THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 42 • NUMBER 3
FALL/WINTER 1999

LAW QUADRANGLE NOTES

Confrontation Confronted

The Last Days
of the Credit Card

Humanities and the Law —
a Kinship of Performance

UNIVERSITY OF MICHIGAN
LAW SCHOOL

Upcoming Events

September 22	International Law Workshop (ILW): "The Hormone Beef Case — A Transatlantic Socio-Cultural Clash," Horst Krenzier, Jean Monnet Professor, European University Institute, Florence, Italy
September 23	Center for International and Comparative Law Advisory Board meeting
September 24-25	"Role and Limits of Unilateralism in International Law," joint symposium of the University of Michigan Law School and *European Journal of International Law*
	Symposium: "Corporate Governance Lessons from Transition Economy Reforms," Law School and Davidson Institute
September 28	ILW: "Globalization and Labor Rights," Christopher McCrudden, Oxford University
October 1-3	Reunion of Classes of 1949, '54, '59, '64, and '69
October 5	ILW: "Human Rights, Democratic Governance, and the Northern Ireland Peace Process," Colin Harvey, Queen's University, Belfast
October 12	ILW: "The United Nations and the Use of Force by NATO: From Kosovo to the New Strategic Concept," Bruno Simma, University of Munich
October 19	ILW: Talk by Christine Chinkin, University of London
October 21-23	Committee of Visitors meeting
October 23	Scholarship Breakfast
October 26	ILW: "Secured Transactions in Latin America," Boris Kozolychyk, University of Arizona College of Law
November 4	Sperling Seminar with Stephen Diamond, '68, managing partner Beeler, Schad & Diamond, PC *(by invitation)*
November 5-7	Reunion of Classes of 1974, '79, '84, '89, and '94

Continued on inside back cover

Have you moved lately?

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

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

Phone: 734.998.7970

Fax: 734.998.7340

jteichow@umich.edu

Non-alumni readers should write directly to:

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

Address all other news to:

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

Phone: 734.647.3589

Fax: 734.764.8309

trogers@umich.edu

Cover: The arch along South University frames a view into the Law Quadrangle.

PHOTO BY
GREGORY FOX

CONTENTS

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

VOLUME 42, NUMBER 3
FALL/WINTER 1999

LAW QUADRANGLE NOTES

FEATURES

ARTICLES

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

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

FACULTY ADVISORS:
Yale Kamisar and Christina B. Whitman

EXECUTIVE EDITOR:
Kathy A. Okun

WRITER/EDITOR: Tom Rogers

DESIGN AND PRODUCTION:
Linda Liske

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

www.law.umich.edu

MESSAGE FROM DEAN LEHMAN

This lawyer recognizes that each side has moments of maximum strength and maximum vulnerability, maximum receptiveness and maximum closure. This lawyer knows that, with the most important ideas, timing is everything, and is able to wait until the moment is ripe.

In my last message, I wrote about the great lawyer's capacity for patience. I discussed how, almost 20 years ago, I heard that quality extolled by Justice Thurgood Marshall. And I noted how it has implications both for a lawyer's commitment to painstaking care and also for a law school's commitment to prepare its students for professional lives in which the most important goals are long-term.

It is worthwhile to pause and reflect on the different colorations that we associate with the ideal of patience. Each of those colorations can teach us something important about what it might mean for us to lead a full life in the law.

In one form, the capacity for patience is cultivated in solitude. It connotes grace and equanimity, a certain spiritual transcendance. The patient one seems able to tune out the mundane pressures that bombard from without, to listen to an inner voice, to wait.

We have all known lawyers like this. We marvel at their ability, in moments of the greatest pressure, to show restraint. In the midst of an apparent crisis, when their clients or their partners are screaming for some action, any action, they choose not to act. And in 24 hours, a new and superior course of action, not apparent to anyone the day before, miraculously appears.

A second form of patience, equally solitary and inner-directed, involves the ability to persist and endure in the face of rejection and defeat. The patient one fights and loses, but commits to soldiering on, to hasten the day when the tide will turn.

We often associate this incarnation of patience with the lawyer for a cause. The world of public interest law includes attorneys of all ideological and political stripes. But if any one quality unites them, it is an exceptional ability to accept the mantle of the underdog, to situate setbacks within a larger narrative of progress and hope, and to draw inspiration from glorious but distant goals.

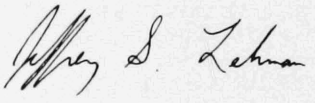
A third form of patience, however, is neither solitary nor inner-directed. It is, rather, intensely relational and restrictive. It embodies an acute sensitivity to the needs and wishes of another person. The patient one is able to sublimate his or her own timetable, to refrain from acting until that other person is ready.

We think here of the consummate negotiator. Such a lawyer understands that every negotiation has its own set of rhythms, shaped in part by the qualities of the distinct universes that the parties invariably inhabit. This lawyer recognizes that each side has moments of maximum strength and maximum vulnerability, maximum receptiveness and maximum closure. This lawyer knows that, with the most important ideas, timing is everything, and is able to wait until the moment is ripe.

Note the paradox here. To be patient may entail a certain heedlessness of others' views and wishes. Or it may entail supreme sensitivity and accommodation to their distinct needs.

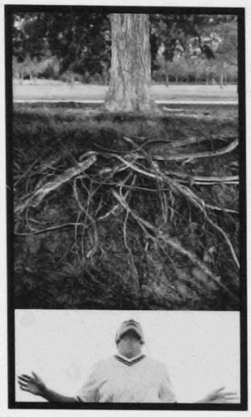
This paradox parallels one that we often note in the domain of professional responsibility. At times we think the ethical lawyer is the one who stands up to a client or a senior partner in defense of what feels right. At times we think the ethical lawyer is the one who can sublimate personal judgment in deference to the considered judgment of a client or senior partner.

Throughout our professional lives, we must struggle to balance sensitivity to others with the preservation of an authentic and enduring sense of self. Indeed, persisting in the belief that such a balance may successfully be struck may be the ultimate measure of our patience.



the CHANGING faces of human rights

In preparation for this century's last issue of Law Quadrangle Notes, *several faculty members were asked to reflect on their professional interests through the prism of human rights. The results will illuminate "the question of human rights from a variety of viewpoints as varied and diverse as the people who write the essays that make up the section," they were told. And their essays do just that. Parallel introductions by Catharine A. MacKinnon, the Elizabeth A. Long Professor of Law, and Eric Stein, the Hessel E. Yntema Professor Emeritus of Law, set the tone for these discussions of human rights by drawing sharp focus from very different starting points. Other writers follow their lead. The result is a rich weave of many threads.*



the CHANGING faces of human rights

Becoming human

By CATHARINE A. MacKINNON

Human rights are a response to atrocity denied. Before they are recognized, the acts are considered, by people not subjected to them, as either too extraordinary to be conceivable or too ordinary to be atrocious. If the events are socially marked as unusual, the fact they happened is denied; if they are regarded as usual, the fact they are violating is denied. The basic psychology seems to be, if it's happening, it's not so bad, and if it's really bad, it isn't happening. In this way, acts that are common to human experience, like rape in war and rape in peace, are beneath notice because they are so familiar, while acts that are uncommon to human experience, like the Nazis' industrial murder and the Serbs' industrial rape, are beyond belief.

When and where the denial stops, rights are recognized against the extreme and the normal, defining the victims as human. Inaugurating modern human rights as we know them in 1948, this process produced the Universal Declaration of Human Rights and the Genocide Convention when denial that the Holocaust occurred was supplanted by acknowledgment and determination that it not recur. Since then, escalating in the past decade, the same process has given rise to increasing recognition of women's human rights, giving back to the "other" half of the world's people the humanity that violence against them — which has been both normal and extreme, sometimes at the same time — takes away. The recognition that rape in genocide in life is genocidal rape under international law provides a paradigm instance of this development.

In the past decade, women's resistance to their status as unfit for a human being has provided the cutting edge of change in international human rights. Atrocities to women were denied. Women's refusal to accept that denial is shifting both the form and the content of the human rights paradigm. Since states have not represented women, women's assertion of their human rights for themselves has required that human beings move to the center of the process, supplementing the state's traditional role as human rights law's prime actor. And since states are often not the most immediate violators of women's humanity, less-than-state actors have increasingly been recognized as perpetrators, supplanting the traditional primacy of the state as the recognized defendant.

As ever, jurisdiction — who can claim what against whom where — has remained the primary legal battleground. The emerging women's model is to go far away from home to claim a women's human right to be free from violation by men at home. Sovereignty has given way to accountability, challenging impunity where dominion is greatest and most entrenched, whether some men recognize their own nationbuilding in other men's rape and genocide or not. As women have come to recognize that their human rights violations, to paraphrase Eleanor Roosevelt, begin close to home, national courts, offering enforcement powers that international forums do not yet have, have been increasingly employed by domestic and foreign nationals alike, asserting international legal principles that national courts, on their own, may not have recognized. In the face of authorities who continue often unresponsive, women take the law into their own hands through civil rather than criminal claims. As these movements continue into the next century, and the wall of denial that now surrounds many atrocities that survivors expose — such as pornography and child sexual torture — crumbles, survivors will be given back a real measure of the humanity that the violations and their denial takes away.

CATHARINE A. MacKINNON
ELIZABETH A. LONG PROFESSOR OF LAW
J.D. YALE LAW SCHOOL
PH.D. YALE UNIVERSITY
B.A. SMITH COLLEGE

Professor MacKinnon is known worldwide for her work for women's equality, against pornography, and to have the rapes in the Serb-led genocide in Bosnia-Herzegovina and Croatia recognized as genocidal acts under international law. Her groundbreaking casebook, Sex Equality, *putting U.S. law in theoretical, social, comparative, and international context, is being published in November 1999 by Foundation Press. Among her other books:* In Harm's Way: The Pornography Civil Rights Hearings *(with Andrea Dworkin);* Only Words; Toward a Feminist Theory of the State; *and* Sexual Harassment of Working Women. *A number of her books also have been translated and published abroad in German, Italian, Japanese, and Spanish. Last year, she wrote an* amicus *brief in support of the petitioner and filed on behalf of 14 groups of men, including survivors, and their advocates "dedicated to ending sexual violence" in* Joseph Oncale v. Sundowner Offshore Services, Inc., et al. *The Court ruled, as Professor MacKinnon argued for* amici, *that same-sex harassment violates civil rights protections just as opposite-sex harassment does.*

Sovereignty and human rights

By ERIC STEIN, '42

ERIC STEIN, '42
HESSEL E. YNTEMA PROFESSOR EMERITUS
J.D. UNIVERSITY OF MICHIGAN LAW SCHOOL
J.U.D. CHARLES UNIVERSITY, PRAGUE

Professor Stein, a member of the international group that advised Czech and Slovak authorities on revision of the Czechoslovak and Czech constitutions, has served in the U.S. State Department, and was an adviser to the U.S. Delegation to the UN General Assembly. He has taught and lectured at American, European, and Asian universities and at the Hague Academy of International Law. Honorary vice president of the American Society for International Law, he also has served on the board of editors of the American Journal of International Law, *the* Common Market Law Review, Legal Issues of European Integration (Amsterdam), *and* Rivista di diritto europeo (Rome). *He is co-author of* European Community Law and Institutions in Perspective *and author of* Czecho/Slovakia: Ethnic Conflict, Constitutional Fissure, Negotiated Breakup. *A collection of his essays, Thoughts From the Bridge: A Retrospective of Writings on New Europe and American Federalism, is being published this fall by the* University of Michigan Press.

I begin this introduction with a question, which will puzzle most of our readers: Whatever happened to Article 2, Paragraph 7 of the UN Charter? This is the text embodying the foundational principle of classic international law — the prohibition of "intervention" in "matters essentially within the domestic jurisdiction of any State."

Few of us have lived long enough to recall the great debates of the 1950s on whether the UN General Assembly had the authority to include in its agenda the item on the treatment of people of Indian origin in the Union of South Africa, and whether such action would amount to the prohibited intervention in the domestic jurisdiction of the "sovereign" Union. Later on, an even more emotional debate turned on the power of the assembly to discuss the issue of the general "apartheid" policy in that country, raised by India and Pakistan. The United States supported the assembly authority only to discuss the complaint; but year after year, it abstained on the assembly's resolutions — until Henry Cabot Lodge, the American ambassador to the UN, a quintessential old-line Bostonian, persuaded President Eisenhower to overrule what he termed "the faceless bureaucrats" of the State Department "dominated by Western European diplomats." Eventually, the United States joined a majority of the assembly in adopting a text, drafted with the connivance of the American delegation staff, that called for an "integrated society," an idea invoked for the first time at the international level in the context of the South African problem. It took some courage to publicly support this resolution in the face of the powerful alliance of Southern Democrats and conservative Republicans in the U.S. Congress. And does anyone still remember the East-West confrontation over the assembly's authority to deal with the state of human rights in Soviet-controlled Eastern Europe where the Soviet Union relied on the same Charter article in opposing the inclusion of the issue in the assembly agenda?

Yet today the charges of violation of human rights are routinely discussed in the UN and other international fora. The last third of the century has witnessed an increasing number of interventions in support of basic human rights values culminating in the NATO-led action in Kosovo. President Václav Havel termed it "the first war that has not been waged in the name of national interest, but rather in the name of principles and values." (Address to the Canadian Senate, April 29, 1999, *The New York Review of Books,* June 10, 1999, 4 at 6.) Forcible intervention, however, may be appropriate in extreme exigencies only and under international safeguards. The proliferation of international tribunals to deal with massive violations of human rights is a related, novel phenomenon.

In the late 1940s, to return once more to the beginning of things, concurrently with the debate on the limits of Article 2, Paragraph 7, another set of activities began to unfold in still another UN forum, destined to have a deep impact on the most intimate aspect of "domestic jurisdiction," the treatment by the "sovereign" state of its own citizens. Based on the UN Charter mandate to promote respect of basic individual rights, the UN embarked on a program stimulated by the United States aimed at defining the fundamental rights and freedoms and translating them into international instruments open for acceptance by the member states. I still hear Mrs. Roosevelt expounding in her high-pitched voice on the progress of the program in meetings I attended as advisor to the U.S. delegation to the UN General Assembly.

Today, the UN program, and parallel developments at the regional levels, particularly in Europe and Latin America, have brought about an existential change not only in the concept of "domestic jurisdiction" but in the international legal order at large. The individual was elevated to the position of a subject of international law, no longer exclusively dependent for protection of her basic rights on the constitution of her nation-

Continued on page 6

Continued from page 5

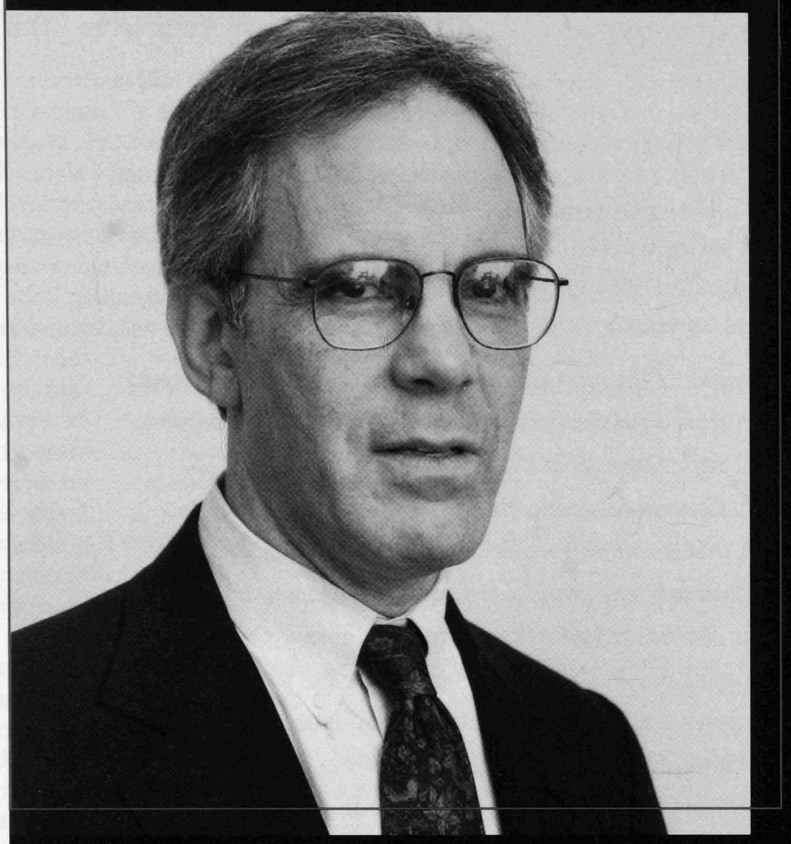
state. Practically all states, members of the international community, have accepted — albeit to a greatly different extent — international obligations in this field, including international and regional supervision in one form or another.

Clearly, an individual still relies first and foremost on the judicial and other avenues of protection in his own state under national standards. Direct access of an individual to international mechanisms for relief against his own state is still limited, except in Europe, where it has flourished for almost half a century. However, there are ways to induce the political actors, through non-governmental organizations or interest groups, to raise a serious violation of basic rights in the appropriate international forum.

National legislatures, including the U.S. Senate, often compromise the ability of an individual to press his rights under an international instrument before the national judiciary of his own state by declaring a human rights treaty non-self-executing (not directly applicable) in the national legal order. This barrier to judicial relief has costs which appear to me increasingly incommensurate with the presumed benefits. Similarly, attaching unreasonable and often unnecessary reservations to the acceptance of human rights treaties is another way of diluting their effect.

The world scene offers today a disconcerting array of rhetoric and actions promoting, interpreting, and applying the many-splendored concepts of individual human rights — political and civil, economic and social, procedural and substantive — by national, regional, and international courts and agencies, operating in vastly divergent social and cultural contexts. This complex, still inchoate development parallels the much-noted economic-technological globalization. Some national actors, political and judicial, either are not aware of this perspective or find it irrelevant for their work. Thus, Justice Stephen Breyer of the U.S. Supreme Court urged his brethren to take notice of foreign experience in interpreting the U.S. Constitution, but Justice Antonin Scalia demurred, albeit discreetly, in a footnote appended to the opinion he wrote for the majority in *Printz v. U.S.*, 117 S. Ct. 2365 (1997), at 2377, n. 11.

The editor of Law Quadrangle Notes *asked several faculty members with expertise ranging across the Law School curriculum to meditate briefly on the implications, if any, of evolving human rights for their work. Their responses follow.*

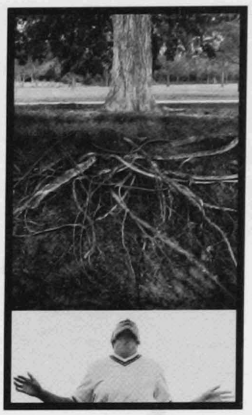


SAMUEL R. GROSS

THOMAS AND MABEL LONG PROFESSOR OF LAW
J.D. UNIVERSITY OF CALIFORNIA, BERKELEY
A.B. COLUMBIA COLLEGE

Professor Gross has published and spoken on the subject of capital punishment. He was a criminal defense attorney in San Francisco for several years, and worked as an attorney with the United Farm Workers Union in California and the Wounded Knee Legal Defense/Offense Committee in Nebraska and South Dakota. As a cooperating attorney for the NAACP Legal Defense and Educational Fund Inc., in New York, and the National Jury Project in Oakland, California, he litigated a series of test cases on jury selection in capital trials and worked on the issue of racial discrimination in the use of the death penalty. He was a visiting lecturer at Yale Law School and came to the University of Michigan from the Stanford Law School faculty. Professor Gross teaches evidence, criminal procedure, and courses on the use of the social sciences in law.

Living with the death penalty



the CHANGING faces of human rights

By SAMUEL R. GROSS

The debate over the death penalty in the United States — such as it is — is framed in terms of criminal justice policy. The issues are the same ones we consider when the question is the length of prison sentence for a drug crime: Does the defendant deserve the penalty? Is it cost effective by comparison to other available sanctions? Will it deter others from committing the crimes for which he was convicted? Can we impose this punishment fairly? Can we make sure that innocent people are not condemned?

The answers to these questions are well known, and depressing. The death penalty is a very expensive punishment; although the act of killing a single person is cheap, maintaining the elaborate system of trial and review that makes these occasional killings possible is extremely costly and diverts resources from other parts of the criminal justice system. Despite its advocates' fondest hopes, the death penalty does not deter homicide any better than life imprisonment. We do not and probably cannot impose the death penalty predictably and fairly, and we have not been able to prevent an extraordinary number of convictions and death sentences for innocent defendants. And yet a great majority of Americans favor the death penalty — most strongly so — in part because they hope — despite the evidence to the contrary — that it will reduce crime, but mostly because they believe that many criminals who commit murder deserve to be killed.

In Europe, and in much of the rest of the world, the death penalty is viewed primarily as an issue of human rights. From this point of view, the question is not whether a killer like John Wayne Gracey *deserves* to die; of course he does. Surely for what Gracey did — kidnapping, humiliating, abusing, torturing, and finally killing dozens of boys and young men — he deserves far worse than a quick death. In Tudor England the punishment for treason was that the condemned man be hung by the neck, that he be cut down and disemboweled while still alive, that his entrails be burnt before him, that he be drawn and quartered (that is, torn apart), and only then, that he be beheaded and his head stuck to rot on a pike. Wouldn't that be closer to the mark? As Americans, we have no doubt that it would be wrong — that it would be a violation of human rights — to torture Gracey as punishment for his acts of torture. For European judges and lawyers it is equally clear that it would be a violation of human rights to kill him for his acts of killing.

Drawing and quartering was not abolished out of sympathy for traitors, but as a fundamental limit on the exercise of government power. We believe that a civilized state does not torture, not even for the vilest crimes, not even if torture would deter future criminals. The abolition of capital punishment extends this logic from torture to death. It signifies that a civilized state does not deliberately and methodically kill the people it governs.

It is the policy of the United States to monitor human rights violations around the globe, and to try to stop human rights abuses by other governments. By the same token, it is the official policy of several European countries to work to abolish the death penalty worldwide, including in the United States, because it is a violation of human rights. In Europe itself, this has been accomplished primarily through the Council of Europe, which now requires abolition of capital punishment as a condition of membership. All of the European republics of the former Soviet Union — as well as the former Soviet bloc countries — are applying for or have recently been admitted to the Council of Europe. As a result, those former socialist countries that did not abolish the death penalty soon after 1989 have done so recently, or are in the process of doing so.

Abolition in the United States is a totally different matter. We are not much interested in what the world thinks of our system of criminal justice, and we have the power to ignore world opinion. And we do. To choose one example among many: In May of this year, the United Nations Human Rights Commission voted for a worldwide moratorium on executions. Only 11 countries voted in opposition, including China, Pakistan, Rwanda, Sudan — and the United States.

Some aspects of the administration of the death penalty in the United States raise separate and troublesome human rights questions. The International Covenant on Civil and Political Rights prohibits the imposition of the death penalty on defendants who were under 18 years old at the time of their crimes. Virtually every country in the world has signed this treaty, most recently China. The United States is the only nation to have done so with a reservation that excludes the article forbidding the execution of juvenile offenders. For the same reason, the United States has not ratified the UN Convention on the Rights of the Child, or the American Convention on Human Rights, both of which would outlaw that practice. This has enabled the United States to retain its status as the modern world leader in executing teenage criminals.

The United States has also executed over 30 mentally retarded defendants since 1976, a practice that is considered unacceptable elsewhere. Racial discrimination in the use of capital punishment is a national disgrace. The extraordinary delays in handling death penalty appeals in America — a death row inmate in California is likely to wait four years or more after judgment before a lawyer is appointed to handle his case — are considered a separate human rights violation by European countries. And the absolutely inadequate legal representation that many capital defendants receive is a human rights scandal by any measure. But the essential problem, seen from the outside, is more basic: The United States is a civilized and democratic nation, with a respected legal system, that nonetheless continues to kill people as a mode of punishment long after most similar states have abandoned that practice as inhumane, brutal, and barbaric.

Killing the Khmer Rouge?

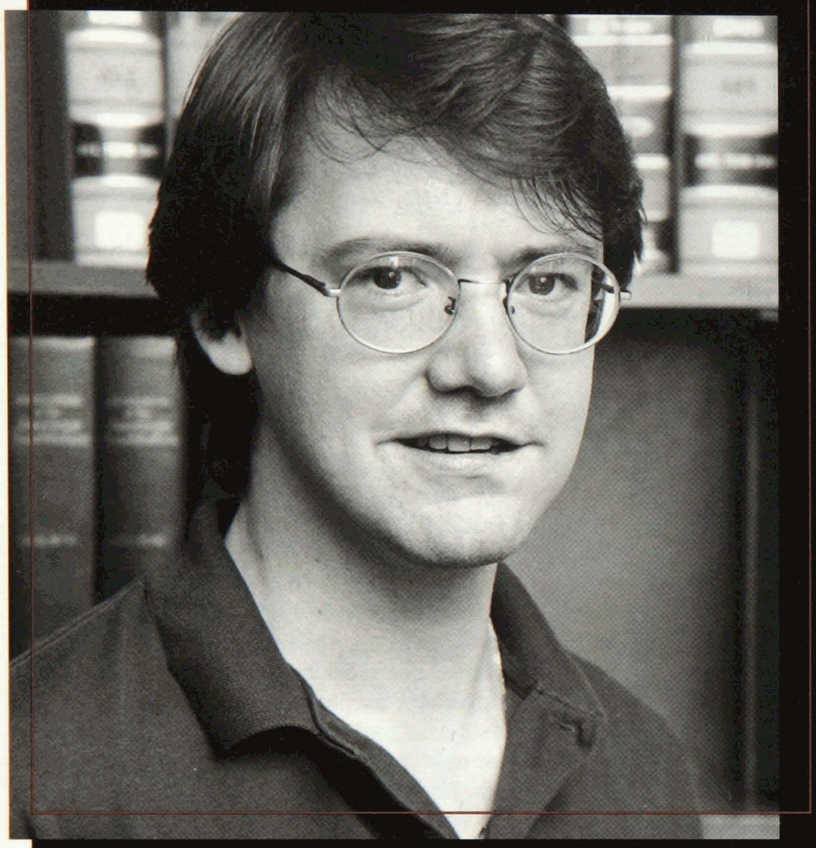
By
PETER J. HAMMER, '89

I had not traveled far from Ann Arbor, less than 200 miles, but the purpose of my journey seemed to take me worlds away. From the killing fields of Cambodia to the central plains of Ohio, I was called by the defense in a capital murder trial, where one Cambodian man had been killed at the hands of another, to testify as an expert on the Khmer Rouge genocide.

The body was found face down on the bathroom floor — a single gunshot wound to the back of the head. To believe the prosecution is to see it as a straightforward case of aggravated murder in the course of a robbery. To believe the defense is to see it as a case of retribution, a revenge killing of a former Khmer Rouge member by one of his victims. One need not resolve the conflicting stories to understand either scenario as yet another in a long list of Cambodian tragedies.

American justice moves at its own pace, and on this summer afternoon it moved slowly. I had been waiting over two hours to testify, sitting on the long wooden benches and walking the halls. We take the physical assets of justice for granted. The courtroom was on the eighth floor of a large modern building, one of four courtrooms complete with separate chambers. In Cambodia we struggle to provide filing cabinets to the clerk's office for court records, or a table for the defenders to have a place to sit during trial. We take the human capital devoted to justice for granted as well — a sophisticated independent judge, two professional prosecutors, and two experienced defense lawyers. At the end of the Khmer Rouge reign of terror, there were fewer than a dozen trained legal professionals left in the country, and it will take a generation or more to reconstruct a workable judicial system.

