?" Budnick asked the audience.

About one-third of her listeners raised their hands. Virtually none of her listeners, however, whether reservation visitors or not, knew of the unique legal systems that characterize American Indian reservations.

Budnick explained that Indian nations' tribal councils act as both executive and legislative arms of their governments and that individuals cannot sue their Indian nation because of the principle of sovereign immunity.

Montoya, drawing on her academic research as well as her role as an expert witness in a property rights case in Colorado in 1988, explained how the different backgrounds of the Hispanic community and the developer who clashed in that case were reflected in their different ideas of property.

Government privatization of services and other aspects of "third party government" have "the consequences of moving power and resources away from government," Professor of Law Sallyanne Payton, right, explains during a program at the Law School in January. The program, "New Directions in Social Justice: Recharting Race in Law," was sponsored by four law student organizations as part of the University's Martin Luther King Jr. celebration. Other panelists are, from left: Donna Budnick, Michigan Commission on Indian Affairs; Leti Volpp, Washington College of Law, American University; and Maria Montoya, University of Michigan.

On one hand, members of the small Hispanic community of San Luis had used land surrounding their settlement like a commons; they hunted there, gathered firewood there, and generally used it as a resource that all residents shared. When a developer bought the acreage and wanted to cut timber on it, residents found themselves facing "a deep economic issue," Montoya said. The situation and the case that resulted from it brought the concepts of common use and private ownership into direct conflict.

Payton said that laws and judicial interpretations have reined in elected leaders and showed them that they have "a responsibility to all of the people." Privatizing government services can put into power managers who do not share the public servant's ideal of multiple benefits from services.

Private businesses control their risk by controlling their clientele, she said. She cited as an example the private contracting of prison care. "Running a prison is a government function if there ever was one," she said. "What are we doing here?"

Volpp noted that Asian Pacific Americans come from many different countries, cultural and colonial traditions, and ethnic backgrounds, but too often are thought of as a single, unified group. She added that "national origin and gender can be obscured and not thought about enough in the Asian American rubric."

Giving voice to women prisoners

Paula C. Johnson has some steely advice for future lawyers on both sides of the aisle:

— "If you're a prosecutor and recommend incarceration, you ought to know what this is about. It's important for students to get an appreciation of the reality of prison."

— "It's also important for defense attorneys. My interviews are replete with stories of attorneys who met their client in the morning and pled them out in the afternoon."

The interviews that Johnson refers to are the heart of the book she is writing, *Inner Lives: Profiles of African American Women in Prison*, to be published next year. An associate professor of law at Syracuse University College of Law, where she organized and conducts a seminar on women in the criminal justice system, and a freelance photographer, Johnson described her work during a program at the University of Michigan Law School in February. Her talk was sponsored by the Law School's clinical law program and Office of Student Services.

African American women make up more than half of women prisoners in the United States, Johnson said. Mostly, they were convicted of nonviolent, economic crimes. Husbands and boyfriends visit them much less often than wives and girlfriends visit male inmates; women prisoners who turn around their lives often do so in order to care for their children.

"I am angered when I walk through the [prison] gates and I see the waste of these women's lives," Johnson said.

"These women are not seen at all," she continued. "It's always been striking to me to see all that we have in common. . . . There's very little to that wall that separates those of us who are good citizens from those who are not."

Johnson, who is African American, said that racial kinship with her subjects helps her appreciate the thin line of opportunity that separates her from them. "Something happens when we look at each other on opposite sides of the bars," she said. "We recognize each other, and it is a very disturbing thing."

"This book is not my book," Johnson said. "I see myself as a conduit, a facilitator for getting these women's voices out. It's their book, and I'm trying to communicate that."

Many Sources, Many Laws —

A system based on Roman-Dutch law, a parallel system of "customary," or native law, and the attempt to impose English law on the mix, all make up the legal history of southern Africa and Botswana, explains Bojosi Orlhogile, of the Faculty of Law at the University of Botswana and a member of the Commission of Inquiry into the Judiciary in Botswana. Orlhogile spoke as part of the winter term Distinguished Speakers Series in Law and Development, sponsored by the Law School's Center for International and Comparative Law and the Horace G. Rackham School of Graduate Studies. The talks were held at midday in the Michigan Union. The series opened in January with Bryant Garth, of the American Bar Foundation, speaking on "The Diffusion of Law: Invention, Adoption, and Imposition." Other series speakers, their affiliations, and their topics, were:

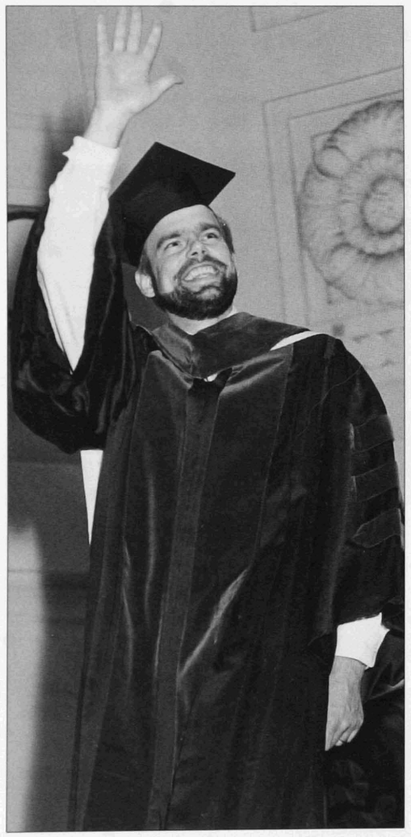
- *John Bruce, Wisconsin Land Tenure Center, "Property Rights"*
- *Ibrahim Juma, University of Dar es Salaam Faculty of Law, "The Politics of Land"*
- *Paul Collier, World Bank, "States, Markets, and Development"*
- *Rick Messick, World Bank, "Legal Frameworks for Competitive Markets"*
- *Kathryn Hendley, University of Wisconsin Law School, "Does Law Really Matter?"*

In another program sponsored by the Center for International and Comparative Law, Professor Liming Wang, of the People's University Law Department in China, spoke in March on "China's New Contract Law: How It was Drafted and What It Says." Wang spent a year at Michigan and at the time of his talk was visiting as a scholar at Harvard. He is editor of the standard civil law textbook used in China and played a prominent role in drafting the country's new contract statute.

Commencement speaker:

YOU CAN DO WELL WHILE DOING GOOD

Three hundred and twenty-five names appeared on the Law School's commencement program in May as recipients of a J.D. or LL.M. As these new graduates walked across the stage of Hill Auditorium — flashing grins of their own and accompanied by whoops of congratulation and the popping of camera flashes brought by well-wishers — the significance of each one's special moment was inescapable. So was their membership together in the special family that joins them to 18,000 previous Law School graduates.



The joy of a job well done is reflected by graduate J. Chris Larson in his wave to family and friends as he crosses the stage.

"Our tour of duty has come to a close," Law School Student Senate President Yolanda McGill told her fellow graduates. Law school's attraction lay in "the challenge of striving to be all that we can be, whatever that may mean to each of us as individuals."

If you checked any of your ideals when you entered law school three years ago, go back and pick them up again, McGill advised. "It takes strength of character to be all that you can be."

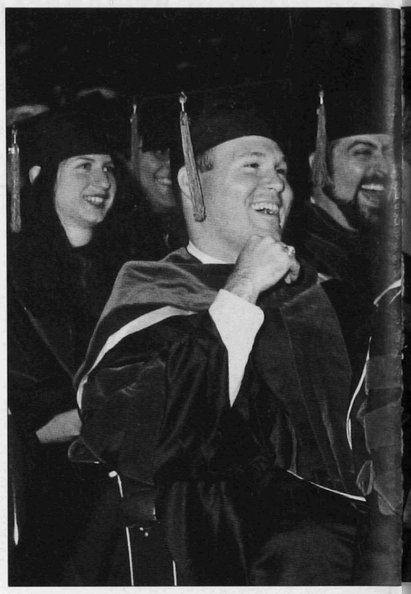
Like all commencements, this Senior Day paired excitement over a job well done with anticipation of another about to begin. Each graduate's path had been bent through the prism of law school, and none would forget.

"Every practicing lawyer will tell you that the law school experience remains the most important shaping experience of your lawyering career," commencement speaker Abner J. Mikva told the graduates.

Mikva, former White House counsel and retired Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit, also served five terms as a congressman from the Chicago area. He currently is a visiting professor at the University of Illinois Law School.

"Law school may not always enhance your original reasons for wanting to be a lawyer, but it is the stamping mill that determines who you are from here on out," Mikva said. "To paraphrase that old jelly commercial, with a name like Michigan, you have to be good.

"That no doubt accounts for why people are suing to get in here, and claiming that your admission people used the wrong biases in choosing all of you instead of the people they didn't choose. My own biases lean with those that got you here. I think that a law school that turns out smart lawyers who have been exposed to a diverse student body and background is good for the profession."



Commencement may be a time of tradition and solemnity — but it also is a time for laughter.

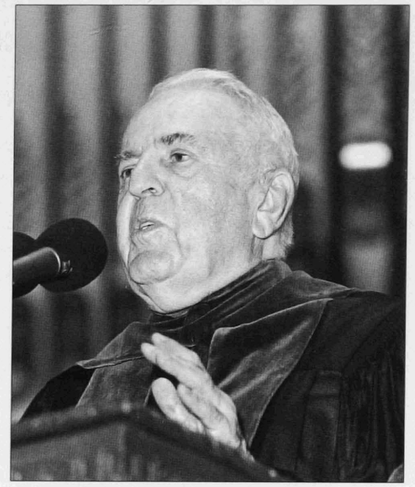
"You should be asking yourselves, now and later, why did you go to law school? First of all, you ought to realize that the persons sitting next to you are asking the same questions, and have the same confusion, about how to mix career and altruism, about finances and ideals, about raising families and pursuing justice. You are not some lonely predators coursing a barren desert for what little prey there is to be found. On the contrary, you are now and will continue to be engaged in the demanding, but collegial process of a role in a social context. You are at the levers of social change.

"It is possible to be a mother and an important, useful member of the legal profession. It is possible to do well, while doing good. And it is possible for those of us inside the profession to have enough pride in what we do to force those critics outside the profession to be impressed that we became lawyers."

In his remarks, Dean Jeffrey S. Lehman, '81, touched on the graduates' role in shaping the image of the legal profession by portraying opposing counsel as well as allied counsel as professional, honorable people.

"You have come to know that, upon reflection, issues are more complicated than they appear from a distance," Lehman said. "You have come to see that good and admirable people may hold different and inconsistent perspectives on a complex problem."

"The practice of law is an ethically challenging career," Lehman advised. "Every day, you will have to reconcile your duties and desires to promote your client's interests with other duties and desires — to yourselves, to your communities, to the legal profession, and to the larger society. I hope that you will feel that struggle every day; when it is no longer a struggle, you should worry about what you are becoming."



Law school is "the stamping mill that determines who you are from here on out," Law School Senior Day commencement speaker Abner J. Mikva tells graduates and wellwishers.

Graduate Steven Jenks and daughter Sabrina stride hand-in-hand with other graduates toward Hill Auditorium for Law School commencement exercises.

U-M awards Barak honorary degree

Aharon Barak, president of the Supreme Court of Israel, a member of the advisory board of the Law School's Center for International and Comparative Law, and a former visiting professor at the Law School, was awarded an honorary degree during University of Michigan commencement ceremonies in May.

Barak, who taught at the Law School from 1990-93, is a native of Lithuania who immigrated to Israel in 1947. A graduate of the School of Law at Hebrew University in Jerusalem, he rose to become a professor and then dean of the school. He also has studied economics and international relations at the Kaplan School and done research at Harvard Law School.

As Israel's attorney general from 1975-78, he was the Israeli delegation's legal adviser for the negotiations and Camp David talks that led to an Israeli-Egyptian peace treaty. He was named to the Supreme Court of Israel in 1978, became deputy president of the court in 1993, and president in 1995.

Simpson helps train Albanians

for legal life within Council of Europe

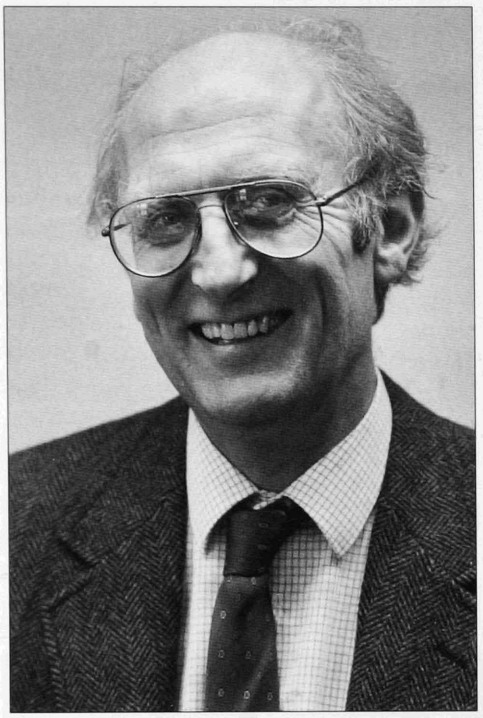
A.W. Brian Simpson, the Charles F. and Edith J. Clyne Professor of Law, says law school facilities may be overcrowded and libraries inadequate in Albania, but future lawyers there are "very good students and very quick and have been taught by dedicated faculty members."

Simpson was part of a team of Westerners who taught Albanian law students at the University of Tirana earlier this year as part of a British Foreign Office-sponsored program to help Albania assume a full role as a member of the Council of Europe.

Albania joined the Council of Europe in 1995, Simpson said, but full, functional integration into the organization demands much more than signing on and flashing your membership card. Ten countries — Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Ireland, Italy, Denmark, Norway, and Sweden — signed the treaty that established the council in 1949 in partial fulfillment of Winston Churchill's vision of "a kind of United States of Europe."

Council membership has expanded continually, and after the breakup of the Soviet Union has added several countries, like Bulgaria and Poland, that formerly were in the Soviet bloc, as well as Croatia, formerly part of Yugoslavia, and Albania, a communist country that dodged the yoke of Moscow by aligning itself first with the People's Republic of China and then going it alone. Membership in the council brought such countries into a brave new world that includes western- and European-style law and requires becoming a signatory to the European Convention on Human Rights.

There is no tradition of case study in Albania and other formerly communist countries, Simpson explained. Legal interpretation in these countries usually had been based on statutory texts.



A.W. Brian Simpson

International traditions of human rights were nonexistent. In addition, Albania is extremely poor and has a small educated middle class and few lawyers in private practice.

Simpson and three other Westerners spent a week in January teaching in the Albanian capital as part of the British Know-How Program. The other teachers were British lawyers Luke Clements, Alan Simmonds, and Nuala Mole. Mole is executive director of the AIRE (Advice on Individual Rights in Europe) Centre in London and a regular speaker in the Law School's International Law Workshop series.

Their week-long course covered:

- Structure of the Council of Europe.
- Origins and function of the European Convention on Human Rights and principles of interpretation and application.
- Features of the convention, like guarantees of the protection of the right to life and political freedoms.
- A hypothetical case and mock argument in the style of the European Court of Human Rights at Strasbourg, France.

For Simpson, teaching with Mole was a reunion of sorts; she had been his student when he taught at Oxford University in England. And for Mole, teaching in Albania was part of AIRE's continuing education efforts.

Mole founded AIRE in 1991, and has accepted student interns from the University of Michigan Law School almost since the organization's founding. AIRE has made its presence felt in cases of individual rights throughout Europe.

Two of AIRE's more widely known cases are *D v. United Kingdom* and *Osman v. United Kingdom.* In *D,* in which the plaintiff's name remained publicly unknown, the European Court of Human Rights ruled that a country's obligation to protect human rights cannot be terminated by the act of removing a person from its borders. The case involved a drug dealer, who was in the final stages of AIDS, whom Britain tried to deport to his native island of St. Kitt's. The court ruled that Britain could not deport the man because of the conditions to which he would return — a lack of medical care and a lack of family to provide support.

In *Osman,* the court ruled that police cannot be wholly unaccountable for negligence in operational activities. Previously, police had been legally shielded from such liability.

Halberstam joins Law School faculty

Daniel Halberstam is joining the Law School faculty in September as an assistant professor. Halberstam, a graduate of Yale Law School, where he was articles editor of the *Yale Law Journal* and editor of the *Journal of Law and the Humanities*, earned his B.A. *summa cum laude* in mathematics and psychology from Columbia College, where he was *Phi Beta Kappa*. He had obtained his Abitur at the Gutenberg-Gymnasium in Wiesbaden, Germany.

After graduation from law school, Halberstam clerked for Judge Patricia M. Wald of the U.S. Court of Appeals for the D.C. Circuit and then for Justice David H. Souter of the U.S. Supreme Court.

He comes to the Law School from a post as attorney advisor in the Office of Legal Counsel at the U.S. Department of Justice. He also has worked as attorney advisor to Chairman Robert Pitofsky at the Federal Trade Commission and as a judicial fellow to Judge Peter Jann at the Court of Justice of the European Communities in Luxembourg.

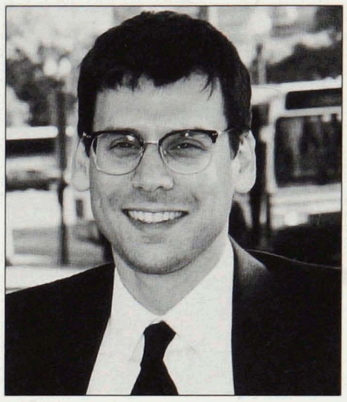


PHOTO BY SUSAN PACHOLSKI

Daniel Halberstam

Halberstam's article "Commercial Speech, Professional Speech, and the Constitutional Status of Social Institutions," was published this spring in the *University of Pennsylvania Law Review*. His teaching interests focus on European Union law, constitutional law, and administrative law.

Katz joins teaching ranks at Law School

Ellen Katz is joining the Law School faculty in September as an assistant professor. Katz earned her J.D. at Yale Law School and clerked for Judge Judith W. Rogers of the U.S. Court of Appeals for the D.C. Circuit and then for Justice David H. Souter of the U.S. Supreme Court. She also has practiced as an appellate staff attorney with the U.S. Department of Justice's Environment and Natural Resources Division and its Civil Division.

Katz's most recent article, "State Courts, State Officers, and Federal Commands After *Seminole Tribe* and *Printz*," was published in the *Wisconsin Law Review*. She also has published in the *Chicago-Kent Law Review* and *Western Legal History*.

At Yale, she was articles editor of the *Yale Law Journal* and won the Joseph Parker Prize for the best paper in legal history and the Benjamin N. Cardozo Prize for the best brief submitted in Yale Moot Court competition.

PHOTO BY SUSAN PACHOLSKI

Ellen Katz

Katz earned her B.A. in history *summa cum laude* from Yale College, where she was *Phi Beta Kappa* and managing editor of *The New Journal*. She is a member of the bars of New York State and the District of Columbia. Her teaching interests include property, environmental law, federal courts, legal history, and equal protection.

Women's View —

"Is law school designed to develop a set of skills that you identify as male?" Professor Jane S. Schacter, right, asks during a midday program on "Becoming Gentlemen" at the Law School in February. Sponsored by the Women Law Students Association, the program drew its title from the study of the same name of women students at the University of Pennsylvania Law School by Lani Guinier, Michelle Fine, and Jane Galin ("Becoming Gentlemen," 143 University of Pennsylvania Law Review 1). *About 40 law students, including a handful of male students, talked of their experiences, thoughts, and feelings during a wide-ranging discussion of Law School pedagogy, the curriculum, and the climate among students.*

Omri Ben-Shahar

Mideast 'peace dividend'

would benefit entire region

Israelis and Palestinians have a great deal in common — a similar language, similar civil culture, a shared geographic region — and peace between them would offer a "peace dividend" that could benefit the entire Middle East, according to an Israeli law and economics professor who joins the Law School faculty this fall.

Professor Omri Ben-Shahar detailed the benefits during a midday program at the Lawyers Club Lounge in February. Co-sponsored by the Jewish Law Student Union and the Middle Eastern Law Students Association, Ben-Shahar's talk dealt with "The Economics of Middle East Conflict and Peace."

Ben-Shahar taught here as a visiting professor from Tel-Aviv University during the 1998-99 academic year. (See accompanying story.)

With its six million people and GDP (Gross Domestic Product) of $95 billion, "Israel is the economic empire of the Middle East," Ben-Shahar said, "and maybe that is where we should start tracing the resentment" that many non-Israelis in the region harbor against Israel.

Israel has "a highly developed economy that has made the transition to high tech industry, whereas neighboring Arab nations are much poorer," according to Ben-Shahar. Peace in the region would benefit everyone, he said. He outlined some of the benefits that peace throughout the region would make possible:

- Construction of a pan-Arab highway that would link countries of the region.
- Construction of a natural gas pipeline from Egypt through Israel to Gaza.
- Construction of an oil pipeline from the Persian Gulf to the Mediterranean Sea that would eliminate the long voyage tankers now make.
- A sharing of Israel's successful desert agriculture with the rest of the region.
- An increase in tourism and the possibility of developing a "Red Sea Riviera."
- An economic boom from a non-exploitative coupling of Israel's high-tech industry with the rest of the region's plentiful labor supply.

A "peace dividend" through which "people realize that making peace makes you better off" would reinforce the motivation of both sides to end generations of hostility, he concluded.

Ben-Shahar joins Law School faculty

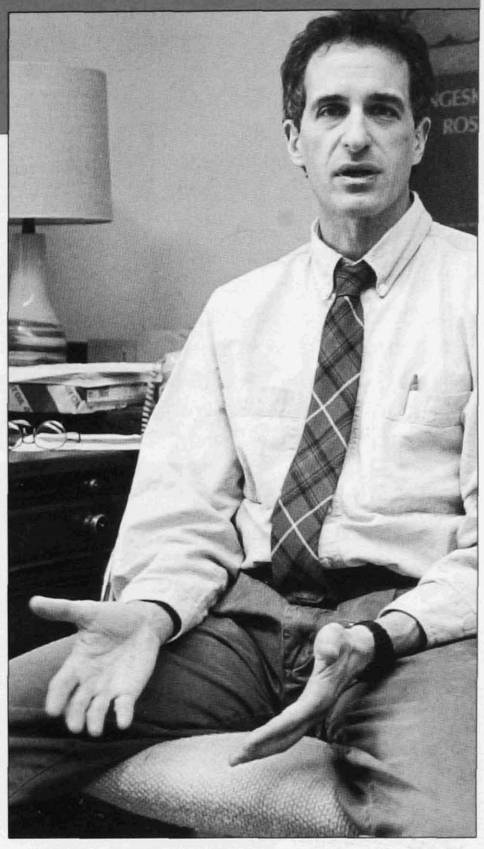
Omri Ben-Shahar, whose research focuses on the intersection of law and economics, joins the University of Michigan Law School faculty fulltime September 1. He previously taught as a professor of law and economics at Tel-Aviv University, was a research fellow at the Israel Democracy Institute, served as a panel member of Israel's Antitrust Court, and clerked at the Supreme Court of Israel.

Ben-Shahar taught two courses — Contracts, and Law and Economics — as a visiting professor at the Law School during the 1998-99 academic year. He holds a B.A. in economics and LL.B. from Hebrew University, and an LL.M., S.J.D. and Ph.D. in economics from Harvard.

A winner of the Provost Prize and a Lady Davis Fellow at Hebrew University, he also was a Fulbright Fellow and, at Harvard Law School, was an Olin Fellow in Law and Economics and a Senior Fellow.

Ben-Shahar has written for many journals, among them the *University of Chicago Law Review, Journal of Law, Economics and Organization, International Review of Law and Economics,* and *University of Pennsylvania Law Review.* He is a frequent presenter at annual meetings of the American Law and Economics Association and presented two papers at the association's most recent annual meeting.
(See story on page 36.)

Disgust draws television attention



William I. Miller

William I. Miller dealt with the most distasteful aspects of human life in his latest book — and has drawn worldwide attention from those who want to know more.

Miller, the Thomas G. Long Professor of Law, waded into the history and dynamics of what is revolting to us to write *The Anatomy of Disgust*, published in 1997 by Harvard University Press. Within a few days of the official publication, Miller was the inaugural interviewee on the Ann Arbor-based Community Television Network's new show *Rip-Rap,* subtitled *The Academic Book Television Program.* The interview with Miller aired last year.

Then, last summer, a television crew spent time with him in Ann Arbor — there are scenes of Miller relaxing at home by shooting baskets in his backyard, as well as an extensive interview in his office on the fourth floor of Hutchins Hall — for an hour-long special that aired last fall on German television.

The German documentary, a film by Claudia Wassmann, opened with idyllic scenes like Miller riding his bicycle through his neighborhood. It also portrayed what disgusts us with harsh images of human and animal viscera, maggots at work, death, and similar distasteful pictures.

"Once you start looking [into the idea of disgust], a whole world opens up," Miller told the interviewer. Miller spoke in English and a German speaker overdubbed his comments for the documentary.

"I believe that disgust is part of a lot of good," Miller says. "Disgust isn't just about bodily effluvia; for instance, so much of our moral discourse depends on disgust, as when we say 'that makes me sick.' And where would our sense of taste and discernment be without disgust?"

Miller says his interest in the role of disgust grew from his lifelong professional study of heroic societies like those of early Iceland. "What I'm interested in is norms and their violations and the sanctions that are imposed if you violate them," he told *Rip-Rap.*

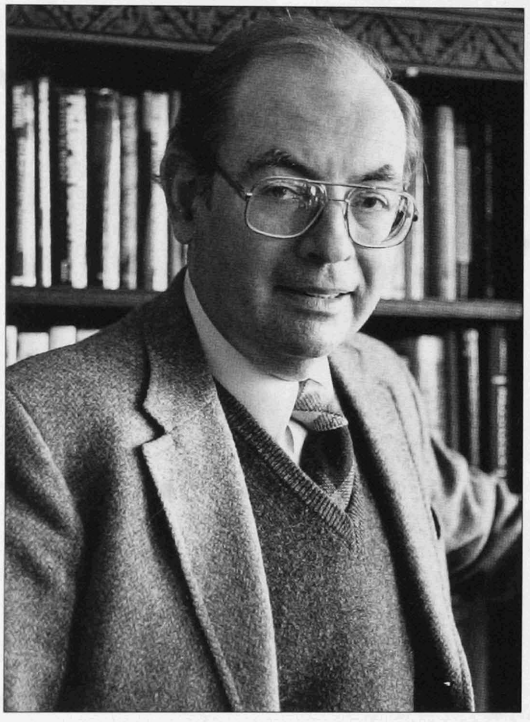
"It's tough to find the tone to talk about disgust and signal to others that you are dead serious about this," Miller confessed.

The Anatomy of Disgust has received critical praise in the United States and abroad. "One wouldn't have thought that the subject of disgust could exfoliate so elaborately, or throw off so many provocative insights, as it does in these pages, not only into the way we live now but into the way we have always lived," reviewer Joseph Epstein wrote in *The New Yorker.* "The capacity for disgust, it turns out, may be as significant as any quality we possess. Our antipathies define us as surely as our sympathies."

"Miller rightly perceives that disgust helps to define our identities, create hierarchies, and order our world; but I remain puzzled about its biological significance," reviewer Anthony Storr wrote in the United Kingdom's *The Observer.* "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."

Kamisar: *Miranda* answers a practical need

The recent decision by the U.S. Court of Appeals for the Fourth Circuit Court in *United States v. Dickerson* "restricts the ability of the Rehnquist Court — and every court — to interpret constitutional provisions in light of institutional realities," according to Professor Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law and a nationally recognized authority on the *Miranda* rule that the decision attacks.



Yale Kamisar

The appeals court decision, handed down early this year, takes the biggest swipe yet at undoing *Miranda v. Arizona*, the 1966 Supreme Court decision that applied the constitutional privilege against self-incrimination to the informal compulsion exerted by police officers during interrogations of suspects.

In a 2-1 decision, the Fourth Circuit held that Congress can "overrule" *Miranda* — and did so in a 1968 statute — and therefore that a confession obtained in violation of *Miranda* should have been admitted into evidence. The Fourth Circuit emphasized that the Burger and Rehnquist Courts have consistently referred to *Miranda* warnings as "prophylactic" rules that, as stated, do not carry constitutional protection.

The *Dickerson* ruling, in a case brought by the Washington Legal Foundation and the Safe Streets Coalition, restores the "voluntariness" test to confessions through § 3501 of the Omnibus Crime Control Act, passed in 1968 to "repeal" or "overrule" *Miranda*. Section 3501 says that a statement "shall be admissible in evidence if it is voluntarily given." The ruling came despite opposition from the U.S. Justice Department, which never has enforced the 1968 law.