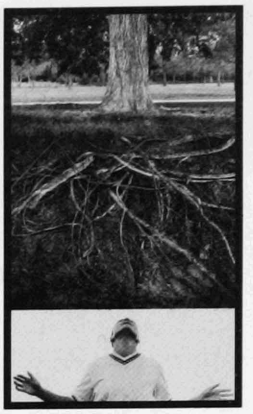
Ironically, despite the fact that I have labored for over six years to help establish and professionalize similar legal institutions in Cambodia, I harbored substantial doubts about the ability of this proceeding to find truth or dispense justice. The prosecutors, as all advocates are prone to do, were ignoring or marginalizing facts inconsistent with their simple theory of the case. Whatever transpired between the victim and the defendant was likely to have been far more complicated than either side was willing to acknowledge. While pacing the hall outside the courtroom, I could look through the narrow window in the door and catch glimpses of the judge, the defendant, and the jury. The thought that kept running through my mind was that the defendant was entitled to a "jury of his peers." What did this mean? Who were his peers? There were certainly no Cambodians on the jury. It was unlikely that any of the jurors were



PETER J. HAMMER, '89

ASSISTANT PROFESSOR OF LAW
DIRECTOR, PROGRAM IN CAMBODIAN LAW AND DEVELOPMENT
J.D. UNIVERSITY OF MICHIGAN LAW SCHOOL
PH.D. (ECONOMICS) UNIVERSITY OF MICHIGAN
B.A. GONZAGA UNIVERSITY

Cambodia's long road back from the devastation of the Khmer Rouge regime has been a continuing subject of study and involvement for Assistant Professor Hammer. He has been deeply involved in establishing a public defender program in Cambodia and is a past president and an active member of the advisory council of Legal Aid of Cambodia. At the Law School, he oversees the Program for Cambodian Law and Development. His interests also embrace issues of healthcare markets, and he and a co-researcher have received an Investigator Award in Health Policy Research from the Robert Wood Johnson Foundation to study how competition policy can affect healthcare quality.



the CHANGING faces of human rights

themselves refugees. What would a jury of his peers look like? Twelve Rwandan Tutsis? A group of Kosovar Albanians? Surviving children of the Nazi Holocaust?

What did Ohio and Cambodia have in common? This was not the first time that Cambodian politics had collided with the lives of ordinary Ohioans. The killing of four students by the Ohio State National Guard at Kent State University was in response to protests over Nixon's invasion of Cambodia. But while the slogan "four dead in Ohio" and the image of 14-year-old Mary Ann Vecchio holding the slain body of one of the fallen became immediate icons for a new American tragedy, what emotional connection would the jury have with this defendant or with his story? I felt wholly inadequate to my task of explaining the magnitude of the horror of the Khmer Rouge, the complete unraveling of the life of an entire nation, and its impact on a single 9-year-old boy.

What if the victim had been a former Khmer Rouge member? What would be the appropriate response? I started my work in Cambodia naive in my notions about forgiveness, believing in its simple, cleansing power. I had never confronted first hand an evil too large to be imagined, too deep to be forgotten, or too raw to be forgiven. I have heard numerous stories of revenge killings in the immediate wake of the 1979 Vietnamese liberation. Many of the incidents involved gruesome beatings and mutilations collectively inflicted by groups of former victims against their now vulnerable oppressors. I know of many more Cambodians who never participated in such acts, but who privately harbor detailed fantasies about the revenge they would exact on the Khmer Rouge.

Forgiveness — Revenge — Reconciliation — Retribution — Justice — Genocide — are all powerful words. In a different context, I have struggled with the question of what obligation a legal aid society in Cambodia would have if asked to represent former leading Khmer Rouge officials in war crimes trials. These are not easy issues. There is no Cambodian equivalent of the ACLU to absorb the political backlash associated with taking ideologically appropriate, but publicly unpopular stances. The success or failure of the entire institution of a meaningful role for public defenders in Cambodia often rides on the decisions that the few legal aid societies make in politically charged cases. In addition, and perhaps more importantly, the marching orders of any institutional decision to represent the Khmer Rouge would have to be carried out by Cambodian lawyers, every one of whom would be a surviving victim of the oppressive and inhumane organization or "Angkar" they would be asked to represent and vicariously defend.

On the drive home, I reviewed the testimony in my mind. I covered all of the topics I had planned, explaining who the Khmer Rouge were and describing their revolutionary agenda to eliminate all vestiges of the past when they declared 1975 to be "Year Zero." I described the chaotic evacuation of Phnom Penh and the story of the second mass deportation that took the defendant from the southeastern area of Prey Veng to the northwest province of Batambang. I described the progression of Khmer Rouge policies leading to the systematic destruction of the family: breaking extended families into nuclear units, removing children over age six from their parents, separating children by age and then by gender into mobile work groups, the imposition of forced communal dining, and the conscious attempt to change language and align previous familial relations into new allegiances to Angkar. Finally, I described the Vietnamese invasion and "liberation" in 1979.

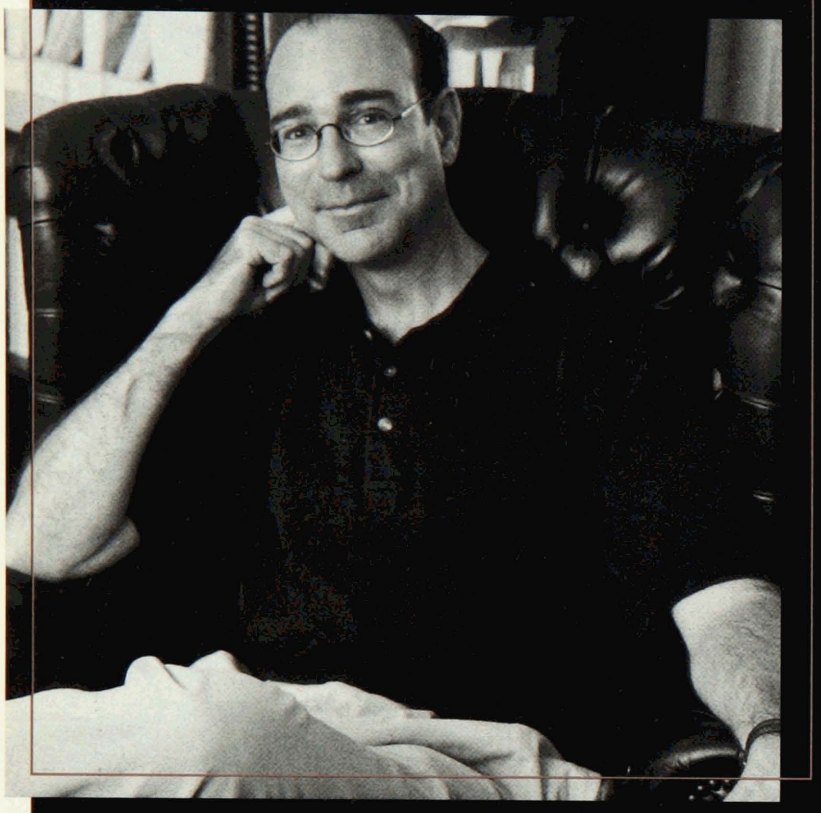
I ended by discussing the fate of the Khmer Rouge. The Khmer Rouge did not simply disappear. They are with us today, as present as the destructive legacy of their oppressive reign. Everywhere you find large groups of Cambodians you can find former Khmer Rouge members. The Prime Minister of Cambodia, Hun Sen, is a former Khmer Rouge member, and there are many others working in the Cambodian government. There are former Khmer Rouge members selling noodles at the Central Market in Phnom Penh. There are former Khmer Rouge members in the United States, among the tens of thousands of Cambodian immigrants, and yes, it is conceivable that there are former Khmer Rouge members in Ohio. At the end of my testimony, I was thanked and politely excused. The prosecution had no questions. As a matter of litigation strategy, this was tactically correct. From their perspective, the story of the Khmer Rouge was another Cambodian "sideshow," a distraction.

The wheels of American justice move methodically, with their own internal logic and their own momentum. This is not a bad thing. The rule of law as a regulator of individual conduct and as a check on the abuse of state power is an essential component of a civilized society. The rule of law in Cambodia was one of the first and most long-lasting victims of the Khmer Rouge revolution, with repercussions felt to this day. A body had been found in Ohio, a proper police investigation had been conducted, the defendant was apprehended, and his rights respected. Now, he was on trial. This is exactly what we aspire to achieve.

Still, juxtaposing the defendant's fate in Ohio with the fate of the leaders of the Khmer Rouge who perpetrated the genocide in Cambodia is unsettling. While Pol Pot, Brother Number One, is dead, four other leading members of the Khmer Rouge are still very much alive — Ieng Sary, Khieu Samphan, Nuon Chea, and Ta Mok. Ieng Sary, the "official" Brother Number Two, defected in 1996 and was granted amnesty by the King, expunging a 1979 death sentence handed down against him and Pol Pot when they were tried in absentia for their crimes. Now, Ieng Sary is not only a free man, but is the *de facto* leader of the gem- and log-rich Pailin area he administered when it was a guerrilla territory. Khieu Samphan, the long-time public face of the Khmer Rouge, and Nuon Chea, Pol Pot's behind-the-scenes real Brother Number Two, defected in December 1998 and spent Christmas weekend in the resort city of Kampong Som. The deal they struck with Prime Minister Hun Sen makes it unlikely that they will ever face trial. Ta Mok, "the Butcher" and last hard-liner, was apprehended in March 1999. He remains in custody, his fate still to be determined. His only real crime in the eyes of the government was his failure to surrender voluntarily and strike his own deal. If tried, the maximum penalty Ta Mok could face would be life in prison. Article 32 of the Cambodian constitution outlaws capital punishment. Section 2929.02(a) of the Ohio Revised Code, in contrast, provides for the death penalty in cases of "aggravated murder."

How could one compare even a "life" sentence for the 72-year-old Ta Mok with a "life" sentence for the 33-year-old Cambodian defendant in Ohio? There is no universal metric of justice to make such comparisons and there are no easy answers. Nor are there easy ways to address the psychic wounds suffered by individual victims or by an entire nation. The only certain truth is that there are victims everywhere. The body was found face down on the bathroom floor — a single gunshot wound to the back of the head. In April 1975, a small nine-year-old boy was forced to leave Phnom Penh, never to return again to the capital city or to the life that he had known. Twenty-four years and many miles later, he sits alone in an Ohio state prison on trial for his life. Cambodia is filled with ghosts, living and dead, still haunted by the specter of the Khmer Rouge. Some of these manifestations are actual, others imagined, all are real.

America's apostasy



By
JAMES C. HATHAWAY

It has often struck me that the prominence of the *Restatement of the Foreign Relations Law of the United States* epitomizes the plight of international law in this country. The title of this standard reference on international law does not even refer to *international* law, but instead to *foreign relations* law. That is, it is meant to set out the standards by which *we* may legitimately judge the conduct of *others*. The clear, if unintended, message is that the *Restatement* is not really a codification of laws that bind *us*. And indeed, it is explicitly not just a codification, but a *re*-statement. It is, in other words, not a simple summation of those rules that are binding under international standards of lawmaking, but a specifically American take on the rules that (ought to?) define the global order.

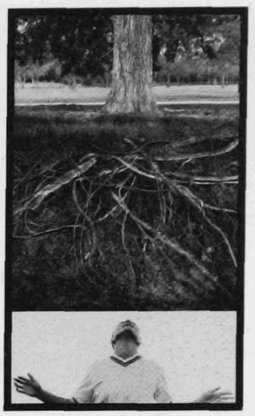
This detachment from an understanding of international law as a collectively defined system that binds all states is most clearly evident in our troubled relationship with international human rights law. While the United States has been involved in the drafting of every major human rights treaty, is represented at virtually every session of every human rights monitoring body, and annually publishes its assessment of the human rights performance of every country in the world, we simply do not accept that international human rights law is *about us*. We cannot bring ourselves as a nation to adopt international human rights standards as domestically binding norms, and we certainly will not tolerate other states or international bodies scrutinizing the ways in which human rights are (or are not) implemented in the United States.

My own field of refugee law is rife with examples of American refusal to be part of the international human rights project. The courts routinely insist that relevant domestic law implements our obligations under international refugee law. But they seem simultaneously determined to interpret our treaty obligations in ways that diverge from the goals of the Refugee Protocol, and which bear little resemblance to interpretations of the same obligations rendered by courts in our partner states. The United States stands alone in its insistence that refugees are to be denied protection unless somehow able to prove the state of mind of the person or entity that would persecute them; specifically, we require evidence that the actions of the agent of persecution are inspired by racial, political, or other animosity. No other country

JAMES C. HATHAWAY

PROFESSOR OF LAW
DIRECTOR, PROGRAM IN REFUGEE AND ASYLUM LAW
SENIOR VISITING RESEARCH ASSOCIATE, REFUGEE STUDIES PROGRAMME, OXFORD UNIVERSITY
LL.B. OSGOODE HALL LAW SCHOOL
LL.M. COLUMBIA LAW SCHOOL
J.S.D. COLUMBIA LAW SCHOOL

Professor Hathaway has taught international human rights law since 1984, and regularly advises both governments and advocacy groups around the world. He has pioneered efforts to link refugee law to international human rights law, and is presently completing a treatise entitled The Rights of Refugees Under International Law. *Last spring, he convened the First Colloquium on Challenges in International Refugee Law, bringing international experts to the Law School to collaborate with students in producing recommendations to respond to the increasing tendency of governments to require would-be refugees to accept relative safety within their own countries, instead of seeking asylum. The result of their deliberations, "Michigan Guidelines on the Internal Protection Alternative" (see story on page 30), has been disseminated to some 500 refugee judges, policymakers, and advocates.*



the CHANGING faces of human rights

demands such feats of clairvoyance. Similarly, while most developed countries have formally committed themselves to judge the existence of a risk of persecution by whether or not basic international human rights are respected in the asylum seeker's home country, American judges only rarely show any awareness of these standards. Instead, our courts are typically content subjectively to decide whether the harm threatened is "regarded as offensive." And even when an individual somehow meets the peculiarly American standard of international refugee status, this is no guarantee of protection. Instead, we assert that asylum is a matter of discretion, rather than entitlement, and, unique among Western states, we explicitly reserve the right forcibly to interdict any refugees approaching our borders, even if this means taking action in international waters beyond our legal authority.

Even with all these concerns, our record on respect for international refugee law is actually one of the relative success stories in America's relationship to international human rights law. At least with refugee law we have signed the relevant treaty, and acknowledge that our asylum law is (more or less) based on international standards. Until quite recently, we refused to be bound by any of the other major human rights treaties. And even now, we will not sign on without a reservation to guarantee that international norms cannot override the U.S. Constitution (logically raising the question of just why we accede to human rights treaties at all).

Perhaps most tragically, the United States steadfastly refuses to allow its own citizens to hold it directly accountable through the United Nations complaint procedures established to address even such presumably uncontroversial rights as freedom from torture, racial discrimination, and the violation of basic civil and political rights. Among the industrialized countries that comprise the Organization for Economic Cooperation and Development, only the citizens of the United States, Japan, Korea, and Mexico are prevented from accessing the United Nations. Even Algeria, China, and Libya have agreed that their citizens will have the right to take human rights concerns directly to the UN. Our contempt for international accountability is clear too in the outrage expressed by some political leaders when the United Nations Special Rapporteur on Summary Executions not only decided to visit the United States last year, but dared to criticize our refusal to abolish laws that authorize the execution of children (only Thailand has taken a position comparable to that of the United States).

We can, of course, credibly argue that there is less need for international involvement in human rights enforcement in the United States than in many other, much more troubled, countries. And we can always fall back on the tired old chestnut of domestic constitutional supremacy to insist that it would not be legally responsible for the United States to be a full participant in the international human rights system. But these are lame excuses for keeping our distance from international human rights law. Many other countries with excellent human rights records are quite willing to embrace international accountability. And few of their constitutions are as clear in defining an authoritative role for international law as is our own Article VI, which expressly defines treaties to be part of "the supreme Law of the Land," which shall bind judges "... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

My own sense is that the real reason the United States rejects international human rights law is an intuitive belief that our own, domestically framed, human rights values are better than anything the world has to offer us. We just do not want to see our definitions of rights interfered with by non-Americans.

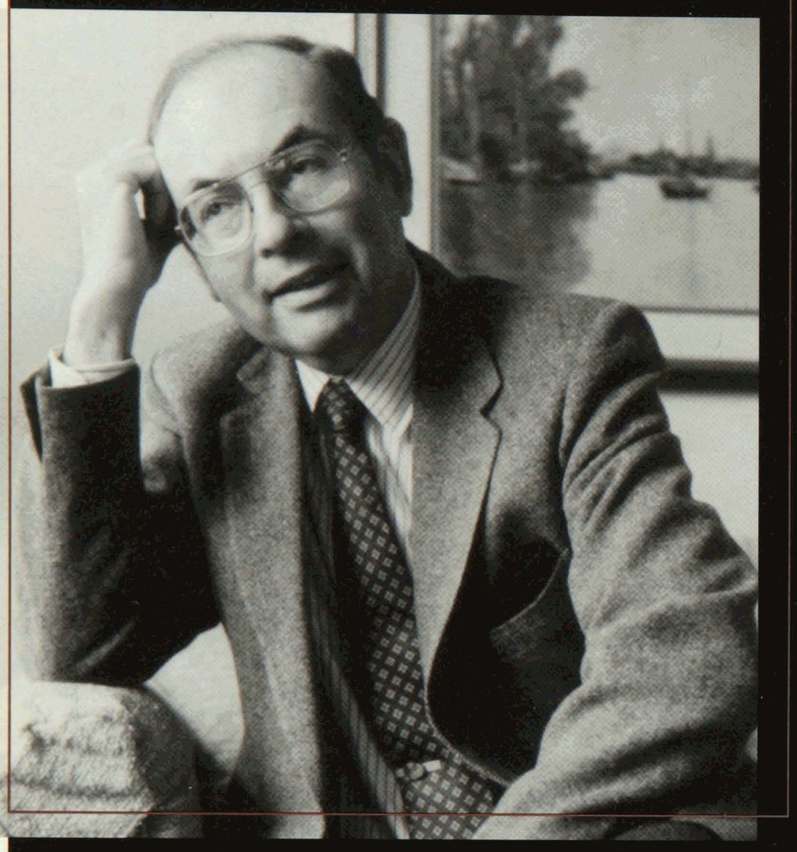
Yet the truth is that access to the international human rights machinery would not allow the United Nations to overrule American law. There is a solid tradition within UN treaty bodies of deference to reasonable national interpretations of human rights, and, in any event, no United Nations human rights body can issue enforceable judgments. The United States would, however, be required to defend the treatment of persons under its authority before expert bodies elected by the governments of the world (including the United States). We would be denied the right simply to assert the domestic legality of a particular practice, and would occasionally have to face up to the logic of reconsidering our traditional views.

Experience elsewhere suggests that the rejection of a cosmopolitan approach to human rights is a substantive loss for American society. Complaints to international human rights bodies have opened the eyes of Canada to flaws in its protection of aboriginal peoples, of the Netherlands to patterns of sex discrimination, and of Switzerland to official conduct that gave rise to the risk of torture. American national human rights law is similarly in need of a mechanism that tests our accepted beliefs against the views of the broader global community. Is there no room for doubt about the sufficiency of our strictly national approach to human rights when the Constitution is invoked to defend the right to inflame hatred through violent speech, to guarantee the right of every American to possess guns without demonstration of genuine need, and to treat foreign nationals routinely incarcerated at our borders as non-persons? Are we really confident that human rights are not infringed when we do little to combat the existence of a permanent economic underclass in the midst of the world's wealthiest nation?

There are also compelling political reasons to accept the need for a continuing dialogue of justification about the scope of human rights law. Whatever concerns we had about the risks of international accountability during the Cold War era are now clearly irrelevant. In an era where virtually all wars are civil wars, fought on the basis of irrational prejudice or discriminatory allocations of power and resources, there is no excuse for our standoffish attitude towards an international legal system that works to defuse precisely those risks. If we continue to insist on the primacy of our own parochial way of defining rights and entitlements, we should not be surprised when others also reject accountability with predictably tragic results of the kind witnessed most recently in Kosovo.

America must learn to lead by example.

The three threats to *Miranda*



YALE KAMISAR

CLARENCE DARROW DISTINGUISHED UNIVERSITY
PROFESSOR OF LAW
LL.B. COLUMBIA UNIVERSITY
A.B. NEW YORK UNIVERSITY

Professor Kamisar, widely known for his pioneering teaching materials on criminal procedure and his many articles defending and explaining the Warren Court's "revolution" in American criminal procedure, is a specialist in constitutional law. He has studied the impact and aftermath of the U.S. Supreme Court decision that produced what we now call the Miranda *Rule since the decision was handed down in* Miranda v. Arizona *in 1966. Here, he identifies three distinct threats to the protections the ruling provided for suspects and defendants.*

By
YALE KAMISAR

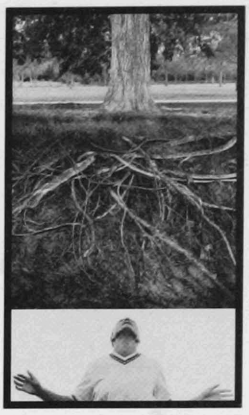
Miranda v. Arizona (1966) was the centerpiece of the Warren Court's "revolution" in American criminal procedure. Moreover, as Professor Stephen Schulhofer of the University of Chicago Law School has recently noted, a number of the *Miranda* safeguards "have now become entrenched in the interrogation procedures of many countries around the world." (See generally Craig Bradley, "The Emerging International Consensus as to Criminal Procedure Rules," 14 *Michigan Journal of International Law* 171 [1993].)

But *Miranda* is in serious trouble at home.

A provision of the federal criminal code enacted in 1968, 18 U.S.C. § 3501, purports to "repeal" *Miranda* and reinstate the pre-*Miranda* standard for the admissibility of confessions — the due process-"totality of circumstances"-"voluntariness" test. Section 3501 has been avoided by every administration since its enactment more than 30 years ago. But this has not discouraged conservative legal foundations from urging the federal courts to inject § 3501 into their cases.

In 1999, these legal groups gained a stunning victory when a 2-1 majority of a panel of the U.S. Court of Appeals for the Fourth Circuit ruled — against the express wishes of the Department of Justice — that the pre-*Miranda* voluntariness test set forth in § 3501, rather than the famous *Miranda* case, governs the admissibility of confessions in the federal courts. According to the Fourth Circuit panel, the *Miranda* rules are not constitutionally required; they are only "prophylactic" rules designed to implement or reinforce the underlying constitutional right. Therefore, § 3501 is a valid exercise of congressional authority to override judicially created rules [that are] not part of the U.S. Constitution.

I strongly disagree. I share the view of a number of criminal procedure and constitutional law professors that the *Miranda* rules were an understandable (and long overdue) response to the inadequacies of the mushy, subjective, and unruly voluntariness test (under which every factor was relevant, but virtually nothing was decisive). I agree, too, that prophylactic rules are a necessary and proper feature of constitutional law — a means of interpreting constitutional provisions in light of institutional realities — a means of providing constitutional rights much-needed "breathing space." But if the present Court were to address this issue in the near future, I am afraid that at least four justices might uphold the statute purporting to abolish *Miranda* (the Chief Justice and Justices O'Connor, Scalia, and Thomas).



the CHANGING faces of human rights

Section 3501 is not the only danger facing *Miranda*. A decade and a half ago, in *Oregon v. Elstad* (1985), a case that upheld the admissibility of a second confession made at the time the police complied with *Miranda*, although earlier that day the police had obtained a statement from the same defendant — in violation of *Miranda* — the Supreme Court indicated that the "fruit of the poisonous tree" doctrine did not apply to *Miranda* at all. If so, all the "fruits" of (or evidence derived from) a *Miranda* violation would be admissible — not just a second confession or a witness for the prosecution whose identity the government learned from the inadmissible confession, but physical evidence, e.g., the drugs, the proceeds from a bank robbery, or the murder weapon.

The Court has never explicitly decided whether physical or nontestimonial evidence derived from a *Miranda* violation is admissible. However, I have to say there is a good chance it will do so. In the meantime, the state courts and the lower federal courts have almost uniformly ruled that the prosecution may use the nontestimonial fruits of a *Miranda* violation.

Some 30 years ago, Judge Henry Friendly noted that "'what data there are' suggest that the obtaining of leads with which to obtain real or demonstrative evidence or prosecution witnesses is *more important* than getting statements for use in court." (Emphasis added.) Therefore, a ruling that *all types* of evidence derived from a *Miranda* violation are admissible would strike the landmark case a grievous blow. How could we possibly expect the police to comply with *Miranda* if the courts barred *only* the use of incriminating statements obtained in violation of that doctrine, but none of the leads or clues or evidence these statements brought to life?

Miranda faces still another danger — there is good reason to think that in a substantial number of police stations throughout the land police interrogators are violating *Miranda* in a fundamental way. They are getting suspects to waive their rights — by persuading them it's in their "best interest" to tell the police "their side of the story" so the police can help them — *before* they advise them of their rights.

These interrogation techniques were first described at length in David Simon's book, *Homicide: A Year on the Killing Streets*. The author, a *Baltimore Sun* reporter, was granted unlimited access to the city's homicide unit for a full year. Recent articles indicate that the interrogation tactics employed by the Baltimore police are being utilized by detectives in a number of other police departments as well.

If the admissibility of a statement obtained as a result of these methods were challenged by a defense lawyer, a prosecutor would be in a strong position, for she would be armed with a signed waiver of rights form (and a signed explanation of rights form as well). But she would be in a strong position only if — as would hardly be surprising — the detective involved in the case conveniently failed to remember how the suspect was induced to sign the waiver of rights form. However, if all the details were known — if the entire transaction had been tape recorded — no court would be able to admit the statement unless it was prepared to overrule *Miranda* itself.

(Unfortunately neither the Warren Court nor any other Supreme Court has ever required law enforcement officers to tape record, when feasible, how the warnings of rights are delivered, how the waiver takes place, and what the police do thereafter. And the overwhelming majority of state courts have held that the testimony of a police officer that he gave complete *Miranda* warnings and obtained a voluntary and intelligent waiver of rights need not be corroborated.)

Miranda emphasizes that "any evidence" that a custodial suspect was "threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege." But in a substantial number of station houses, the police *are* threatening the suspect: they are telling him that unless he talks to them about the homicide, they will write it up as first degree murder and turn him over to a merciless assistant prosecutor. The police are also tricking the suspect: they are leading him to believe that it is in his best interest to tell them his side of the story. Indeed, the police are pretending that talking to the police instead of asking for a lawyer is the suspect's only chance to get the homicide charge reduced (or perhaps even dismissed).

The police are not supposed to subject a custodial suspect to questioning *unless and until* they obtain a waiver of his rights. Unfortunately, what they are really doing in too many places is subjecting individuals to "interrogation" *before* they waive their rights — indeed, before they even *advise* them of their rights.