The *Miranda* rule was a practical answer to a serious problem, according to Kamisar. "A prophylactic rule is not a dirty word. Sometimes," observed Kamisar, "such rules are necessary and proper. The privilege against self-incrimination, no less than other constitutional rights, needs 'breathing space.' And prophylactic rules may be the best way to provide it.

"*Miranda* is based on the realization that case-by-case determination of the 'voluntariness' of a confession was severely testing the capacity of the judiciary and that institutional realities warranted a conclusive presumption that a confession obtained under certain conditions and in the absence of certain safeguards was compelled. The pre-*Miranda* 'voluntariness' test was too mushy, subjective, and unruly to provide suspects with adequate protection."

"And it was too time-consuming to administer," he added. "As Justice Hugo Black expressed it during the oral arguments in *Miranda*: 'If you are going to determine the admissibility of a confession each time on the circumstances . . . if the Court will take them one by one . . . it is more than we are capable of doing.' "

"Under any sensible approach to constitutional interpretation," maintained Kamisar, "the Supreme Court must be allowed to take into account its own fact-finding limitations."

(These comments are based on an op-ed page piece by Kamisar that appeared in the *Los Angeles Times* and other newspapers shortly after the Fourth Circuit decision.)

Eisenberg, Lyon add to *Talk of the Nation*

Two Law School professors have become part of the *Talk of the Nation* as guests on the popular National Public Radio program.

Professor Rebecca Eisenberg was a guest on the show's weekly science segment in March, and Assistant Clinical Professor Andrea D. Lyon was a guest on the show in February.

Eisenberg, a specialist in patents on genetic information, recently headed a National Institutes of Health task force to investigate problems in scientists' exchange of research tools. Also, she and Assistant Professor Michael A. Heller last year co-wrote a cover article in *Science* magazine that discussed patents as potential blocks to research and new product development, especially in genetics. (An excerpt, "Upstream Patents, Downstream Bottlenecks," appeared in 41.3 *Law Quadrangle Notes* 93-97 [Fall/Winter 1998]. The full article, "Can Patents Deter Innovation? The Anticommons in Biomedical Research," appeared in 280 *Science* 698-701 [May 1998].) On *Talk of the Nation,* she shared insights with Todd Dickinson of the U.S. Patent and Trademark Office and Seth Shulman, author of *Owning the Future*.

Rebecca Eisenberg

Andrea D. Lyon

"Is the patent system the best way to deal with products of our increasingly knowledge-based economy?" host Ira Flatow asked in opening the program. "Should anyone own the right to genetic information that other companies or people might need to develop treatments for diseases?"

Eisenberg said that patent protection is especially important as long as the private sector produces most innovation in human health care. She added that "there's been a quite fundamental change" in attitudes toward patenting government-sponsored research results.

Some discoveries are stepping-stones to others, and patents on these forerunner products can impede their use in making further discoveries, she noted. "Under those circumstances, you have to ask whether the inhibition of research that arises from the patent is greater than the initial impetus to research as a result of the promise of the patent," she said.

"We may be motivating the discovery of DNA sequences by allowing them to be patented while inhibiting their use in further research to yield tangible products to the improvement of human health."

Lyon, founder of the Capital Resource Center in Illinois and former chief of the Homicide Task Force of the Cook County Public Defenders Office, joined *Talk of the Nation* as part of the show dealing with misconduct by prosecutors. The February 24 show followed *Chicago Tribune* publication of a five-part series called "Trial and Error: How Prosecutors Sacrifice Justice to Win."

Legal Affairs Writer Ken Armstrong, a co-author of the *Tribune* series, and Richard Devine, states attorney of Cook County, Illinois, also were on the program. Host Ray Suarez opened the show by noting that "nothing can shake the foundations of the public's faith in the legal system more than finding out that representatives of the state, with their tremendous power and resources, abuse the system."

Lyon noted that "being a prosecutor is very difficult" because it means dealing with two "competing commands": "One is to try to do justice, to do the right thing to make sure that someone who is guilty is prosecuted and someone who is innocent is not. And the other one, which is very strong, is to win. And winning causes people to step over the line a lot."

In addition, many defendants are given court-appointed attorneys, and representation often is inept and under-funded. "If what we want is a system we can trust, then we have got to be willing to commit resources to the defense," Lyon said. "That doesn't just mean someone with a law license. It means somebody who is going to do the work and who has the ability to do the work. . . . If we're going to make sure that things happen properly, we have to appropriate enough resources that someone can actually do the work."

Five professors present papers
at American Law and Economics Association

For professors whose work focuses on the intersection of law and economics, being asked to present a paper at the annual meeting of the prestigious American Law and Economics Association (ALEA) is like being asked to stand and be recognized. Having five of your faculty members on the program for a single annual meeting — as the Law School did at ALEA's ninth annual meeting in May — is a rare occurrence that highlights the impact that faculty here are having.

Professors Omri Ben-Shahar, Peter J. Hammer, '89, Ronald J. Mann, Adam C. Pritchard, and Mark D. West each had papers presented during the two-day annual meeting held at Yale Law School.

Ben-Shahar, who joins the Law School faculty fulltime in September after teaching here during the 1998-99 academic year as a visiting professor from Tel-Aviv University, delivered a paper on "Reliance on Non-Enforcement," which he co-authored with Avery Katz, a professor at Georgetown University Law Center. Ben-Shahar also is co-author of a paper on "Revisiting Expectation Damages in Repeat-Play Contexts" that was delivered by his co-author, Lisa Bernstein, a professor at Georgetown University Law Center.

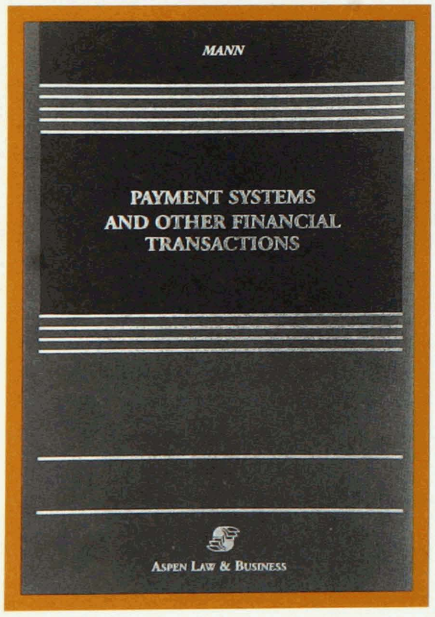
Hammer delivered his paper on "Testing the Limits of Antitrust: The Challenge of Intro-Market Second Best Tradeoffs."

Mann's paper was on "Secured Credit and Software Financing."

Pritchard is one of three co-authors of the paper "Securities Fraud, Corporate Performance and Multiple Board Directorships." His co-authors are Stephen P. Ferris and Murali Jagannathan. Ferris and Jagannathan are, respectively, professor and visiting professor in the Department of Finance of the College of Business and Public Administration, University of Missouri-Columbia.

West and co-author Curtis J. Milhaupt, an associate professor at Washington University School of Law in St. Louis, did a paper on "Organized Crime as Illicit Entrepreneurialism: The Dark Side of Private Ordering."

Mann's new casebook
examines systems of payment



Assistant Professor Ronald J. Mann set out to provide students with two things in his new casebook: "The ability to see the grand structure of the existing systems that I cover and the ability to pick up and use new systems that develop in the years to come."

As a consequence, *Payment Systems and Other Financial Transactions* (Aspen Law & Business, 1999), covers the subject of payment systems by starting with checking accounts and progressing to electronic money and commerce on the Internet. Mann's other two sections deal with credit systems and systems for enhancing liquidity.

Mann's approach is to show how commercial law fits with the commercial systems that operate today and will emerge in the future. "I want my students to see the deep structural similarities of all the different payment systems in our economy, the parallel role of guaranties and standby letters of credit, and the effectiveness of negotiability and securitization as substitute devices for enhancing the liquidity of payment obligations," he writes. "If my students can understand the connections among these different topics, they will be better prepared to grasp the issues raised by the new institutions and systems that will develop during the course of their careers."

He adds: "The book reflects the philosophy that learning proceeds best when students are given all of the information they need to solve the problems. The intellectual task is for them to apply the material. Consequently, the text is considerably more extensive than in traditional casebooks, and at the same time, excerpts from cases are considerably less extensive."

ACTIVITIES

Phoebe Ellsworth, the Kirkland and Ellis Professor of Law, presented a joint talk with Thomas and Mabel Long Professor of Law **Sam Gross** on public opinion and the death penalty in March. In August she delivered the keynote address to the 24th International Congress of Applied Psychology; she spoke on "The American Jury System: What Should be Kept and What Should be Changed?" In July last year she spoke at the University of Kyoto in Japan and in October before the Society for Experimental Social Psychology.

Professor **James C. Hathaway** in February delivered a paper on "Protection for the Duration of Risk: Part of a Revitalized Global Refugee Policy" at an international policy conference on temporary protection of refugees in Oslo, Norway. In January he was elected to a two-year term as vice president of the International Association for the Study of Forced Migration.

During the winter recess, **James E. Krier**, the Earl Warren Delano Professor of Law, served as the 16th annual Higgins Distinguished Visitor at Northwestern School of Law, Lewis & Clark College, in Portland, Oregon. He and Assistant Professor **Michael Heller** also presented workshops at Cardozo Law School and Chicago-Kent Law School.

Professor **Deborah Malamud** taught at the University of Tokyo this summer.

Assistant Professor **Ronald J. Mann** in June taught classes on intellectual property and commercial transactions at the University of Tokyo and University of Kyoto, presented a workshop on secured credit and software financing at the International Center for Comparative Law and Politics at the University of Tokyo, and lectured on U.S. Supreme Court practices at the University of Kyoto.

Thomas M. Cooley Professor Emeritus **John W. Reed** assisted in the State Bar of Michigan course for new lawmakers early this year. Term limitations for former lawmakers resulted in a large number of new legislators taking up lawmaking duties in January, and the course was designed to help acquaint them with their new role.

Donald H. Regan, the William W. Bishop Jr. Collegiate Professor of Law, and a veteran singer with the University of Michigan Gilbert and Sullivan Society (UMGASS), went to the head of the class in "The Gondoliers," according to a review of the UMGASS performance in April. "Especially for a law and philosophy professor, Regan is a polished comic actor and carries off the traditional G&S 'patter' song 'In Enterprise of Martial Kind' as if born to it," reviewer Bruce Martin wrote in the *Ann Arbor News*.

Theodore J. St. Antoine, '54, the James E. and Sarah A. Degan Professor Emeritus of Law, in June began his one-year term as president of the National Academy of Arbitrators.

Professor **Carl E. Schneider**, '79, served on the committee of the Association of American Law Schools (AALS) that chose the best book of law written over a three-year period to receive the National Order of the Coif Triennial Book Award, which went to Gerald Gunther's *Learned Hand: The Man and the Judge*. Schneider's own most recent book, *The Practice of Autonomy: Patients, Doctors, and Medical Decisions*, received high praise in *The New England Journal of Medicine* in March as "the most comprehensive, organized summary and analysis to date of the quantitative and qualitative empirical research on the actual process of medical decision making." Reviewer Marshall B. Kapp of Wright State University writes of Schneider: "In place of the current consumer-choice model, he proffers detailed advice on how to begin to achieve the two aspects of the consumer-welfare model that he thinks most people would prefer — namely, competence and kindness."

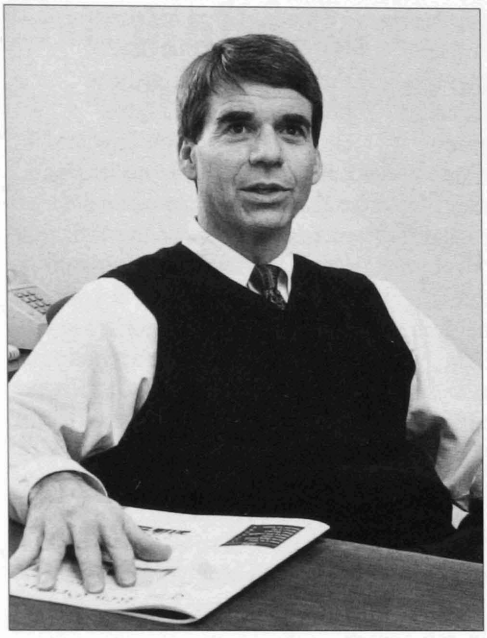
The first hardbound volume of the Restatement (Third) of Property (Wills and Other Donative Transfers), by **Lawrence W. Waggoner**, '63, the Lewis M. Simes Professor of Law, was published in May for distribution at the annual meeting of the American Law Institute. This is the first of five and perhaps six volumes of this Restatement.

James Boyd White, the Hart Wright Collegiate Professor of Law, in June presented the Margaret Howard Lecture on Law and Literature in London, England, and last winter presented the plenary address to the Working Group on Law, Culture, and Humanities at Wake Forest University. Next year he is to give one of the plenary talks at the celebration of the 575th birthday of the University of Louvain in Belgium. His book, *From Expectation to Experience: Essays on Law and Legal Education*, is to be published this fall by the University of Michigan Press.

VISITING FACULTY:

Visiting professor **Marc Spindleman** appeared on the CNN show *Burden of Proof* in March with attorney Geoffrey Fieger to discuss the murder trial of Fieger's former client, assisted suicide advocate Jack Kevorkian. Earlier in March, Spindleman had two commentaries on the issue printed, "Flaws mar Oregon report on dying law," in the *Detroit News*, and "Report on Oregon's assisted-suicide law paints too rosy a picture," in *Legal Times*. In January, his op-ed piece on the impeachment of President Clinton, "Removal arguments not totally convincing," appeared in the *Detroit News*.

Frost becomes assistant director of **Legal Practice Program**



Philip M. Frost, '73

Clinical Assistant Professor Philip M. Frost, '73, who has taught in the Legal Practice Program since it began in 1996, has been named assistant director of the program.

In addition to teaching the Legal Practice course, Frost has taught a course for LL.M. students on research and writing in the American legal system. He also is an arbitrator for the American Arbitration Association.

Before coming to the Law School, Frost was a partner at Dickinson, Wright, Moon, Van Dusen & Freeman in Detroit, where he had a commercial litigation practice that included trial, appellate, and alternative dispute resolution work in antitrust law, bankruptcy, business torts, contracts, commercial transactions, and trade regulation. While at Dickinson Wright, he also chaired the firm's recruitment and *pro bono* service committees.

Frost also chaired the State Bar of Michigan Antitrust, Franchising and Trade Regulation Section Council and has lectured at seminars sponsored by the Michigan State Bar and the Institute for Continuing Legal Education. In 1998 he delivered a paper on "The Last Execution in Michigan" at the annual meeting of the Michigan Academy of Science, Arts & Letters.

He is admitted to practice before the U.S. Supreme Court as well as state and federal courts.

Frost received his B.A. in history from Yale University. At the Law School, he was awarded the Order of the Coif and graduated *magna cum laude*. After graduation, he clerked for the Hon. Philip Pratt of the U.S. District Court for the Eastern District of Michigan.

"Phil has been an excellent Legal Practice teacher," said Legal Practice Program Director Grace Tonner. "His talents and experience make him an ideal assistant director, and his rapport with students is exceptional."

First-year law students are required to take both terms of the Legal Practice course, which is designed to teach legal analysis by giving students hands-on experience with writing memoranda, briefs, and other legal documents. It also introduces them to other aspects of the practice of law, such as client relations, negotiation, and oral argument.

Frost replaces Carolyn R. Spencer, who has joined the Office of Career Services. (See story on page 8.)

Beckerman, Hills, Lyon win L. Hart Wright Awards

Visiting Professor John Beckerman, Assistant Professor Roderick M. Hills, and Clinical Assistant Professor Andrea D. Lyon won top honors from law students in the annual vote for the L. Hart Wright Award.

The teaching award is given each year to one or more faculty members who are top vote getters in balloting sponsored by the Law School Student Senate. The awards were presented in April during the Law School Student Senate's annual talent show.

Beckerman has taught at the Law School for the past two academic years. He taught Legal Profession and Legal Ethics in fall 1998 and Civil Procedure and Enterprise Organization in winter 1999. He has a doctorate in history from the University of London and a J.D. from Yale Law School. He clerked for the Hon. José A. Cabranes of the U.S. District Court of Connecticut and has practiced in New York City.

Hills, whose research interests include land use controls and local government, holds bachelor's and law degrees from Yale University. A former Century Fellow with the Committee on Social Thought at the University of Chicago, he was a member of the *Yale Law Journal* and served as co-editor in chief of the *Yale Journal of Law & Humanities*. He clerked for the late Judge Patrick Higginbotham of the U.S. Court of Appeals for the Fifth Circuit.

Lyon, who joined the Law School in 1995, earned her J.D. at Antioch School of Law. A specialist in capital defense cases, she founded the Capital Resource Center in Chicago in 1990 and served as its first director. She has worked with the Office of the Cook County Public Defender and became chief of that office's Homicide Task Force. She has fought more than 40 capital cases and been involved in more than 130 homicide cases. Last fall she was one of four recipients of a Justice for All Award at the National Conference on Wrongful Convictions and the Death Penalty at Northwestern University School of Law.

The Wright Award is named after the late L. Hart Wright, a tax specialist and long-time member of the Law School faculty who was revered by generations of students. Wright's name also is memorialized in the endowed chair held by Professor James Boyd White.

Four from Law School win top fellowships

PHOTO COURTESY ROBERT PRECHT

Office of Public Service Director Robert Precht, left, is shown at a recent reunion in New York of Skadden Fellowship recipients from the Law School. With him, from left, are Susan Butler Plum, director of the Skadden Fellowship Foundation; Ann Jochnick, '98; Bonita P. Tenneriello, '96 (foreground); Steve Tobocman, '97; Katherine Weatherly, '99; and Deborah M. Golden, '98.

Four members of the Law School community have been awarded prestigious fellowships to advance their public interest work. Ann Jochnick, '98, and Katherine Weatherly, '99, each have won Skadden Fellowships; Tracey L. Wheeler, '99, and has won an echoing green fellowship; and Steve Tobocman, '97, has won a fellowship from the National Association for Public Interest Law (NAPIL).

Jochnick, working through Greater Boston Legal Services, was awarded a Skadden Fellowship to provide legal advice, education, and representation to low-income families at risk of losing their homes due to expiring rent restrictions and subsidies.

Weatherly will use her fellowship to work with attorneys of the Native American Rights Fund in Boulder, Colorado, to provide legal services to Indian tribes that want to assert tribal control over state education plans. Her work also will help tribes take a role in hiring teachers, curriculum design, and the teaching of traditional culture and language.

Sponsored by the Skadden Fellowship Foundation through Skadden, Arps, Slate, Meagher & Flom LLP, the Skadden Fellowships are given to recent law school graduates to pursue public interest work. Law School Dean Jeffrey S. Lehman, '81, is a member of the Skadden Foundation board.

Twenty-five fellowships are awarded nationwide annually and provide an important entré into public interest legal work; one study revealed that, nine years after their fellowships began, half of all fellowship recipients still were working at their original placements and that 90 percent of Skadden Fellowship recipients still were in public interest work.

Wheeler's two-year echoing green fellowship provides seed money for her to establish an organization to help teenage girls who are unlikely to be adopted or to thrive in independent living settings. The program will provide mentoring, counseling, and other services.

The echoing green fellowship "applies a venture capital approach to philanthropy by providing seed money and technical support to emerging social entrepreneurs creating innovative public service organizations or projects that seek to catalyze positive social change," according to fellowship materials. The stipend is to be used to start a new public service organization or to start an independent project within an existing non-profit organization. The fellowship awards are open to graduates of more than 135 selected schools if they graduated no more than 10 years ago.

Tobocman, a former Skadden Fellowship winner who used his fellowship to fashion a program of community development law through the auspices of Michigan Legal Services in Detroit, will use his NAPIL fellowship to explore legislative and public policy initiatives that may be employed in community development work.

During his two years as a Skadden Fellow, Tobocman established Community Legal Resources in Detroit, which draws on law firms to provide legal services for community development programs. "He has created an infrastructure for community development work that didn't exist before," said Robert Precht, director of the Law School's Office of Public Service (OPS).

OPS works closely with fellowship applicants to find suitable placements, fashion proposals, and complete applications.

Women graduates share their strategies for balance, success

Describing the "planned chaos" of her own life and her ways of balancing professional, personal, and family concerns, Indiana Supreme Court Justice Myra Selby, '80, reminds participants in the Women's Professional Development Workshop that "there is no quick fix" for achieving that balance. Selby, the program's keynote speaker, urged women law students and alumnae to be true to themselves in choosing how they will balance their lives. "Don't pretend," she said. "I don't think that pretending gets you ahead in any way."

No one can tell you how to succeed as well as those who have succeeded. That's the attraction that has made the annual Women's Professional Development Workshop so successful — successful women graduates returning to the Law School to tell women law students how they found professional and personal satisfaction and to offer hints that others may use.

The annual workshop, held at the Law School in March, once again showed that the roads to satisfaction are as different as the women who travel them. For example, the panelists who discussed "A Balanced Life: Navigating Your Career," reflected very different ways of finding the balance that makes for happy lives:

- "Don't be afraid to take risks. What you need to do is what's right for you," said Mary Snapp, '84, general counsel for Microsoft Corporation, where she finds the mix of hard work, diversity, and informality ideal. "Frankly, the best way to be successful is to be personally happy in what you do," she said.
- Leslie Newman, '94, director of Proyecto Azterca in McAllen, Texas, said that she always wanted to do public interest work. Proyecto Azterca, which she has headed since 1995, is a community-based housing development organization that works to improve living conditions along the Texas-Mexico border and helps low-income families build their own homes.
- It took a few years of legal practice for Tracey Lessen Gersten, '89, to understand that she would rather be a psychotherapist. "I have a client who taught me this wonderful phrase: 'I knew it, but I didn't know I knew,' " Gersten explained. "You have a lot of choices if you give yourself permission to follow them," she said. "Being true to yourself is very important and the sooner you learn that the better off you will be." The career shift has not reduced her workload, she added: "I work more now than I did as a lawyer [but] I feel blessed to work my five 12-hour days. Balance is going to look different for everybody."
- Panel moderator Christina B. Whitman, '74, U-M Law School associate dean for academic affairs, discussed the balancing act of combining motherhood with a demanding career, the satisfactions that the combination has brought, and the flexibility and career choices that it has required. Women were just beginning to combine family and legal careers when she graduated from law school, Whitman said, and "the greatest thing was that there were absolutely no rules."

Leslie Newman, '94, executive director of Proyecto Azteca in McAllen, Texas, tells of her satisfaction in her work as director of a community-based housing development organization that assists people along the Texas-Mexico border. Newman was one of nearly 20 women graduates who returned to the Law School as presenters for the Women's Professional Development Workshop in March. Behind her is panel moderator Christina B. Whitman, '74, associate dean for academic affairs at the Law School.

The workshop's keynote speaker, the Hon. Myra Selby, '80, a judge on the Indiana Supreme Court, also dealt with the issue of balance. Selby said that when she began work on her talk, called "A Balanced Life," she couldn't help but ask "Is it myth or reality?" It's real, she answered by way of a variety of examples from her own life — like her policy of declining weekend speaking invitations, her practice of eating lunch in her office at least every third day and making herself available to her staff then, and her joy at being able to switch her attention from her work to her family and back again.

"Finding the balance between your life and your legal career will be different for each of you," she said. "Some of you will find it in career and family, some will not have a family. All this requires honest self-examination and constant renewal."

"Women lawyers struggle from the time we are in law school through our career in the role of women lawyers. . . . I think it is something that everyone grapples with individually," she said.

"How can we encourage men to take on more of the balance issue and to see it as not just a women's issue?" a questioner asked after Selby's talk. "The notion that men seek balance is becoming more and more apparent in today's workplace," Selby answered.

The day-long workshop, which featured nearly 20 speakers, also included panel discussions on working in a law firm and working in an "alternative" career. Small groups devoted lunchtime to round table discussions of health and fitness in the workplace, making career choices to accommodate your life, working in an international environment, workplace issues that face women of color, and being a solo practitioner.

Workshop speakers have "achieved prominence across the entire range of the profession," Dean Jeffrey S. Lehman, '81, noted in his welcoming remarks to participants.

From 'DUSTY BOOKS' to writing books

Nancy King, '87, once recalled the Law School as "a boring, tedious place, with dark shelves, dusty books, legal talk, and hard chairs." Now, elementary, middle, high school, and two university degrees later, she's a co-author with two of the best-known professors associated with that "boring, tedious place," Yale Kamisar and Jerold H. Israel (A third co-author is the University of Illinois Law School's Wayne R. LaFave, regarded by many as the nation's leading authority on search and seizure.)

Of course, if you were in first or second grade and your mother brought you to the Law School while she did her studying, you might remember it the same way. That's how it was for Nancy King, whose mother, Jean Ledwith King, '68, graduated to become a pioneer in securing equal rights for women, often in athletics. The younger King later joined her mother in the legal profession and today is a professor of law and — as of July 1 — associate dean of research and faculty development at Vanderbilt University Law School. In fall 1998 she was a visiting professor at the U-M Law School; she taught Criminal Procedure: Bail to Post-Conviction Review and co-taught White Collar Crime with another visiting faculty member, the Hon. Paul D. Borman, '62, of the U.S. District Court for the Eastern District of Michigan.

(For her part, Jean King has continued to do what she does best — mobilize the law and the political process to fight for equal rights. A solo practitioner in Ann Arbor, she recently was the subject of a front-page feature in the *Detroit Free Press.* Headlined "Playing Hardball," the story appeared on March 15 as part of the newspaper's recognition of Women's History Month. The story is available on the World Wide Web at www.freep.com. A short sentence in that story tells as much of Jean King's impact as a list of her accomplishments: "As her reputation grew, a phone call to a coach or an administrator replaced lawsuits." The story ends by quoting Ann Arbor attorney Barbara Kessler: "People don't realize that many of

Continued on page 42

Nancy J. King, '87, right, and her mother, Jean Ledwith King, '68, chat during the Women's Professional Development Workshop at the Law School in 1997. Nancy King, who has been a visiting faculty member at the University of Michigan Law School, is a professor and associate dean at Vanderbilt University Law School in Nashville; Jean King practices law in Ann Arbor.

Continued from page 41

the blessings that exist for young women in sports today are there in large measure because of the clanging of the chains by Jean King. Not only has she worked for equity for women in sports and education, but she has worked hard to advance women in the legal profession. She is really an example for us all.")

Nancy King is drawing similar praise for her academic pursuits. Years ago she read storybooks while her mother studied from the second edition of *Modern Criminal Procedure*. Today she has joined Kamisar and LaFave as co-author of the ninth edition of the same text, out this year. She is also a co-author of the second edition of Israel and LaFave's *Criminal Procedure Treatise*, slated for publication later this year.

King's contributions to the ninth edition of the casebook were "quite significant," said Kamisar, the Clarence Darrow Distinguished University Professor of Law. He especially praised King's new chapter on sentencing and her thoroughly revised and streamlined chapter on *habeas corpus*.

Israel, the Alene and Allan F. Smith Professor Emeritus of Law and a former teacher of King, was even more effusive. "She saved my life because I doubt that without her I would ever finish," he said of the multi-volume treatise on criminal procedure. King did five of the treatise's 27 chapters — on appeals, *habeas corpus*, sentencing procedure, double jeopardy, and trials.

"She really came through for me, and I appreciate that," Israel said. "She gets things done, done on time, and they're interesting to read."

Besides, Israel added with a wink toward his long-time friend and colleague Kamisar, "Doing casebooks is easy. A treatise is a lot more work, and you don't make money like you do on casebooks."

At the Forum —

Law students and successful law graduates meet for conversation at the periodic Dean's Forum luncheons that are held throughout the academic year. Here, Lester L. Coleman III, '68, vice president and general counsel of the Halliburton Co., right, Mary E. Snapp, '84, general counsel for Microsoft, below, right, and David Westin, '77, president of ABC News, at left in photo below, chat with students prior to their Dean's Forum luncheons. Coleman visited the Law School in February, Snapp visited in March, and Westin visited in April. Snapp also extended her stay to participate in the Women's Professional Development Workshop in March. (See story page 40.) The Dean's Forum programs give selected students the opportunity to take part in informal, small group conversations with graduates of the Law School who have become exceptionally successful in their fields.

New Zealand Justice Bradley Giles, LL.M. '74

Bradley Harle Giles, LL.M. '74, a justice on the High Court of New Zealand since 1997, died April 23 at age 55. Giles, who *The National Business Review* called "one of New Zealand's better jurists," had retained his interest in the Law School since studying here during the 1970s and remained in touch with Law School officials.

Giles' career frequently put him in the public eye. He served as advocate general of the Cook Islands after Premier Albert Henry's election was overturned in 1978, represented victims of a failed law firm, and served as attorney for the family of a boy who was crippled in a railway accident.

A tough taskmaster who demanded as much of himself as of his colleagues, Giles considered the practice of law a calling with few equals. "Brad expected from others what he gave of himself," one friend said of the late justice.

"Aside from his courtroom fame in criminal and grievance cases, Mr. Giles was perhaps New Zealand's pre-eminent litigator in the area of maritime law, a specialist area he first encountered while studying at the University of Michigan and continued as a partner at Russell McVeagh McKenzie Bartlect & Co.," Nicholas Bryant wrote of Bradley in the death notice that appeared in New Zealand's *National Business Review* on April 30.

Giles died of cancer. He is survived by his widow and two children.

50TH REUNION

The class of 1949 reunion will be October 1-3

1953

Stanley M. Fisher spoke at the 1998 National Academy of Arbitrators Education Conference in Kansas City on the revised Uniform Arbitration Act. Of Counsel with the law firm Arter & Hadden L.L.P., he practices in the firm's business litigation and ADR group. He also has been reappointed by Ohio Governor George V. Voinovich as a member of the Ohio State Board of Uniform State Laws for a term ending in June 2001.

45TH REUNION

The Class of 1954 reunion will be October 1-3

1959

40TH REUNION

The Class of 1959 reunion will be October 1-3

John W. Kormes, of Philadelphia, Pennsylvania, has enjoyed an active career in private practice since 1961 and has served his city as assistant district attorney, assistant city solicitor, and as a member of the License and Inspection Review Board. He has been listed in *Who's Who in American Law* for more than 20 years, as well as other publications, and is a member of the Poetic Genius Society and the Triple Nine Society, whose members' IQs exceed that of 99.9 percent of the population.

1961

Abba I. Freidman has relocated to Butzel Long's Ann Arbor office from the firm's Birmingham office. He specializes in construction law, with a related practice in commercial and insurance law.

1963

Gen Kajitani, M.C.L., has been appointed to the Supreme Court of Japan and began serving as a justice on the court in April. He formerly practiced with Kajitani Law Offices in Tokyo, where he specialized in business and corporation law, bankruptcy law, and international transaction law. He also has served as president of the First Tokyo Bar Association and as vice president of the Japan Federation of Bar Associations.

(Ed. Note: Itsuo Sonobe, who lectured at the Law School in fall 1998 and was a research scholar at the Law School in 1958-59, retired from the Supreme Court of Japan in April after serving on the court for 10 years.)

35TH REUNION

The Class of 1964 reunion will be October 1-3

1965

Darryl R. Cochrane has retired from the practice of law and become a business agent with Local Union 406 of the International Brotherhood of Teamsters in Grand Rapids.

The Hon. **Rosemary S. Pooler**, has been named to the U.S. Court of Appeals for the Second Circuit in New York. Judge Pooler formerly was U.S. District Court Judge for the Northern District of New York.

Kent P. Talcott has been elected to membership in the law firm Dykema Gossett, P.L.L.C, in the Ann Arbor office. A member of the corporate finance and tax practice groups, he concentrates on corporate law, business planning, mergers and acquisitions, operations, corporate finance, and international transactions.

1966

Henry W. Ewalt has joined the law firm Pepper Hamilton L.L.P. as a partner. Resident in the Pittsburgh office, he concentrates his practice on labor and employment law. He was previously vice president and associate general counsel for litigation with CBS Corporation, Pittsburgh.

CLASS *notes*

James P. Hoffa, president of the Brotherhood of Teamsters, was featured in an article in the *New York Times* on May 1 that described his early efforts to chart a new path for the union that his late father headed from 1957-71. Hoffa "appears to be simply going about his job, struggling to unify and rebuild a deeply divided union that has drifted rudderless for two years," the article said. Hoffa is working 12-hour days, supporting union groups in their negotiations, charting a bipartisan political path, seeking to end federal oversight of the union, and wrestling with the issues posed by the North American Free Trade Agreement's opening of the border to Mexican truckers.

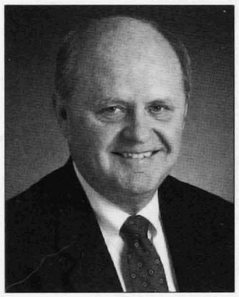
1967

Wisconsin Governor Tommy G. Thompson has appointed **Tom Boykoff** to the Tax Appeals Commission for a term ending in March 2001. The Tax Appeals Commission decides disputes between taxpayers and the Department of Revenue. Boykoff has worked for the past 14 years as general counsel in the Office of the Commission of Savings and Loan. He resides in Madison and has three children.

Richard D. McLellan of East Lansing, Michigan, and **Ometrias Deon Long**, '93, of Orlando, Florida, were part of an International Republican Institute delegation that monitored presidential elections in the Republic of Nigeria in February. This was McLellan's third international election mission; he also served during the 1990 Bulgarian elections and the 1996 Bulgarian presidential elections. A member of the law firm Dykema Gossett, P.L.L.C., he practices in the areas of government policy and election matters. Long is founder and president of the law firm Long and Pryor. He also advises Florida Governor Jeb Bush on issues affecting African Americans statewide, and was a consultant to Governor Bush's successful 1998 campaign.

1968

The University of Hawaii at Manoa honored **David Callies** for co-authoring the book *Property Law and the Public Interest*, published in fall 1998. The casebook, designed for first-year law students, deals with the contemporary law of property from both private and public law perspectives.

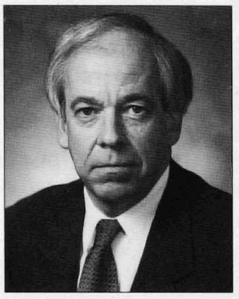


Robert M. Vercruysse recently participated in a panel discussion on whether an employer can pay strike replacement wages different from those it had paid to the strikers, during the annual Bernard Gottfried Labor Law Symposium at Wayne State University. He is president of the management labor and employment law firm of Vercruysse Metz & Murray.

1969

30TH REUNION

The Class of 1969 reunion will be October 1-3



John W. Bryant, a former shareholder of the law firm Eames Wilcox, has joined the law firm Dean & Fulkerson as a shareholder. He has extensive experience in major federal and state court litigation involving issues such as transportation, international trade, antitrust, energy, and commercial transactions law. He also serves as an arbitrator in commercial law disputes and advises business clients on immigration and customs issues. Bryant resides in Grosse Pointe Park with his wife, Susan.

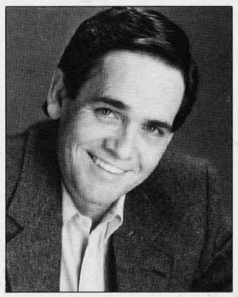
John J. McGonagle, managing partner of The Helicon Group in Blandon, Pennsylvania, is the co-author (with Carolyn M. Vella) of *The Internet Age of Competitive Intelligence*, published in January by the Greenwood Publishing Group Inc. According to the publication announcement, the authors "have written the first work to guide CI [competitive intelligence] professionals through the emerging literature of their field."

Chan Jin Kim, M.C.L., an attorney with CJ International in Seoul, also is a member of the National Assembly of the Republic of Korea.

1970

Butzel Long has elected **Alexander B. Bragdon** and **Gary W. Klotz**, '77, as shareholders. Bragdon practices in the areas of pension and profit sharing law, employee benefits, ERISA litigation, and healthcare law. He is based in the firm's Detroit office and is a resident of Clarkston, Michigan. Klotz specializes in labor and employment law, and is a resident of Troy, Michigan.

Simon N. Lorne, former general counsel for the U.S. Securities and Exchange Commission and former managing director for Salomon Smith Barney, has rejoined Munger, Tolles & Olson LLP as a partner resident in the Los Angeles office.



Lawrence A. Young, a partner with Hughes, Watters & Askanase, L.L.P. in Houston, has been elected to the American College of Consumer Financial Services Lawyers. He also is a Fellow of the American College of Commercial Finance Lawyers.

1971

David T. Alexander is now a partner in the law firm Orrick, Herrington & Sutcliffe L.L.P. in San Francisco, California. He specializes in intellectual property, antitrust, sports litigation, and other forms of complex litigation.

1972

Jerry R. Swift, a former shareholder of the law firm Eames Wilcox, has joined the law firm Dean & Fulkerson as a shareholder. He specializes in tort, insurance, and commercial litigation. He regularly handles cases involving catastrophic commercial vehicle accidents, construction failure claims, and commercial law disputes. Swift resides with his wife, Donna, in Farmington Hills.

1974

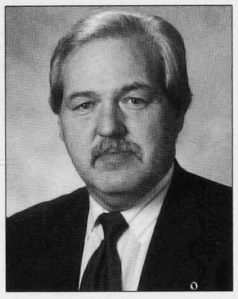
25TH REUNION

The Class of 1974 reunion will be November 5-7

Clarence L. Pozza Jr., a principal in the Detroit office of the law firm Miller, Canfield, Paddock and Stone, P.L.C., has been reelected managing director of the firm. He also is chairman of the retirement benefits committee, and is deputy leader of the commercial litigation practice group. He resides in Ann Arbor.

1976

Lynne E. Deitch of Butzel Long has been elected to a four-year term on the board of directors of Lex Mundi, the world's leading association of independent law firms. She was also the first woman in the organization's 10-year history to be named to the executive committee of Lex Mundi. A shareholder at Butzel Long, Ms. Deitch practices primarily in the areas of labor and employment law.



Neill T. Riddell, formerly a shareholder of the law firm Eames Wilcox, has joined the law firm Dean & Fulkerson as a shareholder. He practices extensively in employment, commercial, and transportation law. He has wide experience in matters involving personal injury, tax, insurance, real estate, and contracts, as well as wrongful discharge and discrimination disputes. Riddell lives in Riverview with his wife, Debra, and their three children.

1979

20TH REUNION

The Class of 1979 reunion will be November 5-7

Brant A. Freer of the Detroit office of Miller, Canfield, Paddock and Stone, P.L.C., has been elected principal. He is the leader of the firm's employee benefits practice group and also focuses on public law with respect to federal income tax aspects of public finance. He resides in Birmingham, Michigan.

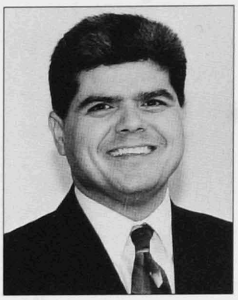
1980

Chicago Legal Clinic Inc. elected **G.A. Finch** to membership on its board of directors. The not-for-profit Chicago Legal Clinic provides community-based legal services and education to underserved and disadvantaged clients in four neighborhood offices. Finch is a partner in the law firm Querrey & Harrow, where he concentrates his practice in corporate, real estate, and employment law. He also was appointed to Governor George Ryan's transition team's financial services and regulation committee.

1981

The law firm Whyte Hirschboeck Dudek S.C. has elected **Bruce G. Arnold** a managing director and member of its six-person management committee, which is responsible for the policy-setting and direction of the 108-attorney firm. A member of the firm's compensation committee, he is a shareholder whose practice focuses on healthcare law, bankruptcy law, and litigation. **Natalia Delgado** has joined Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd., as a partner. Delgado previously had practiced at Jenner & Block since 1984. She will continue her focus on securities as well as international transactional matters as a member of the firm's corporate, tax, and securities law group.

1982



The law firm Brown, Winfield & Canzoneri, Los Angeles, has added **William Balderrama**, Esq., as an associate. Balderrama previously was a sole practitioner since November 1995. He is experienced in business, real estate, professional liability, governmental liability, employment law, and fair housing and discrimination. He resides in Alhambra, California.

David B. Sandalow, associate director for the global environment of the White House Council on Environment Quality and senior director for environmental affairs of the National Security Council, has been nominated by President Clinton to be assistant secretary of state for oceans and international environment and scientific affairs at the U.S. Department of State. Prior to coming to the White House, Sandalow was with the office of the general counsel at the Environmental Protection Agency and in the private practice of law. The assistant secretary of state for oceans and international environment and scientific affairs directs, analyzes, and evaluates issues associated with scientific, technological, and environmental issues and advises the Secretary of State on policy in these areas. Sandalow is the son of Edson R. Sunderland Professor of Law Terrance Sandalow, a former dean of the Law School.

CLASS notes

Graduates named to *The Best Lawyers in America*

Graduates continue to let us know of their own and others' inclusion in *The Best Lawyers in America* 1999-2000. Here are the names of additional graduates whom *Law Quadrangle Notes* has learned are included in the most recent compilation:

Thomas H. Blaske, '76, of Blaske and Blaske, P.L.C., of Ann Arbor and Battle Creek, Michigan. Blaske also recently was selected Washtenaw Trial Lawyers Association Attorney of the Year.

Barry D. Boughton, '64, of Sinas, Dramis, Brake, Boughton & McIntyre, P.C., Lansing, Michigan.

Darryl R. Cochrane, '65, a business agent with Local Union 406 of the International Brotherhood of Teamsters, Grand Rapids.

Rober Z. Feldstein, '63, of counsel to Kemp, Klein, Umphrey & Endelman and a solo practitioner of Robert Z. Feldstein, P.C., of Troy, Michigan, is included in the family law section.

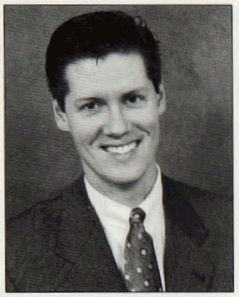
C. Vernon Howard, '62, of Stroud, Willink & Howard, LLC, Madison, Wisconsin.

Richard Z. Kabaker, '59, of Lee, Kilkelly, Paulson & Kabaker, S.C., in Madison, Wisconsin.

Jesse S. Ishikawa, '80, of Michael, Best & Friedrick, Madison, Wisconsin.

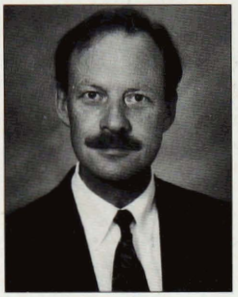
Also, seven graduates who are partners in the Detroit-based Honigman Miller Schwartz and Cohn: **Joel Adelman**, '67, in the real estate law department and CEO of the firm; **David Foltyn**, '80, corporate law department; **Stuart M. Lockman**, '74, health care law department; **Cyril Moscow**, '57, corporate law department; **Joseph M. Polito**, '75, chair of the environmental law department; **Mark Shaevsky**, '59, corporate law practice department; and **Michael B. Shapiro**, '72, chair of the real estate tax appeals department.

1983



William J. Brennan has joined Bissell Inc., of Grand Rapids, Michigan, as vice president, general counsel. He was previously a partner in the law firm Dykema Gossett P.L.L.C., resident in the firm's Grand Rapids office. He and his wife, Susan VanZanten Brennan, have three children.

Jodie King, vice president and secretary of The Hearst Corporation and secretary to the two Hearst Foundations, has been named a David Rockefeller Fellow by the New York City Partnership and the New York Chamber of Commerce. "This year's 12 David Rockefeller Fellows are all senior executives, nominated by their CEOs and selected in a competitive process, who are committed to taking time away from their desks to learn first-hand about the challenges facing New York City," said the announcement of the selection. "Through a program of discussions with top city and business leaders, site visits to city institutions and neighborhoods, and seminars and readings, the Fellows explore one major issue each month and learn how they and their companies can be effective corporate citizens in partnership with the public and non-profit sectors."



Michael R. Lied has joined the Peoria, Illinois, law firm Howard & Howard Attorneys, P.C., where he specializes in labor and employment law and related litigation and immigration law. He resides in Dunlap, Illinois, with his wife, Cherlyn, and three sons.

1984

15TH REUNION

The Class of 1984 reunion will be November 5-7

David D. Knoll, LL.M., has returned to private practice as a barrister. He has joined "5 Wentworth Chambers" in Sydney, Australia. In Australia, as in England, the profession is divided into barristers and solicitors. Barristers are specialist advocates before the superior courts. Knoll continues to practice in the areas of antitrust (trade practices), antidumping, regulated industries, and general commercial litigation.

David Koch has joined the law firm Wiley, Rein & Fielding in Washington, D.C., as a partner. He previously was a partner with Rudnick, Wolfe, Epstien & Zeidman, also in Washington. He specializes in franchising and distribution.

Daniel P. Schaack has left his position as staff attorney for the Arizona Court of Appeals and returned to private practice with the Phoenix, Arizona, law firm Logan & Geotas. He will practice in general civil litigation, with an emphasis in civil appeals.

Michael R. Shpiece is co-founder of the law firm Miller, Shpiece & Andrews, P.C. The firm focuses on no-fault insurance benefits, healthcare, employee benefits, regulatory matters, workers' compensation, litigation, catastrophic personal injury, freedom of information, and corporate law. Shpiece has an extensive background in employee benefits, insurance, and health law, and is an adjunct professor at Wayne State University Law School. He previously was a partner at Honigman Miller Schwartz & Cohn, and for the past five years was of counsel at Shapack, McCullough & Kanter.

1985

Emil Arca was selected for inclusion in Euromoney's 1999 *Guide to the World's Leading Securitization Lawyers*. He is a partner in the New York City office of Dewey Ballantine L.L.P.

Raymond Rundelli, a specialist in intellectual property protection and enforcement, has become of counsel to Aarter & Hadden LLP of Cleveland, Ohio.

1986

Thomas O. Bean has been elected partner in the litigation department of the Boston law firm Nutter, McClennen & Fish, L.L.P. He provides a wide range of legal services related to complex litigation, administrative and regulatory law, and bankruptcy. Bean previously practiced bankruptcy law and bankruptcy litigation with Brown, Rudnick, Freed & Gesmer, P.C.

Donald J. Hutchinson was named to the advisory board of the *Sixth Circuit Review*, a twice-monthly publication that provides late-breaking advisory alerts on significant cases. A principal in the Detroit office of the law firm Miller, Canfield, Paddock and Stone, P.L.C., he has an extensive bankruptcy practice. He resides in Plymouth, Michigan.

Howard Iwrey, a partner in the law firm Honigman Miller Schwartz & Cohn, was appointed to a one-year term as vice chairman of the State Bar of Michigan's Antitrust, Trade Regulation and Franchising Section. He practices all aspects of antitrust, franchising, trade regulation, and trade secrets law, including litigation and counseling. He resides in West Bloomfield, Michigan.

1987

Kathryn A. Donohue, of Philadelphia, Pennsylvania, has been elected to partnership in Pepper Hamilton L.L.P. She concentrates on commercial and intellectual property law, with a focus on technology transfer.

David Ford has been named senior associate of the labor and employment practice group of the law firm Whiteman Osterman & Hanna, Albany, New York. Prior to joining the firm, he provided labor and employment counsel to GE Power Systems in Schenectady, New York, and handled a variety of employment issues for the National Broadcasting Company.

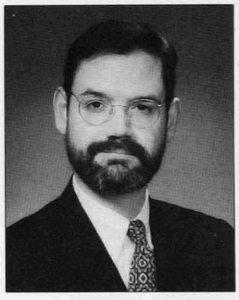
The law firm Bricker & Eckler L.L.P. has elected **Mark C. Pomeroy** as a partner. He is chair of the firm's cyberlaw and Year 2000 law practice groups, practicing computer use and network access law and helping companies prepare for potential Year 2000 problems.

Mary Jo Newborn Wiggins has been appointed by United States Supreme Court Justice William H. Rehnquist to the United States Judicial Conference Advisory Committee on Bankruptcy Rules. She is a professor at the University of San Diego School of Law.

1988

Ronald Albert Jr. has been elected to the Board of Directors for Lawyers for Children of America, a non-profit organization that mobilizes legal and other resources to provide *pro bono* legal representation for abused and neglected children. A partner in the Miami, Florida, office of Holland & Knight L.L.P., Albert practices corporate and securities law, including mergers and acquisitions.

Gabriel J. Chin is the author of the book *Affirmative Action and the Constitution*, published by Garland Publishing in late 1998. Chin edited and wrote introductions for this three-volume anthology, which reprints judicial decisions, scholarly articles, and court documents.



Brent C. Taggart has been named partner at the Columbus, Ohio, law office of Vorys, Sater, Seymour and Pease L.L.P. He practices in the area of litigation, including business and commercial disputes, employment law and civil rights, employee benefits, products liability, and toxic torts.

Class notes

1989

10TH REUNION

The Class of 1989 reunion will be November 5-7

After five years with the Immigration and Naturalization Service, **Lisa Batey** left Washington, D.C., in April to take a position with the International Organization for Migration in Vienna, Austria. In this position, she combines her immigration experience and her knowledge of the Russian language and legal system to work on issues involving migration policies and practices in the former Soviet Union.

Sandra Miller Cotter has been elected to membership in the law firm Dykema Gossett P.L.L.C., in the Lansing, Michigan, office. A member of the government policy and practice group, she concentrates on insurance and environmental regulation and legislation, public policy litigation and legislation, liquor licensing and regulation, and general corporate work for profit and non-profit corporations.

Frank Emmert, LL.M., has become professor of European and international law and dean of the law school at Concordia International University in Estonia.

Ann D. Fillingham has joined the Lansing, Michigan, office of the law firm Howard & Howard Attorneys, P.C. She specializes in public finance and transactional work for corporations and financial institutions. She resides in Holt, Michigan, with her husband, Brian, and two children, Erin and Jacob.

Albert E. Fowerbaugh Jr., and **Damon N. Vocke** have been elected partners in the law firm Lord, Bissell & Brook, Chicago, Illinois. They concentrate in business litigation.

Nancy L. Little has been elected to the Board of Directors and to the office of vice president for the Lansing, Michigan-based law firm Fraser Trebilcock Davis & Foster, P.C. She is the first woman to serve as vice president in the firm's 116-year history. Little specializes in probate, estate planning, estate and trust administration, guardianships and conservatorships. She recently co-authored the book *Michigan Probate Litigation* for the Institute of Continuing Legal Education, and is presently co-authoring another book entitled *Trust Administration in Michigan.*

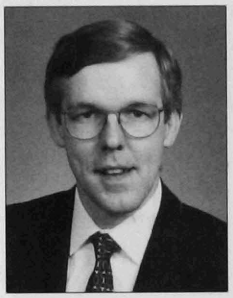
1990

Harold R. Burroughs has been elected to partnership in the St. Louis, Missouri, office of the law firm Bryan Cave L.L.P. He is a member of the bankruptcy, restructuring and creditors' rights, corporate finance and securities; lending and business finance; and real estate development, construction and project finance client service groups.

Michael J. Roche has been elected to partnership in the law firm Baker & Hostetler, L.L.P., Beverly Hills, California. He concentrates his practice in general litigation.

Gail C. (Bent) Saracco has become a partner at the law firm Mayer, Brown & Platt, Chicago, Illinois, where she practices corporate and securities law.

Jill M. Wheaton has been elected to membership in the law firm Dykema Gossett P.L.L.C., in the Detroit office. A member of the litigation practice group, she concentrates on products liability defense, particularly cases involving drugs and medical devices. She also represents clients in patent and trademark disputes and commercial litigation, including securities, antitrust, and contract cases.



Colin J. Zick recently authored two articles on healthcare issues, "The Continuing Dilemma of Compliance with Requests for Health Information," *Boston Bar Journal* (May/June 1999) and "Compensation for Telemedicine Services: Current Issues and Future Prospects," 2 *Journal of Medicine and Law* 117 (Spring 1998). Zick also continues to practice in the litigation and healthcare practice groups of Foley, Hoag & Eliot, Boston, Massachusetts.

1991

Sheila M. (Brennan) Conroy and **Kevin T. Conroy** announce the birth of their first child, Meghan Conroy. Mr. Conroy is a partner with the law firm Pattishall, McAuliffe, Newbury, Hilliard & Geraldson, Chicago, Illinois, where he concentrates primarily on trademark, copyright, and Internet law. Mrs. Conroy specializes in labor and employment law with the law firm Franczek & Sullivan.

Steven F. Ginsberg has been elected to partnership in the Chicago, Illinois, office of the law firm Katten Muchin & Zavis, in the real estate department. **John R. McElyea** also has been elected to partnership, in the corporate department at the Chicago office.

Julia A. Goatley and **Kevin M. Hinman** have been elected to membership in the law firm Dykema Gossett P.L.L.C. Located in the Lansing, Michigan, office, Goatley is a member of the government policy and practice group, concentrating on insurance regulation, public finance, liquor licensing and legislative issues. Hinman is located in the Bloomfield Hills office and is a member of the intellectual property practice group. He concentrates on patent and trademark prosecution and licensing.

Jeffrey D. Shewchuk was elected shareholder in the intellectual property law firm Kinney & Lange, P.A., Minneapolis, Minnesota. He will continue practicing primarily in the areas of patent and trademark prosecution and patent litigation.

Todd A. Schafer has been admitted as a member of the Bloomfield Hills, Michigan, law firm Dawda, Mann, Mulcahy & Sadler, P.L.C. Formerly an associate with the firm, he concentrates his practice in the areas of real estate and corporate law.

Teresa Snider has been elected to partnership in the law firm Butler, Rubin, Saltarelli & Boyd, Chicago, Illinois. She concentrates her practice in the arbitration and litigation of reinsurance disputes.

1993

Glenn Forbis has been elected as a member of the intellectual property law firm Rader, Fishman & Grauer, P.L.L.C., Bloomfield Hills, Michigan. He was previously an associate. Forbis' practice focuses on patent, copyright, trademark, trade secret, and computer litigation, including trial and appellate practice. He resides in Commerce Township, Michigan.

Marcy R. Matson has rejoined the law firm Fraser Trebilcock Davis & Foster, P.C., which has offices in Lansing and Detroit. She will be working primarily in the areas of medical malpractice and civil litigation, as well as the firm's appellate practice.

5TH REUNION

The Class of 1994 reunion will be November 5-7

1995

Lorena Ortega has joined the Orange County, California, office of Lyon Law as an associate handling complex business litigation matters. She was previously an associate at Gartner & Young specializing in employment discrimination litigation.

1996

Cécile Tournaye, LL.M., was appointed associate legal officer at the International Criminal Tribunal for the former Yugoslavia at The Hague, Netherlands. She is working as a law clerk for Judge Almiro Rodriguez (Portugal), a member of the Trial Chamber I. In that capacity, she is drafting judgments concerning war crimes committed in the former Yugoslavia after 1991.

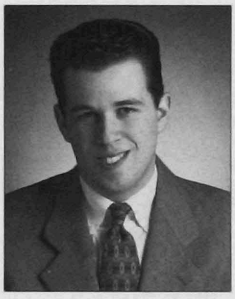
Michael Thomas authored the article "Arresting Without a Warrant: Potential Problems in Misdemeanor Domestic Violence Cases," which appeared in the winter 1998 issue of the *New Mexico Bar Journal*. Thomas presently works in the Albuquerque office of the New Mexico Public Defender Department, and he previously prosecuted domestic violence cases in Silver City, New Mexico.

1997

Nancy E. Vettorello of Ann Arbor has joined the Ann Arbor office of the law firm Miller, Canfield, Paddock and Stone, P.L.C. As an associate in the healthcare department, she will be involved in local and national healthcare matters. She was previously a law clerk for the Hon. Betty B. Fletcher of the Ninth Circuit, United States Court of Appeals, in Seattle, Washington.

1998

John E. Benko has joined the Detroit office of Butzel Long as an associate practicing in the areas of litigation, media law, and probate.



Kevin B. Hirsch has joined the law firm Vercruysse Metz & Murray, Bingham Farms, Michigan, as an associate. He practices in the areas of labor and employment litigation on behalf of private and public sector employers.

Christopher R. Herter has joined the Bloomfield Hills, Michigan, office of the law firm Howard & Howard Attorneys, P.C., where he practices in business and transactional law.

Several 1998 graduates have joined Michigan offices of the law firm Dykema Gossett as associates:

Tiffany N. Daugherty joined the firm's litigation practice group in Detroit, and **Claire S. Pouget** has joined the litigation practice group in Ann Arbor. Their practices focus on commercial and product liability litigation and all other major areas of litigation, including the defense and prosecution of a broad range of civil and criminal cases.

Ronald E. Hall Jr. joined the corporate and finance practice group in Detroit. His practice centers on mergers and acquisitions, corporate and healthcare financing, and securities law.

James D. Oegema joined the government policy and practice group in Lansing, where his practice focuses on government contracts and procurement, lobbying, and public policy representation.

Christopher S. Olson joined the real estate practice group in Detroit. His practice focuses on litigation and transactions involving real estate.