Once the police have taken a suspect into custody, there is no such thing (at least there is no lawful basis for any such thing) as a "*pre*-interview" or "*pre*-waiver" interrogation. The waiver of rights transaction is supposed to take place as soon as the curtain goes up — not be postponed until the second act.

Reports about how modern police interrogators have "adapted" to *Miranda* underscore the need to record on video- or audiotape the entire proceeding in the police station — any preliminary conversation, the reading of rights, the waiver transactions, and any subsequent interrogation. There is nothing new or startling about tape recording police questioning. Virtually all of the nation's criminal procedure professors — critics and defenders of *Miranda* alike — favor the idea. Moreover, there is widespread satisfaction with a mandatory recording requirement in Great Britain. Why then is tape recording, where feasible, not the general practice in American police stations today?

The only startling thing about this issue is that, after all these years, American law enforcement officials are still able to prevent objective recordation of all the facts of police "interviews" or "conversations" with a suspect and, of course, how the warnings are delivered and how the waiver of rights is obtained. But if you were a member of the Baltimore homicide unit (or a member of other police departments employing the same interrogation methods), would you favor tape recording (and making available for public inspection) what really happens in the interrogation room?

'Domesticating' international law

PHOTO BY RICHARD LEE

By
DEBORAH C. MALAMUD

I have two thoughts to contribute to this dialogue — one concerning the atrocities in Bosnia and Kosovo, the other based on a recent visit to South Africa as part of the Law School's student externship program there.

1. International law now recognizes that the use of rape as a tool of war is a war crime. But the examples of Bosnia and Kosovo make clear that rape is an unusual war crime, because it is so often exacerbated by the conduct of the victim's own countrymen. Men in these societies are taught to experience the "violation" of "their" women as a violation of their own proprietary rights. Men, feeling violated, act out the social ritual of repairing the injury to themselves by abandoning, rejecting, blaming, and ostracizing their raped women. The women are thus violated twice: once by the enemy at war, once by their one-time loved ones at home. The rapists likely know (or even share) their enemy-neighbor's norms on the social consequences of rape, and thus commit their rapes with the hope and expectation that their male enemies will do part of their work for them.

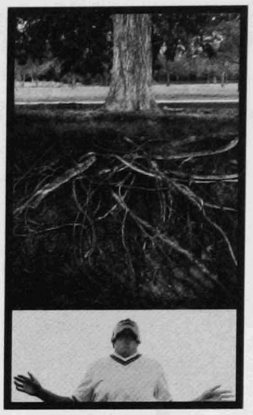
I have been outraged by the fate of many rape victims in these societies. These countries' leaders excel at manipulating the rhetoric of patriotism and nationhood. Why haven't they issued a post-war declaration that discriminating against victims of wartime rape is a crime against the nation? Are the norms of patriarchy that much stronger than the norms of patriotism?

That question presents an opportunity to think about the relationship between domestic and international law. Might it be possible for international authorities to require protective changes in domestic law as a precondition to pursuing war crimes prosecutions? If that suggestion is too naive as a matter of international law, perhaps something less sweeping might work. For example, an

DEBORAH C. MALAMUD

PROFESSOR OF LAW
J.D. UNIVERSITY OF CHICAGO
B.A. WESLEYAN UNIVERSITY

Professor Malamud teaches and writes in the fields of employment and civil rights law, with a focus on issues of social class. This year she also traveled to South Africa to supervise and meet with University of Michigan Law School students doing externships with human rights organizations in that country. She has practiced law in Washington, D.C., and clerked for the Hon. Harry A. Blackmun of the U.S. Supreme Court and the Hon. Louis H. Pollak of the U.S. District Court for the Eastern District of Pennsylvania.



the CHANGING faces of human rights

international war crimes tribunal might insist, as a tool for protecting its own jurisdiction, that those who retaliate against women for discussing their status as rape victims or coming forward in aid of prosecutorial investigations or court proceedings be punished in some way. It is difficult to know whether such coercive action could work a genuine change in the domestic culture of rape. But at least the international community would be acting to protect wartime rape victims from the full force of the domestic culture.

2. South Africa presents a different question about the relationship between domestic and international law.

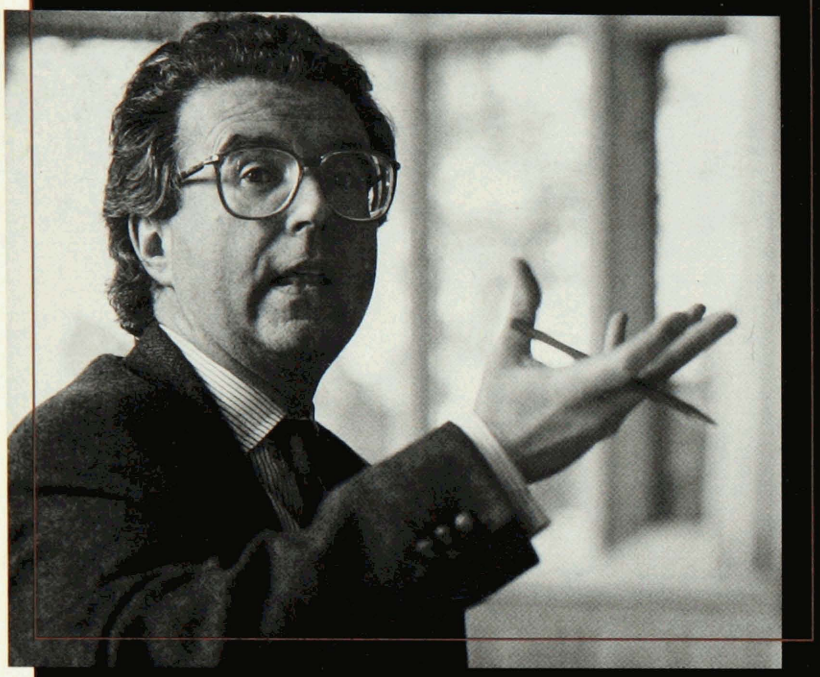
The new South African constitution is heavily influenced by the human rights norms of the international community, and it requires its courts to consult international law sources in interpreting the constitution. For this reason — as well as for domestic reasons easy both to understand and decry — the new constitution feels quite foreign to jurists whose tenure predates the end of apartheid. Many claim not to understand it, and are hesitant to apply it. This frustrates the public-interest lawyers and academics who helped to shape the document and who have developed the still-esoteric expertise to employ its provisions in litigation. They worked hard to embody international human rights norms in the constitution, and they understandably want to see them applied in individual cases.

In conversations with lawyers, academics, and justices of the South African Constitutional Court, I learned of a scenario that has started to play itself out in the courts of pre-apartheid judges. The new constitution requires that South African law — including still-applicable apartheid-era law — be interpreted in light of the letter and spirit of the constitution. There are already examples of surviving apartheid-era judges declining to apply particular provisions of the constitution — claiming that they are too vague and too foreign — but then interpreting pre-existing law in light of the constitution as providing the remedy the plaintiff seeks. This infuriates the constitutional law specialists, who want the terms of the new constitution to be explicitly applied as a rule of decision.

One can certainly understand their position. But there is a contrary view — one I found myself expressing in heated conversations. By convincing themselves that the norms of the new constitution can be read as harmonious with prior law, these judges might well be domesticating a seemingly foreign constitution — both for themselves and for the conservative white constituencies from which they hail. So long as the justices of the Constitutional Court are willing to review decisions of this sort to make sure they do not misapply constitutional norms, there may be more gained than lost through this process of domestication. My last official act in South Africa was a day as the guest of Justice Richard Goldstone at the Constitutional Court. [Goldstone delivered the William W. Bishop Lectures in International Law at the Law School in 1998 in conjunction with the official opening of the Law School's Center for International and Comparative Law.] I was surprised and gratified to find one of his colleagues in agreement with me on this issue.

It is one thing to import international human rights law into domestic legal practice. It is another thing to create an organic relationship between the international and the domestic. What seems like cheating the constitution to members of an internationally sophisticated legal elite might well really be helping to make the constitution seem acceptable to those most hostile to it and to the peaceful revolution that brought it about.

Globalization and human rights



CHRISTOPHER McCRUDDEN

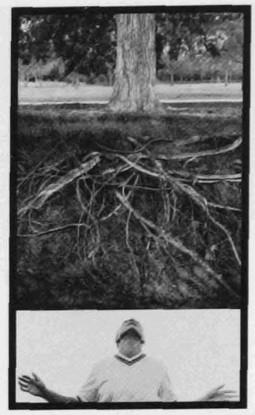
UNIVERSITY OF MICHIGAN LAW SCHOOL AFFILIATED
OVERSEAS FACULTY
PROFESSOR OF HUMAN RIGHTS, OXFORD UNIVERSITY
FELLOW, LINCOLN COLLEGE, OXFORD
LL.B. QUEENS UNIVERSITY
LL.M. YALE LAW SCHOOL
M.A., D. PHIL. OXFORD

Christopher McCrudden, a member of the Law School's Affiliated Overseas Faculty, was named Professor of Human Rights at Oxford this year. He has been a Fellow and Tutor in Law at Lincoln College since 1980 and a Reader in Law at the University of Oxford since 1996. In addition to his publications in a wide variety of journals and books, his academic work has included service on the editorial boards of the Oxford Journal of Legal Studies, the Review of Employment Topics, *and* the International Journal of Discrimination and the Law. *He currently serves on the editorial board of the* Journal of International Economic Law. *He is the United Kingdom's representative in the European Commission's group of lawyers advising it on women's equality issues, and is a specialist advisor to the House of Commons' Northern Ireland Affairs Committee. His research interests lie in the areas of human rights, comparative law, and globalization.*

By
CHRISTOPHER McCRUDDEN

The tension between economic liberalization and the protection of human rights is set to become an issue of increasing concern as we enter the next century. Of course, achieving a *modus vivendi* between deregulating the economy and the achievement of other non-economic values is a problem that has been with us nationally for some years. Indeed, it has proven one of the most difficult issues of this decade in many industrialized countries. Whether it is the tension between economic efficiency and environmental protection, or labor-market flexibility and fair labor standards, or deregulation and distributive justice, a resolution of the problem seems some way away.

The tension between these different values at a national level within a particular country is only one part of the story. Often, complicating the discussion is another problem that involves a dispute about the appropriate level of government (international, regional, national, or local) at which these conflicts of values should be resolved. This issue has various dimensions. How far should national economic liberalization be a subject of international regulation? Does this lead to undermining national sovereignty to an unacceptable extent? How far should sub-national communities, such as municipalities, be able to influence or determine the outcome of these issues? Is such local control merely a way of ensuring that protectionist impulses will win through? Where there is a conflict between the goal of global economic liberalization and the local pursuit of domestic social policy goals, such as job protection, should the local give way to the international? The impact of "globalization" on local communities has therefore also attracted considerable attention recently.



the CHANGING faces of human rights

As if these issues were not complicated enough, there is a further dimension to these problems that has become evident in recent years. The pursuit of one set of international goals may, unsurprisingly, conflict with the pursuit of another set of international goals. For example, the pursuit of trade liberalization, a goal reflected in the World Trade Organization (WTO) system, may conflict with the international protection of human rights, a goal reflected in the plethora of human rights treaties and the growth of non-international entities (such as states in a federation) to seek to pursue this international human rights agenda via international trade.

In a recent essay, I discussed a *cause célèbre* that is currently attracting attention because it neatly illustrates several dimensions of these issues. It is a dispute, on the one hand, about the relative importance of international human rights values as against trade liberalization. It is also, on the other hand, a dispute about the appropriate method of expression of concern by a local community about human rights abuses abroad, as against national and international control of the trade agenda. The issue that has managed to combine these questions is that of selective purchasing by state and local governments in the United States, in particular the legality under the WTO Government Procurement Agreement of the Massachusetts law relating to Myanmar (formerly Burma). The issue of how far state governments should be able to use their purchasing power to require those they purchase from to follow human rights practices acceptable to them has both U.S. constitutional dimensions, which are being adjudicated in federal court, as well as important international law dimensions. It is the latter in which I am particularly interested.

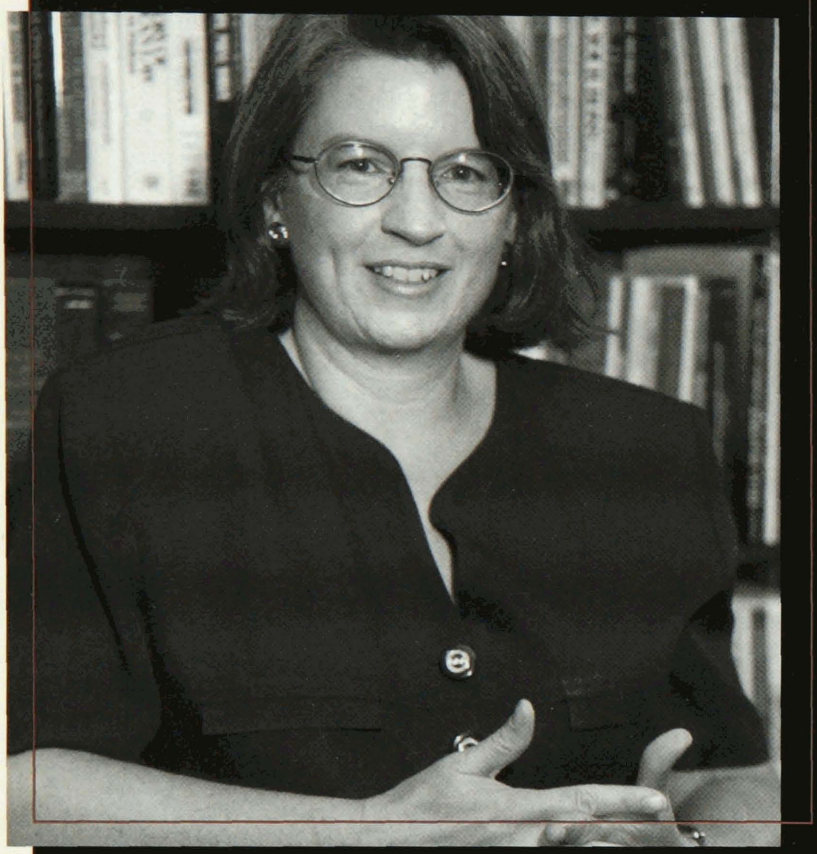
One of the difficulties of resolving such issues is the existence of largely separate spheres that those concerned with international trade, on the one hand, and human rights, on the other, seem to inhabit. Few are experts in both, and there is often considerable difficulty in developing a common language for discussion between them.

That is only one part of the problem. It would be naïve to think that there is not considerable opposition to any linkage between international trade and other non-economic issues such as human rights. Some of that opposition appears to be based on the assumption that it is *possible* to avoid such linkages. The WTO, it is said, should be used as a sword to enforce human rights.

The WTO cannot avoid dealing with such linkages entirely, however. In particular, the WTO dispute settlement institutions are likely to be called on to interpret the multilateral and plurilateral agreements in contexts where the appropriateness of linkages made by national governments will have to be scrutinized. In that case, the issue will be the appropriate amount of legal space that states will be given to pursue such non-economic goals, and the WTO may not be able to avoid giving an answer. When it does so, trade law should not be used as a sword to attack human rights policies, provided they are not protectionist.

This essay is adapted from "International Economic Law and the Pursuit of Human Rights; A Framework for Discussion of the Legality of 'Selective Purchasing' Laws Under the WTO Government Procurement Agreement,"* 2 Journal of International Economic Law *3-48 (1999). Professor McCrudden has been exploring these issues in a seminar he is teaching at the Law School during the fall term.

A child's right to physical integrity



SUELLYN SCARNECCHIA, '81

CLINICAL PROFESSOR AND ASSOCIATE DEAN FOR CLINICAL AFFAIRS
J.D. UNIVERSITY OF MICHIGAN LAW SCHOOL
B.A. NORTHWESTERN UNIVERSITY

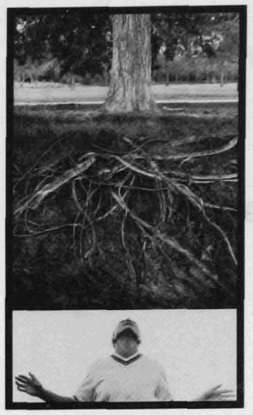
Clinical Professor and Associate Dean for Clinical Affairs Suellyn Scarnecchia, '81, practiced for six years with McCroskey, Feldman, Cochrane & Brock in western Michigan and became a partner of the firm before returning to the Law School to teach in the Child Advocacy Law Clinic. In 1993, she represented the prospective adoptive parents of Baby Jessica in the highly publicized contested adoption case. Her current project is the development of the Michigan Poverty Law Program, a community outreach service of the Law School, which provides support to legal aid offices throughout Michigan. Her research focuses on bias in the courts and on children's rights. This fall she is teaching an interdisciplinary seminar that brings faculty and graduate students from law, social work, and psychology together to explore the boundaries of each field's practice in the area of child abuse and neglect.

By SUELLYN SCARNECCHIA, '81

On one of my first trips to Juvenile Court with two student lawyers, we represented a 10-year-old girl whom I will call Mary. Tall for her age, very thin and fragile, she had pale white skin, stringy blond hair, and glasses too large for her face. Her most prominent features, on the afternoon we met her, were dark, ugly bruises on her cheek and forehead. Mary was a sweet girl, who laughed and joked with the students as they tried desperately to develop rapport with her without surfacing their own horror as they stared at her conspicuous bruises.

She eventually told us her story in a matter-of-fact way. Mary lived with her mother and her mother's boyfriend. He believed in daily exercise and required Mary to perform mandatory sit-ups, push-ups, etc. On the night before we met her, Mary did not do her exercises and the boyfriend physically disciplined her. The muscular, grown man left her badly bruised and the punishment frightened her mother sufficiently to motivate an emergency call to child protective services. Noteworthy was Mary's apparent belief that she deserved the beating. In Mary's case, this use of corporal punishment by a person acting in a parental role crossed the line to child abuse and she was given some protection through the juvenile court system. Of course, her mother's boyfriend had used corporal punishment to discipline Mary before, but it had never been this bad (or it had never before frightened her mother this badly).

In the United States, it is legal for parents to use corporal punishment as a form of discipline. In fact, more than 90 percent of American parents report using some form of corporal punishment on young children. Parents must draw the line between reasonable corporal punishment and child abuse. Most corporal punishment is legal (e.g. hitting, slapping, smacking) regardless of how much the parent outsizes the child or whether the assault is justified. Realistically, children will only receive protection from adults who hit them if someone notifies child protective services AND the punishment involves the use of an object or leaves bruises. If a parent hits her child in private and is careful not to leave noticeable marks, the child is on his own. Is it wise to leave the distinction between acceptable corporal punishment and abuse up to parents?



the CHANGING faces of human rights

As an alternative, we could recognize that a child like Mary has the right to physical integrity — to be free from all physical assault — requiring parents to use alternatives to physical punishment. There is an international movement to ban corporal punishment. The legislatures of Sweden, Finland, Denmark, Norway, Austria, and Cyprus have passed anti-corporal punishment statutes. And, in 1996, Italy's highest court banned corporal punishment of children. Last year, the European Court of Human Rights interpreted the European Convention for the Protection of Human Rights and Fundamental Freedoms to protect a boy who had been repeatedly struck by his stepfather. The United Nations Convention on the Rights of the Child is interpreted by its monitoring committee to require a ban on corporal punishment and the committee has "stated repeatedly . . . that banning corporal punishment of children in families is essential in order for reporting countries to achieve treaty compliance." The United States has not joined the 191 nations that have become parties to the UN Convention since 1989. (For a detailed description of international developments in this area, see Susan Bitensky, "Spare the Rod, Embrace Our Children," 31 *Michigan Journal of Law Reform* 353 [1998]).

In my law practice, I see an endless stream of children treated very badly by their parents. When I look up from the endless stream to seek big-picture solutions, I see international efforts to stop all physical violence against children. I wonder whether we would see fewer cases of child abuse and less violence among American children two or three generations from now, if we adopt, for example, a law like Finland's:

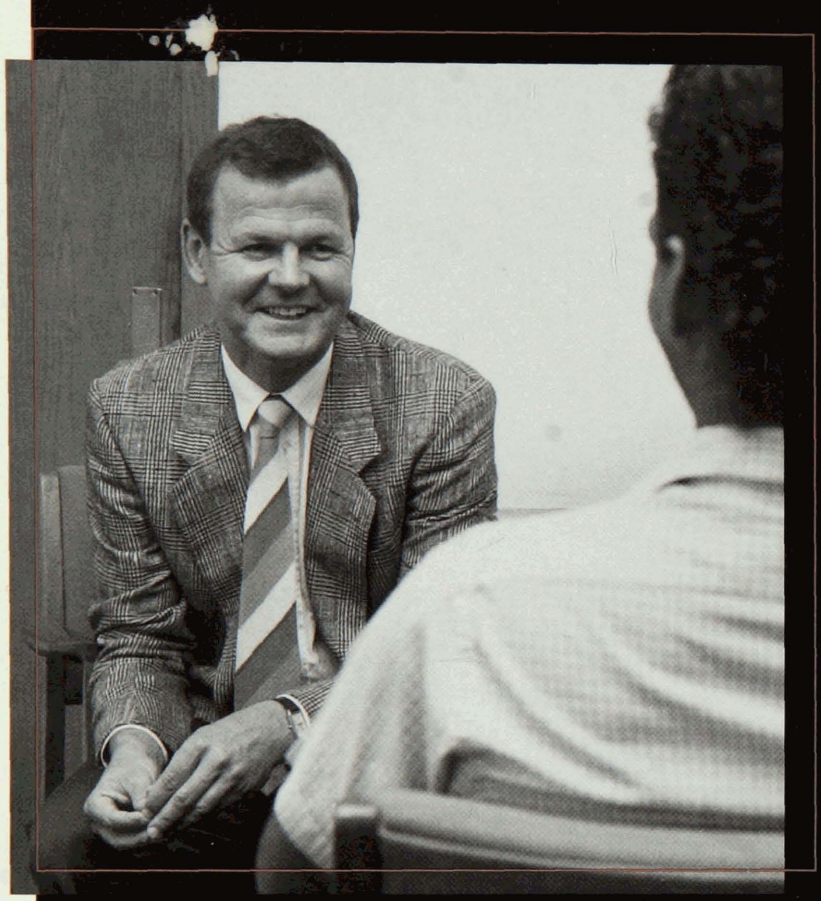
> "A child shall be brought up with understanding, security, and gentleness. He shall not be subdued, corporally punished, or otherwise humiliated. The growth of a child towards independence, responsibility, and adulthood shall be supported and encouraged."

The impact of a law recognizing the child's right to be treated with dignity and to physical integrity would not be noticed for a few generations. Most of us were spanked as children, leaving us hesitant to condemn our parents' techniques and often leaving us without instincts for how to discipline without hitting. Any ban on corporal punishment must be accompanied by a strong public education campaign, as suggested by "Guidance for Effective Discipline," a 1998 report of the American Academy of Pediatrics:

> "Because of the negative consequences of spanking and because it has been demonstrated to be no more effective than other approaches for managing undesired behavior in children, the . . . Academy . . . recommends that parents be encouraged and assisted in developing methods other than spanking. . . ."

If we recognize a child's right to be treated with dignity and without violence, we are necessarily intruding on parents' right to privacy in raising children. This conflict should be easily resolved in favor of the child to the extent that the parent's right to use physical punishment is based on ancient and legally abandoned views of children as the property of their parents. More difficult to reconcile is the more modern justification for parental privacy: that parents, not the state, are better positioned to make appropriate parenting decisions, including the proper method of discipline. This leads back to Mary's story. In our system of *laissez-faire* parenting, Mary's mother could turn her 10-year-old daughter over to a grown man for administration of his idea of proper physical punishment. Daily, the appropriate level of physical punishment of children is left to the subjective judgment of their parents and of the other adults who act as or on behalf of their parents. Some would say that a child's right to dignity and physical integrity should outweigh the privacy rights of her parents, because no one should be subject to physical violence of any kind. Others might say that a child's right to dignity and physical integrity should outweigh the privacy rights of her parents because the assumption that parents and other adults will handle this judgment wisely is not borne out in our society. As we wring our hands over increasing reports of severe child abuse and how violent many of our children have become, it might be time to reassess policies that give parents and others the license to use even the most mild forms of violence against our children.

Words — and deeds



BRUNO E. SIMMA

UNIVERSITY OF MICHIGAN LAW SCHOOL AFFILIATED OVERSEAS FACULTY
PROFESSOR AND DEAN OF THE LAW FACULTY, UNIVERSITY OF MUNICH
LL.D. UNIVERSITY OF INNSBRUCK

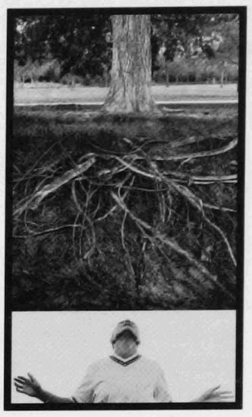
Affiliated Overseas Faculty member Bruno E. Simma earlier this year was named co-agent and counsel for Germany in a case against the United States before the International Court of Justice that raises questions under the Vienna Convention on Consular Relations when one country arrests and tries the citizens of another country. He also has been counsel for Cameroon in a case concerning land and maritime boundaries between Cameroon and Nigeria before the International Court of Justice. He is also an expert for conflict-prevention activities of the United Nations Secretary General. In addition, he is a member of the Court of Arbitration in Sports (CAS) of the International Olympic Committee and a member of the UN Committee on Economic, Social and Cultural Rights. Co-founder and co-editor of the European Journal of International Law, *he has served as vice president of the Council of the German Society of International Law.*

By
BRUNO E. SIMMA

My observations will focus on the international law on human rights developed by the United Nations because it is there that both my academic interest in the matter and my practical experience lie.

In the course of 50 years of United Nations activities, international concern for human rights has occupied an increasingly prominent place. May we, then, list the protection of human rights among the great achievements of the UN? If we only look at legal texts and institutions, and as long as the term "protection" is not given its literal meaning, this question is certainly to be answered in the positive. However, if we asked whether and to what degree these texts, rhetoric, and procedures have had an impact on the exercise of political power by member states in actual practice — and by "practice" I mean what states actually do and not (only) what they say they are doing — our assessment will have to be much more cautious. Human rights in the United Nations are not only a success story of legal activism, a growth industry, and the favorite language in which to couch your claim of the day, but also a hotbed of hypocrisy, double standards, and doublespeak — here we have probably the field of UN activity in which the discrepancy between words and deeds is most notorious. When everything is said and done in the UN (and it is an awful lot indeed), the world community turns out to be still miles away from a truly effective system of actual protection of human rights. It is true that "human rights lawyers are notoriously wishful thinkers" (J. Humphrey). While this quality may have its merits and to a certain degree be indispensable for pushing the enterprise of international human rights further ahead, it can also be infuriating for a more detached observer to see with what remarkable readiness words seem to be taken for reality in the world of international human rights.

In staking out the potential of international efforts to protect human rights, one always has to keep in mind how revolutionary such efforts must appear contrasted with the pre-1945 structures and processes of international law. While until a few decades ago the way in which a foreign government exercised its power vis-à-vis its "own" nationals constituted the very core of so-called domestic jurisdiction, in which no other state was allowed to meddle, today the exercise of state authority, and



the CHANGING faces of human rights

even the ways by which such authority constitutes itself, are the subject of international concern ranging from discussion of human rights matters in various UN organs and conferences to public censure and condemnation. Consequently, the prohibition of intervention by the UN in matters which are "essentially within the domestic jurisdiction of any state" (Article 2 [7] of the UN Charter) has been exposed to a process of constant erosion with regard to human rights concerns, and its invocation by states that have become targets of respective UN activities is now the exception rather than the rule.