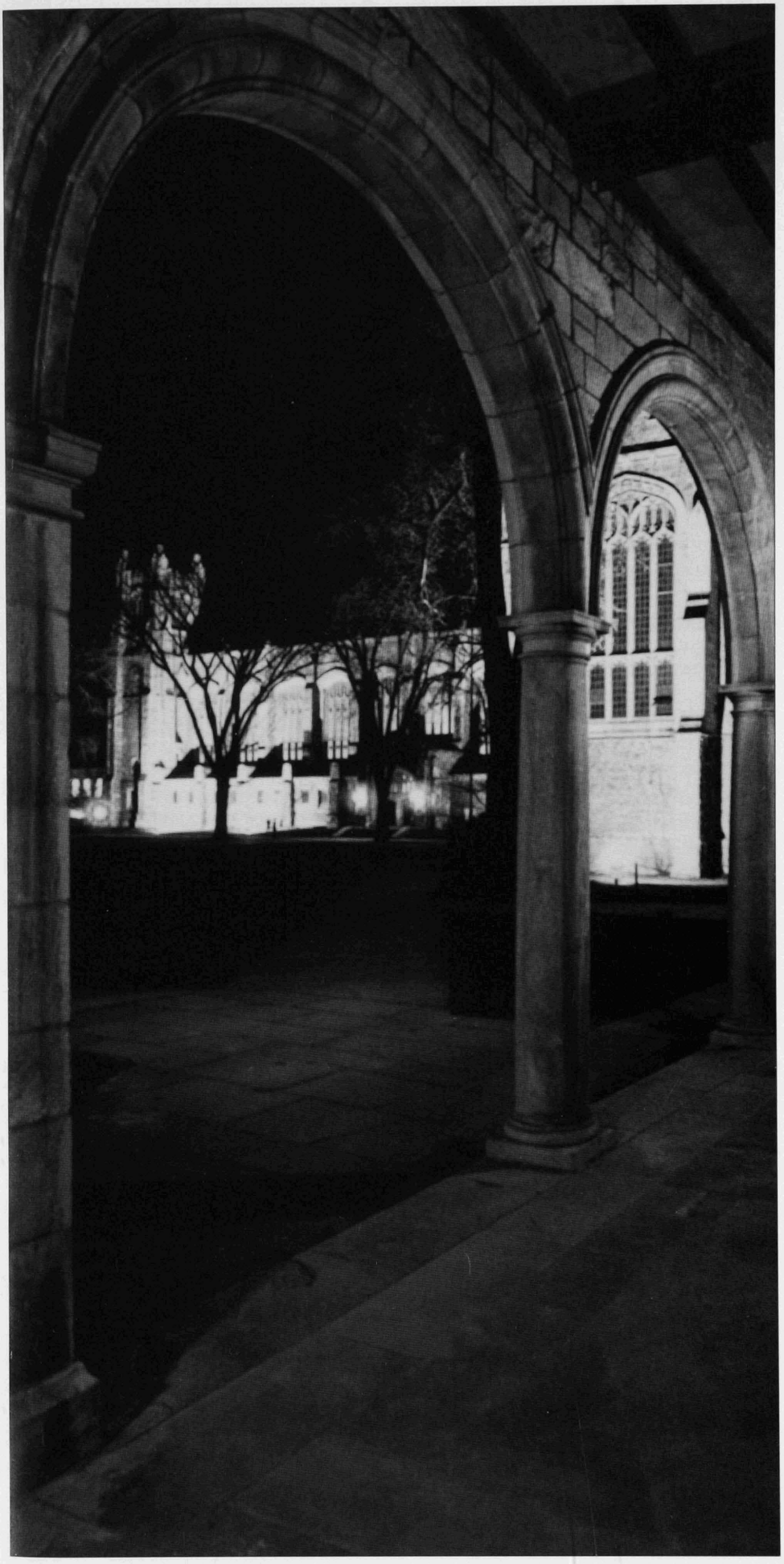
Douglas S. Parker joined the corporate and finance practice group in Bloomfield Hills, where he concentrates on mergers and acquisitions, securities offerings, and mutual funds.

Correction:

The story about Visiting Professor Gennady Danilenko that appeared in 42.1 *Law Quadrangle Notes* 39 (spring 1999) failed to mention that Danilenko is a professor of law at Wayne State University Law School. *Law Quadrangle Notes* regrets the omission.

In *memoriam*

'22	Elmer L. Stephenson	April 20, 1998
'26	S. Brooks Barron	January 4, 1999
'27	John Sklar	July 12, 1998
'28	Joseph B. Alexander	July 1, 1998
	Carney Matheson	June 15, 1997
'29	Mentor A. Kraus	December 24, 1997
'31	Burton Marks	December 12, 1998
'33	Alvin G. Dahlem	December 6, 1997
	Warren W. Kennerly	December 23, 1998
'34	Walter D. Herrick	January 30, 1999
'36	Walter H. Allman	May 10, 1998
'37	C. Garritt Bunting	December 13, 1998
	Royal E. Thompson	December 2, 1998
'38	Nicholas M. Spoke	December 22, 1998
'39	Granville B. Vail	February 27, 1999
	James H. Wiles	April 3, 1998
'41	James M. French	March 28, 1999
	Frederick H. Greiner	August 20, 1998
	Gail H. Haddock	October 5, 1997
	Rex B. Martin	December 21, 1998
	George O. Nichols	January 10, 1999
'42	Thomas G. Holcomb	
'43	James L. McCrystal	February 1, 1999
'43	James A. Tolhuizen	May 2, 1998
'44	Edwin C. Boos	November 26, 1998
'48	Edwin F. Uhl	November 8, 1998
'49	Walter R. James	February 27, 1998
	Lorne S. MacDonald	February 24, 1999
'50	Thomas H. Green	June 24, 1998
	Richard G. Smith	December 4, 1998
'51	Francis E. Lindsay	December 19, 1997
'52	Joseph E. Stevens	December 18, 1998
'54	Patrick J. Kinney	July 24, 1998
	Anthony J. Knerly	January 12, 1999
'56	William E. Guthner	January 19, 1999
	Edwin R. Johnson	August 23, 1997
'59	Arvid Frihagen	
	Kent E. McKee	November 20, 1997
'60	Alan Murray Sinclair	April 1, 1998
'70	David C. Nicholson	April 5, 1999
'75	Peter A. Meilke	February 1, 1999
'74	Bradley Harle Giles	April 23, 1999
'86	Mark Quentin Schmitt	April 17, 1998



A Statement from the Dean

From Dean Jeffrey S. Lehman, '81:

As this issue of *Law Quadrangle Notes* goes to press, the United States District Court for the Eastern District of Michigan is considering cross-motions for summary judgment in *Grutter v. Bollinger et al.* Should the Court deny the motions, a bench trial will begin on August 30, 1999.

The lawsuit is a class action challenge to the constitutionality of our admissions process. It was brought by the Center for Individual Rights (CIR), a Washington, D.C., advocacy group. (CIR also brought a separate lawsuit challenging *undergraduate* admissions at the University of Michigan; that suit will go to trial later this fall.)

The question of affirmative action in university admissions is one of the most widely debated public issues of our time, an issue where people of good will are found on both sides. Because of this litigation, Michigan has, over the course of the past year, assumed a prominent role in the discussion. In this statement, I would like to share with you my thinking about our policies.

First, I believe that the Constitution permits us the discretion to use the admissions process that we have in place. I was a member of the 1992 committee that drafted the current policy. I am confident that our work satisfies the requirements of the Fourteenth Amendment as set forth in *Regents of the University of California v. Bakke*.

In *Bakke*, the California Supreme Court enjoined the University of California from considering an applicant's race in the admissions process. The United States Supreme Court reversed that judgment and lifted the injunction. Part V.C. of Justice Powell's opinion, joined by a clear majority of the Court, held that such an injunction cannot be sustained against "a properly devised admissions program involving the competitive consideration of race and ethnic origin."

Four other Justices joined Justice Powell to reject the notion that the Constitution requires a university to blind itself to the role that race plays in American society. At Michigan, we give race the careful, appropriate consideration that the Court has authorized. We consider each applicant as an individual. We look at indicators of likely aptitude for law school, such as grades, test scores, undergraduate institution, difficulty of undergraduate curriculum, essays, and letters of recommendation. We receive applications from many more students qualified for enrollment than we can admit. From among the qualified applicants, we try to select a class whose diversity has the potential to enrich everyone's education.

"It is important to recognize that, within our admissions policy, racial diversity is a secondary interest, subordinated to our primary interest in admitting only students who promise to be excellent lawyers, who will bring honor to the school and the profession."

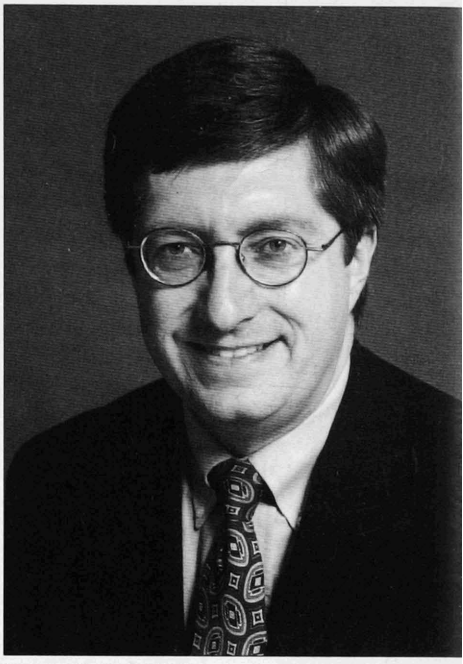


PHOTO BY BOB KALMBACH

Second, I believe that we have applied the policy with sensitive, case-by-case judgments, exactly as intended, giving attention to race as an important but not overriding consideration. Over the years, the racial composition of our entering class has varied. This past year, we had an entering class of 341 students. The vast majority of first-year students (263) were Caucasian. Another 31 were Asian American. And whereas the plaintiffs' lawyers contend that thousands of applicants were injured by our admissions policies, in fact only 24 students in this past year's entering class were African American, 16 were Latino, and 7 were Native American.

While a class that is almost 80 percent Caucasian might not seem racially diverse, the class would have been even less heterogeneous if race had not been taken into account. Mandatory colorblindness in California and Texas resulted in an enormous, highly publicized plunge in minority enrollment at those states' most competitive universities. Recently the *New York Times* suggested that the first-year drop was counteracted by a "jump" in minority enrollment the following year. The truth is, even after that "jump," undergraduate enrollment of underrepresented minorities at U-C Berkeley remained 44 percent below what it had been two years earlier. And Berkeley's Law School, Boalt Hall, included only nine African Americans in this past year's entering class.

Third, I believe that the considerations that justified the 1992 policy remain pertinent today. Indeed, in the course of preparing for the litigation, we assembled an outstanding set of expert reports that explore those considerations with great

care. I would be happy to send interested graduates a copy of the reports, or they may be reviewed on the World Wide Web, at www.umich.edu/~newsinfo/Admission /Expert/toc.html.

I speak often about the lawsuit, and even our most sympathetic supporters sometimes wonder whether it is still necessary to consider race in order to have an integrated, racially diverse law school community. The unfortunate fact is that, in America at the end of the twentieth century, race still matters. Housing remains segregated, and opportunity, including the 22 years of educational opportunity that prepare students for law school, remains unequally distributed. While the gap in academic preparation has narrowed over time, it is nowhere near the point where the most selective law schools can be well integrated without trying to be so.

Why does having an integrated classroom matter? In America in 1999, race remains a uniquely salient social force. Americans of different races have different experiences that predictably lead them to bring different insights to the study of legal issues as diverse as property law, contract law, criminal justice, social welfare policy, civil rights law, voting rights law, and the First Amendment. At the same time, racial background does not preordain one's views. When a class includes a critical mass of minority students, they may express themselves without feeling personally responsible for defining and defending the views of "their" race or culture. A diverse student body allows all students to appreciate better the complex social reality that there are differences between races and differences among races.

Students at the University of Michigan Law School cultivate an essential intellectual quality: the ability to understand an issue from many perspectives at the same time. They do so through their interactions with the faculty and with one another, inside the classroom and outside it. Racial integration nourishes those interactions in a vitally important way.

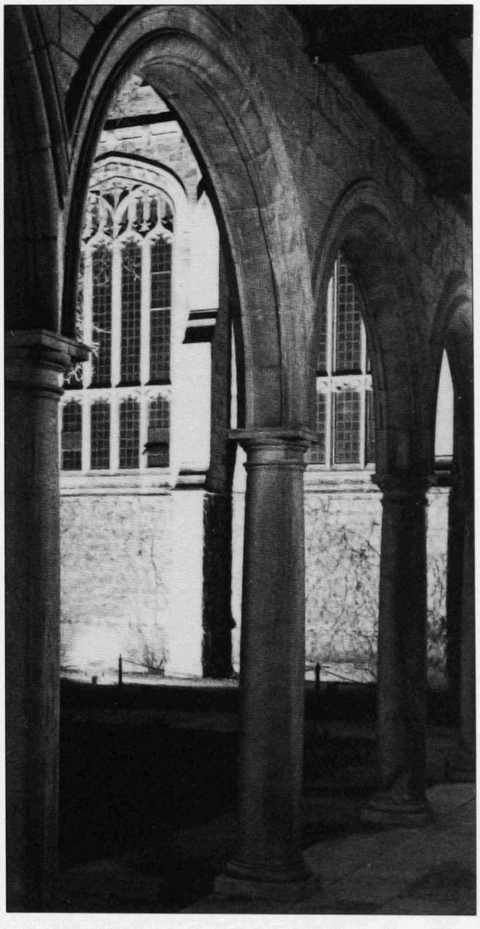
Each year, the Law School receives many more applications from well-qualified students than we have room for in the entering class. In the end, we are required to turn away literally thousands of applications from students of all races who enroll at other law schools and become successful attorneys. I appreciate the genuine sense of disappointment that Ms.Grutter and the many others who are like her must feel in not being admitted to our law school.

The ultimate measure of our success, however, is not the large group of students to whom we must deny admission, but the small group whom we enroll. Every member of that group is extraordinarily talented. It is important to recognize that, within our admissions policy, racial diversity is a secondary interest, subordinated to our primary interest in admitting only students who promise to be excellent lawyers, who will bring honor to the school and the profession. We reject the vast majority of applicants, minority as well as majority. Each student who is admitted is highly talented and eagerly sought after by other law schools.

The judgment we exercise in Law School admissions is vindicated by the achievements and contributions of graduates of all races, after they leave Ann Arbor. Michigan graduates have achieved renown throughout society, as holders of federal and state elective office, judges and justices, senior business executives, and partners in major law firms. A study just completed by Professors David Chambers and Richard Lempert, and Research Scientist Terry Adams (see page 60) confirms that these accomplishments extend to graduates of all races. Data from that study corroborate that there is no statistically significant difference by race in bar passage rates, income, and satisfaction with the profession.

I share the desire to imagine a world in which an individual's race would have no impact on his or her opportunities, academic preparation, life experiences, or institutional relationships. I believe, however, that construing the Constitution to prohibit a law school such as Michigan from using its discretion to select its own racially diverse classes in 1999 would significantly undermine or reverse progress towards such a world.

In defending this lawsuit, the University of Michigan Law School will defend the ability of law schools to make appropriate 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.

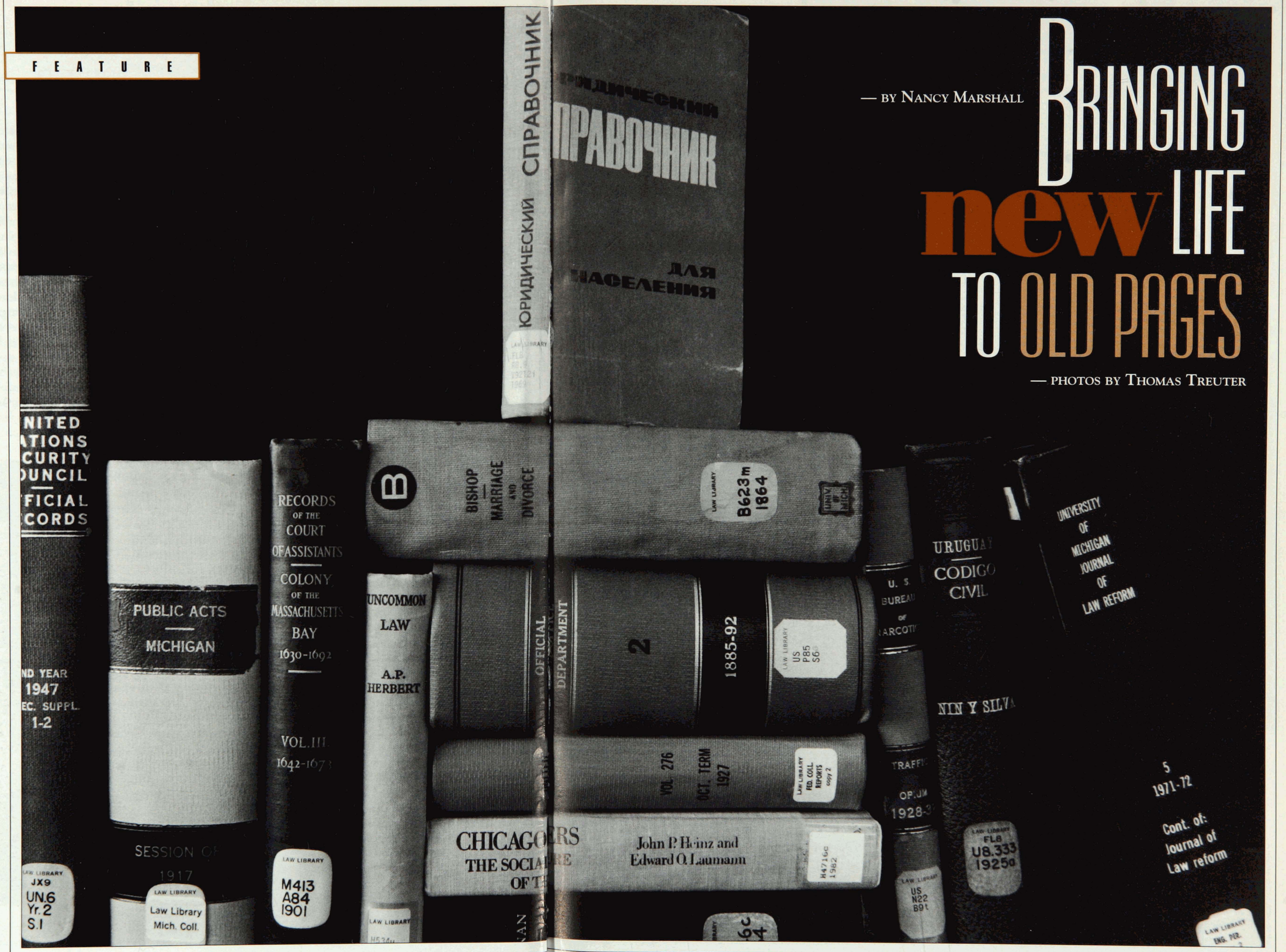


FEATURE

— BY NANCY MARSHALL

BRINGING new LIFE TO OLD PAGES

— PHOTOS BY THOMAS TREUTER



"How did I get here — I ponder that relatively often. It certainly isn't a direction I would have taken."

Richard E. Spatz, '50, is the chairman and chief executive officer of Preservation Technologies Inc. (PTI), based in Cranberry Township near Pittsburgh. PTI specializes in preserving books and documents by neutralizing the acids in paper that, left untreated, will eventually make the paper crumble into dust. For Spatz, heading the company is his third career.

PTI is the result of Spatz's ability to recognize a need as a business opportunity and then develop a product to meet that need. "My law education has been an asset to my career even though I left the practice of law many years ago," he says, referring to his first career as a lawyer. "Lawyers are taught to analyze facts differently. You sort out facts and choose from various options — whether it is law or business, you analyze things the same way."

The bulk of Spatz's second career was spent at Koppers Company, now called Koppers Industries Inc. He joined Koppers' legal department in 1952; a few years later he moved to the management team, and eventually became the president of the company's Forest Products Group, which developed products to preserve lumber. When product growth slowed in the '70s, Spatz went searching for a new product to boost sales.

At that same time, Spatz read an article in the *New York Times* addressing libraries' problems with books deteriorating. Ironically, very old paper ages well, but the mass-produced wood-pulp papers in use since the mid-nineteenth century have an acid additive to help ink adhere. Eventually, after as little as 30 to 50 years, the acid causes the paper to become brittle and eventually to simply fall apart.

Spatz recognized that his division's experience with wood preservation might transfer to paper preservation. He assembled a team to pursue a solution — the result of their efforts was patented in 1985 and is now known as the Bookkeeper process. Koppers, however, chose not to invest in a production plant to put the process to use.

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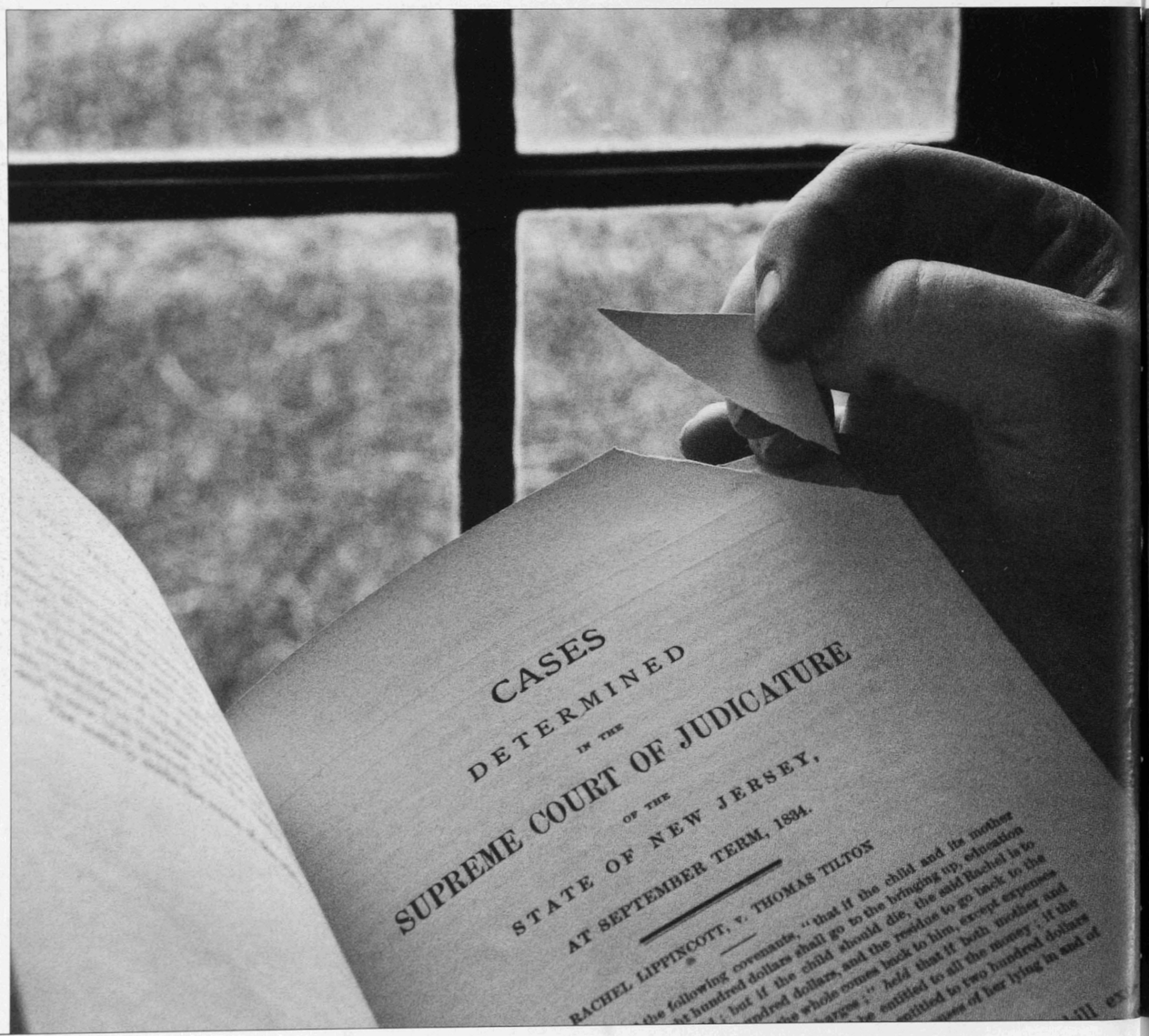
IRONICALLY, VERY OLD PAPER AGES WELL, BUT THE MASS-PRODUCED WOOD-PULP PAPERS IN USE SINCE THE MID-NINETEENTH CENTURY HAVE AN ACID ADDITIVE TO HELP INK ADHERE. EVENTUALLY, AFTER AS LITTLE AS 30 TO 50 YEARS, THE ACID CAUSES THE PAPER TO BECOME BRITTLE AND EVENTUALLY TO SIMPLY FALL APART.



Christina Detchemendy carefully checks the flexibility of a page. Every book in the library is being checked and its condition registered in a database. There are 300,000 books in need of treatment at the Law Library.

This paper is already so brittle that the corner of the page snaps off when it is tested.

"Our treatment extends the life of a book three to five times the existing life of the book if it weren't treated. The process can be repeated, but paper doesn't have an infinite life, so at some point it won't be worth repeating the process." What the Bookkeeper process does is give libraries more time — time to decide what to do next, or for continued improvements in preservation techniques.

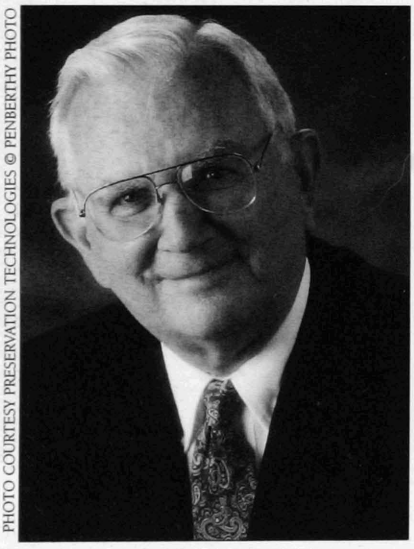


PHOTO COURTESY PRESERVATION TECHNOLOGIES © PENBERTHY PHOTO

Richard E. Spatz, '50

A temporary repair and a cautionary tag remind researchers of the fragility of the books.

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After his retirement in 1986, Spatz bought a three-year option on the process. But he, too, set it aside.

Two years later Spatz received the catalyst he needed — a letter from the Office of Technology Assessment(OTA) of the U.S. Congress asking about the paper preservation process. OTA staffers came to Pittsburgh for a demonstration and liked what they saw. Spatz then gathered his team — all people he had known at Koppers — and laid the foundation for PTI.

As Spatz began visiting libraries to demonstrate the Bookkeeper process, he discovered that it needed the endorsement of the Library of Congress (LC) before other libraries would consider using it. After more than two years of testing by an LC technical team, PTI received the necessary validation along with its first contract with the Library.

Two hundred thousand books later, PTI has a growing client list that includes university libraries throughout the United States, as well as libraries and records clients in Europe and Asia. "In addition to the LC, two of our biggest supporters to date have been the University of Michigan, and the Law Library," Spatz says.

Margaret Leary, director of the Law Library, would like to see all of the Library's books preserved through this system. It is a daunting project. She estimates there are 300,000 books in need of treatment with a cost of $6 million to treat them all. The foreign law collection numbers about 150,000 volumes with a treatment cost of $3 million.

"Right now we have allocated $15-20,000 a year, which allows us to send 750-1,000 books per year for treatment," Leary says. "Our foreign law collection is our top priority at the present — it contains many irreplaceable books which, if they do exist in other libraries, are at similar risk. The foreign law collection is one of the most significant features that distinguishes our law school from all but Harvard, Yale, and Columbia."

Other solutions to this problem include microfilming, at a cost of about $80 per book, or copying, which costs about the same. Simple math shows that the Bookkeeper process is much less expensive — at about $20 a book, which includes the labor costs of packing and shipping along with the treatment process — as well as time effective. Even as you read this article, books are deteriorating past the point of treatment.

"Our treatment extends the life of a book three to five times the existing life of the book if it weren't treated," Spatz says. "The process can be repeated, but paper doesn't have an infinite life, so at some point it won't be worth repeating the process." What the Bookkeeper process does is give libraries more time — time to decide what to do next, or for continued improvements in preservation techniques.

Spatz says future plans for PTI include more treatment facilities in various parts of the country. As its reputation grows, the value of regional locations is obvious. Right now PTI treats about 500 books a day. Its operation is active 24 hours a day, seven days a week. According to Spatz, there is no limit to how many books PTI can process.

With thoughts of growth on his mind, new products coming out for the consumer market, and a desire to constantly improve the process, even at age 73, Spatz has too many plans and is enjoying himself too much to think of retiring. And besides, he says, "I'm kind of gaga over books."

Nancy Marshall *is Information Officer for the Law School. She joined the Law School in 1998 and previously has done public relations and public information writing for a private firm in Southfield, Michigan, and the nonprofit Historical Society of Michigan in Ann Arbor.*

PUTTING BOOKKEEPER TO WORK

There are three ways the Bookkeeper process can be applied to books and loose documents.