Thus, international human rights law is turning the states inside out in the almost literal sense. It exposes to foreign scrutiny, criticism, and even more tangible reaction a realm that was traditionally shielded against such influences like no other aspect of sovereignty. In light of this reversal, it is simply out of the question that the development of the present UN system of protection of human rights could have taken place without encountering heavy resistance at every stage. Fifty years of UN concern with human rights have not yet, at least not entirely, succeeded in eradicating the traditional reflexes. Only too often steps forward have to be paid for, or are countered, by retrogressive moves.

Of course, the intensity of such almost "natural" resistance against the exposure of public authority to international law and procedures will correlate inversely to the degree in which a political system accommodates or even pursues human rights postulates at the level of its own domestic law and constitution. Thus, in the case of liberal democracies, at first glance, resistance seems sometimes to give way to a sort of cautious welcome to human rights treaties or procedures. Frequently, such harmony seems to be motivated by the conviction that the respective state's own domestic system has little or nothing to learn, or fear, from international human rights norms whose essential *raison d'être* is rather seen as dragging other states along towards levels of accomplishment similar to one's own. Further, governments of all ideological affiliations have always tried to keep international concern with human rights as unintimidating, and as reassuring, as possible. One natural way of inevitably defusing almost any "explosive" idea consists in entrusting it to lawyers and bureaucrats.

The tracing of symptoms of such infection of human rights by bureaucratization and politics is as fascinating to the detached scholar as it is depressing and infuriating to the human rights activist. I have had the opportunity to experience such fascination and depression in a variety of contexts.

First, between 1987 and 1996 I served as an expert member of the UN Committee on Economic, Social, and Cultural Rights — a so-called "treaty body" mandated to monitor compliance by more than 140 states that are parties to the International Covenant on Economic, Social, and Cultural Rights, one of the two main pillars of UN human rights law.

The inclusion of economic, social, and cultural rights in the UN human rights agenda was not due to some sinister machinations of the (then) communist camp, but was effected upon the insistence of the United States, whose president had proclaimed "freedom from want" as one of the Four Freedoms for which the Allied Powers fought in World War II. However, after the outbreak of the cold war, the distinction between civil and political rights and economic, social, and cultural rights was infected by East-West antagonism, the latter category being used by the socialist bloc as an argument and propaganda weapon in its counterattacks against human rights offensives of the West. Similarly, newly independent states argued in favor of the priority of creating more tolerable economic and social conditions over the realization of civil and political freedom in the process of nation building, not infrequently as a pretext for political suppression. Thus, in the history of UN involvement with human rights, economic, social, and cultural rights got off to an extremely bad start from which they have not yet recovered. Despite many rhetorical confirmations of the unity and equality of the two categories of human rights, in the actual practice both of the UN itself and its member states, these lofty statements have hitherto been little more than lip-service accompanied less by energetic efforts to grant the pursuit of economic, social, and cultural rights a more prominent place than by a continuation of institutional neglect and the worn-out doctrinal *dialogue des sourds* on the nature of these rights. Economic, social, and cultural rights are, to put it somewhat graphically, still considered to be the ultimate toothless tiger by some and a Trojan horse by others, and consequently pretty much set aside by both. As is well known, the United States has never been a leader with regard to participation in international human rights treaties. Even though this picture has changed somewhat during recent years, it is telling that the United States is not seriously considering becoming a party to the Economic Social Covenant. The reasons given for this abstention seem to me to be paradigmatic of the ideological and political bias towards economic, social, and cultural rights, and of the unwillingness to learn what modern human rights doctrine has to say about the nature of the obligations under the covenant. To this doctrine the activities of the respective committee, of which I was privileged to be a member during its first 10 years of existence, have made a decisive contribution, particularly through so-called "general comments" by which the committee interpreted the covenant.

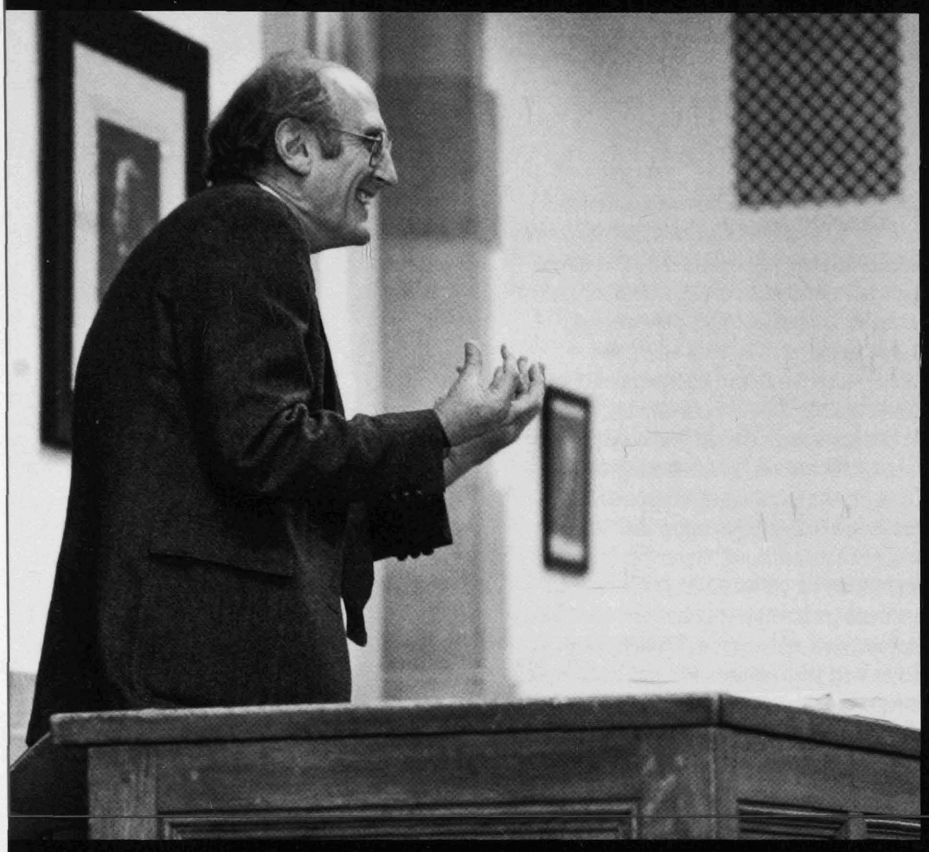
In 1996 the UN General Assembly elected me to the International Law Commission (ILC). This expert body, mandated with the codification and progressive development of international law (Article 13 [1] [a] of the UN Charter) has considered human rights issues, if defined sufficiently widely, on more occasions than one would think. Whenever it did so since I joined the commission, I have had an interesting experience: While on the Committee on Economic, Social, and Cultural Rights, I often felt like an international "black letter" lawyer defending the integrity and solidness of international law against the criticism and the idiosyncrasies of the human rights community; in the ILC, I sometimes find myself in the role of a human rights advocate trying to keep the achievements of the human rights movement free from the revenge of politics that I described earlier. My most interesting experience in this regard has been the discussion on the issue of reservations to human rights treaties at the ILC's 1997 session. Nowhere in international treaty law are reservations more popular and numerous than with regard to multilateral human rights treaties concluded under UN auspices. Even though many of these reservations,

Continued on page 22

Continued from page 21

among them also reservations formulated by western states, must be considered inadmissible under the standards of the established law of treaties, objections to them by other states' parties are neither as regular nor as forceful as would be desirable. Perusing the list of parties to major human rights treaties, any alert observer must wonder how many of these states have decided to join this great enterprise more for symbolic reasons than from a desire to conform their domestic laws and practices to internationally agreed upon standards and to subject themselves to international scrutiny. Unfortunately, the United States must again be mentioned in this context. As to the question of how to counter unacceptable reservations to human rights treaties, the differences of opinion and divergences of practice are great. In my view, this epitomizes the current interim stage of the world of international law between a society marked by bilateralism and a true international community: Undeniable community interests like that in the protection of human rights find themselves consecrated in international treaties but are then, with regard to realization and enforcement, left to old bilateralist mechanisms. The only exception to this can be found at the regional level, particularly in the system of the European Convention on Human Rights. But aside from Strasbourg, the growth in numbers and scope of reservations to universal human rights conventions urgently calls for a centralized, objective system of determining their admissibility. Hence, *de lege ferenda*, the UN human rights treaty bodies need — and deserve — to be made competent to render legally binding decisions on the admissibility and severability of such reservations. In 1997, the International Law Commission expressed itself in favor of a cautious development in this direction. But this came anything but easily.

To sum up my impressions: human rights seem to have developed into a kind of secular religion for our times. This new religion is (almost) universally professed but the degree to which it is taken seriously varies. With this one can live. What I consider more dangerous than inevitable hypocrisy is complacency.

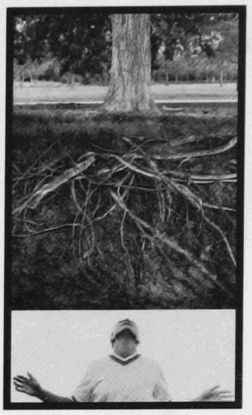


A.W. BRIAN SIMPSON

CHARLES F. AND EDITH J. CLYNE PROFESSOR OF LAW
M.A., D.C.L. OXFORD

Early this year, Professor Simpson traveled to Albania to teach law students at the University of Tirana as part of an international team of lawyers assembled by the British Foreign Office to help Albania assume its full role as a member of the Council of Europe. Professor Simpson is the author of In the Highest Degree Odious: Detention Without Trial in Wartime Britain; A History of the Land Law; Cannibalism and the Common Law; *and* A History of the Common Law of Contract. *He is a member of the Selden Society and American Society for Legal History and a Fellow of the British Academy. He is a former fellow of Lincoln College, Oxford, and former professor at the University of Kent, Canterbury.*

The growing role of the European Convention on Human Rights



the CHANGING faces of human rights

By A.W. BRIAN SIMPSON

Far and away the most effective international system of human rights protection, which has, so far, been invented, is the system established by the European Convention on Human Rights; the convention was signed in 1950, and remains the only major achievement of the Council of Europe. The council itself, which originally had 10 members, was an unhappy compromise between the European federalist movement, whose members conceived of the convention as the Bill of Rights of a future United States of Europe, and the opponents of federalism, led by Britain, who favored an organization that would make no inroads on state sovereignty, but who, nevertheless, supported the idea of a bill of rights that would serve as a statement of western values and a weapon in the ideological battles of the cold war. Both the federalists and their opponents conceived of the convention as a conservative document; its function was merely to reinforce the protection of human rights that already existed in western European democracies.

The convention came into force in 1953, but at first it had little impact. One reason was that allowing individuals to bring complaints, and accepting the jurisdiction of the Court of Human Rights at Strasboug, were both originally optional. Another was that many European lawyers knew little about it. In addition, one major western state, France, long remained outside the system. In the 1970s, however, an initial trickle of complaints began to turn into a flood. The Strasbourg Court of Human Rights (and its subsidiary, the commission) began to evolve an elaborate and dynamic jurisprudence of human rights. The consequence was that the convention ceased merely to protest the *status quo;* it came to be used instead to enhance the level of the protection offered to individuals against misconduct by government officials. Appropriate legal doctrines were evolved in Strasbourg to legitimate this — for example, it came to be said that interpretation of the convention must be "evolutive." At the same time, doctrines were evolved to soften its intrusiveness — for example, it was established that member states had "a margin of appreciation" as to precisely [which] convention rights would be protected domestically. With some ups and downs and some grumbling, member states went along with this, though for a short period Greece, under the vicious rule of the colonels, withdrew from the council entirely rather than conform. In the case of Turkey, among the long established members, conformity remains a problem.

The role of the convention is now changing as part of a remarkable experiment. With the collapse of the Soviet bloc, admission to membership in the Council of Europe, and acceptance of its convention, now much modified by subsequent protocols, has come to be required of those states that hope, one day, to be admitted into the European Union. Willingness to conform to the convention serves as a certificate of political respectability, and its ratification and observance provides a ticket of entry to a very exclusive European club, albeit not an immediate ticket of entry. The convention is being used to serve a proselytizing or missionary function, a vehicle for the creation of a new political and legal ideology in central and eastern Europe. There are now 40 members of the Council of Europe; they even include Russia. Somewhere around 700 million people are, in theory at least, now protected; the convention applies from Gibraltar to Moscow. Within the countries to which the convention has not been extended, groups of liberal minded citizens are now engaged in establishing non governmental organizations committed to human rights, a vital element in any scheme of protection, as well as arranging educational courses for students, officials, and lawyers, and producing translations of relevant texts. Knowledge of the convention and expertise in using it are both being exported on an increasing scale. And some, at least, of the new member states are fully committed to making the convention work, whilst others are beginning this difficult process.

It took something like 20 years for the convention to have much practical effect in western Europe, and it will surely take as long in central and eastern Europe. There is no doubt but that the extension of the convention will impose severe strains on the Strasbourg machinery, which has recently been rejigged in an attempt to reduce the current severe backlog of cases. The pessimistic view is that the whole system will simply collapse under the load that has now been placed upon it. It is in reality far too early to judge. My own interest in the convention was, initially, purely historical — I am indeed working on a book about its genesis back in the 1940s and 1950s. From this historical work has developed a fascination with what is now becoming of it. It is particularly exciting that quite a number of Michigan students and graduates have come to be directly involved, through internships and other mechanisms, in this great experiment in the extension of the protection of human rights.

Japan and 'post-modern' human rights

By

MARK D. WEST

I have a bit of a streak going. I have found that if I attend enough social events, not a year goes by that someone does not remark to me that *now* must be an especially fascinating time to specialize in Japanese law. Those who make that remark are almost never wrong, as developments in Japanese law are often exciting, sometimes frustrating, and always at least interesting.

In 1999, many of the more fascinating issues have arisen from Japan's struggle with "modern," or perhaps "post-modern," human rights. As an economically developed democracy, Japan of course struggles with many of the same human rights questions that emerge in the United States. But recently Japan has been forced to grapple with a unique set of issues that fall loosely under the broad rubric of human rights and that result from conflicts between Japan's traditional history and the turn-of-the-millenium forces of information access, economic liberalization, and technological change.

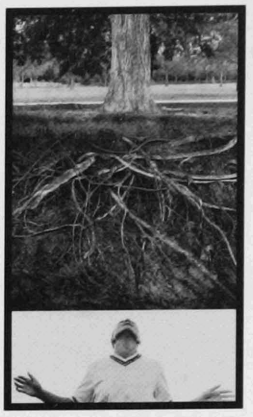
Consider the following five measures, all of which reached Parliament in the first half of 1999 — a period so busy that Parliament voted to extend its session by two months.

First, the Lower House passed a package of wiretapping bills that gives police the power to use wiretapping in cases involving drugs, guns, multiple murders, and mass smuggling of illegal immigrants. Japan is said to be the only leading industrial country that does not have laws allowing monitoring of private communications during crime investigations, and the legislation comes in response to the 1995 poison gas attack by the *Aum Shinrikyo* religious group and subsequent international pressure. An odd coalition of right-wing gangsters and three left-wing opposition parties have denounced the bill as an unconstitutional encroachment on the "fundamental human rights" of secrecy of communications and privacy. Playing on remaining wartime sentiments, popular Democratic Party of Japan leader Naoto Kan called the debate "a battle between citizens' rights and the power of the bureaucrats." A June poll found that 45 percent of respondents opposed the bill, 44 percent were in favor, and 11 percent were undecided.

MARK D. WEST

ASSISTANT PROFESSOR OF LAW
J.D. COLUMBIA UNIVERSITY SCHOOL OF LAW
B.A. RHODES COLLEGE

Assistant Professor West heads the Law School's efforts in Japanese studies and, since joining the Law School faculty in 1998, has shepherded to completion a new joint degree program with the University of Michigan's Center for Japanese Studies and compiled and had published a listing of job opportunities in Japan for U.S. law students and law graduates. He has taught at the Graduate School of Law and Politics at Tokyo University and has practiced in the corporate and litigation departments of the New York and Tokyo offices of Paul, Weiss, Rifkind, Wharton & Garrison. His research centers on differences among systems of corporate governance.



the CHANGING faces of human rights

Second, since 1955, fingerprinting has been required of foreigners living in Japan. Many non-Japanese residents, including many lifelong residents of Korean descent (more than 600,000 Koreans are in Japan), quite understandably found the procedure to be invasive and felt that they were treated as criminals. In 1992, the requirement was eliminated for foreigners with permanent resident status. In May, the Upper House passed a bill eliminating the requirement altogether. Although the bill is a victory for non-Japanese residents, one reason the requirement was relaxed may be the increasing existence and accessibility of information from sources other than fingerprints.

Third, a "citizen numbering plan" was adopted by the Lower House in June. In the past, individual records were kept in a registry system based on domicile and family. The system is often annoyingly complicated. (You really can't fight City Hall. I have yet to convince a single Japanese civil servant that *my* way is more efficient than the double-stamped, copies-in-triplicate method supposedly mandated by some unseen, yet strictly applied, regulation.) The new law would simplify such procedures as passport renewal, voting registration, and national health insurance plan changes by providing each citizen with a 10-digit number and storing relevant linked information in a national computer database. Although the law prescribes punishments for administrative officials who use the information for commercial purposes, opponents argue that such measures may be insufficient to protect individual privacy and could result in human rights violations.

Fourth, in May, the Japanese Parliament enacted a law that aims to ban child prostitution and child pornography. Existing laws had been vague, and required a victim to file a complaint before the police could take action. Opponents of the new law argue that it restricts free speech and as such impinges on human rights, while supporters argue that the law is necessary to protect the rights of minors.

Finally, also in May, Parliament passed Japan's first national Freedom of Information Act. Proponents argue that the law is a first step toward allowing ordinary citizens access to government documents, a liberty they label as a human right in a modern state. But some opponents note that the law does not go far enough, as it stipulates that government organizations are allowed to refuse to release information if it would identify individuals linked to the requested information, was given to the government voluntarily by corporations on the understanding that it would not be made public, would be detrimental to the interests of the nation and its relations with other countries, or would impede criminal investigations or threaten public security.

Besides these relatively modern concerns, Japan also faces a host of basic human rights issues related to race, treatment of criminal defendants, treatment of the mentally ill, religious freedom, and gender. (With respect to the latter, Japan in April revised its Equal Employment Opportunity Law to prohibit sexual discrimination. In June it became the last developed democracy to approve the Pill, a development caused by protests that ensued after approval for Viagra took less than six months, while the petition for the Pill lingered for nine years.)

One of the luxuries of studying Japanese law is that almost all of these issues, whether traditional or modern, have been subject to relatively little examination by scholars trained in U.S.-style legal analysis and law and economics. As a researcher, this means that much of the most fertile ground is just begging for analysis. As a teacher, it means that I have the opportunity to present these issues to bright students who have never confronted the issues before, but who have enough initial training in the law, as well as life experiences sufficiently different from my own, to create exciting class discussion.

Fannie Mae Foundation grants aid Legal Assistance for Urban Communities Clinic

The Law School's Legal Assistance for Urban Communities Clinic has received two federal grants totaling approximately $200,000 to support and expand its work and has added a new clinical assistant professor.

"The Fannie Mae support has given the Urban Communities Clinic the ability to enhance our legal assistance to our non-profit development clientele," said Clinic Director Rochelle A. Lento, a clinical assistant professor of law. "The foundation's assistance helps us address the multitude of legal issues related to site control and land acquisition — a threshold requirement for any affordable housing development project."

The Detroit-based clinic began using its portion of funds from a Fannie Mae Foundation University-Community Partnership grant earlier this year to support its work with the Detroit Eastside Community Collaborative (DECC). A second, $100,000 grant from the Fannie Mae Foundation is being used to "assist six to ten nonprofit developers [to] research the state of title on developable land, identify the issues, outline a plan of action or the necessary steps to clear title, and assist with acquisition strategies to acquire both publicly- and privately-owned land."

J. Taylor Teasdale, formerly a corporate attorney with Lewis & Munday, P.C., in Detroit, has joined the clinic to work on programs associated with the grants. Teasdale earned his LL.M. at the London School of Economics and his J.D. from the Detroit College of Law. He also studied at the University of Windsor Law School and is a member of the Michigan and Ontario Bars.

Teasdale has been working with five clinic clients — the community-based housing/development groups V.I.S.I.O.N. Inc., Messiah Housing Corporation, Creekside Community Development Corporation, Grandmont/Rosedale Development Corporation, and U-SNAP-BAC Inc. — "to target properties appropriate for development." The work includes "obtaining title insurance commitments (which include title searches) for the properties, charting the relevant information from the title searches in a user-friendly form, prioritizing and addressing title problems, and assisting the developers with acquiring the property from the city or the private owner."

He also is working with Detroit officials to improve the city's policies for disposition of city-owned land. Much of the real estate the clinic deals with or proposes to improve is owned by the city, and Teasdale's examination of the Detroit's property disposition policies is aimed at expediting the clinic's ongoing work.

In addition, the clinic has moved its headquarters from its former downtown location to a 97-year-old converted mansion on East Jefferson that it shares with other office tenants. The Frederick K. Stearns House, as the Arts and Crafts style mansion is known, was built by the Detroit architects Stratton and Baldwin. The formerly single-family home is half-timbered on the exterior. Inside, it is known as one of the best surviving showcases for Pewabic Pottery tile in Detroit. The address is part of the Historic West Village section of Detroit, which hosts an annual house and garden tour.

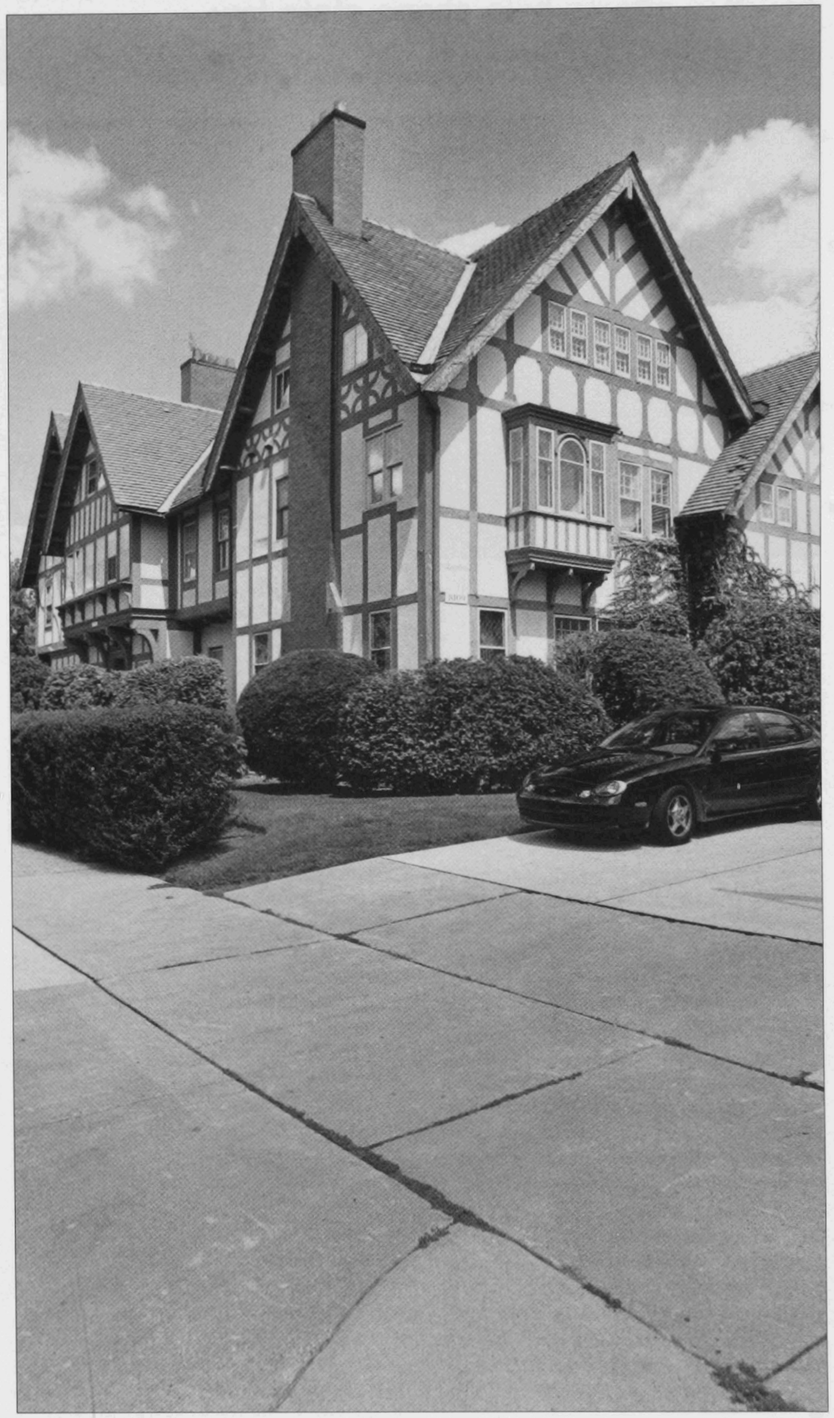
The clinic was cited in July at the Lawyers for One America Dinner that followed President Clinton's Call to Action to the Legal Profession (see story on page 80) as one of the "creative and effective approaches undertaken by the legal community . . . that serve to heighten diversity and promote equal justice." The clinic was one of 32 "Model Programs" operated by corporate counsel, bar associations, law firms, and law schools that were discussed in the dinner program. The citation read: "A couple of years ago, Northwest Detroit Neighborhood Development (NDND), a community-based nonprofit organization that is committed to doing something about the impoverished Detroit neighborhood of Brightmoor, approached the Legal Assistance to Urban Communities Clinic (LAUC) at the University of Michigan Law School. Their law students receive academic credit for helping groups like NDND.

"Working with the sure-footed counsel of the LAUC students, NDND has facilitated the commencement of construction of 50 units of new scattered-site housing. The students' accomplishments include helping the group to acquire 100 lots of property, structure a construction limited partnership, acquire the first Michigan low-income housing tax credits for scattered-site development, and negotiate and monitor construction contracts.

"This project typifies students' work in the LAUC, an eight-year-old program at the University of Michigan Law School. Jointly funded by the Law School, the State of Michigan, the Fannie Mae Foundation, and others, its faculty and professional staff supervise 24 students a year, working on behalf of 30 clients."

Clinical Assistant Professor Rochelle Lento, director of the Legal Assistance for Urban Communities Clinic, confers with Clinical Assistant Professor J. Taylor Teasdale, also with the clinic. Teasdale, who joined the clinic this year, focuses on projects associated with the clinic's two grants from the Fannie Mae Foundation.

BRIEFS



The Legal Assistance for Urban Communities Clinic is housed on the third floor of this 97-year-old converted mansion on East Jefferson Avenue in Detroit. The clinic gives law students the opportunity to learn first-hand the intricacies of urban revitalization and how to help community-based organizations improve and build affordable housing in the city.

Student efforts help shape state law
on legal protection for children

Clinical Professor Donald Duquette is shown testifying in Lansing in March 1998 in favor of proposals to establish legal representation for children in proceedings that involve them. A number of Law School students worked on the proposals, which influenced the new Michigan law on attorney-guardian ad litum *that went into effect last spring. Duquette directs the Law School's Child Advocacy Law Clinic, a* pro bono *legal consultant to the lieutenant governor's staff on the project.*

Donald Duquette watched with satisfaction last spring as Michigan lawmakers established the kind of legal protection for children that he and many of his students had advocated for several years. P.A. 480 of 1998 became effective in March 1999, and shortly afterward Duquette sent a letter to four former students who had worked on the proposal trumpeting that "Lawyer-guardian *ad litem* statute passes in Michigan."

He happily noted in his letter — sent to Gregory Stanton, '95, Rachel Lokken, '97, Kristin Schutjer, '98, and Albert Hartmann, '98 — "you will recognize the concepts and the language since much of it reflects your efforts while students here at Michigan Law and while in the Child Advocacy Law Clinic [CALC]."

"Greg Stanton helped research and draft the recommendations of the State Bar of Michigan Children's Task Force back in 1995," noted Duquette, a clinical professor of law and director of CALC. "Those recommendations were formally adopted by the State Bar in 1996. In 1997, those concepts were translated into bill form, in part through the efforts of Rachel Lokken and Kristin Schutjer. This team came up with language that is now enacted into law. Albert Hartmann authored the influential law review note in the fall 1997 *Michigan Journal of Law Reform* that set out some of the principal arguments in support of this change."

"On the national scene, this Michigan model of legal representation of children is having great influence," Duquette said. "Many find that our approach nicely addresses the needs of the child for aggressive and independent advocacy while accommodating some children's immaturity and inability to competently instruct counsel. Separate bills apply this role to children in child protection cases, guardianship cases, and child custody disputes.

"Nice work. I thought you would like to know that your efforts have borne fruit."

"These bills endorse the best interests role, but in a way that treats the individual child fairly and with respect while recognizing the special needs and immaturity of children," Duquette said in testimony on the proposals in March 1998 at Lansing. "This proposal, where the court appoints a 'child-attorney' [called 'lawyer-guardian *ad litem*' in the law as it was passed] to represent the best interests of the child, is a simple but elegant — and practical — solution to this problem. The bill requires that the court always be informed of the child's wishes, even when they conflict with the advocate's best interests recommendation. In case of a conflict between the child-attorney's best interests view and the child's wishes after discussion and counseling, the bill provides that the child-attorney must raise the matter with the court for the court's determination."

"These bills do not expand the circumstances under which the child would be independently represented, but merely define the role more specifically," Duquette said. "Under these bills, the child-attorney remains mandatory in protection proceedings, but optional in child custody or guardianship where the court is to appoint a child-attorney only if the court determines that the child's interests are not adequately represented."

"The proposed system is comfortable because it gives the child-attorney the clarity and flexibility necessary for him to use his training as an attorney," Hartmann said in remarks prepared for delivery at the same legislative hearings. "Attorneys are trained to evaluate a legal situation and arrive at a satisfactory resolution based on the goals of the representation. The child-attorney will seek a resolution that furthers the best interests of the child."

Sharing the Law School's commitment to child advocacy

This year's session for Child Welfare Law Summer Fellowship trainees began just as the sessions each of the four previous years had begun: with the fellows introducing themselves and finding that they share many ideas, experiences, and a dedication to the welfare of children.

Four of the 16 were first-year University of Michigan Law School students: Janet A. Bradley, Sarah A. DeYoung, Cristina W. Ritchie, and Jonathan P. Witmer-Rich. Others came from law schools in California, Connecticut, the District of Columbia, Massachusetts, Mississippi, and South Carolina.

But this year's class was different, too. It was, as organizer Naomi Woloshin put it, "the beginning of the new fellowship program." This year's class is a "very exciting" one, said Woloshin, who is program manager for child welfare career development at the Law School's Child Welfare Law Resource Center.

University of Michigan Law School students Janet A. Bradley, Sarah A. DeYoung, Jonathan P. Witmer-Rich, and Cristina W. Ritchie during a break from their training as Michigan Child Welfare Law Summer Fellows. These four and a dozen other fellows from as far away as California, Mississippi, and Massachusetts spent three intensive days training at the Law School in May before heading out to begin their summer internships with child advocacy agencies.

Launched five years ago with funds from the W.K. Kellogg Foundation, the program this year for the first time operated without Kellogg funds and with support from the Bergstom Foundation and the Holden Foundation. The original Kellogg grant provided seed funds to launch the program as a demonstration project. The Bergstrom Foundation underwrites the training, fellows' transportation, and two stipends for Law School students; the Holden Foundation also funds two Law School students' stipends and two stipends for fellows from other schools. Some fellows secured other funding and some came at their own expense.

While most of us were relaxing for our Memorial Day weekend, the summer fellows spent a rigorous three days at the Law School being introduced to the legal, organizational, and philosophical byways by which practitioners navigate the minefield of child advocacy.

The training period is "very intensive and focused," Dean Jeffrey S. Lehman, '81, told the fellows. It shares with them what faculty members and "generations of students before you" have learned during the Law School's more than quarter century of commitment to child advocacy.

Fellows listened as Suellyn Scarnecchia, '81, associate dean for clinical affairs, led them through the child protection and foster care legal process and assigned the legal exercise that they would work on throughout the training program.

In other parts of the program, James Henry, of the School of Social Work at Western Michigan University, discussed interview techniques with child sexual abuse victims. Henry also joined Woloshin and Clinical Assistant Professor Melissa Breger, '94, (see story on page 46) to present a session on sexual abuse that included a demonstration of expert testimony.

Fellows also heard programs on drug abuse, child development, rules of evidence, professional responsibility, and standards of practice. They took part in small group discussions, shared each other's views in informal conversations and, at dinner one evening, heard a talk by the Hon. Nancy C. Francis, '73, Washtenaw County Family Court Judge.

Throughout the training, they were role playing in a hypothetical case and honing skills for making legal decisions as attorneys for children, parents, and agencies at the different stages of child welfare court hearings. On the final day, they tried out what they had learned in a courtroom exercise involving the hypothetical case.

Afterward, the interns dispersed across the country for summer internships at child advocacy agencies. Of the Law School students, Bradley and Witmer-Rich remained in Ann Arbor to work with the Law School's Child Advocacy Law

Continued on page 30

Continued from page 29

Clinic. DeYoung's summer internship was with the Children's Law Clinic in Grand Rapids, and Ritchie worked with Legal Services for Children in San Francisco.

The summer training, which is helping build a network of child advocacy specialists, is designed for young law students who expect to use child advocacy skills in their future careers. Many already have acquired considerable experience in the field. Ritchie, for example, was an investigator for the D.C. Public Defender's Service and then for Covington & Burling's Child Welfare Initiative before enrolling in the Law School; Bradley, whose undergraduate work at the University of Michigan included a focus on developmental psychology, said she was attracted to the Law School because of the opportunity to work in the Child Advocacy Law Clinic.

Charting a way through the 'Internal Protection Alternative'

Discussions like this one at the First Colloquium on Challenges in International Refugee Law, held at the Law School in April, led to development of "The Michigan Guidelines on the Internal Protection Alternative." Here, Rodger P. G. Haines, Q.C., of the University of Auckland, New Zealand, makes a point while student/session reporter Anne Cusick takes notes.

"Intellectual conversation in the field of refugee law ought, if at all possible, to lead to concrete results for the people who need them." In voicing this sentiment, Professor James C. Hathaway, director of the Law School's Program in Refugee and Asylum Law, set the tone for the First Colloquium on Challenges in International Refugee Law, held at the Law School in April.

Colloquium participants — experts from around the world and law students who had spent an academic term in Hathaway's seminar in comparative asylum law — followed his lead. They thrashed out 26 guidelines to chart the way through the thicket of the often misunderstood and misapplied "internal protection alternative" — and distributed them worldwide to some 500 refugee judges, policymakers, and advocates.

The guidelines begin by noting that it is increasingly common for countries to use "internal flight" or "internal relocation" rules to keep out people who qualify for refugee status under the Refugee Convention of 1951 but who are considered to be in danger in only part of their home country. "In this," the guidelines say, "as in so many areas of refugee law and policy, the viability of a universal commitment to protection is challenged by divergence in state practice. These guidelines seek to define the ways in which international refugee law should inform what the authors believe is more accurately described as the 'internal protection alternative.'"

The guidelines are divided into seven categories:

- The analytical framework;
- General nature and requirements of "internal protection alternative" analysis;
- The first requirement: an "antidote" to the primary risk of persecution;
- The second requirement: no additional risk of, or equivalent to, persecution;
- The third requirement: existence of a minimalist commitment to affirmative protection;
- "Reasonableness"; and
- Procedural safeguards.

The focus of the colloquium was driven by the fact that increasing numbers of nations, especially wealthier and more powerful nations, are pursuing policies designed to refuse admission and to keep refugees in often insecure areas within their country of origin. Colloquium participants noted that "contemporary practice in most developed states of asylum has . . . evolved to take account of regionalized variations of risk within countries of origin. Under the rubric of so-called 'internal flight' or 'internal relocation' rules, states increasingly decline to recognize as Convention refugees persons acknowledged to be at risk in one locality on the grounds that protection should have been, or could be, sought elsewhere inside the state of origin."

Participants recognized in their guidelines that in some cases the country to which the refugee is attempting to flee may refuse to admit him because investigation has revealed that the refugee really has a safe haven within his own country. "Where a careful inquiry determines that a particular asylum-seeker has an 'internal protection alternative,' it is lawful to deny recognition of Convention refugee status," they concluded.

But they stressed that the crux of the decision to deny refugee status must be a finding that the asylum seeker could, in fact, return and be admitted to a region of the country of origin in which he or she really will enjoy meaningful and durable protection. Participants also stressed that the refugee must be made aware of the basis for that decision and have the chance to respond to it.

"To ensure that assessment of the viability of an 'internal protection alternative' meets the standards set by international refugee law, it is important that the putative asylum state clearly discloses to the asylum-seeker that internal protection is under consideration, as well as the information upon which it relies to advance this contention," they said. "The decision-maker must in all cases act fairly, and, in particular, ensure that no information regarding the availability of an 'internal protection alternative' is considered unless the asylum-seeker has an opportunity to respond to that information, and to present other relevant information to the decision-maker."

Colloquium participants included: Hathaway; Philip Rudge, founding general secretary of the European Council on Refugees and Exile and a co-teacher with Hathaway during the 1999 winter term; Deborah Anker, Harvard University; Rodger P.G. Haines, Q.C., University of Auckland; David A. Martin, University of Virginia; Jean-Yves Carlier, Université de Louvain-la-Neuve, Belgium; Lee Anne de la Hunt, University of Cape Town; and V. Vijayakumar, National Law School of India University.

Nine Law School students also participated: Deborah Benedict, Jonathan Chudler, Anne Cusick, Michael Kagan, Sheila Minihane, Lakshmi Nayar, Frank Richter, Ali Saidi, and Kathryn Socha.

A complete set of the guidelines is available via e-mail to proctorj@umich.edu, or by writing Janis Proctor, 1033 Legal Research Building, University of Michigan Law School, Ann Arbor, Michigan 48109-1215.

"The decision-maker must in all cases act fairly, and, in particular, ensure that no information regarding the availability of an 'internal protection alternative' is considered unless the asylum-seeker has an opportunity to respond to that information, and to present other relevant information to the decision-maker."

Law School **conferences** deepen outlooks, insights

Conferences and symposia ornament the progression of the academic year like special guests whose visits you enthusiastically await beforehand and pleasantly reflect on afterward. Half a dozen conferences and symposia dot the 1999-2000 academic year calendar, offering the opportunity for deep examination and discussion of a variety of issues from gender equity and athletics to American law's impact on native Americans and the expansion of the number of groups and backgrounds with which modern Americans identify.

The first program of this kind already will have taken place by the time this issue of *Law Quadrangle Notes* goes to press: the conference on "The Role and Limits of Unilateralism in International Law: A U.S.-European Symposium," held at the Law School September 24-25. The program was jointly sponsored by the Law School's Center for International and Comparative Law and the *European Journal of International Law*. At deadline time, the program was to include sessions on "International Economic and Environmental Law," "The United Nations and the Maintenance of Peace," and "International Law Making."

Each session included discussions from the U.S. and European viewpoints, and remarks by one or more commentators. For example, the session on international lawmaking included a presentation of the U.S. viewpoint by Kenneth Anderson, of American University, Washington College of Law; comments from the European perspective by Peter Malanczuk, of Erasmus University; and comment by Professor James Hathaway of the University of Michigan Law School.

Continued on page 32

Continued from page 31

The conference was the first for Professor Merritt B. Fox as director of the Center for International and Comparative Law; Fox was named director in July. (See story page 45).

In addition, Fox and Professor Michael A. Heller, who serve as directors for corporate governance for the William Davidson Institute, which investigates and assists nations whose economies are in transition to modern free market systems, organized a conference on "Corporate Governance Lessons from Transition Economy Reforms" that also was held September 24-25. The Law School co-sponsored the conference, which focused on the questions of "what, if anything, do the reform experiences of transition countries teach about corporate governance theory generally?"

Here are the other conferences and symposia to be held at the Law School during this academic year:

■ **Children in Crisis: Rethinking Juvenile Justice**. January 28, 2000. "From the two Chicago boys accused of rape and murder, to the recent rash of school shootings, juvenile crime seems like an ever-present reminder of society's failures," symposium planners say. "The symposium will examine this timeless issue by addressing contemporary and traditional approaches to juvenile crime and the often-tragic consequences." Sessions are to deal with police interviewing techniques, trying minors as adults, juvenile detention, school shootings, and careers in the field. Presented by the Michigan Criminal Law Society.

■ **Competing in the 21st Century: Title IX, Gender Equity, and Athletics**. February 4-5. "Title IX [of the Civil Rights Act] has spurred much litigation, especially during the past 10 years," say organizers of the symposium, which is presented by the *Michigan Journal of Law Reform*. "Female athletes have taken their universities to court to prevent women's sports from being cut, or to gain varsity status for women's club teams. Surprisingly, the Supreme Court has yet to consider a case specifically addressing the issue of gender equity in athletics. Due to the continuing controversy surrounding Title IX and its current enforcement, there is abundant room for reform in this area of the law, making the subject ideally suited to a *Michigan Journal of Law Reform* symposium."

■ **Private and Public Ordering of Commercial Transactions**. February 11-12. Presented by the *Michigan Law Review* with assistance from Professor Ronald J. Mann, who will be one of the presenters. Other speakers are to include commercial law experts from Harvard, Yale, Columbia, the University of Chicago and Boalt Hall at the University of California at Berkley, as well as University of Michigan Law School faculty members Mark D. West and James J. White, '62, and Professor Scott J. Masten of the University of Michigan School of Business Administration. Sessions will deal with Article 2 and the reality of sales contracts; the role of leverage; and private ordering without public ordering.

■ **Identities in the Year 2000 and Beyond**. March 17-19. Presented by the *Michigan Journal of Race & Law*, the symposium "will bring together students, scholars, practitioners, and activists to explore the ways in which various identities are currently recognized in American legal institutions, to explore the ways in which conceptions of identity will evolve, and to evaluate different techniques for multi-dimensional analysis in the courtroom and the classroom," according to the symposium proposal.

■ **A Decade of Indian Law — Rewriting Justice Marshall's Vision of Indian Country**. March 24. Topics will cover tribal/state relations, sovereign immunity legislation, and the potential impact of international law. Presented by the Native American Law Students Association and the *Michigan Journal of Race & Law*, with assistance from the University of Michigan's Office of Multi-Ethnic Student Affairs.

Appeals Court: intervenors can enter suit

The U.S. Sixth Circuit Court of Appeals ruled in early August that a coalition of African American and Hispanic students may join the University of Michigan in defense of its admissions policies. The policies of the Law School and the undergraduate program are being challenged in two lawsuits brought by the Washington, D.C.-based Center for Individual Rights (CIR). The ruling overturns an earlier trial court decision and delays the original August 30, 1999 date to begin trial of the suit against the Law School until August 28, 2000. CIR brought the suit in late 1997 to challenge the use of race as one of many factors that go into making admissions decisions.

"We welcome the intervenors' involvement," Elizabeth Barry, '88, the University's associate vice president and vice general counsel, said in a statement released after the decision. "Both the intervenors and the University are fighting for the same thing: the preservation of a diverse student body. This ruling puts students front and center in the cases and their point of view is very important to this debate."

University honors Israeli jurist, Law School supporter AHARON BARAK

Joseph Vining, the Harry Burns Hutchins Collegiate Professor of Law, has an abiding respect for the work and dedication of Aharon Barak, president of the Supreme Court of Israel. So he was elated when his nomination of the Israeli jurist to receive an honorary degree from the University of Michigan was accepted. And he was happier still to be able to escort Barak during much of his visit to the University of Michigan campus last May to receive his honorary degree as part of spring commencement ceremonies.

Barak is well known at the Law School. He was a visiting professor here each year from 1990-93, and was scheduled to teach but was unable to come in 1995, the year he became president of the Israeli Supreme Court. He currently is a member of the advisory board of the Law School's Center for International and Comparative Law. The written citation for the honorary degree ceremony read:

"A brilliant legal scholar and jurist and president of the Israeli Supreme Court since 1995, Aharon Barak is widely respected for his courage, integrity, and wisdom in adjudicating some of the most difficult legal problems the western democratic tradition has presented.

"Since his appointment as a Supreme Court justice in 1978, Judge Barak has widened citizens' rights of petition and has helped shape Israel's constitutional, administrative, and commercial laws through his opinions and scholarship.

PHOTO COURTESY PROFESSOR JOSEPH VINING

Professors Samuel R. Gross and Roderick Hills Jr. chat with Aharon Barak, president of the Supreme Court of Israel, during a reception at the Law School in conjunction with Barak's receipt of an honorary degree at the University of Michigan's spring commencement in May. At right is Ina Sandalow, spouse of Professor Terrance Sandalow.

"A graduate of the Hebrew University Law School, Judge Barak joined the school's faculty in 1963 and was appointed dean in 1974. He is a dedicated public servant, both in his own country and internationally, respected for his candor and great personal integrity. Among his many contributions to international law is a treaty on bills of exchange created at the request of the United Nations Commission on International Trade Law. He also contributed significantly to the Camp David Peace Accords while serving as Israel's attorney general.

"Judge Barak has published extensively in both Hebrew and English, including six books and nearly 100 articles. He is a frequent and welcome visitor to the United States, where he teaches seminars in constitutional law at Michigan's Law School, as well as at the law schools of Yale and Harvard universities. Judge Barak has fostered cooperation and friendship between members of the University of Michigan faculty and Israeli institutions through his participation in the international exchange program Partnership 2000.

"In recognition of his distinguished scholarship and lasting contributions to society and to the academy, to relations between Israel and the University, and to international peace and understanding, the University of Michigan is proud to present to Aharon Barak the honorary degree Doctor of Laws."

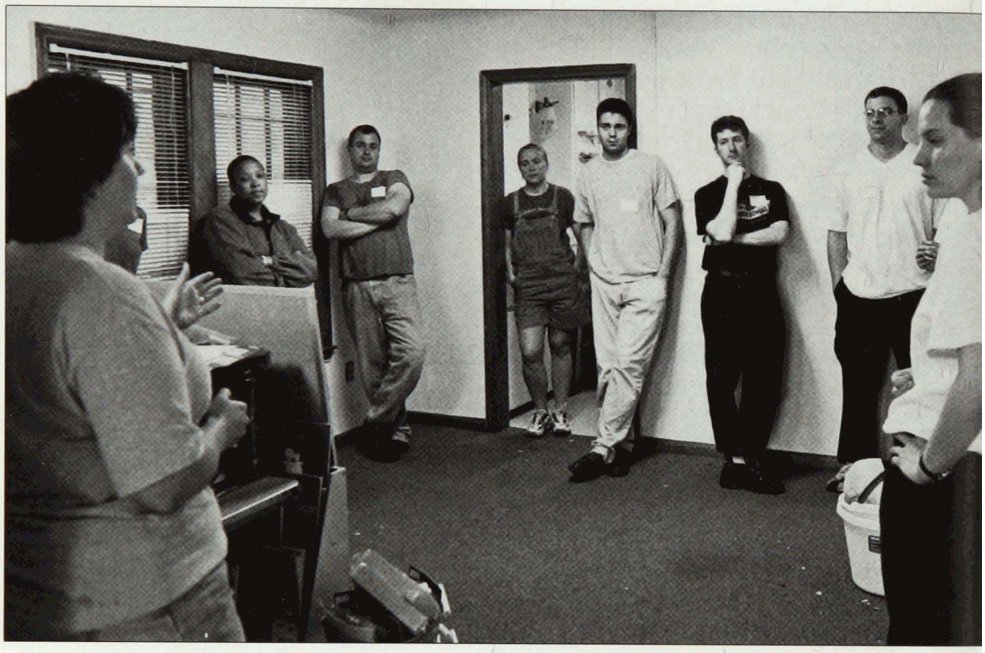
New law students aid area agencies; speakers added to service day

John Sloat, joking about the similarities between his protective goggles and a high-priced brand of sunglasses, brushed his cleaning sponge back and forth over the ceiling of the old house that makes up part of SOS/Prospect Place in Ypsilanti. The goggles may not have equaled the allure of Okley sunglasses, but the satisfaction that Sloat reaped from helping the family assistance agency more than compensated.

Sloat and about a dozen other summer starter law students, accompanied by Clinical Professor Nick Rine and Mary Dluzen of the Law School Admissions Office staff, spent a morning in June scouring walls, moving and checking toys and furniture, and helping in other ways to ready SOS/Prospect Place for its summer program.

SOS provides services for women and children in crisis and aids homeless people. The center was one of four work sites for the new students during the service day portion of their orientation to the Law School. The other sites were:

- Food Gatherers, a "food rescue" program that collects unused food for distribution to needy. Students helped with food sorting, preparation for a fundraising event, and painting.
- Dawn Farm, a residential treatment facility for young people with substance abuse problems, where law student volunteers worked with residents at gardening, spring planting, and painting.
- The Ann Arbor Hunger Coalition, which provides meals to needy people. Law student volunteers helped clean and sanitize kitchens of Ann Arbor churches where the meals are prepared and served.



The service day program has been part of summer and fall orientation for several years. This year, the program added lunchtime speakers to help acquaint the incoming students with the legal issues faced by clients and leaders of the agencies where the students were doing their volunteer work. Rine, a member of the Law School's clinical faculty, was the speaker at SOS.

James E. Schaafsma, '89, and Lisa S. Ruby, '91, both of Legal Services of Southeastern Michigan, were the speakers, respectively, at Food Gatherers and at the Ann Arbor Hunger Coalition.

At Dawn Farm there were three speakers: Washtenaw County Circuit Court Judge Archie Brown; the Hon. Elizabeth Hines, '77, chief judge of the Washtenaw County District Court; and Sheila Blakney, chief assistant public defender for Washtenaw County and president of the Washtenaw County Bar Association.

Students ended their service day with an outdoor barbecue dinner on the Law Quadrangle. The dinner speaker was Robert Precht, director of the Law School's Office of Public Service. Precht related how then-candidate John F. Kennedy, in a brief wee-hours-of-the-morning talk at the Michigan Union in 1960, sketched the ideas that would lead to establishment of the Peace Corps during Kennedy's presidency.

Service Day was organized by the Law School's Office of Student Services and Office of Public Service.

At far left, law students who have come to SOS/Prospect Place for the service day portion of their orientation in June hear SOS/Prospect Place Children Services Coordinator Terri Beadlescomb explain how the Ypsilanti-based agency aids women, children, and homeless people. Left, first-year law student John Sloat reaches high to scrub the ceiling of a building at SOS/Prospect Place. Other volunteers cleaned rooms, evaluated toys, and otherwise helped prepare SOS for its summer daycare program. Overall, about 60 students worked at four sites on service day: SOS/Prospect Place; Food Gatherers; Dawn Farm; and the Ann Arbor Hunger Coalition.

Summer's midday programs head outdoors

Summer's sunny days and warm temperatures offer new venues for Law School brown bag programs — like this one, where listeners in the Hutchins Hall interior courtyard listen as Clinical Assistant Professor Philip Frost, assistant director of the Legal Practice Program, discusses a civil case. Frost's talk was one of three in the "Anatomy of a . . . Case" series that presented sessions on a criminal, a civil, and a family law case. Other speakers in the series were Assistant Clinical Professor Bridget McCormack and Rebecca Shiemke, who supervises the student-run Family Law Project.

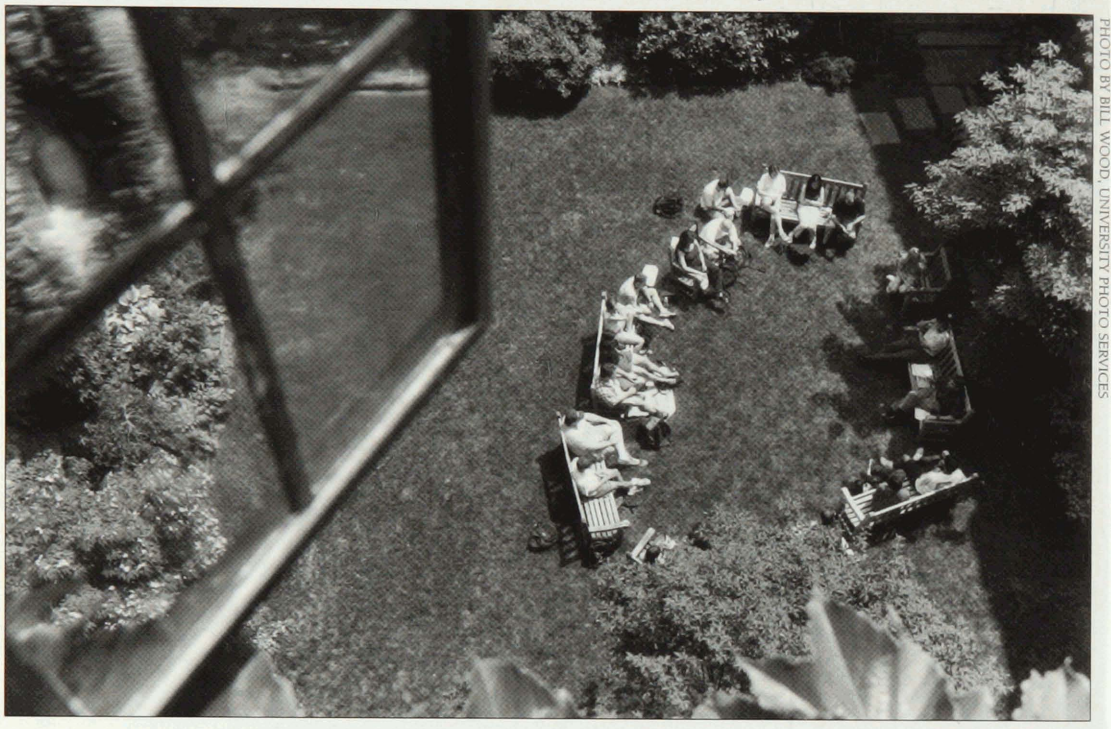


PHOTO BY BILL WOOD, UNIVERSITY PHOTO SERVICES

Images of the Law School's architecture often etch themselves into graduates' memories as they pursue their careers. Many of these memories play off the light of colored windows and slate roofs against the reds and oranges of autumn hardwoods; others mingle with recollections of gray winter skies and white snow, or (read: "hurray!") spring flowers.