The first is for treatment of books that have intact bindings so they can be placed onto a rack that allows the pages to fan out. Once the books are secured, the rack, which can hold a total of eight books, is put into an upright cylinder that is then sealed. Four cylinders comprise one system unit, and the cylinders are connected so that the dispersion liquid can be pumped from one cylinder to the next as each cylinder finishes its process.

Three components make up the dispersion fluid:

- **magnesium oxide (MgO) particles, which bond with the structure of the paper and act to neutralize the acid in the paper**
- **perfluoroalkane, the liquid carrier that transports the MgO, and importantly, is not a chemical that depletes the ozone layer**
- **a dispersant that keeps the MgO particles from clumping together and helps the particles penetrate the paper.**

Once the liquid is pumped into the first cylinder and submerges the books, the books are gently moved up and down in the fluid so that the MgO can penetrate all of the paper. This step lasts about 30 minutes. At the end of that time, the fluid is drained from the first cylinder into the next one, which has been prepared the same way as the first, so the process is continued in this manner — progressing through each of the four cylinders. When the fluid is drained from the first chamber, a vacuum is applied and the books are dried. The entire process takes about two hours per cylinder to complete.

A second treatment method uses the same formula, but is applied by moving loose papers in a horizontal motion in closed cylinders. This system allows for mass treatment of archival documents and oversize books.

The third treatment method, using the same chemistry, is applied by various gentle spray systems. This option allows custom treatment of individual documents, or books that have deteriorating bindings.

WELL-READ CLIENTS

In addition to the University of Michigan and the Law Library, some of Preservation Technologies' clients and projects have also included:

- **Northwestern University: music scores including Fritz Reiner's original hand-marked scores**
- **New York Public Library: archives and books, which include Walter Winchel's original radio scripts**
- **Kautz Family YMCA Archives: the complete archives for the international YMCA including the original handwritten records from the first missionary trip to China at the turn of the century**

On an international basis, Preservation Technologies has an arrangement with Archimascon, a licensee in the Netherlands, to treat books for both the National Library of the Netherlands and the National Archives. It has also worked with the National Library of Portugal, the Public Record Office of the United Kingdom, and the Tokyo Restoration and Conservation Center in Japan.

Doing well & Doing good

BY DAVID L. CHAMBERS,
RICHARD O. LEMPERT '68,
AND TERRY K. ADAMS, '72

The careers of minority and white graduates of the University of Michigan Law School,

1970-1996

f the more than 1,000 law students attending the University of lichigan Law School in the spring of 1965, only one was African merican. The Law School faculty, in response, decided to develop a rogram to attract more African American students. One element of his program was the authorization of a deliberately race-conscious dmissions process. By the mid-1970s, at least 25 African American tudents were represented in each graduating class. By the late 970s, Latino and Native American students were included in the rogram as well. Over the nearly three decades between 1970 and 998, the admissions efforts and goals have taken many forms, but, n all, about 800 African American, 350 Latino, 200 Asian American, nd nearly 100 Native American students have graduated from the aw School.

What has been the experience after law school of this large group of minority lawyers?

Have they practiced law successfully? Provided valuable service to communities? Have their career paths been similar to or different from those of their white classmates? In the last few years, affirmative action in higher education has faced increasing legal scrutiny, in part because of doubts about the kinds of graduates these programs produce. A few years ago, we and some of our colleagues at Michigan started asking whether we could learn the answers to these questions about the careers of our graduates. The Law School already possessed considerable information about our minority graduates — from the surveys we have conducted each year for over 30 years of our alumni five and 15 years after graduation. But, while the annual survey asks many questions about careers and career satisfaction, it is not mailed to graduates less than five years or more than 15 years out of the Law School. And, while the survey has long asked a few questions about discrimination based on race, it did not ask other questions — for example, about the race and ethnicity of clients served — that would permit us to explore other possible differences in the experiences of minority and white graduates.

Thus, in the fall of 1996, the three of us began designing a survey of all of Michigan's living African American, Asian American, Latino, and Native American graduates through 1996, together with a stratified random sample of our white graduates from 1970 through 1996. We worked to devise a questionnaire that explored many aspects of our graduates' professional experiences, including matters relating to gender, race, and ethnicity. It is now nearly three years later. The survey has

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been mailed, and all the questionnaires we are going to receive have been returned. Much of the data has been analyzed. This article reports what we have found so far and seeks to repay especially those alumni whose cooperation made our findings possible. Because of their participation, we have been able to assemble more information about the minority graduates of one school than has ever previously been assembled in the United States. We have also assembled a great deal of information about one school's white graduates as well. For purposes of this article, we have concentrated on our African American, Latino, and Native American graduates, the three groups whose race or ethnicity has been consciously considered in the admissions program since the 1970s. We have included all these alumni, even though, in any given case, the race of any one of these graduates might or might not have made a difference in whether she or he was admitted. We refer to these groups as "minority" alumni. We draw comparisons primarily with our white alumni. In later publications, we will report on our Asian American alumni, the great majority of whom have graduated in the 1990s.

We have two principal and related findings to report. The first is that our African American, Latino, and Native American alumni, though, on average, admitted to the Law School with lower numerical entry credentials than those of whites, have fully entered the mainstream of the American legal profession. As a group, they earn large incomes, perform *pro bono* work in generous amounts, and feel satisfied with their careers. The initial and current job choices of minorities and whites differ somewhat, but across time the achievements of the minority graduates are quite similar and very few differences between them are statistically significant.*

Our second finding is related to the first. It is that although Law School Admission Test (LSAT) scores and undergraduate grade point averages (UGPA), two factors that figure prominently in admissions decisions, do correlate strongly with law school grades, they seem to have no relationship to achievement after law school, within the range of students admitted to our law school, whether achievement is measured by earned income, career satisfaction, or service contributions. For both our minority and white alumni those numbers that counted so much at the admissions stage tell little if anything about their later careers.

METHODS

In the winter and spring of 1998, we mailed a seven-page survey to 2,196 alumni — 755 of whom were African American, 300 Latino, 60 Native American, 154 Asian American, and 927 white — who graduated between 1970 and 1996. After three mailings and a telephone reminder, we received responses from 51.4 percent of the minority alumni (approximately the same for each of the three minority groups) and 61.9 percent of the white alumni. Response rates of minority and white alumni are closer in each succeeding decade, and among graduates of the 1990s, the difference in rates is not statistically significant. Even though the overall level of response that we achieved was commendable for a mail survey of busy professionals, we were worried that there might be important differences between the respondents and nonrespondents that would compromise our findings. We examined this possibility using information on both respondents and nonrespondents that were contained in Law School records and developed in our own independent search of lawyer directories like *Martindale-Hubble*. Through these directories, we located a current place of employment for 87 percent of our minority graduates and 91 percent of our sample of white graduates.

* Readers unused to the notion of "statistical significance" may be surprised in looking at some tables to find instances where differences in means appear large but are said to be "not statistically significant." The means represented in the tables are based on the sum of all the responses to a question by the individuals in each group (for example, their earned incomes), and there is often considerable variation in the responses. Statistical significance is a measure of the extent to which two distributions (sets of data points, e.g., the reported incomes for each minority group respondent and each white respondent) are likely to have been produced by random sampling from a single underlying larger distribution. (The "P" values given in the tables are a measure of the probability that a given difference occurred at random.) This probability, in turn, is a function of the extent to which the two distributions overlap each other and of the number of cases in each distribution. (Imagine, for example, two groups, A and B. Each group has 100 members. Group A's members all earn between $9,000 and $11,000. All group B's members except one also earn between $9,000 and $11,000, but one of group B's members earns $1 million. The mean income of group A, let's say, is around $10,000. The mean income of group B is around $20,000, twice as much. But the difference between groups A and B would not be statistically significant because nearly all of both groups' members are in the same range. On the other hand, if nearly all of group A's members earned between $9,000 and $11,000, and nearly all of group B's members earned between $19,000 and $21,000, the means of income might again be $10,000 and $20,000, but the difference in incomes between the two groups would be highly significant statistically because there is no, or almost no, overlap between the incomes of members of the two groups.)

Extensive checking indicates that within our minority and white samples, the respondents and nonrespondents are very much alike across the characteristics important in the study and thus that our findings are not substantially distorted by biases in nonresponse. We do think it likely that a somewhat higher proportion of our nonrespondents than respondents are not currently practicing law (and thus not in any readily available attorney directory) and that we may have a somewhat lower response rate from those least happy with their Law School experiences, from those least satisfied with their careers, and from those who have the most frantic schedules, but we have little reason to believe that these differences are significantly more prevalent among our minority than among our white nonrespondents. We do know that the minority and white nonrespondents include large numbers of almost certainly high earning persons. For example, from our own address lists and from lawyer directories, we learned that at least 167 of the minority persons we sought to survey currently work in law firms of 50 or more lawyers. Of this group of 167, 41 percent were nonrespondents, nearly as high a rate of nonresponse as in the minority sample as a whole.

ACHIEVEMENTS AFTER LAW SCHOOL

The experiences of our minority and white graduates after law school have varied depending on when they graduated from the Law School. The graduates of the 1970s are not simply older and out of law school longer. They also entered a profession that was very different from the profession today — one that included few women, few minorities, and fewer large law firms. Thus, in the discussion that follows, we generally group our graduates by the decade in which they graduated.

We do not, however, focus in this article on the differences in the experiences of women and men, but gender differences between minority and white graduates need to be mentioned. Women represent a larger proportion of our minority graduates than of our white graduates (38 percent of our minority respondents are women, in contrast with 27 percent of our white respondents) and, of the differences that we report between minority and white graduates, some are attributable in part to the fact that more of the minority respondents are women. As a broad generalization, minority graduates' career experiences differ from whites' career experiences in the same directions that women's career experiences differ from men's. Thus, for example, when we report that more whites than minorities work in private practice, the reason is due in part to the fact that women, both minority and white, are more likely to chose to work in settings other than private practice and there are simply more women among our minorities than among our whites. In greater part, however, gender and race/ethnicity seem to operate independently in explaining the situations of our alumni and often neither is part of the explanation. In other articles based on this study, we will report at greater length on the role of gender.

PASSAGE OF THE BAR

As Table 1 (page 64) reveals, across all three decades, almost all minority alumni who responded to our survey passed a bar exam after graduation. Overall, 97.2 percent have been admitted to the bar of at least one state, and many have been admitted in two or more states. We do not know how many, if any, of the 2.8 percent who have not joined a bar (15 individuals out of 552 responding minority graduates) attempted to pass a bar examination and failed and how many chose from the beginning employment that did not require bar membership. We do know that as a group these 15 view their non-law careers today with high satisfaction (somewhat higher, in fact, than the respondents who are bar members) and that two-thirds reported on the survey that their legal training is a "great value" to them in their current employment. (For comparison, the proportion of white graduates who have ever been admitted to the practice or law is 98.7 percent, a higher figure, but the difference between groups across the three decades taken together is not statistically significant.)

THE CAREERS OF THE GRADUATES OF THE 1970s

Three hundred minority students graduated from the University of Michigan Law School during the 1970s. This group of graduates took career paths very different from those of their white classmates. As Table 1 reveals, the members of both groups nearly all joined the bar, but while the great majority of white graduates from this decade began their legal careers in a firm, the great majority of minority graduates did not. Far more of the minority graduates began work in government or in legal services or public interest work. The world of practice our white and minority graduates entered was largely but not completely segregated by race. The great majority of the minority graduates of the 1970s found an initial workplace in which there was at least one other minority lawyer (that may explain in part the attraction to them of government agencies and very small firms), but 60 percent of whites took jobs in settings in which there were no minority lawyers at all.

To some extent, the pattern set by their initial job settings has continued to the present. At the time of our survey, the graduates of the 1970s had been out of law school between 18 and 27 years. Many minority graduates from that decade have never worked in private practice, and most are not in private practice today. As many are in business and government (taken together) as are in private practice. (See Table 2, page 64.) About half of those in government work for the federal government. Those in government today are often in positions of high responsibility. A remarkable 13 percent of all minority graduates of the 1970s serve as judges or public officials or government agency managers (in comparison to 4 percent of all white alumni). On the other hand, private practice is also an appealing setting for the minority graduates of the 1970s. More work in private practice than in any other single setting. Most of the minority lawyer private practitioners are in solo practice or in firms of 10 or fewer lawyers, while white lawyers are substantially more likely than minority lawyers to work in mid- or large-sized firms. Unsurprisingly, those minorities and whites from the classes of the 1970s who are in private firms are nearly all

Table 1
University of Michigan Law School
Bar Passage and First Job Settings

	Classes of the 1970s		Classes of the 1980s		Classes of 1990-1996	
	Minority N=146	*White N=240*	*Minority N=191*	*White N=221*	*Minority N=208*	*White N=125*
Ever admitted to the Bar	98.5%	97.9%	95.1%*	99.3%*	96.1%	97.4%
Judicial clerkship	8%	14%	11%	16%	18%	24%
First job (not counting clerkship)**						
Private practice	31%	69%	72%	85%	69%	82%
Solo or firm of 10 or under	15%	18%	11%	9%	10%	8%
Firm of 11 to 50	10%	27%	14%	23%	14%	7%
Firm of more than 50	7%	24%	47%	53%	45%	68%
Government	30%	15%	13%	4%	16%	3%
Legal services, public interest	18%	5%	7%	3%	3%	6%
Business	10%	6%	4%	3%	3%	2%
Other	10%	5%	4%	5%	9%	7%

* Differences are statistically significant (p<.01).
** Differences in tendencies to have first jobs in various settings are statistically significant in all three decades (p<.01).

Table 2
University of Michigan Law School
Current Job Settings as of 1997*

	Classes of the 1970s		Classes of the 1980s		Classes of 1990-1996	
	Minority N=146	*White N=246*	*Minority N=177*	*White N=210*	*Minority N=208*	*White N=125*
Private practice	41%	60%	47%	53%	58%	67%
Solo or firm of 10 or under	27%	23%	22%	15%	15%	10%
Firm of 11-50	7%	14%	10%	11%	10%	13%
Firm of more than 50	7%	23%	15%	27%	33%	44%
Government	23%	14%	19%	10%	20%	9%
Legal Services, Public Interest	2%	1%	4%	3%	4%	2%
Business (as lawyer or nonlawyer)	20%	16%	15%	27%	14%	7%
Other	15%	10%	16%	8%	5%	15%

* For each decade, the differences in current job patterns are statistically significant when private practice is broken down into three groups by firm size (p<.01).

partners, and those who are in organizations other than private firms have typically risen to positions of supervisory or managerial responsibility.

For the graduates of each decade, we have three sorts of measures of achievements and service in addition to what we know about their job status. These are: their satisfaction with their work; their income; and their unremunerated services to others.

As to career satisfaction, the minority graduates of the 1970s are a generally satisfied group, fully as satisfied as their white classmates. (See Table 3, page 66.) We asked all our respondents to indicate their overall career satisfaction on a 7-point scale. We report as "satisfied" those who answered our question with one of the three highest scores on the scale, even though a "3" on our scale probably signified only "somewhat satisfied" while a 1 indicates "extremely satisfied." As Table 3 reports, 79.2 percent of our minority graduates from the 1970s report satisfaction with their careers. (Across all three decades of graduates, 14 percent of minorities and 11 percent of whites put themselves into the highest of the seven categories of career satisfaction; 35 percent of minorities and 41 percent of whites put themselves in the second highest; and 26 percent of minorities and 28 percent of whites in the third highest. Those who do not put themselves into one of these highest three categories nearly all place themselves in one of the next two, not in either of the bottom two. Only five percent of minority graduates and four percent of white graduates place themselves in the lowest two categories, the categories we consider to indicate serious dissatisfaction.)

We also asked the graduates about their satisfaction with various aspects of their careers, including their satisfaction with solving problems for clients, their income, the intellectual challenge of their work, the value of their work to society, their relationship with coworkers, and the balance between work and family. Among these aspects of work, the minority and white graduates of the 1970s express the greatest satisfaction with their solving of problems for clients and with the intellectual challenge of their work and the least satisfaction with the balance between their family and their professional lives. The only area of their careers in which a statistically significant difference appears in

the satisfactions of the minorities and whites is with regard to the social value of their work. Our minority graduates are significantly more likely to report satisfaction with their work's social value.

Michigan's minority graduates from the 1970s earn very high incomes — a mean of $141,800, a median of $101,500. (See Table 4, page 66.) To put these figures into perspective, the median income of Michigan's minority alumni who graduated between 1970 and 1979 places them in the top 8 percent of total *household* incomes in the United States even if they had no other household income or non-job sources of income. If we add spouse's income and non-job sources of income to respondent's job income, minority graduates from the 1970s had household incomes in 1996 in the top 3 percent of American households. The incomes of white graduates, as a group, are somewhat higher — a mean of $177,700, a median of $135,000 — and the difference in distribution of incomes is statistically significant, but by any standard our minority graduates from the 1970s are extremely successful financially.

The minority and white graduates of the 1970s have also provided a remarkably high level of service to others. (See Table 5, page 69.) Nearly all report that they have served as mentors to other lawyers. Indeed, on average, the minority graduates have served as mentors to eight attorneys over their years since graduation. The minority graduates are also deeply involved in community service. Over half serve now or have recently served on the governing board of a nonprofit organization. A great many serve on two or more such boards. Forty percent are also involved in some manner in electoral or nonelectoral issue politics. The private practitioners are also deeply involved in *pro bono* legal work, contributing an average of 132 hours of law-related service during the year. The ABA's Model Rules of Professional Conduct urge lawyers to perform at least 50 hours of *pro bono* service each year. Sixty-five percent of the minority private practitioners report 50 or more such hours. As Table 5 reveals, minority graduates provide somewhat more service in each of these areas than the white graduates, though only the minority lawyers' higher participation on nonprofit boards differs from that of their white counterparts at a statistically significant level.

THE CAREERS OF THE GRADUATES OF THE 1980s

A great change in job opportunities and job choices began to occur near the end of the 1970s and continued throughout the 1980s. Large law firms in the United States grew at a rapid rate. The gap in starting salaries between jobs in government and legal services and jobs in private firms grew wider and wider. And the graduates of the University of Michigan Law School, both minority and white, found themselves in high demand from large firms. More white and minority graduates took initial jobs in large firms, fewer took initial jobs in government, barely any took jobs in legal services and public interest settings, and the differences between the initial career choices of white and minority graduates greatly diminished. (See Table 1.)

The changes between decades were particularly striking for the minority alumni. In the 1970s, only a third of minority graduates took initial jobs in private practice (after any judicial clerkship). In the 1980s, nearly three-quarters took an initial job in private practice. And whereas during the 1970s, the minority graduates who took jobs in firms overwhelmingly found work in small and mid-sized firms, during the 1980s over 60 percent of those taking firm jobs began in firms of more than 50 lawyers. This was an enormous shift. The one pattern that remained much the same was that, while the proportions of minority and white graduates taking initial jobs in government declined sharply, minorities were still considerably more likely than whites to take an initial position in government.

In 1997, when the minority and white graduates of the 1980s had been out of law school for between eight and 17 years, many fewer of the members of these classes were still working in private practice. (See Table 2.) About 40 percent of both whites and minorities who had begun in private practice had left to work in business or, to a lesser extent, in government. The net effect of initial choices and shifts has been that the minority lawyers not in private practice remain substantially more likely than white graduates to work in government, while the white lawyers not in private practice are more likely to work in business. Still, for both groups, private practice remains by far the most common single setting for work. About half of the minority graduates of the 1980s work in private practice, and of those in private practice about a third work in firms of more than 50 lawyers. About the same proportion of white graduates work in private practice, but more of those who do work in large firms. Somewhat fewer of the minorities than whites from the 1980s working in firms are partners as of 1997, but the primary reason for this lower proportion appears to be that more of the minority than white graduates of the 1980s began work in their current firm recently and more of the minority than white graduates were 1988 and 1989 graduates who, at they time they answered our questionnaire, were just reaching the stage when promotion commonly occurs.

Table 3 reveals the career satisfaction of the classes of the 1980s. Again, we see that the great majority of minority graduates are satisfied with their careers. The differences here that seem most striking are not between minorities and whites — there are no significant differences in this respect — but between graduates of whatever race in private practice and graduates in other settings. Those who work in private practice are significantly less satisfied with their careers, a pattern that we have been observing for several years now in the responses to our annual Alumni Survey. As was the case with the 1970s graduates, the only aspect of career satisfaction for which there is a significant difference between white and minority lawyers of the 1980s is that minority lawyers are more likely than whites to be satisfied with the value of their work to society.

Like their predecessors of the 1970s, the graduates of the 1980s earn high incomes. (See Table 4.) Minority lawyers earn an average of $104,500 and a median of $85,000. Their average household incomes, despite their relative youth, are in the top 7 percent of all American households. The incomes of white graduates are, on average, somewhat higher — a mean of $127,700, a median of $110,000. This difference is in large part due to the high incomes of those who work in large firms. As Table 2 reports, a higher proportion of the white graduates than minority graduates work in large firms.

Table 3
University of Michigan Law School
Career Satisfaction in 1997*
(Proportion placing themselves in top 3 of 7 categories)

	Classes of the 1970s		Classes of the 1980s		Classes of 1990-1996	
	Minority N=144	*White N=237*	*Minority N=184*	*White N=215*	*Minority N=205*	*White N=125*
Private practice	80%	79%	70%	71%	63%	72%
Solo or firm of 10 or under	78%	81%	74%	77%	90%	88%
Firm of 11-50	90%	90%	72%	65%	48%	76%
Firm of more than 50	78%	71%	65%	70%	55%	67%
Government	87%	91%	85%	92%	85%	88%
Business	64%	84%	81%	87%	71%	93%
All respondents	79%	82%	76%	79%	71%	76%

* In comparisons of pairs of minorities and whites in any work setting in any decade, none of the differences is statistically significant.

Table 4
University of Michigan Law School
Mean Earned Income in 1996*

	Classes of the 1970s		Classes of the 1980s		Classes of 1990-1996	
	Minority N=136	*White N=239*	*Minority N=178*	*White N=191*	*Minority N=195*	*White N=102*
Private practice	$167,700	$205,100	$125,500	$161,200	$74,000	$71,200
Solo or firm of 10 or under	$154,400	$131,700	$78,500	$105,800	$75,900	$45,800
Firm of 11-50	$161,300	$197,000	$140,600	$138,900	$68,800	$73,700
Firm of more than 50	$223,900	$279,300	$179,300	$197,900	$75,700	$75,800
Government	$91,600	$79,600	$82,500	$70,800	$53,200	$49,700
Business	$183,600	$224,800	$130,300	$117,100	$80,500	$133,400
All respondents	$141,400*	$177,700*	$104,500*	$127,700*	$68,000	$68,300

* The differences between the earned incomes of all minority and all white respondents from the 1970s and again from the 1980s are statistically significant ($p<.05$). None of the other pairs of incomes differ significantly. In most cases where differences seem large (e.g., the incomes of minority and white graduates of the 1990s in small firms or in business), the numbers of individuals are small and the variations in individual incomes are quite wide. See note on page 62.

As Table 5 shows, both minority and white attorneys have typically served as mentors to several less experienced lawyers. They also perform a great deal of unremunerated community service — mentoring younger attorneys, serving on boards, working on political campaigns and performing *pro bono* work. The minority graduates perform somewhat more of this community work than the white graduates, but the differences are not statistically significant.

THE CAREERS OF THE GRADUATES OF 1990 THROUGH 1996

In the early years of the 1990s, more minority and white students than ever before took judicial clerkships, and, as in the 1980s, whether they had a clerkship or not, nearly all passed a bar and most began work in a private firm. In the country in general at this point, many of the largest firms were hiring fewer new lawyers than they had in the late 1980s. As Table 1 reveals, however, Michigan's graduates, both minority and white, continued to enter large firms in very large numbers. As in the earlier decades, of those who did not enter firms, far more of the minority graduates than whites chose to start their careers in government.

At the time of our survey, only one to seven years after they graduated, most of our graduates who began work in a large law firm are no longer working at that firm — 65 percent of minority graduates and 53 percent of white graduates have left their initial position. As Table 2 reveals, however, large numbers of recent minority and white graduates continue to work in large firms. Many have simply moved from one large firm to another. About 10 percent of both minorities and whites in private practice have already become partners in their firms, mostly in firms of small and mid-size. Of those in nonfirm settings, a greater proportion of both white and minority graduates work in business and in government than worked initially in these settings and about 15 percent of minority graduates and no white graduates report themselves working as supervising or managing attorneys.

As with the graduates of prior decades, the great majority of the graduates of the 1990s report overall satisfaction with their careers, and again somewhat (but not

significantly) fewer minorities than whites report such satisfaction. (See Table 3.) Once more, both white and minority lawyers working in mid-sized and large firms are substantially less satisfied than those working in other settings. When we look at the components of satisfaction, the only area of satisfaction in which there is a

"For the most recent graduates surveyed (the classes of 1990 to 1996), the average debt on graduation for the minority graduates was $57,200 and for white graduates $34,600 . . . . By the graduating classes of 1995 and 1996, half the minority graduates left law school with debts of at least $70,000."

difference between minorities and whites is with regard to satisfaction with coworkers, where whites are significantly more likely than minorities to express high satisfaction. (Minority attorneys are not dissatisfied with their co-worker relationships; for reasons we do not yet understand, the white graduates of the 1990s are simply extraordinarily satisfied with these relationships in comparison to white and minority graduates of prior decades. Ninety percent of them express satisfaction with their coworker relationship in comparison to 76 percent of the minority graduates.)

Most of these recent graduates are probably earning more than their parents' wildest expectations. (See Table 4.) For both white and minority graduates the median income is $65,000, and the average around $68,000, placing them shortly out of law school in the top 15 percent of earned incomes for all American households. At the same time, the graduates of the 1990s are saddled with much higher educational debts than were the graduates of earlier decades — about twice the average debt of the graduates of the 1980s and about six or seven times the average debt of the graduates of the 1970s. In all three decades, the mean educational debts of minority graduates have been much higher than the debts of white graduates. For the most recent graduates surveyed (the classes of 1990 to 1996), the average debt on graduation for the minority graduates was $57,200 and for white graduates $34,600. As time passes, debts continue to become more and more onerous in absolute dollars and in relation to initial year earnings. By the graduating classes of 1995 and 1996, half the minority graduates left law school with debts of at least $70,000. Thus, for many graduates of the 1990s, particularly for the minority graduates, paying off their law school loans with after-tax dollars has probably cut into the high standard of living that their earnings permit them.

Unremunerated contributions are also substantial among the graduates of the 1990s. (See Table 5). Many, even in their first years out of law school, have served on the boards of nonprofit organizations and most have already served as mentors for other attorneys. The amount of *pro bono* work performed by those in private practice is particularly noteworthy, with minority graduates in private practice performing an average of 90 hours in the preceding year and whites performing an average of 59. The difference is statistically significant but both groups report much higher participation in *pro bono* work than is the case with lawyers in the United States in general.

MINORITY LAW TEACHERS ACROSS THREE DECADES

Insufficient numbers of our graduates teach law for us to report on them separately by decade, but they are a group that, taken together across the decades, deserve discussion. Roughly 6 percent of the minority graduates of the classes between 1970 and 1996 work today in the field of education. Most of this group — 25 minority graduates in all — are teachers of law. Since our survey focused primarily on those who practice law in some setting, we did not learn much about the professional life of law teachers — what or where they taught, for example. But the numbers are important. Michigan is among the 10 law schools that provide the largest numbers of law teachers for American law schools. At the beginning of the 1970s, there were almost no African American, Latino, or Native American law teachers at predominantly white law schools in the United States. Together with the minority graduates of the other teacher-producing schools, Michigan's minority graduates have played an important role in bringing minority group members onto the faculties of law schools in the United States. White alumni are similar to minority alumni in the frequency with which they choose careers in education and about the same proportion of those who choose careers in this sector enter law teaching.

DIFFERENCES AMONG MINORITY GROUPS

Up to this point in this article, we have grouped our African American, Latino, and Native American graduates together as our "minority alumni." What differences are there, if any, among these three groups with regard to the aspects of their careers that we have been reporting? Some, but very few. Within each decade, we have such limited numbers of Native American respondents that almost no differences between them and the other two minority groups have statistical significance. (The one exception is that the 14 Native American graduates of the 1980s are more satisfied with their careers overall than the 170 African American and Latino respondents from the same decade, a pattern that does not continue for the graduates of the 1990s.)

The numbers of Latino and African American graduates in our sample are large enough to look for significant differences, but the differences between them are in fact quite small. African American and Latino graduates have made somewhat different initial career choices. During the 1970s and 1980s, many more African Americans than Latinos took a first job in government (25 percent of African American graduates of those two decades, 7 percent of Latino graduates), but during the 1990s, the pattern was reversed (12 percent of African Americans took a first job in government, 25 percent of Latinos). For none of the

decades are there substantial differences between African American and Latino respondents in their current work settings, in their current earned incomes, or in their overall career satisfaction. Nor are there significant differences in the amount of *pro bono* work they perform or in their service on nonprofit boards. Thus, what we display in the tables as the achievements of "minority graduates" is close to the achievements of African American and Latino graduates separately.