For some students, however — "summer starters" and those who for other reasons attend classes during the warmest months — they also may recall classes held outdoors or discussions held in the sunny open-air courtyard bounded by the first floor hallways of Hutchins Hall. David Baum, '89, director of Student Services, finds the courtyard a welcome alternative site for the midday programs he arranges during the summer months.

This summer, he presented three lunchtime brown bag programs in the informal setting of the courtyard. The series included: talks in June by Clinical Assistant Professors Bridget McCormack and Philip Frost, the assistant director of the Law School's Legal Practice Program; and in July by Rebecca Shiemke, an attorney with Legal Services of Southeastern Michigan Inc. and supervisor of the student-run Family Law Project. In each program, billed as "The Anatomy of a … (fill in the type of case)," the speaker outlined the steps and processes that go into the case.

Together, the speakers analyzed the workings of a criminal case, a civil case, and a family law case.

The three speakers also showed different approaches to teaching about their cases: McCormack, who used a hypothetical case composed of pieces of actual cases she had worked on, explained that she prefers to use such cases for teaching purposes; Frost and Shiemke used actual cases for their discussions, but did not reveal names of the companies and people involved.

McCormack outlined the processes that make up a criminal case involving a defendant accused of selling a controlled substance; Frost traced the steps involved in pursuing a case against a dealer who charged a manufacturer/supplier with violating antitrust laws; Shiemke re-traced the steps in a case in which a woman sought a personal protection order against her husband, later filed for divorce from him, and finally rejoined him. All speakers led students through their cases step by step and answered any questions that arose along the way.

McCormack's talk, "based on many cases that I did when I was a public defender," moved from the incident, in which the defendant was said to have sold heroin to an undercover officer, through arrest, arraignment, pre-trial discovery, investigation, motions, hearings, and then the trial and appeals.

Frost described how a dealer charged his client, the manufacturer/supplier, with fraud and antitrust violation, and how his client countersued. Eventually, the case went to arbitration in New York State, and the arbitration panel ruled against the dealer. "They kept us in suspense for a while," Frost said. "We got a decision in our favor a couple of weeks later."

Shiemke explained that her clinic's client, a woman who brought her children with her to Ann Arbor when her husband expected her to join him in Minnesota, sought a personal protection order in Michigan when her husband tried to locate and contact her. The case was further complicated when the husband filed action from Minnesota for custody of the children, and later, when his attorney filed to change judges when the hearing for renewal of the PPO was scheduled. "It's not a typical case," she explained. "All our cases are not like this." But it was a good teaching case.

Unprecedented recruiting success adds eight new faculty

For 140 years, the heart of the University of Michigan Law School has been its research and teaching faculty. From Thomas Cooley to the present day, our professors' blend of scholarly preeminence and classroom distinction has left Michigan graduates with vivid memories of transforming moments, profound aphorisms, and compelling personalities.

The impulse to grow and renew means the faculty always has its sights on possible additions. Sometimes proven stars are identified at other law schools and brought "laterally" to Michigan. Just as often, the academic leaders of tomorrow are identified early and begin their teaching careers in Ann Arbor.

This past year, unprecedented success in faculty recruitment has taken the Law School to a new level of breadth and depth, while maintaining its reputation for unsurpassed excellence. Eight exceptional legal scholars agreed to join Michigan's tenured and tenure-track faculty, the most significant expansion of the faculty in the Law School's history.

"By accepting our invitation to join the Michigan faculty, these outstanding scholars have continued a tradition through which Michigan students are able to study with the most original and penetrating minds in the legal academy," Dean Jeffrey S. Lehman, '81, observed. "What makes this past year so remarkable is the sheer number of individuals who accepted our offer to teach at Michigan. Our faculty, long considered one of the most distinguished in the world, is today stronger and more numerous than ever before in our history."

The new professors hold expertise in an extraordinary range of subjects, and their scholarship has been influential both in this country and overseas. Their fields of study include tax law, law and economics, legal history, constitutional law, European Union law, international trade law, and environmental law.

Continued on page 38

OMRI BEN-SHAHAR | DANIEL HALBERSTAM | ELLEN KATZ

In the last issue of *Law Quadrangle Notes*, three of the eight new Michigan faculty members were profiled (Summer 1999, pp. 31-32):

• **Omri Ben-Shahar**, an authority on law and economics, comes to Michigan after several years as a faculty member at Tel Aviv University.

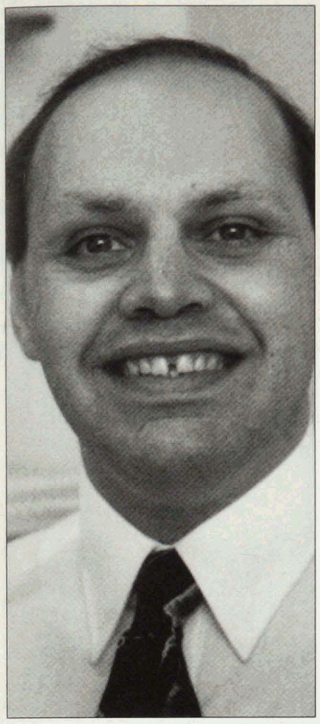
• **Daniel Halberstam**, a former law clerk to Justice David Souter of the U.S. Supreme Court, is beginning his teaching career with an emphasis on the law of the European Union.

• **Ellen Katz**, also a former law clerk of Justice Souter, begins her teaching career with an emphasis on environmental law.

new faculty

In the following pages, we are pleased to introduce the other five new additions to Michigan's research and teaching faculty.

REUVEN S. AVI-YONAH



Professor Avi-Yonah's current research focuses on the interaction of globalization, tax competition, and the welfare state.

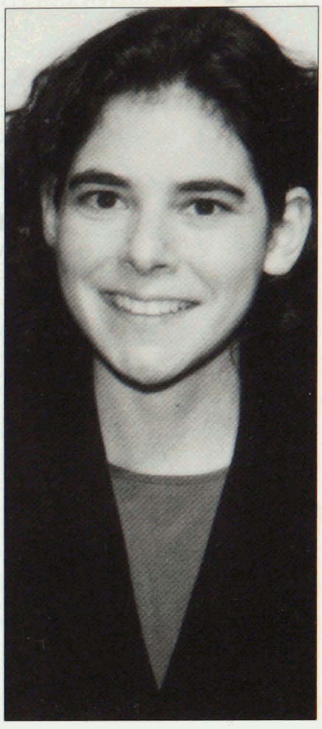
Professor Reuven Avi-Yonah comes to Michigan from the Harvard Law School, where he has been a faculty member since 1994. A specialist in tax law and a former history professor, Professor Avi-Yonah received his B.A. in history, *summa cum laude*, from Hebrew University, and went on to earn both his Ph.D. in history and his J.D. at Harvard. He has taught history at Boston College, and last year he was a visiting law professor at the University of Michigan and at the University of Pennsylvania.

While a student, Professor Avi-Yonah received many honors and awards, including a Felix Frankfurter Scholarship, an American Educational Foundation Scholarship, a Lurcy Traveling Fellowship, the Rector's Prize, and a Rothschild Fellowship. He has practiced law in New York and Boston, has co-chaired several committees of the New York State Bar tax section, and has been a member of the tax section of the New York State Bar's executive committee. He has served as a member of the U.S. Income Advisory Board for Tax Management since 1995.

Professor Avi-Yonah is a versatile linguist. In addition to English, he is fluent in French, German, and Hebrew, and he has a reading knowledge of Arabic, Greek, Italian, Latin, Portuguese, and Spanish. And he is an equally versatile teacher, having offered courses on taxation, the international aspects of U.S. income taxation, comparative income taxation, the value added tax, state and local taxation, corporate taxation, partnership taxation, the multinational enterprise, and the origins and development of the corporate form.

Professor Avi-Yonah's current research focuses on the interaction of globalization, tax competition, and the welfare state; a recent article analyzes the international taxation of electronic commerce. His scholarly writing has appeared in many journals, among them the *Tax Law Review*, *San Diego Law Review*, *Texas Law Review*, *Virginia Tax Review*, and *Tax Notes International*. In addition, he is revising a treatise on U.S. international taxation and is completing a casebook on international taxation for Foundation Press.

SUSANNA L. BLUMENTHAL



new faculty

Professor Blumenthal's research and teaching interests concentrate on legal history, trusts and estates, criminal law, torts, and evidence.

Professor Susanna Blumenthal will begin her teaching career at Michigan. She is a legal historian who earned her A.B. in government, *magna cum laude*, from Harvard-Radcliffe College. After a year of graduate study in philosophy, jurisprudence, and political theory at Oxford, she returned to the United States to earn her J.D. at the Yale Law School. She is currently completing her Ph.D. in history at Yale University. Her dissertation examines "Law and the Modern Mind: The Problem of Consciousness in American Legal Culture, 1800-1930."

Professor Blumenthal's many academic honors include election to *Phi Beta Kappa*, a John Harvard Scholarship, the Elizabeth Agassiz Award, the Thomas T. Hoopes Prize for her Honors Thesis, a Samuel Golieb Fellowship, and a recent fellowship from the Pew Foundation. During law school, she was an editor of the *Yale Law Journal* and was submissions editor for the *Yale Journal of Law and the Humanities*. She also was a student supervisor within the poverty clinic at Yale Legal Services, where she developed and participated in the Education Equity Project, a project that expanded educational opportunities for young mothers in New Haven.

After law school, Professor Blumenthal clerked for Judge Kimba Wood in the Southern District of New York. She has also worked as a summer associate with law firms in New York City and Washington, D.C., and worked as a legal intern with the Women's Rights Project of the American Civil Liberties Union in New York.

Professor Blumenthal's research and teaching interests concentrate on legal history, trusts and estates, criminal law, torts, and evidence. She has published articles in the *Chicago-Kent Law Review* and the *Journal of the History of the Behavioral Sciences*. She is a member of the Law & Society Association, the American Society for Legal History, and the American Historical Association. She recently presented "The Duress of the Delusion: Mental Capacity and the Rules of Responsibility in Nineteenth-Century American Law" at the 1999 Annual Meeting of the American Historical Association.

Continued on page 40

EVAN H. CAMINKER

Professor Caminker's research interests include the intersection of state and federal powers and the interplay of lower and higher courts.

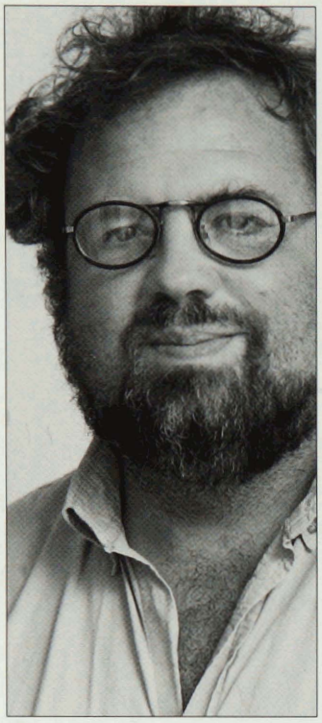
Professor Evan Caminker comes to Michigan from the UCLA Law School, where he has been a faculty member since 1991. Professor Caminker is a distinguished scholar of constitutional law who clerked for Justice William Brennan at the Supreme Court and for Judge William Norris of the Ninth Circuit. He received his B.A. in political economy and environmental studies, *summa cum laude*, from the University of California at Los Angeles. He received his J.D. from the Yale Law School.

As an undergraduate student, Professor Caminker earned the Outstanding Senior Award, the *Phi Beta Kappa* Top Junior at UCLA Award, the National Exceptional Student Fellowship Award, and two debate awards. In law school, he was a senior editor of the *Yale Law Journal* and a Coker Fellow, and he was awarded the Benjamin Scharps Prize for Excellence in Legal Writing. Professor Caminker practiced law with the Center for Law in the Public Interest in Los Angeles and with Wilmer, Cutler & Pickering in Washington, D.C. Last year, he taught constitutional law as a visiting professor at the University of Michigan Law School. He has also been a visiting scholar at the University of Cambridge.

A gifted classroom teacher, Professor Caminker has received the ACLU Distinguished Professors Award for Civil Liberties Education. He has taught in the fields of constitutional law, civil procedure, and federal courts, and he has lectured widely before audiences ranging from the Los Angeles Chapter of the Federalist Society to the Free Society of the University of Cambridge.

Professor Caminker's research interests include the intersection of state and federal powers and the interplay of lower and higher courts. He has published articles in *Columbia Law Review, Harvard Journal of Law and Public Policy, Stanford Law Review, The Supreme Court Review, Texas Law Review,* and the *Yale Law Journal.* His current work includes an inquiry into the nature of voting on multi-member courts.

ROBERT L. HOWSE



Professor Howse is a much sought-after commentator on broad issues in international law and public policy.

Professor Robert Howse comes to Michigan from the Faculty of Law at the University of Toronto, where he has been a faculty member since 1990. An internationally recognized authority on international trade law, Professor Howse received his B.A. in philosophy and political science with high distinction, as well as an LL.B., with honours, from the University of Toronto. He also holds an LL.M. from the Harvard Law School and has traveled and studied Russian in the former Soviet Union. Last year, Professor Howse was a visiting law professor at the University of Michigan and at Harvard.

Professor Howse's academic awards include the Thomas Henderson Wood Scholarship in Philosophy, the Laskin Prize in Constitutional Law, the Borden and Elliot Prize for Academic Excellence, the Provost's Award, and a variety of fellowships. While completing his LL.M., he served as a research assistant to Laurence Tribe on a project advising the Civic Forum of Czechoslovakia on constitutional reform, and as a research assistant to Paul Weiler on a project involving tort law reform and public policy. He has also held a variety of posts with the Canadian Department of External Affairs and the Canadian Embassy in Belgrade.

Professor Howse is a much sought-after commentator on a broad range of issues in international law and public policy. His op-ed pieces have appeared in the *Globe and Mail, Toronto Star, Le Devoir,* and *The Financial Post.*

His research has concerned a wide range of issues in international law, and legal and political philosophy, but his emphasis has been on international trade and related regulatory issues. Professor Howse is the author, co-author, or editor of five books, including *Trade and Transitions; Economic Union, Social Justice, and Constitutional Reform; The Regulation of International Trade; Yugoslavia the Former and Future;* and *The World Trading System;* and he is also the translator of Alexander Kojève's *Outline for a Phenomenology of Right.* He has published 30 scholarly articles and book chapters, on topics as disparate as NAFTA, whistleblowing, industrial policy, food inspection, income tax harmonization, and ethnic accommodation.

NINA A. MENDELSON

Professor Nina Mendelson begins her teaching career at Michigan after four years of service as an attorney with the Department of Justice's Environment and Natural Resources Division. An expert in environmental law, she earned her A.B. in economics, *summa cum laude*, from Harvard University, and her J.D. from the Yale Law School. After law school, she clerked for Judge Pierre Leval in the Southern District of New York and for Judge John Walker, '66, on the Second Circuit.

As an undergraduate, Professor Mendelson was elected to membership in *Phi Beta Kappa* during her junior year, and she won the Detur Prize and John Harvard Scholarships for distinguished academic performance. In law school, she was an articles editor of the *Yale Law Journal*, a senior editor of the *Yale Journal of International Law,* an Olin Fellow in Law and Economics, and a research assistant to Paul Kahn.

After clerking, Professor Mendelson practiced law with Heller, Ehrman, White & McAuliffe of Seattle, where she litigated and advised clients on environmental, corporate, and land use matters. While at Heller, Ehrman, she won the Washington State Bar Association's Thomas Neville Award for outstanding *pro bono* service.

During her tenure at the Justice Department, Professor Mendelson worked with other federal agencies on environmental compliance, rulemaking, and the development of new environmental policy initiatives. She also drafted environmental legislation proposals and participated in extensive legislative negotiations. Her work has concentrated on hazardous waste issues, natural resource damages, and oil pollution.

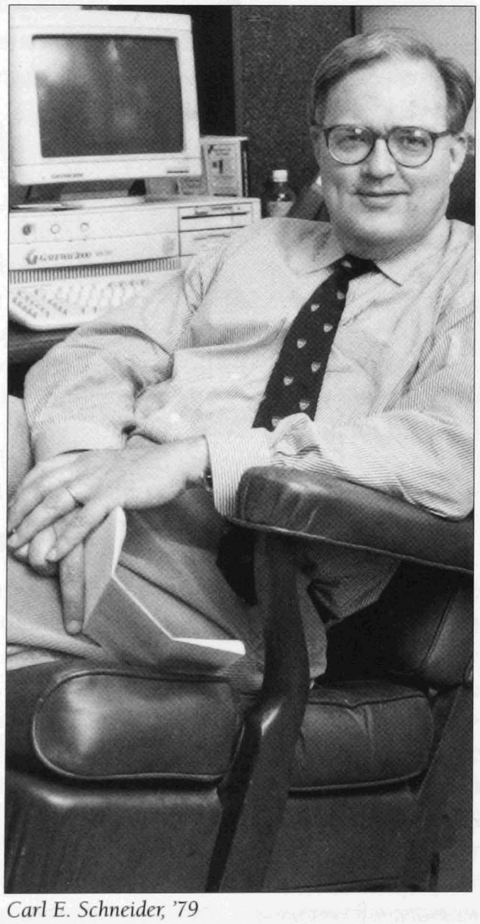
Professor Mendelson's research and teaching interests include environmental law, legislation, administrative law, land use and zoning law, and corporations. She is currently completing a study concerning the liability of corporate shareholders for environmental violations.

Professor Mendelson's research and teaching interests include environmental law, legislation, administrative law, land use and zoning law, and corporations.

Eisenberg, Schneider, '79, named to endowed professorships

Thanks to the generosity of two donors, the Law School this year has established two new endowed professorships. The Robert and Barbara Luciano Professorship in Law and the Chauncey Stillman Professorship for Ethics, Morality, and the Practice of Law add to the Law School's already impressive roster of named professorships. Such professorships help to ensure the Law School's financial stability as well as recognize the generosity of supporters and the accomplishments of professors who are awarded them. Dean Jeffrey S. Lehman, '81, expressed the Law School's "profound gratitude" for the gifts, and noted that "the award of an endowed professorship is the highest form of recognition that can be bestowed upon a distinguished faculty member."

Rebecca S. Eisenberg



Carl E. Schneider, '79

Rebecca S. Eisenberg has been named the Robert and Barbara Luciano Professor of Law. A member of the Law School faculty since 1984, she received her law degree from the University of California, Berkeley, School of Law, and her bachelor's degree from Stanford University. She clerked for the Hon. Robert F. Peckham, chief judge for the Northern District of California, and practiced law in San Francisco before joining the Law School faculty.

Eisenberg has published widely and presented the results of her research at workshops around the world. Her interests center on legal protection of intellectual property, and especially on questions of technology transfer and the role and impact of patent rights on the growth of knowledge and products related to human genetics.

At the Law School, she has taught courses in torts and a variety of topics related to intellectual property.

The Robert and Barbara Luciano Professorship in Law was established this year. It honors Robert Luciano's long association with the Law School as a member of the Committee of Visitors and through his chairmanship of Schering-Plough Corp. He graduated from the Law School in 1958.

"It's important for alumni to support and promote the level of educational excellence that Michigan has achieved," Luciano says.

Carl E. Schneider, '79, who also is a professor of internal medicine at the University of Michigan Medical School, has been named to the new Chauncey Stillman Professorship for Ethics, Morality, and the Practice of Law. A member of the Law School faculty since 1981, Schneider received his A.B. degree from Harvard College. At the Law School, he was editor in chief of the *Michigan Law Review* and was awarded the Henry M. Bates Memorial Scholarship. After graduation, he clerked for the Hon. Carl McGowan of the U.S.

Court of Appeals for the D.C. Circuit, and then for Justice Potter Stewart of the U.S. Supreme Court.

Schneider has published widely, mostly on subjects related to bioethics, law and medicine, and the relationship among law, medicine, and bioethics. He has taught courses on these subjects and on family law, and has lectured in Japan, Germany, and England. His most recent book, *The Practice of Autonomy: Patients, Doctors, and Decisions,* published last year by Oxford University Press, has received critical attention and acclaim. His current research focuses on the relationship between professional education and the pursuit of a moral life.

The Stillman Professorship was established with support from the Homeland Foundation Incorporated "to help the society in which we live." Its goals are to help students, lawyers, and jurists to:

- "appreciate the vital relationship between the particular professional responsibilities of members of the bar and more general questions of ethical and moral responsibility," and
- "reflect on how they make choices about the ethical and moral issues that arise in their professional lives."

"We have put ethics as a primary funding goal, and this program is a very worthwhile cause in keeping with what we are trying to accomplish," according to Homeland Foundation President E. Lisk Wyckoff, '60, a partner at Kramer, Levin, Haftalis & Frankel in New York City. The chair is named for the founder of the Homeland Foundation.

The University of Michigan Board of Regents approved the professorships and appointments in July.

Chinkin joins ranks of Affiliated Overseas Faculty

Christine M. Chinkin, professor in international law at the London School of Economics and Political Science, University of London, joins the ranks of the Law School's Affiliated Overseas Faculty this fall. Chinkin this year is teaching a seminar on international dispute resolution and co-teaching a seminar on women's human rights with Elizabeth A. Long Professor of Law Catharine A. MacKinnon.

The Affiliated Overseas Faculty program establishes and maintains longstanding relationships between the Law School and highly regarded overseas-based scholars and overseas institutions. The other Affiliated Overseas Faculty are Christopher McCrudden, professor of human rights and a reader in law at Oxford University and a fellow at Lincoln College, Oxford; and Bruno Simma, professor and dean of the law faculty at the University of Munich.

Chinkin is the Law School's L. Bates Lea Visiting Professor of Law. Established in 1993 in honor of L. Bates Lea, '49, the retired vice president and general counsel of Amoco, the professorship promotes "the establishment of long-term relationships with the University of Michigan Law School and its peer institutions abroad."

Chinkin received her LL.B. from the University of London with first class honors, has LL.M. degrees from the University of London and Yale University, and a Ph.D. from the University of Sydney. She has held academic positions at the universities of Oxford, London, New York Law School, the National University of Singapore, and the University of Sydney.

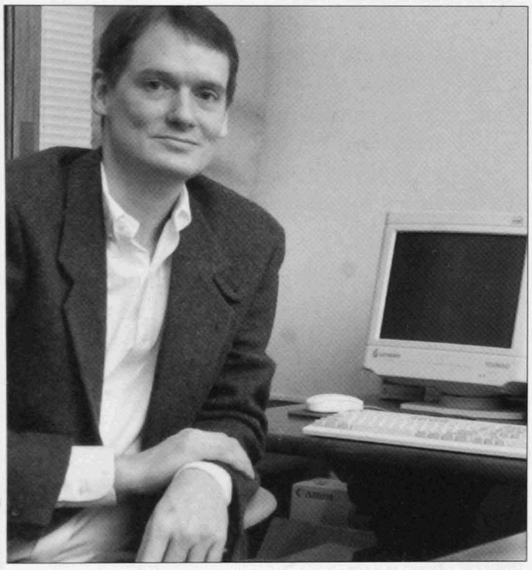
She has published widely on issues of international law. Among her books are *Halsbury's Laws of Australia, Title on Foreign Relations,* and *Third Parties in International Law.* She is co-author of *Dispute Resolution in Australia*, and the *American Journal of International Law* published her award-winning *Feminist Approaches to International Law.* Forthcoming is a monograph with Hilary Charlesworth, the "Boundaries of International Law: A Feminist Analysis." Chinkin is a member of the board of editors of the *American Journal of International Law,* a consultant on international law to the Asian Development Bank, and on gender to the Commonwealth Secretariat, a member of the Board of Interights, and has advised many non-governmental organizations on human rights issues.

Christine M. Chinkin

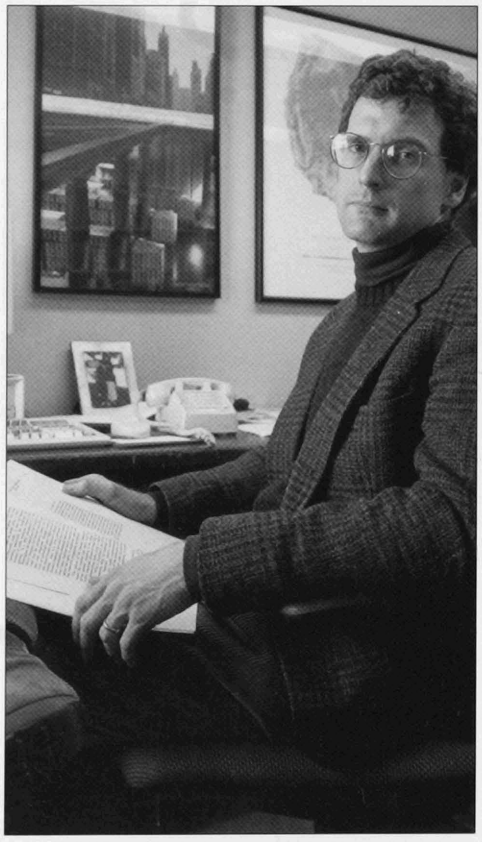
Heller, Hills, and Mann named full professors

PHOTO BY PETER YATES

Michael A. Heller



Ronald J. Mann



Roderick M. Hills Jr.

The University of Michigan Board of Regents has awarded the title of full professor with tenure to three Law School faculty members: Michael A. Heller, Roderick M. Hills Jr., and Ronald J. Mann. The regents approved the titles in June.

Michael A. Heller, who joined the Law School faculty in 1994, holds a J.D. with distinction from Stanford University and an A.B. *cum laude* from Harvard University. He clerked for the Hon. James R. Browning of the U.S. Court of Appeals for the Ninth Circuit. Before joining the faculty, he served as legal and policy consultant and deputy task manager for The World Bank.

Each year since 1995 Heller has led the fall portion of the Law School's International Law Workshop, a series of lectures by visiting experts on "hot topics" in the field of international law. In 1996 he received the L. Hart Wright Award for Excellence in Teaching, an annual award that goes to the faculty member receiving the highest number of votes from law students.

Heller's research interests focus on the field of property, in which he has offered new insights into how the fragmentation of property rights may affect the ability to use or convey them. He has used the word "anticommons" to describe the phenomenon. He also recently co-authored an article with Professor James E. Krier that reconceptualizes the law of "takings."

Heller teaches Property and International Law, and seminars that bridge the fields, like "From Marx to Markets."

Roderick M. Hills Jr. earned his law degree at Yale Law School and his bachelor's degree *summa cum laude* in history from Yale University. He joined the Law School faculty in 1994.

After earning his J.D., Hills clerked for the Hon. Patrick J. Higginbotham of the U.S. Court of Appeals for the Fifth Circuit. He also taught at the University of Colorado Law School and practiced as an associate attorney with the law office of Jean Dubofsky in Boulder.

Hills, a constitutional law specialist, often has focused in his writings on "cooperative federalism" and the relationship between the federal government and state and local governments. He argues that state autonomy should be seen in functional terms that promote efficiency rather than in conventional terms of "dual sovereignty." In his *pro bono* activity, Hills has drafted *amicus* briefs to the U.S. Supreme Court in three cases: *Romer v. Evans*, *Anderson v. Roe*, and *American Manufacturers Mutual Insurance Co. v. Sullivan*.