SUMMARY OF THE DECADES

The minority graduates of the 1970s entered a world of practice in which there were few other minority lawyers and law firms were highly segregated by race. Most, regardless of their initial setting of work, have gone on to highly successful careers. The minority graduates of the next two decades found work in firms of all sizes, in government, in business, and in teaching, and have also become part of the main currents of the American legal profession. Across all three decades, Michigan's minority graduates have gravitated toward work in government to a greater extent than their white classmates. Over 40 percent of the minority graduates have worked in government at some point since law school, and many from the 1970s and 1980s are now judges, elected officials, or agency managers or officials. Half of those now working in government work for the federal government.

Across all settings of work, the minority lawyers are generally satisfied with their careers. As a group, they earn lots of money. They contribute to the public good by mentoring younger lawyers, by serving on nonprofit boards, by doing elective and nonelective political work, and by contributing their legal services on a *pro bono* basis. Of course some minority graduates are not satisfied with their careers, earn far less than the average among our graduates, and make few contributions to the community. That is true also with our white graduates. As we pointed out above, 5 percent of our minority respondents and 4 percent of our white respondents reported themselves in the lowest two of seven categories on our scale of overall career satisfaction. Since it is also probable that the nonrespondents to our survey include a somewhat higher proportion of persons who are not satisfied with their careers, it may well be that the actual proportion of dissatisfied persons among our graduates from these classes is higher, with somewhat more minorities than whites among the dissatisfied. Still, comparing our findings with studies of satisfaction in the bar in the country as a whole, Michigan's graduates, minority and white, are much more satisfied in general than most other American attorneys report themselves to be.

THE RACE AND ETHNICITY OF CLIENTS

A very high proportion of the clients of our minority and white graduates in private practice are white, in large part, we assume, because white people make up the majority of Americans and white people and the organizations they run are, in general, more able than minorities to afford attorneys. At the same time, our alumni, regardless of race, disproportionately serve clients of their own race. A higher proportion of the clients of our African American graduates are African American than is the case for our white or Latino graduates, and a higher proportion of the clients of our Latino lawyers are Latino than is the case for our African American or white graduates. This pattern holds both for our graduates' individual clients and for their contacts with organizational clients, such as corporations. (See Table 6, page 69). There is also a strong correlation for lawyers of each ethnic group between the proportion of same-race attorneys with whom they practice in the same firm and the proportion of their clients and their organizational contacts who are also of that race: for example, African American lawyers working in largely African American firms serve more African American clients than do African American lawyers in firms that are predominantly white.

From one point of view, this distribution of client services among private practitioners can be regarded as a part of the success of Michigan's program of training more minority lawyers. A school such as Michigan wants its graduates, taken as a group, to serve well all segments of the public, and our program has surely increased the numbers of our graduates providing services to African American and Latino individuals and businesses. (Our African American and Latino graduates of the 1970s and 1980s also provide more services than whites to low and middle income individuals.) From another point of view, the implications of the race-linked pattern of clients are more ambiguous, a sign of the persistent salience of race in American society. However the pattern of services is viewed, it is a reflection that in our culture, as in nearly all others, people seek out people whom they perceive as like themselves. Clients seek lawyers with whom they expect to be comfortable. Lawyers seek out as colleagues and as clients people to whom they have access and with whom they, too, expect to be comfortable.

IS MINORITY SUCCESS ATTRIBUTABLE TO AFFIRMATIVE ACTION AFTER GRADUATION?

At the same time that the University of Michigan Law School was making efforts to bring more minority lawyers into the Law School, other institutions in American life — first, government agencies, then firms and corporations — were beginning to make the same sorts of efforts. To what extent is the success of Michigan's minority lawyers after graduation due to the affirmative action of others rather than to hiring, promotion, and compensation standards that disregard race entirely?

We are limited in our ability to answer this question. We did not survey the employers who hired our graduates. Nor did we ask our minority or our white graduates whether their ethnicity played a role in the jobs they were offered either immediately after law school or later. Had we asked, we do not think that most respondents would have known. We also believe that there are subtle issues here that a few survey questions would not have illuminated. As previously all-white institutions throughout society committed themselves to racial integration, they understandably viewed the social value of a diverse work force as an appropriate component in assessing how well their

work force as a whole would perform. We do not believe, however, that over the course of any given employee's career many employers would permit such considerations standing alone to make up for significant deficiencies in job performance.

Still, for whatever relevance it is seen as having, our data do contain some clues about the degree to which employers might have been taking race favorably into account in making hiring and retention decisions. Large law firms, for example, generally attach significant weight to law school grades when making initial decisions about hiring law students. In each of the three decades, our minority graduates hired by large firms have had, in general, significantly lower law school grades than their white classmates hired by the firms of the same size. This is a strong sign that, in general, large firms have assigned positive weight to increasing the racial diversity of their staffs. One cannot, however, conclude from these data that firms hiring minority graduates were hiring less qualified persons than they would have if they had not taken race into account.

Throughout the period we studied, a high proportion of the permanent job offers firms extended were to students whose abilities the firms knew first hand because the firms had observed them as summer clerks. This has been especially true in the 1990s. When firms offered long-term jobs to students, they almost certainly believed, based on actual observation, that he or she showed promise of performing well.

In an effort to learn whether or not this confidence on the part of firms was well placed, we asked our respondents how many years they worked at their first jobs (not including judicial clerkships) in the belief that less able people would be asked or encouraged to leave. At the time of our survey, most graduates of the 1990s had not been out of law school long enough for meaningful assessment, but the graduates of the 1980s are a good group to examine. The many minority graduates from the 1980s who took a first job in a firm of 50 or more lawyers spent an average of 4.2 years at that firm. By comparison, the white graduates in our sample who took a job in a large firm spent an average of 4.7 years at the firm. Seventeen percent of minority alumni and 21 percent of white alumni

Table 5
University of Michigan Law School
Unremunerated Contributions as of 1997

	Classes of the 1970s		Classes of the 1980s		Classes of 1990-1996	
	Minority N=146	*White N=246*	*Minority N=187*	*White N=221*	*Minority N=208*	*White N=125*
Numbers of lawyers mentored (mean)	8	6	5	5	3	2
Serves on at least one nonprofit board	60%*	48%*	48%**	34%**	29%*	19%*
Involved in politics (electoral or issue)	40%	23%	24%	17%	25%	21%
Hours of *pro bono* legal work in a year for private practitioners (mean)	132	90	103	86	98*	58*
Private practitioners doing 50 or more hours of *pro bono* work in a year	65%	48%	63%	53%	53%	49%

* Differences are statistically significant (p<.05).
** Differences are statistically significant (p<.01).

Table 6
University of Michigan Law School
Classes of 1970-1996
Proportion of Clients/Contacts Who are of Various Racial/Ethnic Groups

Individual Clients *(of private practitioners who spend at least 20 percent of their time serving individuals)*	Black Clients*	Latino Clients*	White Clients*
Black Graduates	**53%**	5%	39%
Latino Graduates	11%	**29%**	53%
White Graduates	14%	5%	**77%**

Organizational Contact Persons *(of private practitioners who spend at least 20 percent of their time serving organizations)*	Black Contacts*	Latino Contacts*	White Contacts*
Black Graduates	**25%**	2%	73%
Latino Graduates	4%	**9%**	82%
White Graduates	4%	2%	**89%**

* Statistically significant (p<.01).

spent 7 or more years at their first large firm job. These differences are slight and not statistically significant. (There are, of course, many reasons other than lack of capacity to explain why an associate would leave a firm after a few years. In making this comparison, we have assumed that the dissatisfactions that might lead minority graduates to leave after a few years are essentially the same as those that might lead white graduates to do so. In fact there are reasons, as David Wilkins of Harvard has ably explored, why a minority person who is as competent as his or her white colleagues might be generally less happy in work settings that, like nearly all large firms, are predominantly white.)

A quite different place to look for whether success is due to affirmative action is among experienced lawyers who are on their own or in small firms, a group unlikely to benefit significantly in their current practice by affirmative action. Income is a common, even if contested, measure of ability. As Table 4 reported, the minority lawyers we surveyed from the 1970s who are in solo practice or in small firms had average incomes in 1996 of $154,400. Their median income was $95,000. The minority graduates of the 1980s in solo practice and in small firms averaged $78,500, with a median of $76,000. (White graduates from the 1970s in solo practice and small firms average somewhat less than their minority classmates; white graduates from the 1980s average somewhat more.) To be sure, all lawyers are hired from time to time for reasons other than their abilities or their reputations for ability — they are golf buddies of the client or are married to a client's cousin. But, on average, one would expect that most clients with a legal problem look for someone with a reputation for competence and that most lawyers who do not develop such a reputation will eventually pay a heavy financial price. From any economist's perspective, these solo and small firm minority practitioners have demonstrated their competence in the marketplace.

PREDICTING SUCCESS IN PRACTICE FROM ENTRY CREDENTIALS

Nearly all law schools, including Michigan, rely heavily on applicants' scores on the Law School Admission Test (LSAT) and on the applicant's undergraduate grade point average (UGPA) in making decisions about admissions. We examined the relationship between these two figures and the grades the graduates earned during law school as well as the relationship between these figures and achievement after law school. Do high LSATs and UGPAs actually predict better performance in law school? Do they correspond with more achievement after law school?

What we find is that there is a strong, statistically significant relationship between LSAT and UGPA, on the one hand, and grades at the end of three years of law school on the other, but no significant relationship between the LSAT or UGPA with regard to what matters much more — the achievement of students after graduation.

The University of Michigan Law School receives far more applications for admission than it has places to fill, nearly always at least 10 times as many applicants as there are positions. In deciding whom to admit, Michigan, like all other highly selective law schools, considers such hard-to-quantify indicators of ability as applicant essays and letters of recommendation, but it also pays considerable attention to LSAT scores and the UGPA. Critics of minority admissions programs typically point to disparities between minorities and whites in these quantifiable indicators and not to disparities in other indicators of ability to support their claims that race-conscious admissions programs admit people who are less competent academically, less able to benefit from their education, and less likely to succeed after school than rejected white applicants.

The flaw in this argument in the Law School context is that the usefulness of LSAT scores and the UGPA as law school selection devices has been demonstrated solely with respect to first-year law school grades, rarely examined with regard to grades over the full three years of law school, and never, before this study, examined for their relationship to achievement in the practice of law.

In order to measure the relationship between the LSAT and UGPA and performance during and after law school, we combined each graduate's LSAT and UGPA by ranking the respondents according to their LSAT scores and their UGPAs and adding their percentile rankings on these two dimensions, yielding an index with the potential range of 0 to 200. We refer to this measure as the "index," even though it is not the actual index that the University of Michigan Law School has used in the application process. (The Law School has computed an index based on LSAT and UGPA to predict Law School grades for applicants. It has been constructed in different ways over time, and some of the formulae for earlier years are no longer in the Law School files.) We also constructed three indexes of post-Law-School achievement: an index of satisfaction that combines overall satisfaction with the various components of satisfaction; a measure of income that uses log of income to reduce the effects of a few very high income respondents; and an index of community service that combines mentoring, *pro bono* work, and involvement on nonprofit boards. All three indices were created before looking at their relationship to the admissions index or to law school grades.

The combined LSAT and UGPA admissions index does a good job of predicting final law school grade point averages. Students with high indexes tend to earn higher grades than students with lower indexes. For all students, considering each decade separately, the correlations range from .62 to .66, which means that between 38 and 43 percent of the variance in Law School grades can be explained by the admissions index alone. (For minorities considered separately, the correlation ranges between .48 and .58; for whites separately, the relation is somewhat weaker but still substantial.)

Given this strong relationship between Law School admissions criteria and graded Law School performance, one might expect that these quantifiable admissions criteria would also positively correlate to success in practice. Our examination, however, reveals no such relationship. For no decade's graduates is there a statistically significant relationship between the admissions index and either the log of income or our index of career satisfaction. Those with

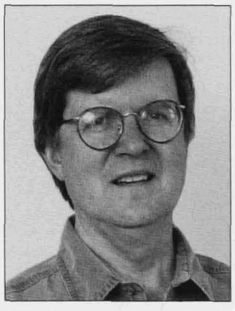
comparatively low admissions indexes earn as much on average as those with high indexes and are as satisfied with their careers. There is a significant correlation, however, between the admissions index and our index of service: in all decades those with higher admissions index scores tend to contribute less unremunerated service to society, as measured by our service index, than those with lower indices, and this negative relationship is statistically significant among graduates in the 1970-79 and 1990-96 cohorts. Why there is this mildly negative relationship between the admissions index and community service is unclear. It may possibly be due to the fact that Michigan seeks to recruit students who subscribe to the legal profession's aspirational norms of service and so admits applicants who appear committed to serving others on somewhat weaker numerical records than they require of those who seem less interested in service.

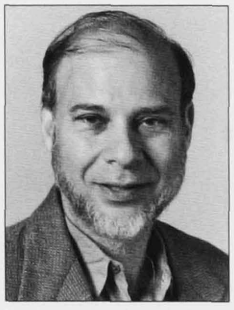
One can easily overinterpret our findings about the absence of a positive relationship between numerical admissions credentials and later achievement. It might be tempting to conclude that the skills that predict law school grades don't matter in practice — or to conclude that our graduates would do as well in practice if we admitted all applicants without regard to their undergraduate grades and LSAT scores. Neither of these interpretations correctly understands our data. In the first place, our measures of achievement after law school — satisfaction, income, unremunerated service — do not measure the full range of competence of a good lawyer. For neither our white nor our minority graduates did we conduct a survey of clients to determine how well the clients believe they have been served. Nor, of course, did we ourselves observe our graduates at work or review the products of their work. It is possible that, had we done so, we would have reached some conclusions about their skills that would in turn have correlated with the numerical admissions credentials. Second, and more fundamentally, ours is a study only of the students whom the University of Michigan Law School Admissions Office actually chose to admit. The Michigan students who are admitted, minority and white, fall within a narrow band of skills and performance, a band of high achievement. All that we have found is that, within that band, the skills measured by the LSAT and UGPA do not predict differences in career achievements when those skills are considered as part of an admissions process that also considers letters of recommendation, nongraded accomplishments, and other indicators or ability and achievement. One cannot extrapolate from that conclusion to the conclusion that any randomly chosen group of applicants, including persons with very low LSAT scores or undergraduate grades, would have done as well as the applicants that Michigan admitted.

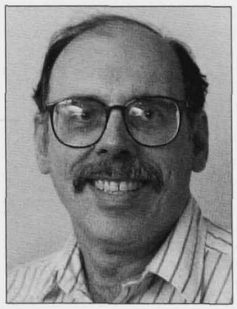
CONCLUSION

The University of Michigan Law School considers race in admissions in order to achieve a diverse student body for educational purposes. We believe that diversity is important to the learning experience. A question on our survey that we have not discussed earlier indicates that most minority graduates and many white graduates, including about half the School's white graduates from the 1990s, believe that the ethnic diversity they found at Michigan added a great deal to their classroom experience. Most of us who teach in the classrooms of the University of Michigan Law School have had the same experience.

What this survey has demonstrated is that in addition to the values that the ethnic diversity of our students have contributed to the Law School environment, our minority graduates, like our white graduates, have gone on to make significant achievements in the profession after law school. They have fine jobs and they do good works. They earn a lot and they contribute a lot. Thus, we have found a clear answer to one of the central questions that originally motivated our research: the University of Michigan Law School's admissions program has brought into the profession large numbers of minority lawyers who have become financially successful, happy with their careers, and generous with their time through community service.







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Making sense of Japan's

Sokaiya Racketeers

— BY MARK D. WEST

The following article is excerpted from "Information, Institutions, and Extortion in Japan and the United States: Making Sense of Sokaiya Racketeers," which will appear in its complete form in 93 Northwestern University Law Review *this summer. Publication is by permission.*

How do legal, regulatory, and organizational systems affect the emergence and development of corporate extortion? The question arises whether the extortionist is a potential plaintiff seeking settlement, a labor union threatening to strike, or the lucky finder of the mouse-in-the-soda-bottle of urban legend. In each case, including those in which extortion may be lawful and even desirable, the extortionist's threat and the corporation's response depend on the institutional context in which the extortion takes place.

In the Japanese system, corporate extortion by *sokaiya* gangster-racketeers appears to be widespread. Although *sokaiya* (literally, "general meeting operators") take several forms, a *sokaiya* typically is defined as a nominal shareholder who *either* attempts to extort money from a company by threatening to disrupt its annual shareholders' meeting *or* works for a company to suppress opposition at the meeting. Surprisingly, Japanese executives pay *sokaiya* despite the fact that payment can result in civil and criminal liability not only for *sokaiya*, but for the executive as well.

Recent scandals involving some of Japan's largest and most prestigious financial institutions have thrust *sokaiya* into international headlines and vividly illustrate some of the problems of the Japanese and/or Asian economic systems. In spring 1997, prosecutors revealed that Dai-Ichi Kangyo Bank (DKB), the fifth-largest corporation in the world, had paid *sokaiya* Ryuichi Koike a total of $96 million for his services. Koike then admitted that he used these funds to acquire a stake — significantly, for exactly the number of shares needed to give him the right to make proposals at shareholders' meetings — in each of Japan's "Big Four" securities brokerages. The brokerages subsequently paid Koike a combined total of nearly $6 million to keep their meetings quiet. The "Koike scandal" led to mass board resignations, to the arrest of 35 executives, to the suicide of a former DKB chairman, and ultimately to the dissolution of Yamaichi Securities and the collapse of the Japanese stock market. Six months later, eight executives of Hitachi, Toshiba, and three Mitsubishi group companies were arrested (and as of this writing, all but one have been convicted) for paying *sokaiya* amounts ranging from $16,800 to $72,000 — ostensibly for the use of a beach house — to keep their meetings quiet. Fewer than six months after that, prosecutors revealed that the exorbitant brochure-advertising fees that certain Mitsubishi group companies had paid a former flight attendant were actually disguised payments to her husband, a 30-year *sokaiya* veteran, to keep meetings quiet. In August 1998, two extortionists were arrested for leasing office plants (at prices to make a florist blush) to Japan Airlines in exchange for meeting protection, and Toyota and Nissan soon admitted that they had done the same.

These recent incidents appear to be part of a much larger phenomenon. Since criminal penalties were clearly imposed on payments to *sokaiya* in 1982, executives of 31 corporations — almost all of which are household names in Japan, and only one of which is not listed on the Tokyo Stock Exchange — have been convicted of making payments to *sokaiya*. In a 1997 survey of large Japanese firms including giants such as NTT, Toyota, and Matsushita, nearly 90 percent indicated that they had been approached by *sokaiya* with extortionist demands of one kind or another. Another recent survey of 2,000 firms (1,200 responding) found that 77 percent had paid *sokaiya*. This generous corporate support is said to keep in

Estimates of how much money companies actually pay *sokaiya* vary. One study finds that typical *sokaiya* earn $20 to $200 per firm, twice a year. One firm's general affairs department chief states that his company's regular policy at one time was to pay small-time *sokaiya* ¥100,000 (about $800) per year, and to pay its "expert" *sokaiya* ¥300,000 to ¥500,000 ($2,400 to $4,000) per month, with bonuses of ¥2 million to ¥3 million ($16,000 to $24,000) around the time of the meeting. The firm's annual *sokaiya* budget was ¥500 million (about $4 million) for 2,000 *sokaiya*, which results in an average payment of $2,000 per *sokaiya*.

business 1,000 *sokaiya* who hold stock in nearly 12,000 companies.

Some commentators have argued that *sokaiya* are a cultural phenomenon, a reflection of the importance of harmony, politeness, and respect in Japan. After extensive research, including numerous interviews of Japanese managers, attorneys, prosecutors and *sokaiya*, I reach a different conclusion. In this article, I argue that a better explanation for the behavior of extortionists and managers in Japan lies in the choices that are determined by institutions. Specifically, I argue, first, that Japanese institutions lead to low levels of corporate disclosure. Because extortion correlates positively to secrecy, inadequate disclosure creates blackmail opportunities that can be used by *sokaiya* at any time. Second, I show empirically that long shareholders' meetings in Japan send negative market signals that lead to stock price drops. Japanese executives pay *sokaiya* to avoid these negative returns. Concisely stated, Japanese firms choose to pay *sokaiya* because the Japanese system makes paying *sokaiya* less costly than the alternative.

I. A CORPORATE EXTORTION PRIMER

The question of why *sokaiya* successfully extort Japanese companies in spite of the law while *sokaiya* apparently do not arise in the United States, even in the absence of legal prohibitions, principally involves three factors: *sokaiya*, corporations, and corporate law.

A. *Sokaiya*

Although *sokaiya* play a variety of roles, they usually come in one of three varieties. First, there are fighters. Japanese managers have long known that one of the easiest ways to ensure an orderly shareholders' meeting is to hire thugs to intimidate shareholders who want to speak. This rent-a-thug image is fueled by well-publicized melees of the early 1970s at Chisso Corporation, where *sokaiya* physically suppressed environmental activists, and at Mitsubishi Heavy Industries, where *sokaiya* fought to a bloody finish with shareholders who protested the company's production of military weapons for the Vietnam War. Relatively few incidents of physical shareholder repression have surfaced since that time, perhaps because *sokaiya* moved into other more profitable lines of business, perhaps because shareholders began to get the message through more subtle hints of violence.

Second, a few elite *sokaiya* are paid to keep other more dangerous *sokaiya* away from meetings. These *sokaiya* use various means to accomplish the task: intimidation, influence peddling, or outright payment. These *sokaiya* sometimes become corporate insiders, advising companies on how to deal with other troublemakers, how to organize meetings, and how to circumvent the law. As one such *sokaiya* (who prefers the title "consultant") told me, "*Sokaiya* problem? What *sokaiya* problem? I show up. I give advice. I help. I do the same thing that a lawyer would do. And I'm cheaper, too. What's the problem with that?"

Finally, and most commonly, many *sokaiya* make a living through blackmail. Sometimes *sokaiya* blackmail by threatening to reveal sensitive information at the public forum of shareholders meetings. Sometimes the blackmail is not related to meetings at all. A favorite *sokaiya* tactic is to request that a corporation subscribe to magazines published by the *sokaiya*; the underlying threat being that if the company does not subscribe, scandalous stories about the company will appear in the magazine. Other popular tactics include organizing expensive golf tournaments, leasing potted plants, and holding karaoke singing contests. Japanese police arrest approximately 200 *sokaiya* (and related actors) each year on various extortion charges, but blackmail persists.

Blackmail *might* flourish in Japan — not just among *sokaiya* but in society as a whole — because of broad legal and social differences. But this does not seem to be the case. In a recent study, Judge Richard Posner found only 124 reported published opinions (among 3 million in the Westlaw database) in blackmail cases in the United States in the last century. I have serious doubts — as does Posner — about the reliability of using the number of judicial opinions as a measure of blackmail activity. But because good alternatives are scarce, and a comparison would be nice, I adopt a similar approach for Japan. I searched for all blackmail opinions in *Hanrei Taikei*, a ten-disc CD-ROM database that is the Japanese functional equivalent of Westlaw. After reading through all the extortion cases returned by the search, I was only able to classify 15 of them as informational blackmail — a small number indeed, and easily comparable with the U.S. number given the disparity in database size.

B. *The Companies*

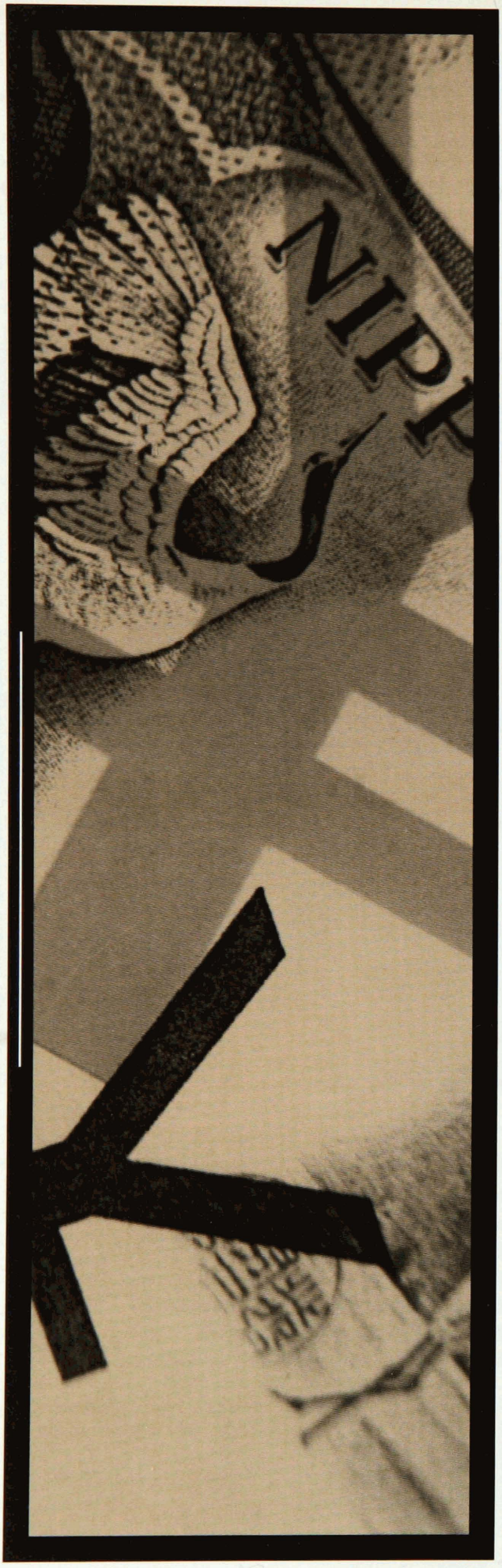
When confronted by a *sokaiya*, companies have two options: pay or resist.

1. Pay. A company's general affairs department usually handles payments to *sokaiya*. Before 1982, many companies had their affiliated *sokaiya* form a queue at the door of that department on the day of, or the day before, their shareholders' meeting. All in line received envelopes full of cash. Recent compensation schemes are more sophisticated. The 1997 Koike scandal involved off-the-books loans to a company owned by Koike's brother (by DKB), purchases and repurchases of expensive golf club memberships (Daiwa Securities), and compensation for losses incurred through Koike's discretionary "V.I.P." account (Nomura Securities), futures accounts (Nikko Securities), and Singapore International Monetary Exchange Nikkei Index accounts (Yamaichi Securities).

Estimates of how much money companies actually pay *sokaiya* vary. One study finds that typical *sokaiya* earn $20 to $200 per firm, twice a year. One firm's general affairs department chief states that his company's regular policy at one time was to pay small-time *sokaiya* ¥100,000 (about $800) per year, and to pay its "expert" *sokaiya* ¥300,000 to ¥500,000 ($2,400 to $4,000) per month, with bonuses of ¥2 million to ¥3 million ($16,000 to $24,000) around the time of the meeting. The firm's annual *sokaiya* budget was ¥500 million (about $4 million) for 2,000 *sokaiya*, which results in an average payment of $2,000 per *sokaiya*.

Other evidence comes from the amounts companies spend on subscriptions to magazines published by *sokaiya*. The Koike scandal brought to light that Nomura Securities had been paying ¥70 million ($560,000) annually for subscriptions to 700 magazines. Subsequent investigation revealed that each of Japan's large city banks subscribed to an average of 1,000 such magazines at a cost of ¥100 million ($800,000) annually.

One way to estimate the amounts companies pay is to calculate the average amount cited in court cases. From 1983 to 1998, Japanese courts sentenced executives from 36 firms who made payments to a total of 133 *sokaiya*. The total amount of the payments to *sokaiya* by these 36 firms is ¥474.4 million (about $3.8 million), representing a disbursement of about ¥3.57 million (about $28,000) per *sokaiya* or ¥13.18 million (about $105,000) per firm. The highest amount received by a single *sokaiya* was ¥94 million ($750,000); the lowest, ¥50,000 ($400). On one hand,



Enter the *sokaiya*. A skilled *sokaiya* can expertly deconstruct a balance sheet, querying discrepancies, errors, and omissions. Though the same may be true of analysts in the United States, *sokaiya* have more secrets to expose in Japan because less information is initially disclosed.

these figures may understate firms' total payments because many firms have relationships with more than one *sokaiya*. But on the other hand, these figures may overstate the payments, as prosecutors may let smaller payments slide, choosing to litigate only the large cases.

In short, it is difficult to determine how much firms pay *sokaiya*. Many of the managers I interviewed suggested that one reason this may be so is that firms pay *sokaiya* varying amounts depending on their relationship with the company, the quality of their information, the credibility of their threat, and their skills in performing other services for the company.