Hills teaches Constitutional Law, Land-Use Planning & Regulation, Local Government Law, and Education Law.

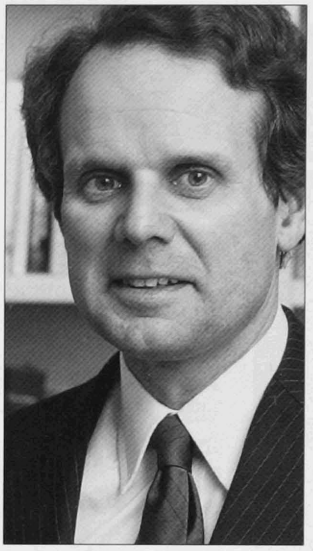
Ronald J. Mann, who joined the Law School faculty in 1997, earned his law degree *magna cum laude* at the University of Texas and his bachelor's degree *magna cum laude* in history from Rice University. He clerked for the Hon. Joseph T. Sneed of the U.S. Court of Appeals for the Ninth Circuit and then for the Hon. Lewis F. Powell Jr. of the U.S. Supreme Court. He has practiced law in Houston, served as assistant to the Solicitor General in the U.S. Department of Justice, and taught law at Washington University School of Law.

Mann's journal articles on secured debt have drawn significant attention, and he also has written on payment systems and bankruptcy theory. His casebook, *Payment Systems and Other Financial Transactions*, was published by Aspen this year.

At the Law School, Mann has organized the weekly Fawley Lectures, in which faculty present preliminary versions of research reports, writings, and other works in progress and receive feedback from colleagues.

Professor Mann teaches Real Estate Transactions, Copyright, and Payment Systems.

Fox new director of Center for International and Comparative Law



Merritt B. Fox

Professor Merritt B. Fox, a member of the Law School faculty since 1988, has been named director of the Law School's Center for International and Comparative Law. Fox began his new duties in July after returning from teaching at Peking University at Beijing.

"I'm delighted to have someone of the intellectual breadth and caliber of Merritt Fox to head the center," said Dean Jeffrey S. Lehman, '81, who announced the appointment in July. "He brings a depth of experience to the center that will help it to continue its significant role within the Law School and beyond."

Fox, who earned his J.D. at Yale Law School and his Ph.D. in economics from Yale University, focuses his academic work in the areas of international law, corporate and securities law, and law and economics. He is the author of *Finance and Industrial Performance in a Dynamic Economy* and (with H. Lasswell) *The Signature of Power: Buildings, Communications, and Policy*.

He has taught at Yale University, Fordham Law School, and Indiana University Law School. He practiced with Cleary, Gottlieb, Steen & Hamilton in New York City.

In addition to maintaining the center's role as an "umbrella" for the Law School's internationally-oriented courses and activities, Fox said that he hopes to use the center to encourage and expand contacts between faculty members here and their counterparts overseas.

"What I'm particularly interested in is facilitating interchange between members of our faculty from all kinds of orientations and their counterparts abroad," he said. "Eighty-five percent of our faculty never teach a course that has the word 'international' in it — their specialties relate to substantive or procedural areas of U.S. law.

"The issues they deal with, however, have much in common with issues in foreign legal systems as well. Our faculty thus have a lot to say to, and a lot to learn from, their counterparts in other countries who share the same interests. I would like to encourage more contact of this kind."

The Center for International and Comparative Law is the Law School's "institutional focal point for visiting foreign faculty as well as members of the permanent faculty and students with interests in international law, including international economic law and foreign and comparative law," according to a description that accompanied the center's formal opening in 1998. "The center reflects the School's longstanding commitment and proud history in these fields." Fox replaces Professor of Law José Alvarez as the director of the center.

CALC veteran Melissa Breger, '94, back on familiar turf

PHOTO BY THOMAS TREUTER

Melissa Breger, '94

"There is a tremendous need for well-trained lawyers in child advocacy. It is a field that is desperate for exceptional, enthusiastic attorneys who are dedicated to the public sector."

Melissa Breger, '94, hit the ground running when she returned to the Law School as a clinical assistant professor last spring. She stepped up to fill the annual need that occurs when students in the Child Advocacy Law Clinic (CALC) leave for the summer but their cases continue. She also was an integral part of this year's training of summer fellows for child advocacy summer internshhips and supervised two interns who spent their summer working at CALC. (The training program is the subject of a story on page 29.)

Breger felt right at home. She had worked in CALC as a third-year law student, and had become convinced of the need to educate and prepare students for work in the child advocacy field. She also taught Legal Writing and Advocacy for two years while she was a law student. At the time those introductory skills courses were taught by upper-level law students; it was in 1996 that the Law School established its formal Legal Practice Program, which uses full-time faculty to teach these and other skills in a two-term course that is required of all first-year students.

"I attended Michigan in order to join the Child Advocacy Clinic," Breger explained of her decision to attend the Law School. "And while in the clinic I always envisioned returning here to teach it."

Why?

"Because child advocacy is so important to me. Teaching future lawyers holds the most promise for effectively changing this area of the law."

"There is a tremendous need for well-trained lawyers in child advocacy," she said. "It is a field that is desperate for exceptional, enthusiastic attorneys who are dedicated to the public sector."

Breger earned her bachelor's degree in psychology *summa cum laude* from the University of Illinois and attended a legal writing program at Harvard University before enrolling at the Law School. After earning her law degree, she briefly worked as a volunteer attorney with Lawyers for Children in New York City before joining the Legal Services Department of St. Joseph Services for Children & Families in Brooklyn and then the Family Court Bureau of the Legal Aid Society of Nassau County. She came to the Law School after serving three years as a staff attorney with the Juvenile Rights Division of the Legal Aid Society in Brooklyn.

While practicing in Brooklyn, Breger supervised NYU School of Law students enrolled in the Juvenile Justice Clinic. She served as a volunteer high school teacher in New York City for the New York Civil Rights Coalition and as a guest lecturer through the community outreach law program of the Association of the Bar of the City of New York. As a member of the New York County Lawyers Association, she volunteered for the Monday Night Law Project, which provided *pro bono* legal services, and served on the association's committees of Family Court and Child Welfare and Law-Related Education.

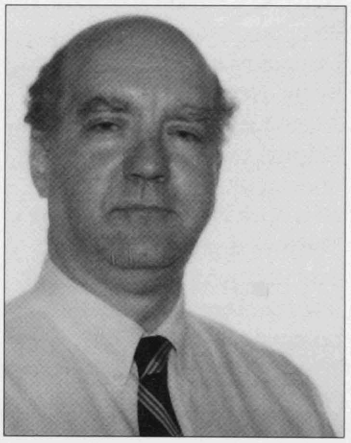
Legal Practice Program welcomes three new faculty members

Few courses touch law students the way that the Legal Practice Program does. Every first-year law student must take the course, and every student must pass it in order to graduate. The skills that Legal Practice students learn — how to write legal documents, advocacy communications, client letters, and to learn and hone courtroom oral argument abilities — in many ways are the mirrors that reflect their later competence or specialization in the variety of areas that a career in the law offers.

This year, three professors have joined the ranks of the Law School's Legal Practice Program faculty: Julie Potts Close, '96; William Lewis Cooper, '72; and Gloria Kay Miller, '94. Each combines the blend of practical and professional experience that makes the Legal Practice course the foundation for so many accomplishments during Law School study and after graduation.

"I'm very excited about Julie, Bill, and Gloria's decisions to join the Law School's teaching ranks," said Grace Tonner, director of the Legal Practice Program. "Their enthusiasm, experience, and energy are great assets to our program. Our students and the Law School will reap the rewards of having them here."

Close, who served as a Writing and Advocacy junior instructor while earning her J.D. *cum laude*, earned her bachelor's degree in economics and history at Northwestern University. The writing and advocacy program in which she taught assigned upper-level students as legal writing and oral advocacy teachers for lower-level students; it was the predecessor to the current Legal Practice Program, which began in 1996 and uses fulltime clinical assistant professors as teachers.



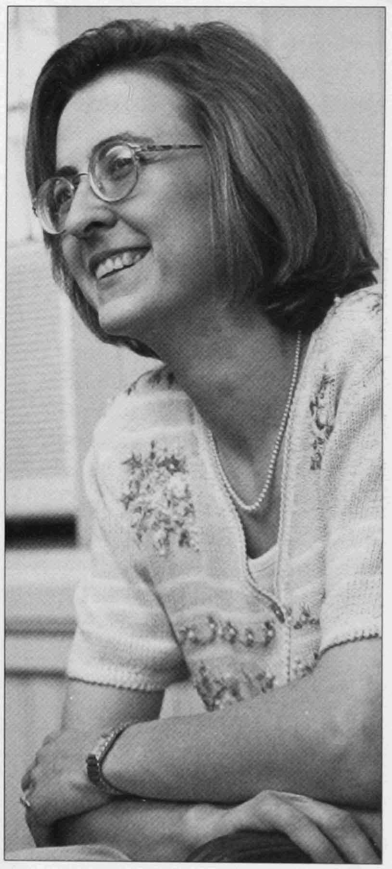
William Lewis Cooper

Julie Potts Close

Before joining the Legal Practice Program faculty, Close was a litigation associate with Miller, Canfield, Paddock and Stone, PLC, in Ann Arbor, where she focused on litigation involving constitutional law, product defamation, securities, antitrust, breach of contract, and Freedom of Information Act issues. She also worked on appellate cases and was a member of the firm's mentoring committee, which was charged with developing and implementing a mentoring program for junior associates. Close has been a litigation associate with Jenner & Block in Chicago, as well.

Cooper comes to the Law School from a position as head of research and instructional services and adjunct professor of legal skills at the College of William and Mary. He also has been a reference librarian and instructor of legal research and writing at the University of Toledo College of Law. He has been a participating principle with Dykema Gossett in Detroit, where he was responsible for attorney research services, and an associate attorney with Miller,

Continued on page 48



Gloria Kay Miller

Continued from page 47

Canfield, Paddock & Stone in Detroit, where he specialized in antitrust issues and intergovernmental relations. Cooper earned a J.D. *cum laude*. He also earned a masters in library and information science at the University of Michigan. His bachelor's in English is from Dartmouth College.

Miller was symposium editor for the *Journal of Law Reform* and won the Health Law Award and a Writing and Advocacy Merit Certificate on the way to earning her J.D. *cum laude* from the University of Michigan Law School. She also holds bachelor's and master's degrees from Johns Hopkins University, where she was *Phi Beta Kappa*, a Beneficial Hodson Trust Scholar, and the recipient of the Hammerman Award for academic excellence and outstanding scholarship.

Miller has been a litigation associate with Dickinson, Wright, Moon, Van Dusen & Freeman in Detroit and a pre-hearing attorney in the research division of the State of Michigan Court of Appeals. She comes to the Law School after teaching legal research and writing at Wayne State University Law School.

ACTIVITIES

Edward H. Cooper, the Thomas M. Cooley Professor of Law, served as reporter for the Civil Rules Advisory Committee in drafting the "Report on Mass Tort Litigation" in 1999.

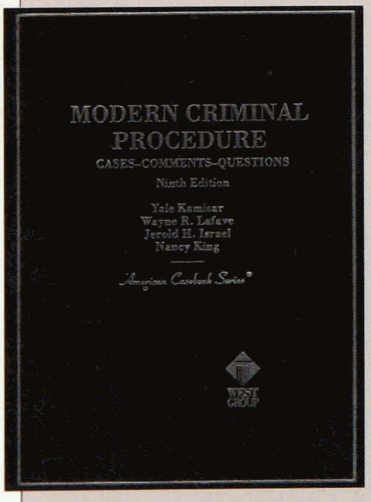
Professor **Richard D. Friedman** presented commentary at a symposium at Michigan State University on The Constitution in World War II in November, and in October presented the paper "The Emergence of Confrontation and Hearsay" at the annual meeting of the American Society for Legal History. Last fall he testified before the Advisory Committee on the Federal Rules of Evidence. He also has continued as general editor of *The New Wigmore* and worked on a volume of the treatise on hearsay.

Samuel R. Gross, the Thomas and Mabel Long Professor of Law, discussed Kentucky's "Racial Justice Act" as speaker for the Kentucky Bar Association meeting in Louisville in June. Earlier this year, he presented a paper on erroneous convictions in capital cases for a faculty workshop at the University of Texas at Austin, and teamed with Kirkland and Ellis Professor of Law Phoebe Ellsworth to present a paper on attitudes toward the death penalty for a Vanderbilt University School of Law faculty workshop.

Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law, was presented with the Distinguished Alumnus Award by the New York University Alumni Association in June. Kamisar received his undergraduate degree from New York University in 1950. The award says: "Your extensive writings on criminal law, the administration of criminal justice, and the 'politics of crime' have contributed significantly to the law and the legal profession. Through your publications and research on euthanasia, you have influenced the lives of all Americans. As one of the nation's most outstanding law professors, you have indeed shaped the future for all of us."

Clinical Assistant Professor **Rochelle Lento**, director of the Legal Assistance for Urban Communities Clinic, is a member of the Chamber of Commerce Leadership Detroit XXI 1999-2000 Class and the governing board of the American Bar Association Forum on Affordable Housing and Community Development Law. In July, she will begin participation in the Program for Senior Executives in State and Local Government at the JFK School of Government at Harvard.

Clinical Assistant Professor **Andrea D. Lyon** focused on



The 9th Edition —

The 9th edition of Modern Criminal Procedure *is out (West Publishing, 1999), and authors Yale Kamisar, Wayne R. LaFave, Jerold H. Israel, and Nancy King, '87, note that it is 40 pages shorter than its predecessor, even though it integrates into its pages "numerous legislative changes and lower court rulings, and much significant law review commentary" that has occurred since the 8th edition was concluded. Still, they say, "this is still (and we have 'probable cause' to believe always will be) a big book." Sharp readers quickly will notice the addition of King's name to the names of the three authors whose names have become nearly synonymous with the casebook. "We are delighted that Nancy J. King has agreed to join us in this venture," Kamisar, LaFave, and Israel write. "We greatly appreciate the important contributions she has made to this edition." Kamisar especially has praised her chapter on sentencing and her streamlining of the chapter on* habeus corpus. *King, who was a visiting professor at the Law School in fall 1998, is a professor of law and associate dean for research and faculty development at Vanderbilt University Law School. She also is helping Israel write a multi-volume treatise on criminal procedure. Kamisar is Clarence Darrow Distinguished University Professor of Law at the Law School; LaFave is professor emeritus in the College of Law and Center for Advanced Study at the University of Illinois; and Israel is Alene and Allan F. Smith Professor of Law Emeritus at the Law School and Ed Rood Eminent Scholar in Trial Advocacy and Procedure at the University of Florida College of Law.*

the topic "How to Try a Confession Case" while conducting the annual training seminar in June for the Maine Association of Criminal Defense Lawyers in Portland. During the winter she presented continuing legal education training sessions for the Oklahoma Association of Criminal Defense Lawyers in Oklahoma City, the Florida Association of Criminal Defense Lawyers in West Palm Beach, the Georgia Association of Criminal Defense Lawyers in Atlanta, and the State Appellate Defender's annual trial training in Chicago.

Professor **Deborah C. Malamud** was a panelist in the discussion of interdisciplinary labor law research at the annual meeting of the Law and Society Association in May in Chicago. In April, she conducted a faculty workshop at the University of Arizona Law School on the question "Are the Middle Classes Still Middle Class When They're Poor?"; and in March she discussed her "Reflections on Affirmative Action in South Africa" at the International Transformative Labor Law Conference in Cape Town. In January, she spoke on class and labor organizing at the Association of American Law Schools' annual meeting and also lectured on affirmative action at Albion College.

Professor **Ronald J. Mann** was elected a member of the American Law Institute in May.

Christopher McCrudden, a member of the Law School's Affiliated Overseas Faculty, has been serving as specialist advisor to the British House of Commons' Northern Ireland Affairs Committee. This summer he was named professor of human rights at Oxford.

In his role as court-appointed independent expert to the U.S. District Court for the Eastern District of Michigan, Professor **Richard H. Pildes** provided a formal report and testimony on Voting Act challenges to reorganization of Michigan's system of elected criminal trial court judges.

Assistant Professor **Adam C. Pritchard** delivered lectures on constitutional amendment and civil forfeiture at the Public Choice Outreach Conference at George Mason University in May. In April he presented a paper on monitoring by directors who hold multiple directorships at the Law and Economics Workshop at Vanderbilt University School of Law and last fall presented a paper on exchange monitoring of securities fraud for the University of Michigan Law School's Law and Economics Workshop.

Professor **Mathias W. Reimann**, LL.M. '83, spoke on "Learning from the American University Model" at the University of Kaiserslautern in Germany in May and on "International Law and Comparative Law" at the annual meeting of the American Society of International Law in Washington, D.C., in March.

Carl E. Schneider, '79, the Stillman Professor of Law, presented the paper "Married Life and Marital Wealth," in April at the Eighth Gallivan Conference on Real Property Law at the University of Connecticut. Early in 1999 he presented a paper at Wake Forest University Law School on "Mandatory Autonomy: Must Patients Make Their Own Medical Decisions?"

Affiliated Overseas Faculty member **Bruno Simma** earlier this year was named co-agent and counsel for Germany in a case against the United States before the International Court of Justice that raises questions under the Vienna Convention on Consular Relations when one country arrests and tries the citizens of another country. Professor **Richard H. Pildes** is of counsel in the case, and Professor **Roderick M. Hills** also is participating.

Eric Stein, the Hessel E. Yntema Professor Emeritus of Law, spoke on "Europe Without 'A People'" at the Sixth Biennial International Convention of the European Communities Studies Association in Pittsburgh in June.

Lawrence W. Waggoner, '63, Lewis M. Simes Professor of Law, was a panelist in the program on techniques for the interpretation of statutes, contracts, and donative transfers at the Association of American Law Schools convention in January. He also has attended many drafting meetings on uniform acts and restatements.

Hart Wright Professor of Law **James Boyd White** in June presented the Harrow Lecture on Law and Literature at University College, London; in April he delivered the Bell Lecture on Law at Wooster College, and in March presented the plenary address to the Working Group in Law, Humanities, and Culture at Wake Forest College in Winston-Salem, North Carolina.

James J. White, '62, the Robert A. Sullivan Professor of Law, presented a lecture on "Changes to Article 9" to the South Carolina Commercial Lawyers in April; in March he addressed the South Carolina Bank Lawyers on "Politics of the ALI and the National Conference of Commissioners" and spoke on contract law at the Commercial Law Symposium at Wayne State University Law School.

Professor **Chistina B. Whitman**, '74, spoke on behalf of the Supreme Court Bar resolution as a memorial for Justice Powell in May. She also has accepted a second two-year term as the Law School's associate dean for academic affairs.

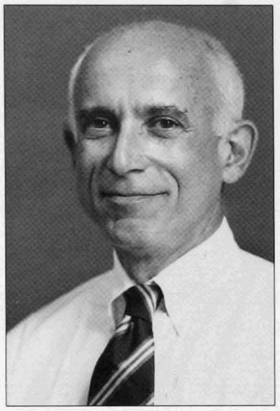
Visiting faculty —

reflections of the many sides of legal careers

Students at the Law School learn from many sources — casebooks, textbooks, and library holdings; each other, guest speakers and other experts; the expertise and experience that faculty members share — and from a rich variety of visiting faculty members whose diversity of experiences, viewpoints, and approaches add significantly to the educational resources that students encounter at the Law School.

The Law School is reaching out widely to bring to students the talents of many practitioners, teachers, and other legal specialists. Here, meet those who are teaching as visiting professors throughout the 1999-2000 academic year or in the current fall term. The listing is accurate at deadline time but may be subject to change.

Academic Year 1999-2000



John S. Beckerman is teaching Advanced Civil Procedure in the fall term and Enterprise Organization in the winter term. A winner of the L. Hart Wright Award for exceptional teaching last year as a visiting professor, Beckerman 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. He has taught at Yale Law School, Rutgers, Camden, and Benjamin Cardozo Law School, and practiced as a litigator in New York City. His article, "Let the Money Do the Monitoring: How Institutional Investors Can Reduce Agency Costs in Securities Class Actions," which appeared in the *Yale Law Journal*, provided the basis for the "lead plaintiff" provision in the Private Securities Litigation Reform Act of 1995.

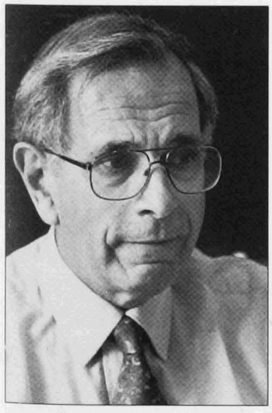
Laurence D. Connor, '65, is a senior litigation partner at Dykema Gossett in Detroit, where he specializes in complex business and tort litigation, trials, appeals, and alternative dispute resolution. He is chairman of the Michigan State Bar section on alternative dispute resolution. At the Law School, he is teaching Mediating Legal Disputes in the fall term and Alternative Dispute Resolution in the winter term.

Martha M. Ertman earned her J.D. from Northwestern University School of Law and clerked in the U.S. District Court for the Eastern District of Louisiana. She has practiced commercial litigation in Denver and Seattle and has published a number of journal articles on the legal regulation of intimate relationships. In 1998, in the article "Commercializing Marriage," which appeared in the *Texas Law Review*, she recommended that UCC Article 9 rules governing debtor/creditor relations be imported into family law. She has taught since 1994 at the University of Denver College of Law, where she is an assistant professor. She is teaching Secured Transactions during the fall term and Commercial Transactions during the winter term.

Joan L. Larsen is teaching Criminal Procedure: Bail to Post Conviction Review in the fall term and Introduction to Constitutional Law during the winter term. A graduate of Northwestern University School of Law, she clerked for Judge David B. Sentelle of the U.S. Court of Appeals for the District of Columbia and then for Justice Antonin Scalia of the U.S. Supreme Court. She has practiced with Sidley & Austin and taught at Northwestern University School of Law.

Takashi Maruta, LL.M. '81, earned his Ph.D. from Kwansei Gakuin University in Nishinomiya, Japan, where he now is a professor of law. He is teaching Individual Rights in Japan during the fall term and Japanese Legal Documents during the winter term. He was a visiting professor at the Law School in 1993-94, and also has been a visiting law professor at the University of Hawaii and at the University of Sussex, England. He is a member of the editorial boards of *Contemporary Issues in Law* in Great Britain and *Law & Policy* at the School of Law at the State University of New York at Buffalo.

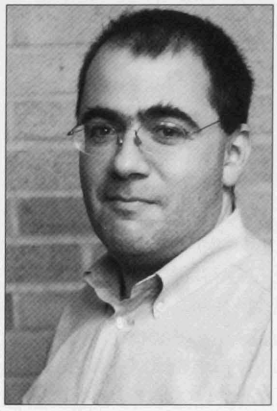
Roberta J. Morris is teaching Advanced Topics in Patent Law in the fall term and Patent Law in the winter term. A frequent visitor at the Law School, she earned her J.D. from Harvard Law School and her Ph.D. in physics from Columbia University. She has practiced at White & Case and Fish & Naeve, a patent law firm, and served as assistant general counsel for Mt. Sinai Medical Center in New York.



Cyril Moscow, '57, the co-author of textbooks on Michigan corporate law and securities regulation, practices corporate and securities law as a partner with Honigman, Miller, Schwartz & Cohn in Detroit. He is teaching Business Planning during the fall term and Advanced Problems in Corporate Law in the winter term.

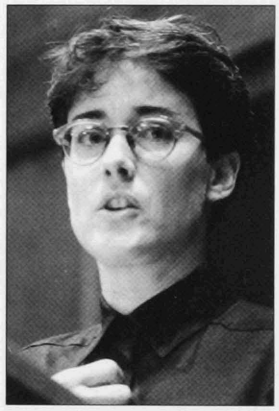
Julie A. Nice earned her J.D. from Northwestern University School of Law and is lead author of *Poverty Law: Theory and Practice* (West, 1997). She is Hughes Research Professor at the University of Denver College of Law, where she has taught since 1991 and received the Professor of Year for Teaching Excellence award four times. She has practiced with the Legal Assistance Foundation of Chicago and taught for two years as a fellow in Northwestern's legal clinic. At the Law School, she is teaching Introduction to Constitutional Law during the fall term and Civil Procedure during the winter term.

Fall Term 1999



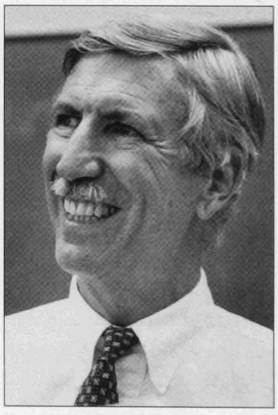
Hanoch Dagan earned his J.S.D. in law from Yale Law School after receiving his law degree from Tel Aviv University, where he now is a professor of law. He has practiced law in Israel. His recent book, *Unjust Enrichment: A Study of Private Law and Public Values*, appeared in the Cambridge University Press series of studies in international and comparative law. He also has published many articles on private law theory, takings law, distributive justice, and property theory. This fall he is teaching American Legal Theory.

Nora V. Demleitner earned her J.D. from Yale Law School and her LL.M. from Georgetown University Law Center. She clerked for the Hon. Samuel A. Alito Jr. of the U.S. Court of Appeals for the Third Circuit. An editor of the *Federal Sentencing Reporter*, she is a professor of law at St. Mary's University School of Law in San Antonio. She is teaching Criminal Law.



Paula L. Ettelbrick is teaching Sexuality and the Law. She is director of public policy for the National Center for Lesbian Rights. She has taught at the Law School previously and has practiced as an associate with Miller Canfield Paddock & Stone.

Timothy L. Fort is teaching Legal Profession and Legal Ethics. An assistant professor of business ethics and business law at the University of Michigan School of Business Administration, he earned his J.D. and Ph.D. from Northwestern University. Named the outstanding untenured business law professor in the United States in 1998, he has published extensively in law reviews and business ethics journals.



William R. Jentes, '56, is a senior partner at Kirkland & Ellis in Chicago. A frequent visitor at the Law School, he also has lectured at the University of Chicago Law School and for the

Continued on page 52

FACULTY

Continued from page 51

American, Federal, Texas, Illinois, and Chicago bar associations. He is teaching Complex Litigation.

Mark J. Loewenstein is teaching Enterprise Organization. A professor at the University of Colorado School of Law, he earned his J.D. from the University of Illinois. He has been a French Government Fellow at the Universite de Caen in France and a Fulbright scholar and visiting professor of law at Hokkaido University, Sapporo, Japan. He is a member of the Securities Board of the State of Colorado and has practiced with Altheimer & Gray in Chicago. He is teaching Enterprise Organization.

Jeffrey H. Miro, '67, a frequent visitor to the law school, is teaching Federal Income Tax Relating to Real Estate. He is chairman of Miro, Wiener & Kramer, Bloomfield Hills.