2. Resist. Of course, not all firms pay *sokaiya*. Those who do not pay either (1) are not bothered by *sokaiya*, (2) turn threatening *sokaiya* over to prosecutors, who pursue them on extortion charges, or (3) simply ignore *sokaiya* threats. Although the third strategy may seem to be the easiest course, a few executives who ignored *sokaiya* threats have become subject to acts of violence. One survey, conducted by a National Police Agency administrator, found 10 acts of violence against corporate officials during a one-year period alone. At least three of these incidents — assaults on executives of Tokai Bank, Fuji Film, and Sumitomo Bank — are linked to the refusal of those companies' executives to pay *sokaiya*.

C. *The Law*

Payments to *sokaiya* to suppress shareholders' rights have been illegal since the Commercial Code was promulgated in 1950. Under section 494 of the Code, it is illegal to make an "improper solicitation" with respect to the "exercise of shareholder rights." "Improper solicitation," courts have held, includes paying *sokaiya* to prevent others from "fairly speaking or fairly exercising their vote."

But this formulation of the law raised multiple problems of clarity for prosecutors and civil plaintiffs. These problems, and growing concerns about corporate gangsters in an internationalizing Japan, caused the Japanese legislature in 1981 to enact a full-scale revision of the Commercial Code aimed specifically at the elimination of *sokaiya*. Effective October 1982, prosecutors need no longer prove an "improper solicitation." Instead, they need only prove that a "benefit" was offered with respect to the exercise of shareholder rights, and in civil cases, if the benefit is "gratuitously offered" to a "specific shareholder," it is presumed that it is offered with respect to those rights.

The revisions imposed clear civil and criminal penalties on both *sokaiya* and management. The new code also introduced clear criminal penalties — up to six months' imprisonment or fines of up to ¥300,000 ($2,400) for both the originator of the benefit (management) and the recipient (*sokaiya*).

The "*sokaiya* provisions" of the Commercial Code create incentives against payments to *sokaiya*, and may have contributed to the decline in the estimated *sokaiya* population from about 6,000 pre-1982 to about 1,000 in 1997. But the provisions have at least three readily apparent problems. First, the six-month sentence specified by the code carries a statute of limitations of only three years. Second, the presumption that a benefit, if gratuitously offered, is made in connection with shareholders' rights, only arises if the payment is made to a shareholder. Third, the *sokaiya* provisions do not address the *sokaiya* magazine subscription phenomenon, which can be a significant sphere of *sokaiya* activity.

The Japanese judiciary has added an additional reason why the *sokaiya* provisions may not have the full impact that they otherwise could. In the scores of cases adjudicated since the *sokaiya* provisions took effect, only three *sokaiya* (in the Noritake, Ajinomoto, and Mitsubishi group cases) actually were sentenced to prison. All others received suspended sentences. In no case did any of the executives convicted in those incidents receive jail time — they *all* received suspended sentences. This is not an aberration from the Japanese criminal justice system as a whole, which sends fewer than 5 percent of its suspects to prison, compared to over 30 percent in the United States, but it does show that the *sokaiya* provisions are not being enforced to their fullest extent.

II. INFORMATION

Some *sokaiya* blackmail has nothing to do with shareholders' meetings. This is clearly evidenced by year-round *sokaiya* magazine subscriptions and implied in relevant case law. To put it another way, what would be the expected result if holding Japanese shareholders' meetings suddenly were made illegal? After executives sobered up from the tremendous parties that they surely would throw in celebration, *sokaiya* activity would continue as usual. Information with blackmail potential would still be available, and executives would still be vulnerable. The *sokaiyas*' broadcast of information would simply switch to some other forum.

A. *Types of Information*

The U.S. corporate governance system and U.S. corporate law regime, defined broadly to include regulatory institutions, makes available more useful information to independent investors, reducing the marginal costs to investors of information acquisition. In contrast, the Japanese system often keeps such information — most importantly, *negative* information — secret. *Sokaiya* normally blackmail corporations with three types of information: financial and accounting data, potentially scandalous information relating to corporate malfeasance, and private information about management.

1. Financial and Accounting Data. It is widely recognized that Japanese corporations do not disclose as much information as their U.S. counterparts. First, a Japanese corporation's annual report contains no mention of management compensation, as required in the United States. Second, Japanese reports do not break down sales by industry or business line, so it is difficult to determine a firm's profitability. Third, assets a Japanese firm holds in the form of securities are booked at the price at which the firm bought the shares, not the current market price. Finally, a Japanese financial statement usually is not specific about the method the company uses to depreciate its assets. The aggregate result is that the annual report, which is mandatory in both systems, contains significantly less useful information in Japan than in the United States.

A recent survey by the Organization for Economic Cooperation and Development (OECD) further illustrates the point. The OECD studied the consolidated financial statements of several large public corporations and rated their disclosure of operating results relative to OECD guidelines as full or partial. Of 53 U.S. firms studied, 34 had full disclosure, and 19 had partial. The 25 British firms in the survey ranked similarly with 19 full, 6 partial. Of the 23 Japanese firms surveyed, the results were nearly opposite: only 2 firms had full disclosure, while 21 firms had partial disclosure. A similar survey by the Investor Responsibility Research Center found that on average, Japanese listed corporations were required by law to disclose only 40 percent of the information that is required in the United States.

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2. Past Bad Acts. More often, *sokaiya* use information regarding past corporate misdeeds to blackmail corporate executives. Sometimes the acts are illegal; sometimes they are merely embarrassing. A list of bad acts that *sokaiya* typically use for blackmail would include silently settled product liability claims, hiring and employment issues, bid-rigging, poor management practices, and other unreported liabilities.

It is difficult to determine whether Japanese firms on average commit more "bad acts" than U.S. firms or if more bad acts simply are kept secret. If the former is true, it is probably because Japanese overregulation creates incentives for firms to commit bad acts. An obvious case is that of now-defunct Yamaichi Securities. Yamaichi competed in what is perhaps the most heavily regulated sector of the Japanese economy: the securities industry. Unlike the United States, where brokerage fees were deregulated in1975, commissions on securities transactions in Japan remained fixed until 1998. In order to maintain the accounts of its largest customers, Yamaichi agreed to perform "tobashi" transactions, the illegal practice of repurchasing losses that have been shifted so that favored customers do not have to report losses. *Sokaiya* learned of the arrangement and used it to blackmail Yamaichi.

3. Personal Information. Sometimes the information that *sokaiya* use to blackmail companies is purely personal in nature — an executive's extramarital affair, a director's criminal son, a manager's questionable background — all make excellent blackmail fodder and payments are usually made by the corporation, not the individual.

B. *Information Concealment: The Role of Government and Governance*

What elements would a regime need to facilitate the non-disclosure of negative information? First, it would need an organizational system that would tend to prevent negative information from being unwillingly released. Second, it would require minimal enforcement of disclosure requirements so that firms would (a) not get caught keeping secrets and (b) if caught, would not be too severely punished. Third, it would need some mechanism through which economy-wide (or at least industry-wide) unraveling effects could be deterred. In Japan, firms appear to benefit from all three elements.

1. Maintaining Secrecy. Three aspects of the Japanese corporate governance system help to maintain secrecy better than in the United States. First, the cross-shareholding (*keiretsu*) system common in the Japanese economy lessens the need for market-wide disclosure. If a small number of institutional shareholders hold a large percentage of a company's stock, there is lessened incentive to share information outside of that limited group.

Second, most large Japanese firms are affiliated with a main bank. Main banks are in some ways similar to non-financial cross-shareholders because their inside position reduces the need for public disclosure.

Finally, Japanese boards of directors are composed almost exclusively of insiders. The lack of outside directors may result in a reduced flow of information to sources outside the firm.

2. Enforcement. The Japanese disclosure regime is characterized by a lack of enforcement of disclosure laws by civil or criminal means relative to the level of enforcement in the United States. The U.S. Securities and Exchange Commission investigates an average of 150 to 200 cases annually. By contrast, from 1992 to 1995, the Japanese Securities and Exchange Surveillance Commission (SESC) investigated only six.

Virtually no securities fraud litigation, civil or criminal, occurs in Japan. Japan has no class action mechanism. Another potential enforcement mechanism, the shareholder derivative suit, has only recently become active, as a result of a 1993 Commercial Code amendment that made the mechanism moderately more accessible. However, because of reliance on the business judgment rule, in cases involving listed companies, the only shareholders who have litigated successfully have been those whose directors committed illegal acts. Japan's judge-centered civil law discovery system also may yield less corporate information than the U.S. adversary system.

3. Deterring Disclosure. Even in the absence of mandatory disclosure provisions, competitive markets should still produce something close to the right level of information to investors. Firms with positive outlooks have every reason to disclose their rosy futures. Those firms with the next most favorable information then disclose, and the unraveling process continues until all firms disclose except for those firms with the worst information. At this point, investors can draw inferences about those firms' financial outlook from their silence. In Japan, this "unraveling effect" appears not to occur as frequently or as deeply as it does in the United States.

The broad range of Japanese corporate secrets may limit unraveling as investors cannot be sure what type of information to seek. Some deterrence to the unraveling effect probably also results from direct coordination among managers of "competitive" firms.

But most importantly, corporate Japan may have mitigated the unraveling effect by relying on an institution — the bureaucracy — to monitor firms and keep disclosure at preset levels, in effect creating an "information cartel." Although bureaucratic influence may come from a variety of different sources, I focus in particular on the most prominent ministry (particularly in recent *sokaiya* scandals), the Ministry of Finance (MOF). MOF serves as regulator, protector, and promoter of the financial services industry and securities markets. In many cases, MOF chooses protection and promotion over regulation. Examples abound; two recent events from January 1998 tend to confirm what had always been widely suspected:

- Two MOF financial inspectors were arrested on charges that they took bribes from Sumitomo Bank, Tokyo-Mitsubishi Bank, Sanwa Bank, Dai-Ichi Kangyo Bank, Asahi Bank, and Hokkaido Takushoku Bank in return for revealing *inspection plans* to the "MOF-tan" (a manager in charge of MOF relations) at those banks. During and after a subsequent investigation, a senior investigator committed suicide, the minister and vice-minister were forced to resign, and 112 officials were disciplined for "excessive" wining and dining.
- Koichi Miyakawa, a former MOF financial inspector, admitted to prosecutors that he learned of illegal loans by Dai-Ichi Kangyo Bank to *sokaiya* Ryuichi Koike in 1994 and deleted information regarding those loans from his official report.

The reasons why MOF might withhold information are plentiful, and suggest that the incidents recounted above are not mere aberrations. Sometimes the goal may be market stability. Sometimes MOF may withhold information in order to prevent firms from failing — a goal that can be observed in the United States in cases like the 1979 Chrysler Corporation rescue or the 1998 Long-Term Capital bailout — but that is supported more openly and invoked more frequently in Japan. Private interest, rather than public policy, is also likely; recent scandals suggest that bribery, at least in the form of lavish entertainment, if not cash, may be widespread. Even if outright bribery is limited to a few high-profile cases (which, unfortunately, appears not to be the case), it is no secret that bureaucrats' careers are determined by legislators, who receive large contributions from large corporations. Also a potential contributing factor is the practice of *amakudari*, through which former bureaucrats, especially in heavily regulated industries, retire to high-paying positions in the very companies that they formerly monitored, supported, and promoted.

The case is easy to overstate; I do not intend to imply that MOF or any other agency purposely limits disclosure as a matter of policy (though they might). But through small steps and individual actions, MOF and other agencies can be effectively employed as institutional solutions to collective action problems, ensuring that "excessive" disclosure does not occur, and allowing all firms to profit while maintaining minimum disclosure policies.

C. Information Acquisition: Organized Crime Syndicates

A blackmail threat is only credible if the blackmailer has sensitive information and the means to expose it. *Sokaiya* are often able to acquire both by means of relationships to the *yakuza* or *boryukuden* (Japan's organized crime syndicates) and related groups.

Yakuza are more numerous and more pervasive in everyday Japanese life than their Mafia counterparts in the United States. The general explanation for this in the socioeconomic literature is that Japan's overregulated economy, layered bureaucracy, and slow-moving court system create an environment in which it is often quicker and easier for corporations, individuals, and occasionally government itself, to turn to the *yakuza* than to legitimate organizations. In the corporate context, firms turn to *sokaiya* to handle activities that they either are not equipped to handle or are not willing to undertake directly. Companies can hire *yakuza* to enforce judgments, a skill at which gangs appear to be more adept than the legal system. Construction firms reportedly use *yakuza* to monitor bid rigging for public works projects. Such firms also turn to *yakuza* to bypass strict immigration laws so that Southeast Asian immigrants can be used on construction projects. For securities firms, one common use of *yakuza* is said to be in the manipulation of stock prices, especially in the ramping of prices for new issues. For real estate firms, *yakuza* can be used to

intimidate stubborn holdout owners into vacating land at a low price, a niche created at least in part by Japanese landlord-tenant law, which heavily favors tenants. For lenders, *sokaiya* can assist with debt collection or may even purchase bad debts so that banks do not have to write them off (*yakuza* can then make the debtors offers that cannot be refused).

The problem for the corporation is that once it turns to the *yakuza* for private law enforcement, the *yakuza*, via *sokaiya*, can then use information gathered in performing the services to blackmail the company. And the company knows that the *yakuza/sokaiya* can follow through on the threat of exposure — after all, it is the *yakuza*'s expertise in such matters that leads corporations to turn to them in the first place.

The foregoing is not meant to suggest that all firms hire *yakuza* to do their dirty work. The degree of involvement varies by industry, and it is doubtful that every firm in any industry would turn to the underground. These services are more available in Japan, and because of their sheer numbers, most firms — or at least vulnerable secret-holding employees of those firms — are likely to encounter organized crime representatives.

Mob ties help *sokaiya* in other ways. First, and perhaps obviously, *yakuza* can impose occasional threats of physical violence when necessary. Second, mob ties also help *sokaiya* maintain their monopoly over information that has blackmail potential.

As noted earlier, not all *sokaiya* are involved in blackmail. Some fill important roles of silencing dissenters, whether they are shareholders or other *sokaiya*. In this sense, *yakuza/sokaiya* are classic racketeers, mixing extortion with enforcement of illegal monopolies. Many *yakuza/sokaiya*, rather than working against the company, simply reinforce existing collusion between managers and large shareholders, providing services for which many managers pay.

Nor do all *sokaiya* have organized crime connections. A small group of *sokaiya* intelligentsia makes its living blackmailing corporations with information derived from standard securities analyses of firms' financial statements and other public documents. This group, which even includes a couple of corporate law professors, makes money more on analytical acumen than mob ties. Their tactics are more subtle, as they often send their written findings to the corporations, with attached cover letters suggesting that

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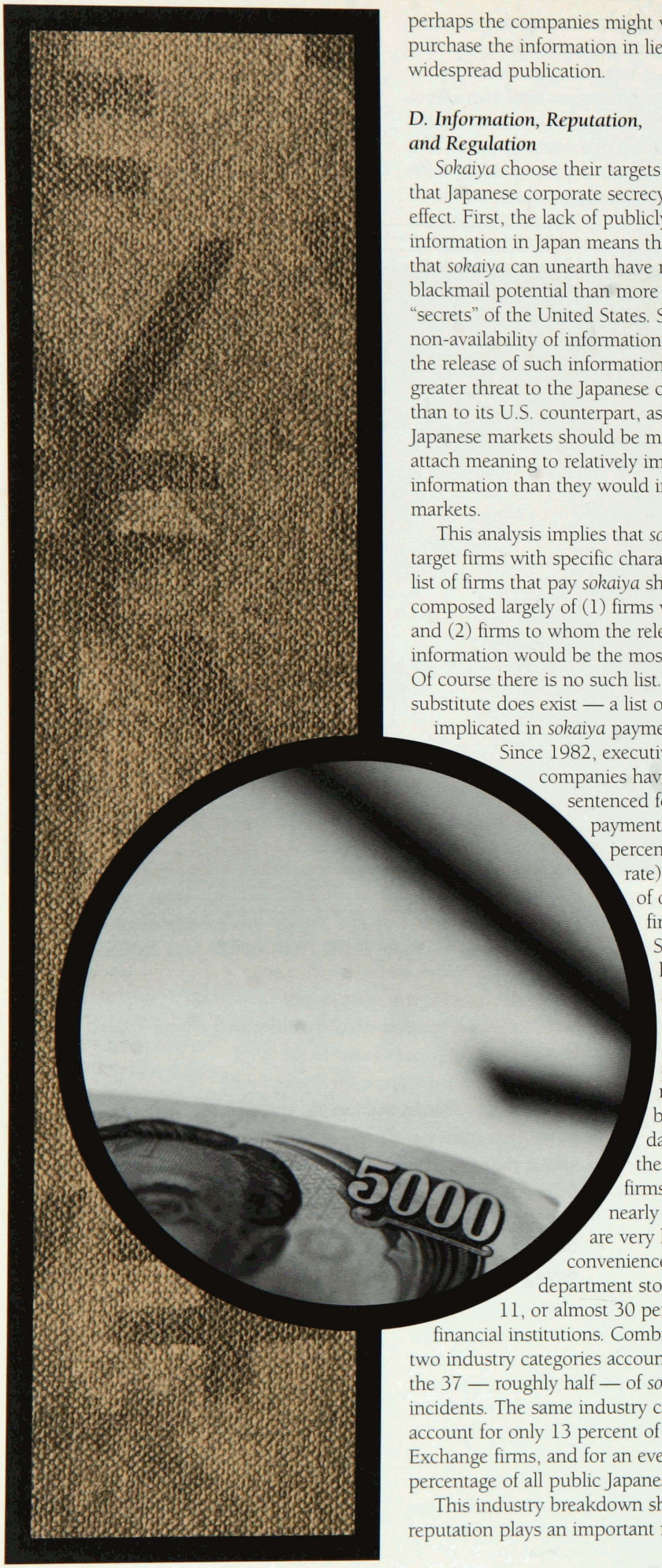

perhaps the companies might wish to purchase the information in lieu of more widespread publication.

D. Information, Reputation, and Regulation

Sokaiya choose their targets knowing that Japanese corporate secrecy has a dual effect. First, the lack of publicly available information in Japan means that the secrets that *sokaiya* can unearth have more blackmail potential than more public "secrets" of the United States. Second, the non-availability of information means that the release of such information poses a greater threat to the Japanese corporation than to its U.S. counterpart, as investors in Japanese markets should be more likely to attach meaning to relatively immaterial information than they would in U.S. markets.

This analysis implies that *sokaiya* will target firms with specific characteristics. A list of firms that pay *sokaiya* should be composed largely of (1) firms with secrets and (2) firms to whom the release of information would be the most damaging. Of course there is no such list. But a substitute does exist — a list of firms implicated in *sokaiya* payment scandals. Since 1982, executives of 36 companies have been sentenced for *sokaiya* payments (a 100 percent conviction rate). Executives of one other firm (Nomara Securities) have been arrested and pleaded guilty and agreed to pay more than $3 billion in civil damages. Of these 37 total firms, seven, or nearly 20 percent, are very large food, convenience, and department stores. Another 11, or almost 30 percent, are financial institutions. Combined, these two industry categories account for 18 of the 37 — roughly half — of *sokaiya* arrest incidents. The same industry categories account for only 13 percent of Tokyo Stock Exchange firms, and for an even smaller percentage of all public Japanese firms.

This industry breakdown shows that reputation plays an important role in determining which firms tend to pay *sokaiya*. Game theory shows that "the power of reputation seems to be positively related to its fragility." Firms whose reputations are most easily shattered will value reputation more highly than other firms will. The applicability to financial institutions is clear; they operate in a highly competitive industry in which public trust is essential to success. Department stores in Japan function under similar constraints. Japanese department stores sell food, a commodity in which trust is essential. Moreover, the margins in retail in Japan, and especially in food retail, are comparatively very thin, and the market is quite competitive: In Japan, there are 120 retailers and 46 food retailers per 10,000 persons; in the United States the corresponding numbers are 59 and 7 per 10,000. This thin-margin environment in which multiple competitors are often selling identical products may lead some Japanese department stores to value their reputation more highly than corresponding U.S. firms.

The degree to which industry is regulated also seems to determine *sokaiya* targets. MOF plays a predominant role in the financial services industry. In the retail industry, the Ministry of International Trade and Industry (MITI) is in charge, heavily regulating retail stores with inefficient requirements relating to floor space, vacation days (a minimum of 24 days per year), and even requiring local merchant consent to the creation of new large stores. Heavy regulation may lead to questionable practices, the knowledge of which can be used for subsequent blackmail, or it may be a conduit for deterring the informational unraveling effect.

E. Uses for Negative Information, or Why Don't They Just . . .?

Why do *sokaiya* choose to blackmail executives with negative information as opposed to using it to profit in some legal manner? While extortion-like uses for negative information can arise in all systems, institutions determine the form of the extortion. In the United States, three potential uses for negative information — securities lawsuits, financial instruments, and publication — are readily apparent. In Japan, however, these sources of profit are much more limited, and holders of negative information thus turn to extortion, whether as *sokaiya* or by selling information to *sokaiya*.

1. Lawsuits. Negative information in the United States is often used for profit by securities plaintiffs, or more specifically, by their attorneys. In the United States, as a congressional committee noted, securities

class litigation is "lawyer-driven" and often carried out by "professional plaintiffs" who own nominal interests in many different companies and who stand willing to lend their names to class actions in exchange for an extra "bounty" payment upon settlement. In such a system, nominal professional plaintiffs perform the same economic function as *sokaiya*: They simply exercise their claim legally after disclosure, while *sokaiya* make their claim illegally before the information can be disclosed.

In Japan, the class action system does not exist. The Japanese derivative suit mechanism creates little monetary incentive either for shareholders or their attorneys. Without a legal mechanism through which to profit from negative information, an illegal one emerged.

2. Financial instruments. Investors can profit on undisclosed negative information by the use of financial instruments such as put options or short sales. But due to heavy regulation, options and short sales are more difficult, more costly, and much less popular in Japan than in the United States.

Regulation aside, in the Japanese system, *sokaiya* blackmail has at least three advantages over trading. First, income earned from either short sales or options is a one-shot affair, while income earned from blackmail can be repeated at least once a year with continued threats of exposure. Of course, blackmail and trading are not mutually exclusive. A *sokaiya* could blackmail the company, short the stock, announce the information, and reap a dual profit — but then he would be unable to reap future profits using either method.

Second, *sokaiya* blackmail may be less risky. A holder of a short position or a put option has no way of determining whether, when, or to what extent market prices will actually fall. Short-sellers face additional risks. "Uptick" rules that prohibit short sales in a falling market prevent *sokaiya* from shorting after the release of the information. If multiple *sokaiya* attempt to short-sell, purchases required to cover their repayment obligations can actually drive prices up. Blackmail, on the other hand, involves almost certain payment, and the risk of arrest is minimal.

Finally, in a market of low informational availability, many companies may actually prefer blackmail to the use of financial instruments. Shorting is a viable investment strategy only if negative information is to be released. Companies have no desire to see negative information released. Accordingly, some should be willing to pay potential short-selling *sokaiya* significant sums not to short.

3. Publication. When cooperation leads to efficiency gains that the market fails to capture, "private order" economic institutions will emerge. Perhaps the cooperation of *sokaiya* with managers constitutes such a "private order" institution. But if there is so much valuable negative information out there, why don't securities agencies, newspapers, or some other third party profit from it legally by selling it to investors?

Part of the answer may lie in the players in the game. The most likely distributors of the information would be securities houses and their affiliated research groups. These groups may not always have the proper incentives to research and convey to customer's negative information. Japanese securities firms traditionally earn the bulk of their profits through commissions rather than from trading on their own accounts. Accordingly, their goal is to influence customers to buy more securities and pay more commissions. Moreover, as recent scandals have shown, the securities houses themselves are often so deeply mired in *sokaiya* activity that pointing out the mistakes of others could simply be a suicide request.

The media may constitute another source of negative information distributorship. But the Japanese media has long been known for its press club that rewards positive publicity for the news source over exposé reporting. Moreover, many Japanese media with enough capital to publish news of hidden corporate wrongdoing are often owned and affiliated substantially with the very large corporations on whom they would be reporting.

This leaves one particular group of actors with enough capital and consumer trust to fill the gap — foreign securities firms. Although foreign firms have been in Japan since 1961, their activity was relatively limited until the bubble economy that began in the mid-1980s. As new entrants to the market, establishing a reputation among Japanese securities customers was relatively difficult, and such firms were forced to be much more active in trading for their own accounts than their Japanese counterparts, who could rely on churning alone. But as foreign firms lured foreign customers to Japanese markets, and developed reputations in Japanese domestic markets, that picture began to change, and now the top four foreign firms conduct more retail trading than do the Japanese top four.

These foreign firms already may have affected *sokaiya* activity. The decline in *sokaiya* from 6,000 pre-1982 to about 1,000 in 1997 is often cited as a result of enforcement of the 1982 *sokaiya* provisions. But very little actually changed in 1982 — *sokaiya* activity was illegal before 1982, and a handful of arrests in the following years does not amount to rigorous enforcement. A better explanation for the decline of *sokaiya* may be the relatively unbiased dissemination of information by foreign firms in Japan. With fewer ties to listed firms and an initial reliance on trading wholesale rather than retail for profit, foreign firms are often said to be less reluctant to distribute (true) negative information about listed firms. Foreign firms can make legitimate use of negative information on which *sokaiya* would otherwise profit. As the foreign retail presence increases, their distribution of negative information to investors may further drive *sokaiya* out of business.

F. A Brief Comparative Test

If institutions determine how negative information is used, we would expect to see *sokaiya*-like actors in similar institutional environments. As it turns out, *sokaiya*-like actors are not unique to Japan. In South Korea, *chongheoggun* are "hecklers" who demand money from companies in exchange for pro-management services or speeches during shareholders meetings.

Although not identical, the similarity between Japanese and Korean institutions and organizations is more than cosmetic. Korean firms are arguably even more heavily regulated than Japanese firms. Korean *chaebol* look a lot like Japanese *keiretsu* and other cross-shareholding arrangements, and *chaebol* is written with the same Chinese characters used in Japanese for *zaibatsu*, Japan's pre-war conglomerates. Similar institutions lead to similar results.

It could be that *sokaiya* simply plague Asian systems. But how, then, could Italian "*disturbatori*" be explained? *Disturbatori* are, as the *International Herald Tribune* has reported, "professional claques that get paid under the table not to disrupt a company's annual shareholders' meeting" — in other words, Italian *sokaiya*. Italy has no labels like *keiretsu* or *chaebol* for its corporate system, but its largest organizations are structured in the form of pyramidal groups of financial and operational firms. As in Japan and Korea, the state plays an inordinate role in corporate governance, and corruption scandals occur with some regularity. The Mafia parallel to *yakuza* is inescapable.

III. FILIBUSTER BLACKMAIL

Shareholders' meetings seem to play a critical role in the *sokaiya* framework. Magazine subscriptions aside, most of the payments to *sokaiya* come just before a firm's shareholders' meeting. And *sokaiyas*' use of *shitsumonjo* — a written list of expository questions to be raised at the meeting that *sokaiya* submit to management to induce payment — also underscores meeting importance.

Two reasons explain the annual concentration of *sokaiya* payments. First, if management had to pay *sokaiya* year-round, accounting would be more difficult, and the risk of detection would increase. Second, annual payments are a mechanism by which the *sokaiya* can precommit to limited extortion. The *sokaiya*'s implicit message to the firm is "pay me this one time and you won't see me again until next year."

Why shareholders' meetings? Don't firms know that in most cases, a shareholders' meeting is nothing but, as A.A. Berle Jr. aptly described it in *Economic Power and the Free Society* (1957), "a kind of ancient, meaningless ritual like some of the ceremonies that go on with the mace in the House of Lords?" Why do managers pay *sokaiya* to keep their meetings short and quiet? Who cares if a "meaningless ritual" of a meeting runs long?

A. The Role of Shareholders' Meetings

In both Japan and the United States, shareholders' meetings are usually meaningless rituals that have all the entertainment value of watching wet paint dry. In Japan, however, meetings take on heightened significance. Almost all Japanese corporations hold their shareholders' meetings on a designated "meeting day" in June. In 1998, 2,325 firms, including 95 percent of all firms listed on the first section of the Tokyo Stock Exchange, held their meetings on "meeting day."

Meeting time in Japan is all-important. The top story of the evening news on meeting day is usually the length of large firms' meetings. After their meetings, each of Japan's large commercial banks must call the Banking Department of MOF to report its meeting time. As the manager of one of those banks' general affairs departments told me, "This really puts us in a bind. If our meeting is too short, MOF thinks it's because we're paying *sokaiya*. If it's too long, they say, 'What's wrong? You got bad loans outstanding or something?'" As a consequence, most firms try to hit the magic number of 30 minutes for their meetings — and most succeed. In 1997, average meeting length on meeting day was 29 minutes, over 95 percent of meetings ended in less than an hour, and no questions were asked at 87.5 percent of meetings.

Companies employ a variety of strategies to keep meetings short. Some, of course, pay *sokaiya*. This tactic seems to work; firms that pay *sokaiya* tend to have short, orderly shareholders' meetings, while those that do not pay have long ones. Three recent stories illustrate the point. First, Sony, often held to be a model of good corporate governance practices in Japan, publicly announced in 1983 that to comply with the new *sokaiya* provisions, it unequivocally would have no further relations with *sokaiya*. *Sokaiya* responded by questioning Sony executives for over 13 hours at its 1984 meeting. The market responded negatively, "chilling" a two-month rise in Sony's stock price. Second, in contrast, Nomura Securities' most potentially volatile meeting was its 1995 gathering, in which it (1) announced a record $500 million loss and (2) reinstated as directors its former chairman and president, who had resigned four years earlier to take responsibility for *sokaiya* and loss compensation scandals. Nomura paid *sokaiya* Ryuichi Koike for his silence at the firm's 1995 meeting. The meeting lasted half an hour. Finally, department store Matsuzakaya's 1994 and 1995 meetings lasted 4 hours and 3 hours, respectively. Matsuzakaya executives began paying *sokaiya* in 1996. Its 1996 meeting lasted 19 minutes; its 1997 meeting, 38 minutes.

Executives in any country would prefer short meetings to long ones — even General Motors has measures in place to keep its meeting short, and almost all firms have policies to control unruly parties.

B. *An Empirical Test*

I hypothesize that if long meetings are more damaging than short meetings, on average, firms that have long meetings will have significantly negative stock returns. To test the hypothesis, I use the following method. A publication named *Shiryōban Shōji Hōmu* (loosely, *Corporate Data Book*) publishes an accurate list of the length of the shareholders' meetings of virtually every large Japanese firm — 1,927 firms in 1997, and a total of 12,301 observations for the period 1990-97. From these lists, I constructed a dataset of all long meetings held on meeting day (when 95 percent of firms hold their annual meetings) by first-section Tokyo stock exchange firms during the eight-year period from 1990 to 1997. I define "long" as one hour or longer. My review of the *Shiryōban Shōko Hōmu* data yielded 285 such long meetings. Of the firms that held these 285 meetings, all but five had complete stock price data in the Datastream electronic database, yielding a total of 280 observations. I then used financial economics methodology to conduct an event study designed to test the price effects on the firms' stock in the year of their long meeting for the two-day period beginning the day of the meeting.

The results were as follows. The average market adjusted returns for the entire sample of 280 firms with meetings of over one hour were relatively unexciting; they showed a statistically insignificant decline of .06 percent. Perhaps investors only care if a firm has an *extraordinarily* long meeting. To test this hypothesis, I split the 280 firms that had long meetings into two groups; those whose meetings lasted from one to two hours, and those whose meetings exceeded two hours. Again results were not very exciting and most were not statistically significant.

Finally, I split the sample into two groups: repeaters and non-repeaters. I define "repeater" as those firms in the dataset of long meetings whose meetings in the year previous *preceding* their long meeting also exceeded one hour. All other firms are non-repeaters. The reasoning behind this division is that if a firm regularly has long meetings, investors eventually learn that there is no information being signaled by the length of the firm's meeting. Electrical utilities, for instance, almost always have very long meetings; they were the only repeater firms in 1991, 1992, and 1994 to have meetings longer than two hours. But these meetings run long because of anti-nuclear protests, not *sokaiya*. And some meetings of Japanese firms with good investor relations programs run long for the same planned reasons that they might in the United States: speeches, entertainment, and *hors d'oeuvres*. Realizing this, the market should not react to the length of repeaters' meetings.

In fact, in my study, repeaters on average showed a slight, though insigificant *increase* in market adjusted returns during the meeting day window. The surprising story in my experiment was the set of firms that have long meetings out of the blue; that is, the non repeaters. In the year of their long

meetings, these firms, on average, had statistically significant market-adjusted returns of –0.59 percent. Stated concretely, the data show that during the period 1990-97, if a company that did not regularly have long meetings suddenly had a long meeting, that company lost, on average, 0.59 percent of its value (adjusted for market risk and variation in the Tokyo Stock Price Index) during the two-day period beginning the day it held its meeting.

Faced with these stock price effects, how might each actor — managers, *sokaiya*, and shareholders — behave? Managers have incentives to pay *sokaiya* to keep meetings short, whether the payments are made to keep *sokaiya* quiet at meetings or as compensation for *sokaiya* suppression of "legitimate" shareholder voice. *Sokaiya* clearly have incentives to disrupt meetings, and given negative returns for long meetings, it may not be necessary that all of their information is always true or even always secret, so long as they can make the meeting run long and collect enough true information over time to maintain the signal's validity. Finally and somewhat perversely, investors should in some cases welcome payments to *sokaiya*, as *sokaiya*, for a relatively trivial fee, can prevent an average loss in shareholder wealth of 0.59 percent.

Investors thus tend to buy the stock only of those companies that have short meetings. Of course, this pleases companies that usually have short meetings. But some companies — presumably those with such low information disclosure that shareholders can only acquire relevant information by asking lengthy questions at shareholders' meetings — will tend to have long meetings. These companies have clear incentives to pool with (mimic) companies that have short meetings. Paying *sokaiya* helps them do so.

CONCLUSION

Why would rational executives of highly successful Japanese firms pay *sokaiya* racketeers to keep their shareholders' meetings short? This article has shown that sometimes they pay *sokaiya* for blackmail, which is hardly a uniquely Japanese phenomenon. But sometimes the blackmail actually does center around shareholders' meetings. The econometric data I have gathered suggest that because meeting length is correlated to share prices, payments to *sokaiya* to keep meetings short can increase shareholder wealth.

This wealth maximization potential is a direct product of Japanese corporate law, regulation, and corporate governance, which facilitate barren information markets. *Sokaiya* — often armed with mob connections that make their threats perfectly clear — simply take advantage of the fact that little information is disseminated. U.S. corporate blackmail apparently does not reach the scale of that of Japan because the U.S. federal system, relatively unfettered by inefficient corporate law, heavy regulation, and other anti-competitive institutions, makes publicly available more information with blackmail potential.

The *sokaiya* payment institution persists because, given other existing institutions, almost all actors have reason to choose it over alternative choices. Obviously *sokaiya* can profit with little chance of detection. Managers and shareholders benefit, too. The Japanese press sometimes describes *sokaiya*-paying managers as gutless and cowardly. Managers counterattack with cries that they bravely pay *sokaiya* "for the good of the company." On this issue, managerial and shareholder interests are aligned. Given that the system is one of non-disclosure, shareholders (and perhaps society as a whole) may derive further benefit from *sokaiya* activity, as *sokaiya* may serve as monitors of management behavior, forcing managers to calculate the cost of *sokaiya* bribes into the cost of their actions. And if MOF wants to prevent firms from failing, it, too, may have incentives to support *sokaiya* activity.

The institutional incentive structure implies that recent Japanese legislative efforts to curtail *sokaiya* activity may be of limited efficacy. In November 1997, the Japanese legislature enacted revisions to the Commercial Code designed (once again) to eliminate *sokaiya*. The new provisions increase criminal penalties for payment from imprisonment of 6 months *or* a $2,400 fine to 3 years *and* $24,000; impose criminal liability for *sokaiya* who demand payment (as opposed to liability only for receiving payment); and increase penalties for related wrongdoing such as money laundering and making false statements to regulators. This legislation may have some marginal effect. But even after the law — which ignores the institutional dynamics discussed in this article — was enacted (and several months after the most publicized scandals), 60 percent of surveyed directors, 79 percent of auditors, and 75 percent of managers still said that they would be unable to cut *sokaiya* ties in 10 years.

Despite these recent legislative attempts at reform, *sokaiya* influence remains pervasive. On a recent and utterly unscientific walk around Tokyo's Kabutocho securities brokerage district, I saw three types of freshly-inked posters in brokerage windows. Eight firms' posters warned *sokaiya* and other unsavory types to stay away. Four firms' posters apologized for their recent *sokaiya* scandals. Three firms had posters announcing the dissolution of the firm. Breadwinning calligraphers and poster-printers can take comfort. Unless and until the incentive structures created by corporate law, corporate governance, and regulatory policy change to encourage more "stay away" signs, demand for *sokaiya* apology signs, and perhaps dissolution signs as well, is likely to persist.

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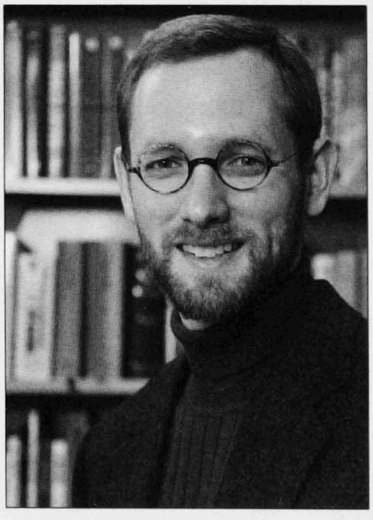
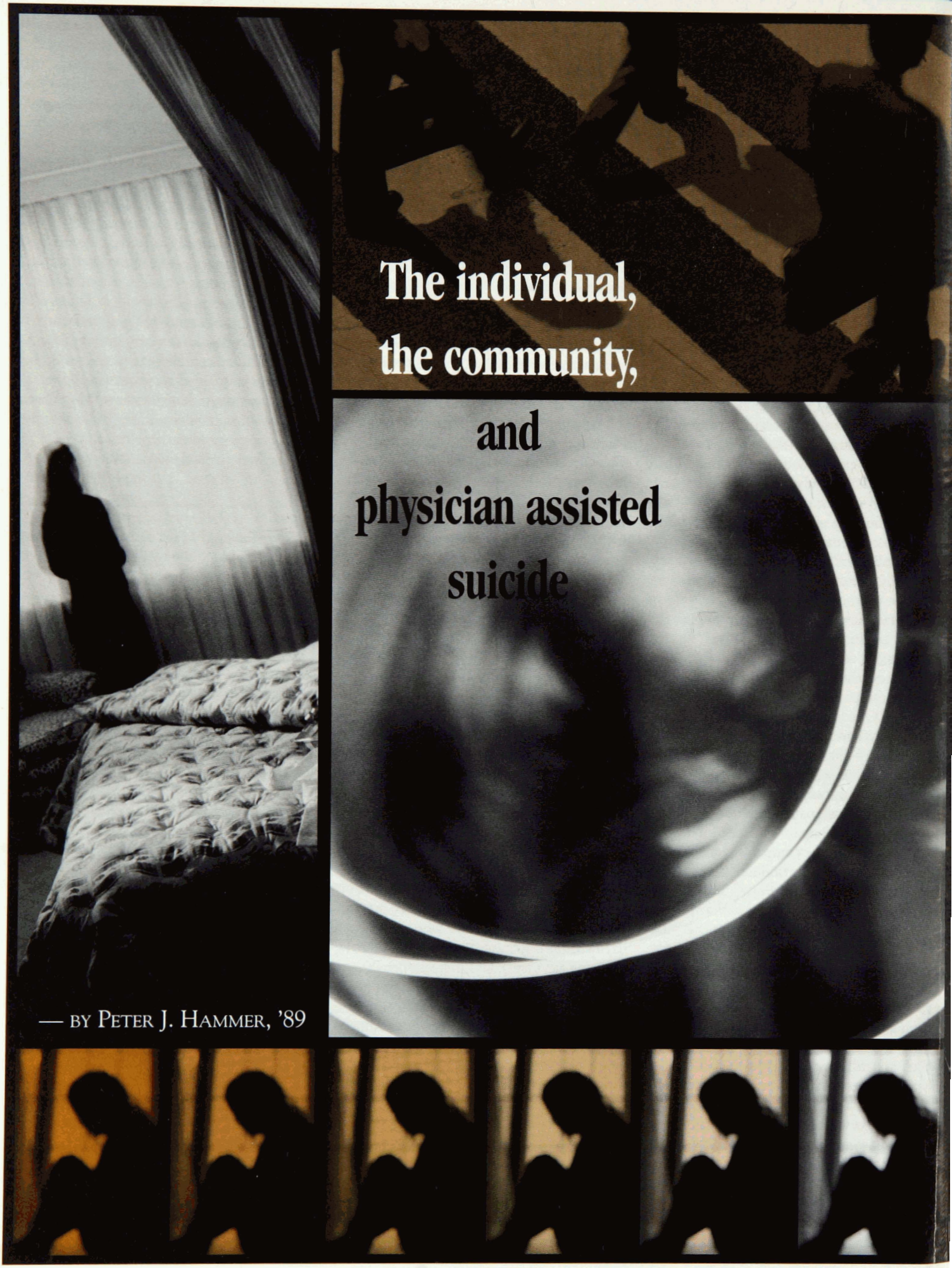




The individual, the community, and physician assisted suicide

— BY PETER J. HAMMER, '89

This excerpt is adapted from the upcoming book Physician-Assisted Suicide, *to be published in October 2000 and copyrighted by University of Michigan Press. The forthcoming book, edited and with an introduction by Professor of Law Carl E. Schneider, '79, incorporates papers delivered at the conference "Courting Death: A Constitutional Right to Suicide," held at the Law School in November 1997. The conference was devoted to follow-up discussion of two decisions in summer 1997 in which the U.S. Supreme Court rejected the right to physician-assisted suicide,* Washington v. Glucksberg *117 S Ct 2258 (1997), and* Vacco v. Quill *117 S Ct 2293 (1997). The following excerpt appears with permission from University of Michigan Press.*

The conflict surrounding assisted suicide is symptomatic of a profound disequilibrium in the way society faces death and dying. The sources of this imbalance are many. Technology has drastically changed the physical setting in which dying occurs, forcing us to formulate new understandings of life and death. What it means to be alive or to be dead is no longer clear, nor is the exact moment of passage. The structure of modern medicine further contributes to the imbalance: As health care has become more institutionalized, specialized, and routinized, so has dying. Machines regulate and control life and death, maintaining heartbeats and breaths, reducing a person to a series of vital signs. Life is meted out and measured, regulated and controlled. Quantity, defined in hours, days, and years, often displaces quality as the objective to be pursued. Grieving and burial have also been reduced to commodities by a funeral industry equally committed to masking the real face of death. At the same time, the families and communities responsible for nurturing life and consoling death have been severely strained. Family structures at the nuclear and extended levels have become more fractured, and our circle of immediate friends and loved ones has become more geographically dispersed. As a consequence, death is often faced alone in a cold, technical environment, divorced from family and friends, surrounded by strangers.

The problem of assisted suicide forces us to carefully assess the meaning of death and dying (and by implication the meaning of life and living). This assessment is hard because death typically provokes more fear and denial than contemplation and reflection. The fear is of the unknown, of pain, suffering, and debility. The denial of death can be motivated as much by a sense of emptiness in life as by an actual fear of dying — or perhaps by a heightened fear of death because of a felt incompleteness in life. Still, it is clear that death retains an importance and significance that is as profound as it is unavoidable. Death is a stage in life holding many of its own lessons. Moreover, the manner in which death must be faced can influence the choices made during life, just as how we live will have implications for the manner in which we die. Death can bring us back to a sense of community, both by coalescing a group that provides support and comfort and by bringing to the fore the legacy we will leave behind, a legacy often defined in terms of the contributions we have made to others.

In our passive acquiescence to the medicalization of death and dying, it is not only death that is being denied. There is a denial of life. There is a denial of the individual as an integrated being. There is a denial of meaning and human dignity. Finally, there is a denial of community. Add to this the reality of individual human suffering, pain, disability, and dementia, and it is easy to see how recourse to suicide may look individually rational. While substantial attention has been paid to the role of pain in decisions on whether to commit suicide, similar attention has not been paid to the role of community. The issue is whether suicide is, for some, an individually rational response to death or an individually rational response to the way people are presently living and dying. The movement for assisted suicide may be symptomatic of larger problems in society and an indictment of the absence of meaningful community. Ironically, ratifying a right to assisted suicide and recognizing the ascendancy of the I-for-me rationality at the end of life may be the ultimate step in commodifying life and death and may further shift the balance away from the community and toward the increasingly isolated individual.

As the assisted suicide debate moves from the courthouse to the statehouse, we must re-examine the arguments that surround it to determine which elements are essential and which might bend in establishing a network of coexisting beliefs.

The I-for-me perspectives of the plaintiffs in *Glucksburg* (*Washington v. Glucksberg*, 117 S Ct 2258 [1997]) and *Quill* (*Vacco v. Quill* 117 S Ct 2293 [1997]) highlight the importance of respecting individual autonomy and self-determination, particularly as these qualities relate to engendering an appropriate sense of personal dignity and control in the face of death. Moreover, the reality of the pain and suffering experienced by these individuals must be directly confronted. The we-for-me arguments of opponents of assisted suicide remind us that the scope of individual autonomy and self-determination is necessarily circumscribed in the presence of defects in individual decision making, and that it is appropriate to place limits on personal choice when those choices have adverse effects on third persons. The we-for-us perspectives highlight the fact that the community is a collective entity with its own needs and interests. There are times when these collective interests may legitimately trump those of the individual. The community, however, must also be sensitive to the growth, development, and self-actualization of its members.

While there are positive aspects to these viewpoints, there are shortcomings to each perspective as well. The plaintiffs' claims in *Glucksberg* and *Quill* are arresting, but they have limitations. If we ask the dying why they consider suicide, they frequently speak of pain and suffering. But a number of other themes also emerge. One is a desire for control, another a desire for dignity. While the desire for control is understandable, the important question is what type of control is appropriate and how that control should be manifested.

Proponents of assisted suicide argue for control in the form of being able to individually determine the moment and manner of death. This is the type of control of a Hollywood director, a film editor, or Ronald Dworkin's author writing her life's last chapter. (R. Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom,* Knopf, 1993). This is not the only type of individual control that can be envisioned. Being ill and dying entails an inevitable loss of control. That loss is compounded when doctors expect passive compliance with their expertise and authority. But while many aspects of dying are beyond human control, numerous other aspects are not. Individual control can be manifested in many ways short of assisted suicide. Letting people participate in what they can affect is one way for them to assert control and to assuage feelings of helplessness and anxiety. Participation can help people distinguish those parts of dying that are controllable from those that are not, and help them to accept the inevitable loss of control they have over their bodies and existence. Dying must involve an appropriate combination of taking charge and letting go, engagement, and resignation.

Just as the desire for control requires a balanced understanding of what can and cannot be influenced, so the desire for dignity requires an understanding and acceptance of different forms of dependence. In our culture, dignity is often defined in terms of independence and self-sufficiency. A common fear among the dying is of becoming dependent upon others. Put bluntly but succinctly — "I want to be able to wipe my own butt." While every one can empathize with this sentiment, "dignity" need not be understood that way. Infants do not lack dignity because they need their diapers changed, nor must changing them be burdensome. Dignity is inherently a relational concept, defining the person with respect to her community. Illness and dying are necessarily an assault on self-sufficiency, a reminder of one's vulnerability, weakness, and dependence. As illness physically changes the person, it calls for a continual redefinition of one's self and of one's sense of dignity.

Confronting incapacity while retaining a sense of self-worth is like accepting loss of control over the uncontrollable and yet remaining engaged and retaining control of the dying process. A static image of self and concepts of dignity defined solely in terms of strength, independence, and autonomy are ill-suited to prepare a person for a protracted illness or prolonged death. Justice Stevens speaks poignantly about people's interest in influencing the memories they will leave behind, but no life is a snapshot. A life is a complex story, with many chapters and phases. Just as the concern about memories is a concern about how others see us, so the concern over dignity is at its heart a fear that our inability to accept the loss of our independence and our control over our bodies will be shared by others. Feelings of indignity are largely fears of rejection by our community. Such fears not only invite, but demand, a communal response.

It is interesting but not surprising to note how tracing the individual's interest in maintaining personal dignity has necessarily led us from viewing the individual in isolation to understanding the individual as a member of a community. Other emotions and fears surrounding death — such as fears of abandonment and feelings of isolation — confirm that it is impossible to speak of the dying individual without also speaking of the living community. The individual and society are intimately interconnected. The decisions of family, friends, and the community will affect the environment in which death occurs and the levels of fear, anxiety, and meaning that are present. Coming to terms with death requires coming to terms with one's self and one's community. A discourse focusing exclusively upon individual autonomy and I-for-me rationality is insufficient unless the concept of self it engenders leads the individual back to a sense of community. The presence, attitudes, and actions of family and friends, of doctors and nurses, and healthcare providers will have as much to do with finding dignity and meaning in death as the medical condition of the dying person.

This criticism is not limited to I-for-me perspectives. Similar deficiencies can be found in the we-for-me policy arguments raised by opponents of assisted suicide. Rather than addressing the central issue of the individual's relationship to the community and the community's obligations to its members, opponents focus on decision defects and slippery-slope concerns. These are surely important, but at another level they are simply distractions, for they do not address the human dimension of the dying person's needs or the overall needs of society. Worse, these arguments are frequently a pretext to camouflage a debate that is really about social norms. Those favoring a strong norm in favor of the sanctity of life often invoke substantial and irremediable decision-making defects and a steep and inescapable slippery slope. Their opponents deprecate these concerns. The failure to address the central conflict between individual and collective rationality is not only disingenuous, it is self-defeating. Decision-defect and slippery-slope arguments involve contested, empirical claims. Empirical claims invite emprical resolution. Debate will inevitably drift toward "how" to regulate and not "whether" to regulate. In this process, a right to assisted suicide could too easily be adopted incrementally without openly addressing the underlying normative concerns.

We-for-us arguments face their own challenges and limitations. The concern over the sanctity of life can delegitimate itself if pursued so oppressively that it robs individual lives of their meaning. Any

authentic communal value must resonate in a consonant fashion with the needs of its individual members. The sanctity of life cannot be a wooden or artificial principle. To address these concerns, the Ninth Circuit advocated using a sliding scale standard to assess the value of life (in *Compassion in Dying v. Washington*, 850 F Supp 1454 [WD Wash 1994]): "[E]ven though the protection of life is one of the state's most important functions, the state's interest is dramatically diminished if the person it seeks to protect is terminally ill or permanently comatose and has expressed a wish that he be permitted to die without further medical treatment. . . . When patients are no longer able to pursue liberty or happiness and do not wish to pursue life, the state's interest in forcing them to remain alive is clearly less compelling."

Unfortunately, this analysis raises its own slippery-slope concerns. If the socially determined value of a life diminishes as people near death, how will the debates over voluntary and involuntary euthanasia, or the rationing of healthcare be affected? Eroding or chipping away at the intrinsic value society attaches to the lives of its individual members can have profound and disturbing consequences. The use of a sliding scale in which the value of a life is worth less depending on its objective circumstances motivates the opposition to the legalization of assisted suicide of many associations of handicapped and disabled people. In fairness to the Ninth Circuit, the court tries to make the sliding scale depend upon the dying person herself. The distinction between the individual's assessment of her life's value and society's assessment, however, is difficult to maintain as a practical matter and almost impossible to implement as a matter of policy. To be given legal effect, the individual's evaluation must ultimately be ratified by the state.

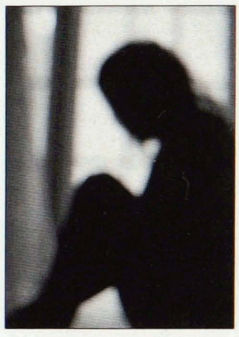
If the sliding-scale valuation of human life is not a good way to prevent a rigid version of the sanctity of life from burdening the dying, how should collective concerns over the intrinsic value of life be tailored to address the needs of the terminally ill? A policy that can provide a satisfactory answer to this question will effectively mediate and potentially resolve the tensions between individual and collective rationality that divide camps in the assisted suicide debate. While I do not claim to have a definitive answer to this question, a satisfactory resolution would seem to minimally include the following elements.

First, an acknowledgement that a necessary corollary to the sanctity of life is the value of compassion. A society that claims to respect the intrinsic value of life is obligated to respond compassionately to the physical and emotional needs of its dying members, including the use of aggressive palliative care when necessary to ameliorate individual pain and suffering. Respect for the sanctity of life without the corresponding value of compassion can become a hollow and potentially oppressive principle.

Second, development of an appropriate vocabulary to operationalize the principles associated with preserving the sanctity of life in order to help guide the making of end-of-life decisions. I often prefer speaking of a "reverence for life" rather than the "sanctity" or "intrinsic value" of life, and operationalizing this principle by requiring that individual decisions be life-affirming. Choice of terminology, however, should not obscure the fact that life must remain an end in itself, and that end-of-life decisions should be made in accordance with this principle. The danger in the Ninth Circuit's sliding scale and in efforts to adopt a "quality of life" rhetoric is that both can too easily slip in directions that fail to respect life as its own end. A rhetoric grounded in reverence for life and a requirement that end-of-life decisions be life-affirming helps avoid this trap, and yet should be capable of acknowledging that the object of life and medicine is not simply the preservation of a series of vital signs.

Third, encouraging individual self-determination and empowering individuals to exercise control over their lives and medical care within a dominant ethic of reverence for life, including reverence for their own lives. Individuals should be permitted to structure a substantial range of end-of-life alternatives, including alternatives other than dying in an institutionalized medical setting. While I would empower greater individual autonomy in making end-of-life decisions, I would deny the individual the option of suicide on the ground that such an act is not life-affirming and fails to respect the intrinsic value of life that should be symmetrically held by the individual and society.

Although approaching the problem from a substantially different perspective, these principles are in general accord with the Supreme Court's results in *Cruzan v. Director, Missouri Dept. of Health* 497 US 261 (1990) and *Glucksberg*. Individuals are provided substantial freedom in denying unwanted medical care, and yet are also



The individual and society *are intimately interconnected. The decisions of family, friends, and the community will affect the environment in which death occurs and the levels of fear, anxiety, and meaning that are present. Coming to terms with death requires coming to terms with one's self and one's community.*

***Death is undeniably an important stage in life**, potentially no less significant than other development stages such as childhood and adolescence. Death and dying may afford unexpected opportunities and lessons for each of us, lessons that would be lost if death is short circuited or denied.*

denied the right to assisted suicide. The extension of choice in one area and the denial of choice in another may appear contradictory, but it underlies an important paradox. Sometimes the exercise of individual freedom can be realized only in the presence of external constraints. The freedom is the ability to actively shape and influence the manner in which death and dying occur. The constraint is the prohibition of suicide. The individual and the community may be better able to negotiate the delicate balances these decisions require if they do so within a setting in which both the individual and the state share a mutual commitment to the sanctity of human life.

But what of the challenge of I-for-us reasoning? Is a norm prohibiting suicide but expressly acknowledging society's obligation for compassionate palliative care and otherwise permitting individuals substantial self-determination in making life-affirming end-of-life decisions consistent with the dictates of I-for-us rationality? Could that norm be embraced by the plaintiffs in *Glucksberg* and *Quill* not necessarily as a matter of individual rationality, but as part of what they could think of as collectively rational? Justification for such a norm could come from two sources. First are the aspirational arguments in favor of a symmetric commitment to the sanctity of life as an essential aspect of our definition of society. If these arguments present a persuasive picture of how we conceive of ourselves and our community, then a norm prohibiting assisted suicide could fall within the category of I-for-us norms essential to the survival and integrity of the community. The arguments against the sliding-scale value of life suggest some of the dangers associated with failing to embrace such a norm.

The second possible justification would be in terms of norms designed to facilitate individual development. A norm against assisted suicide could be justified if dying, like primary education, is an important developmental stage in life — a stage that is capable of substantively transforming individual preferences and beliefs. Death is undeniably an important stage in life, potentially no less significant than other development stages such as childhood and adolescence. Death and dying may afford unexpected opportunities and lessons for each of us, lessons that would be lost if death is short circuited or denied. This contention is not limited to the lessons inherent in the dying process. Equally important is the fact that knowledge of how we must face death can filter back and influence decisions throughout our lives. Moreover, it is not only the dying who lea through death. The actions and decisions we make in dying teach those around us particularly members of our family, abou life and death.

If these I-for-us arguments are not persuasive, then the issue of assisted suici is reduced to a set of empirical questions regarding the significance of various we-for-me concerns. Appropriate policy should then be based upon the assessmen of state legislators about the pervasiveness of individual decision defects and the seriousness of potential slippery slope problems. The significance of resolving th debate in this manner, however, should no be lost. Assisted suicide raises important constitutive questions. Rejecting the aspiration arguments in favor of the sancti of life involves the adoption of a different set of aspirational claims and beliefs that will equally define us as a society. My poin is that in making constitutive decisions tha will define who we are, we should collective pause and give careful consideration to wh we want to be.

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