PHOTO BY BOB KALMBACH

Lynda J. Oswald, '86, a professor in the business law group at the University of Michigan School of Business Administration, earned her law degree in a joint J.D./M.B.A. program at the University of Michigan. She served on the editorial board of the *Michigan Law Review* while a law student, and afterward clerked for the Hon. Cornelia Kennedy, '47, of the U.S. Sixth Circuit. She has practiced with a large firm and taught at the University of Florida Law School. She was a visiting scholar at China University of Political Science and Law in Beijing and at L'viv State University in L'viv, Ukraine. Her research focuses on property and environmental law issues. She is teaching Environmental Law and Real Property.

Kenneth W. Simons, '78, clerked for the Hon. Thurgood Marshall of the U.S. Supreme Court. He also clerked for the Hon. James Oakes of the U.S. Court of Appeals for the Second Circuit and practiced with Goodwin, Procter & Hoar in Boston. He has taught at the Boston University School of Law since 1982 and his articles have appeared in many journals, among them the *Boston University Law Review, Columbia Law Review, Cornell Law Review,* and the *UCLA Law Review.* He is teaching Torts.

Michel Waelbroeck is teaching European Community Law. He has been a visiting professor at the Law School previously, and is with Liedekerke Wolters Walebroeck and Kirkpatrick in Brussels.

Affiliated Overseas Faculty

Christine Chinkin, professor of international law at the London School of Economics, is L. Bates Lee Visiting Professor and a member of the Law School's Affiliated Overseas Faculty (see story on page 43). During the fall term, she is teaching International Dispute Resolution and co-teaching Women's Human Rights with Elizabeth A. Long Professor of Law Catharine A. MacKinnon.

Christopher McCrudden is professor of human rights (his essay on human rights appears on page 16) and a reader in law at Oxford University and a fellow of Lincoln College, Oxford. He is the United Kingdom's representative on the European Commission's group of lawyers advising on women's equality issues, and is a specialist advisor to the House of Commons' Northern Ireland Affairs Committee. He is teaching a seminar on Comparative Human Rights Law during the fall term.

Bruno Simma is professor and dean of the School of Law at the University of Munich and an expert for conflict prevention activities of the UN Secretary General. He is co-teaching International Law with Professor Michael Heller during the fall term and a second course during the winter term. (His essay on human rights appears on page 20.)

U.S. Supreme Court draws on faculty member's work

There are few higher compliments to a law professor than having his work play a significant role in the decision making of the U.S. Supreme Court. Professor Richard D. Friedman was pleased when the Court handed down a decision that reflected his work on the Confrontation Clause — and, indeed, the contents of the brief that he had co-written in the case.

At least four other faculty members also played roles in Supreme Court decision in the most recent term; these will be discussed in the spring issue of *Law Quadrangle Notes.*

To Friedman, the Sixth Amendment to the Constitution guarantees a criminal defendant the right to "be confronted with the witnesses against him." He has been spending a great deal of energy addressing one fundamental question: To what extent does the Confrontation Clause bar a prosecutor from presenting evidence in court of what a person has said out of court? "The Supreme Court has interpreted the clause as virtually a constitutionalization of the law of hearsay," Friedman says, "and the result is a mess. It yields doctrine that is complex and bizarre and that often obscures rather than highlights the great principle behind the clause."

That principle, Friedman says, may be gleaned by examining the language of the clause. "The clause doesn't speak in terms of hearsay, or of hearsay exceptions, or of the reliability of evidence," he points out. "It says that the accused has a right to confront the witnesses against him. It doesn't apply to all hearsay declarants — only 'witnesses' — but as to those it sets up a categorical rule."

Of course, the key question is what out-of-court declarants should be deemed "witnesses." "I think history casts a helpful light here," says Friedman. "In medieval times, and in early Continental systems, accusers often gave their evidence outside the presence of the accused. One of the great glories of the English system was the recognition that this was an improper way of giving testimony, and this principle was well established by the middle of the 17th century. In short, a witness is a person who makes a statement understood at the time to be creating evidence for a possible prosecution.

In *Lilly v. Virginia*, 119 S. Ct. 1887 (1999), the Supreme Court recently took a significant step moving confrontation doctrine toward the position Friedman has advocated. The case presented a simple, classic situation. Benjamin and Mark Lilly and a friend had gone on a two-day spree of robbery, drug and alcohol use, and car theft that eventually left one man dead from multiple, close-range gunshots. Mark Lilly told police that his brother was the triggerman, but at Benjamin's trial Mark exercised his Fifth Amendment right not to testify and so was deemed to be unavailable for cross examination. Benjamin Lilly was convicted of murder and other crimes and sentenced to death. He turned to the U.S. Supreme Court after losing his appeal in the Virginia Supreme Court.

Friedman was one of the authors of an *amicus* brief filed in support of Lilly by the American Civil Liberties Union in the Supreme Court. (An edited version of the brief begins on page 90). The Court unanimously agreed that the decision of the Virginia Supreme Court had to be reversed, but it was badly fragmented as to the reasons. There was no majority opinion on the crucial issues. Although the plurality opinion did not purport to reevaluate confrontation doctrine, Friedman took heart from a passage emphasizing that the statements made by Mark Lilly "were obviously obtained for the purpose of creating evidence that would be useful at a future trial."

Perhaps even more significant was the concurring opinion of Justice Stephen Breyer, a member of the plurality. Breyer wrote separately "to point out that the fact that we do not reevaluate the link (between hearsay and confrontation doctrine) in this case does not end the matter. It may leave the question open for another day." Breyer's opinion relied heavily on the ACLU *amicus* brief and cited an article by Friedman, "Confrontation: The Search for Basic Principles," 86 *Georgetown Law Journal* 1011-1043 (1998). "Viewed in the light of its traditional purposes," Breyer wrote, "the current, hearsay-based Confrontation Clause text, *amici* argue, is both too narrow and too broad. The test is arguably too narrow insofar as it authorizes the admission of out-of-court statements prepared as testimony for a trial when such statements happen to fall within some well-recognized hearsay rule exception. . . .

"At the same time, the current hearsay-based Confrontation Clause test is arguably too broad. It would make a constitutional issue out of the admission of any relevant hearsay statement, even if that hearsay statement is only tangentially related to the elements in dispute, or was made long before the crime occurred and without relation to the prospect of a future trial."

"Ours may have been the first ACLU brief ever to take the position that in some sense the Court has been interpreting a constitutional right too broadly," says Friedman. "But Margaret Berger [his co-author] and I believe that the Court has been diluting the right by applying it to all hearsay declarants, and then deciding that the right can be overcome if the evidence fits within a hearsay exception or otherwise appears reliable. A narrower right would be a stronger right."

Faculty Publications

Knowledge shared is knowledge gained, and faculty members at the University of Michigan Law School devote great time and energy to sharing the fruits of their research and reflection via a variety of publications.

Here we present a compilation of publications by faculty members from 1996 to the present.

Layman E. Allen

"Some Examples of Using Legal Relations Language in the Legal Domain: Applied Deontic Logic," 73 *Notre Dame Law Review* 535-75 (1998).

"The Legal Argument Games of Legal Relations on the Internet," *The Journal of Law and Information Science* (forthcoming) and *E-Law* (forthcoming). (Paper presented at the first Australasian Legal Information Institute Conference on Computerization of Law via the Internet, AusLII, University of Technology, Sydney, 25-27 June 1997.)

"Achieving Fluency in Modernized and Formalized Hohfeld: Puzzles and Games for the Legal Relations Language," *Proceedings of the Sixth International Conference on Artificial Intelligence and Law*, June 29-July 3, 1997, University of Melbourne, Melbourne.

"From the Fundamental Legal Conceptions of Hohfeld to Legal Relations: Refining the Enrichment of Solely Deontic Legal Relations," p. 1-26 in (Mark A. Brown and José Carmo, eds.) *Deontic Logic, Agency and Normative Systems*, Springer and the British Computer Society (1996). Presented at DEON '96: Third International Workshop on Deontic Logic in Computer Science, Sesimbra, Portugal (January 11-13, 1996); Volume in the (C.J. van Rijsbergen, ed.) *Workshops in Computing* series.

Reuven S. Avi-Yonah

"U.S. Notice 98-11 and the Logic of Subpart F: A Comparative Perspective," *Tax Notes International* (June 8, 1998).

"International Taxation of Electronic Commerce," 52 *Tax Law Review* 507-55 (1997).

Comment on (Shay and Summers) "Selected International Aspects of Fundamental Tax Reform Proposals," 51 *University of Miami Law Review* 1085-91 (1997).

Review of (John Head and Richard Krever) *Company Tax Systems,* Australian Tax Research Foundation (1997), 15 *Tax Notes International* 37 (1997).

"U.S. International Treatment of Financial Derivatives" (with Linda Z. Swartz), 14 *Tax Notes International* 787 (1997). Also at 74 *Tax Notes* 1703 (1997).

Taxation of Financial Instruments (ed., with D. Newman and D. Ring), Clark, Boardman, Callaghan (1996).

"The Attribution Rules," *Tax Management* (1996).

"Slicing the Shadow: A Proposal for Updating U.S. International Taxation" (T. Okamura, tr.), 139 *Kyoto Law Review* 89 (1996).

"From Income to Consumption Tax: Some International Implications," 33 *San Diego Law Review* 1329-54 (1996).

"Comment on Grubert and Newlon, 'The International Implications of Consumption Tax Proposals'," 49 *National Tax Journal* 259 (1996).

"Virtual Taxation: Source-Based Taxation in the Age of Derivatives," 2 *Derivatives* 247 (1997). Also in (with L. Swartz) *Proceedings of the 89th Annual Congress of the National Tax Association* 269, Boston (1996).

"To End Deferral as We Know It: Simplification Potential of Check-the-Box," 13 *Tax Notes International* 2207 (1996).

"The Structure of International Taxation: A Proposal for Simplification," 74 *Texas Law Review* 1301-59 (1996).

Omri Ben-Shahar

"Rights Eroding by Past Breach," 1 *American Law and Economics Review* (forthcoming 1999).

"The Tentative Case Against Flexibility in Commercial Law," 66 *University of Chicago Law Review* (forthcoming 1999).

"Causation and Foreseeability," in (Bouckaert and DeGeest, eds.) *Encyclopedia of Law and Economics*, Elgar Publishing (forthcoming 1999).

"The Regulation of the Licensing of Professional Occupations," 1 *The Economic Quarterly* 18-27 (in Hebrew) (1998).

"Should Products Liability be Based on Hindsight?" 14 *Journal of Law, Economics, and Organization* 325-57 (1998).

"Playing Without a Rulebook: Optimal Sanctions When Individuals Learn the Penalty Only by Committing the Crime," 7 *International Review of Law and Economics* 409-21 (1997).

"Criminal Attempts," in (P. Newman, ed.) *The New Palgrave Dictionary of Economics and the Law* (1998).

"The Economics of the Law of Criminal Attempts: A Victim-Centered Perspective," 145 *University of Pennsylvania Law Review* 299-351 (1996).

Susanna L. Blumenthal

"Law and the Creative Mind," 74 *Chicago-Kent Law Review* (forthcoming 1999).

Lorray S.C. Brown

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

Evan H. Caminker

"Sincere and Strategic Voting Norms on Multi-Member Courts," 97 *Michigan Law Review* (forthcoming 1999).

"Context and Complementarity Within Federalism Doctrine," 22 *Harvard Journal of Law and Public Policy* 161-71 (Fall 1998).

"The *Hunter* Doctrine and Proposition 209: A Reply to Thomas Wood" (with Vik Amari), 24 *Hastings Constitutional Law Quarterly* 1001-14 (Summer 1997).

"Morning Coffee with Justice Brennan," 7 *Boston University Public Interest Law Journal* 3-7 (Winter 1998).

"Memorial Dedication to Justice William J. Brennan Jr.," 31 *Loyola of Los Angeles Law Review* 759-63 (April 1998).

"*Printz*, State Sovereignty, and the Limits of Formalism," 1997 *Supreme Court Review* 199-248 (1997).

"The Unitary Executive and State Administration of Federal Law," 45 *University of Kansas Law Review* 1075-1112 (July 1997).

"Equal Protection, Unequal Political Burdens, and the CCRI" (with Vik Amar), 23 *Hastings Constitutional Law Quarterly* 1019-56 (Summer 1996).

David L. Chambers

"Learning to Serve: The Findings and Proposals of the AALS Commission on *Pro Bono* and Public Service Opportunities" (principal author), Association of American Law Schools (May 1999).

"Doing Well and Doing Good: The Careers of Minority and White Graduates of the University of Michigan Law School, 1970-1996" (with Richard O. Lempert and Terry K. Adams), 42.2 *Law Quadrangle Notes* 60-71 (Summer 1999).

"Polygamy and Same-Sex Marriage," 26 *Hofstra Law Review* 53-83 (Fall 1997).

"Honesty, Privacy and Shame: When Gay People Talk about Other Gay People to Nongay People," 4 *Michigan Journal of Gender & Law* 255-73 (1997).

"25 Divorce Attorneys and 40 Clients in Two Not So Big but Not So Small Cities in Massachusetts and California: An Appreciation," 22 *Law and Social Inquiry* 209-31 (1997).

"What If? The Legal Consequences of Marriage and the Legal Needs of Lesbian and Gay Male Couples," 95 *Michigan Law Review* 447-491 (November 1996). Reprinted as "Marriage Today: Legal Consequences for Same Sex and Opposite Sex Couples," in 40.2 *Law Quadrangle Notes* 60-70 (Summer 1997).

Sherman Clark

"The Courage of our Convictions," 97 *Michigan Law Review* (forthcoming 1999).

"Direct Democracy in America," 97 *Michigan Law Review* (forthcoming 1999).

"Literate Lawyering: An Essay on Imagination and Persuasion," *Rutgers Law Journal* (forthcoming 1999).

"A Populist Critique of Direct Democracy," 112 *Harvard Law Review* 434-82 (December 1998).

"To Thine Own Self Be True: Enforcing Candor in Pleading Through the Party Admissions Doctrine," 49 *Hastings Law Journal* 565-90 (March 1998).

"Law and Literature," 41.2 *Law Quadrangle Notes* 84-88 (Summer 1998).

Edward H. Cooper

"Commentary, An Alternative and Discretionary § 1367," 74 *Indiana Law Journal* 153-59 (Winter 1998).

"The (Cloudy) Future of Class Actions," 40 *Arizona Law Review* 923-63 (Fall 1998).

1999 and 1998 Supplements, Vols. 13, 13A, 15A, 15B, 16, 16B, 17, 18, *Federal Practice and Procedure: Jurisdiction* (with C. A. Wright and A. R. Miller).

Vols. 14, 14A, 14B, 14C, *Federal Practice and Procedure: Jurisdiction* 3rd (with C. A. Wright and A. R. Miller).

Vol. 16A, *Federal Practice and Procedure: Jurisdiction*, 3rd (with C. A. Wright and A. R. Miller).

Proposed revisions, *Federal Rules of Civil Procedure* 4, 5, 12, 26, 30, 34, 37, Admiralty Rules B, C, E (as Reporter, Advisory Committee of the Federal Rules of Civil Procedure), August 1, 1998.

"The Structure of Pretrial and Trial: A United States Perspective," a paper delivered in August, 1997, at an international symposium held by the Japanese Association of the Law of Civil Procedure and published only in Japanese.

"Civil Rule 53: An Enabling Act Challenge," 76 *Texas Law Review* 1607-35 (June 1998).

"The Jurisprudence of Yogi Berra" (with G. Tonner et 37 alii), 46 *Emory Law Journal* 697-790 (1997).

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

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

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

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

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

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

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

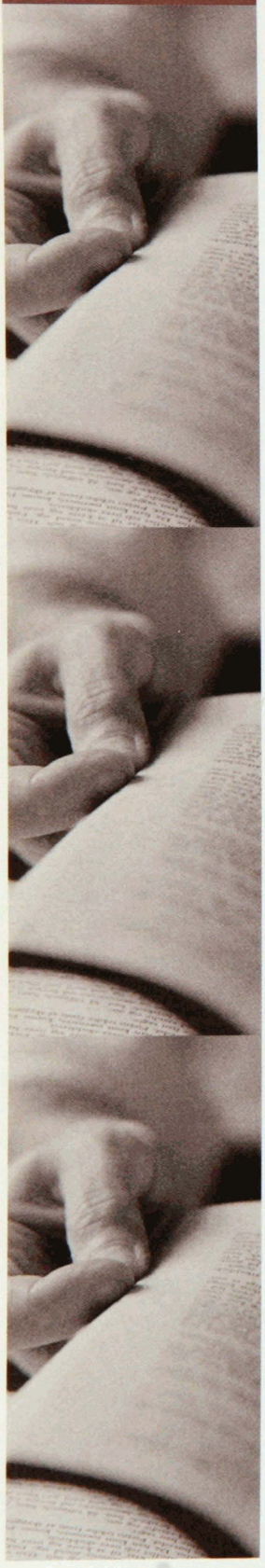
Proposed revisions, Federal Rules of Civil Procedure 9(h), 26 (c), 47 (a), and 48, with Committee Notes (as Reporter, Advisory Committee on the Federal Rules of Civil Procedure), 91 F.R.D. 123-147.

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

"Class Action Rule Changes: A Midpoint Report," 39.3 *Law Quadrangle Notes* 78-81 (Fall/Winter 1996).

Faculty Publications

Faculty Publications



Steven P. Croley

"State Administrative Procedure Reform: Michigan's Recent Experience," 8 *Widener Journal of Public Law* (forthcoming 1999).

"Theories of Regulation: Incorporating the Administrative Process," 98 *Columbia Law Review* 1-168 (January 1998).

"The Federal Advisory Committee Act and Good Government" (with William Funk), 14 *Yale Journal on Regulation* 451-557 (1997).

"WTO Dispute Panel Deference to National Government Decisions: The Misplaced Analogy to the U.S. Chevron Standard-of-Review Doctrine" (with John H. Jackson), in *International Trade Law and the GATT/WTO Dispute Settlement System* 187-210, Kluwer (1997).

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

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

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

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

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

Donald N. Duquette

Guidelines for Public Policy and State Legislation Governing Permanence for Children, U.S. Government (1999).

Michigan Child Welfare Law: Child Protection, Foster Care, Termination of Rights, State of Michigan/Family Independence Agency (forthcoming 1999).

"Lawyers' Roles in Child Protection," in (Helfer, Kempe and Krugman, eds.) *The Battered Child*, 5th ed., University of Chicago Press (1997).

"We Know Better Than We Do: A Policy Framework for Child Welfare Reform" (with Danziger, Abbey, and Seefeldt), 31 *University of Michigan Journal of Law Reform* 93-157 (Fall 1997).

"Developing a Child Advocacy Law Clinic: A Law School Clinical Legal Education Opportunity," monograph, June 1996. Reprinted in 31 *University of Michigan Journal of Law Reform* 1-32 (Fall 1997). Reprinted in *A Judge's Guide to Improving Legal Representation of Children*, ABA Center for Children and the Law (1998).

Rebecca S. Eisenberg

"Can Patents Deter Innovation? The Anticommons in Biomedical Research" (with Michael A. Heller), 280 *Science* 698-701 (May 1998). Excerpted as "Upstream Patents = Downstream Bottlenecks" in 41.3 *Law Quadrangle Notes* 93-97 (Fall/Winter 1998).

"Do EST Patents Matter?" *Trends in Genetics* (forthcoming).

"Commentary: The Move Toward the Privatization of Biomedical Research," in (C. Barfield and B. Smith, eds.) *The Future of Biomedical Research*, American Enterprise Institute and Brookings Institution (1997).

"Structure and Function in Gene Patenting," 15 *Nature Genetics* 125 (1997).

"Intellectual Property at the Public-Private Divide: The Case of Large-Scale cDNA Sequencing," 3 *University of Chicago Law School Roundtable* 557-73 (1996).

"Public Research and Private Development: Patents & Technology Transfer in Government-Sponsored Research," 82 *Virginia Law Review* 1663-1727 (November 1996).

"Genomic Patents and Product Development Incentives," published as part of the proceedings of the First International Conference on DNA Sampling, Montreal, Quebec, Canada (1996).

"Intellectual Property Rights and Research Tools in Molecular Biology" (with co-authors), summary of a National Academy of Sciences workshop, National Academy Press (1997).

"Intellectual Property Issues in Genomics," 14 *Trends in Biotechnology* 302 (1996).

"Patents: Help or Hindrance to Technology Transfer?", in *Biotechnology: Science, Engineering, and Ethical Challenges for the 21st Century*, National Academy Press (1996).

Phoebe C. Ellsworth

"Through the Looking Glass Darkly? When Self-Doubts Turn into Relationship Insecurities" (with Sandra L. Murray, John G. Holmes, and Geoff MacDonald), 75 *Journal of Personality and Social Psychology* 1459-80 (1998).

"Psychology and Law" (with R. Mauro), in (D. Gilbert, S. Fiske, and G. Lindzey, eds.) *Handbook of Social Psychology*, New York: McGraw Hill, 684-731 (1998).

"The Right Way to Study Emotion," 6 *Psychological Inquiry* 213-16 (1996).

Merritt B. Fox

"Securities Disclosure in a Globalizing Market: Who Should Regulate Whom," 95 *Michigan Law Review* 2498-2632 (1997).

Richard D. Friedman

"DNA Database Searches and the Legal Consumption of Scientific Evidence" (with Peter Donnelly), 97 *Michigan Law Review* 931-84 (February 1999).

"Confrontation Confronted" (with Margaret A. Berger and Steven R. Shapiro), an adaptation of the *amicus curiae* brief to the U.S. Supreme Court in *Benjamin Lee Lilly v. Commonwealth of Virginia* (No. 98-5881), 42.3 *Law Quadrangle Notes,* 90-97 (Fall/Winter 1999).

"Truth and Its Rivals in the Law of Hearsay and Confrontation," 49 *Hastings Law Journal* 545-64 (March 1998).

"Thoughts from Across the Water on Hearsay and Confrontation," *Criminal Law Review* 687 (October 1998).

"Three New Deal Justices," review of (Jeffrey D. Hockett) *New Deal Justice*, published on-line for H-Pol@h-net.msu.edu (January 1999).

"*Lilly v. Virginia*: A Chance to Reconceptualize the Confrontation Right," AALS Section on Evidence, Spring 1999 newsletter, at 5.

The Elements of Evidence (with teacher's manual), 2nd ed., West Publishing Co. (1998).

"Economic Analysis of Evidentiary Law: An Underused Tool, an Underplowed Field," 19 *Cardozo Law Review* 1531-39 (May 1998).

"Logic and Elements," 73 *Notre Dame Law Review* 575-601 (March 1998).

"Anchors and Flotsam," review of (Mirjan Damaska) *Evidence Law Adrift,* 107 *Yale Law Journal* 1921-67 (April 1998).

"Confrontation: The Search for Basic Principles," 86 *Georgetown Law Journal* 1011-43 (February 1998).

"Clinton's betrayal deserves public rebuke for misconduct," *Detroit News*, August 23, 1998, at 9B.

"Confrontation and the Definition of Chutzpa," 31 *Israel Law Review* 506 (1997).

Review of (John Anthony Maltese) *The Selling of Supreme Court Nominees*, 41 *American Journal of Legal History* 502 (October 1997).

"Answering the Bayesioskeptical Challenge," 1 *International Journal of Evidence and Proof* 276 (1997).

"Dealing With Evidentiary Deficiency," 18 *Cardozo Law Review* 1961-86 (July 1997).

"Toward a (Bayesian) Convergence?" 1 *International Journal of Evidence and Proof* 348 (1997).

"Confrontation Rights of Criminal Defendants," in *Proceedings of the First World Conference on New Trends in Criminal Investigation and Evidence* (Nijboer & Reijntjes) 533-41 (1997).

"Irrelevance, Minimal Relevance, and Meta-Relevance," 34 *Houston Law Review* 55-71 (Spring 1997).

"Chief Justice Hughes' Letter on Court-Packing," *Journal of Supreme Court History*, Vol. 1 (1997).

"Charles Evans Hughes as International Lawyer," 90 *American Society of International Law Proceedings* 143 (1996).

"Assessing Evidence," review of (C.G.G. Aitken) *Statistics and the Evaluation of Evidence for Forensic Scientists*, (Bernard Robertson and G. A. Vignaux) *Evidence: Evaluating Forensic Science and the Courtroom*, and (David A. Schum) *Interpreting Evidential Foundations of Probabilistic Reasoning*, 94 *Michigan Law Review* 810-38 (1996).

"Prior Statements of a Witness: A Nettlesome Corner of the Hearsay Thicket," 1995 *Supreme Court Review* 277-321 (1996).

"The New Wigmore in Perspective," introduction as general editor to *The New Wigmore: A Treatise on Evidence*, included in the first volume published, (David P. Leonard) *Selected Rules of Limited Admissibility, The New Wigmore*, at xxiii (1996).

"Telling the Story of the Hughes Court," 39.1 *Law Quadrangle Notes* 32-39 (Spring 1996).

Bruce Frier

"The Census Register P. Oxy. 984: The Reverse of Pindar's Paeans" (with R. S. Bagnall and I. C. Rutherford), *Papyrologica Bruxellensia* 36, University of Brussels (1997).

"The Sociology of Roman Law," in *The Oxford Classical Dictionary*, 3d ed., 823-825 (1996).

"Roman Legal and Social Status," in *The Oxford Classical Dictionary*, 3d ed., 1441-42 (1996).

Thomas A. Green

"Freedom and Criminal Responsibility in the Age of Pound: An Essay on Criminal Justice," 39.2 *Law Quadrangle Notes* 45-49 (Summer 1996). Reprinted from 93 *Michigan Law Review* 1915-2053 (June 1995).

Samuel R. Gross

"Lost Lives: Miscarriages of Justice in Capital Cases," 61 *Law and Contemporary Problems* 125 (1998). A version also appeared in *Law Quadrangle Notes* 82-92 (Spring 1999).

"Update: American Public Opinion on the Death Penalty — It's Getting Personal," 83 *Cornell Law Review* 1448-75 (September 1998).

"Law in the Backwaters: A Comment on *Evidence Law Adrift* by Mirjan Damaska," 49 *Hastings Law Journal* 368-75 (January 1998).

"We Could Pass a Law ... What Might Happen if Contingent Legal Fees Were Banned," 47 *DePaul Law Review* 321-46 (Winter 1998).

"Make-Believe: The Rules Excluding Evidence of Character and Liability Insurance," 49 *Hastings Law Journal* 843-60 (March 1998).

"Countering Stereotypes," review of (Neil Vidmar) *Medical Malpractice and the American Jury*, 81 *Judicature* 36-38 (1997).

"Why Civil Cases Go to Trial: Strategic Bargaining and the Desire for Vindication" (with Kent Syverud), 4 *Dispute Resolution Magazine* 21 (1997).

"Crime, Politics, and Race," 20 *Harvard Journal of Law & Public Policy* 405 (1997).

"Don't Try: Civil Jury Verdicts in a System Geared to Settlement" (with Kent Syverud), 44 *UCLA Law Review* 1-64 (October 1996). Reprinted as "Going to Trial: A Rare Throw of the Die" in 40.1 *Law Quadrangle Notes* 74-86 (Spring 1997).

"Substance and Form in Scientific Evidence: What Daubert Didn't Do," in (L. Kramer, ed.) *Reforming the Civil Justice System*, NYU Press, 1996 (also printed in *Shepherd's Expert and Scientific Evidence Quarterly*, vol. 3, number 1, at 129 [1995]).

"The Risks of Death: Sources of Error in Capital Prosecutions," 44 *Buffalo Law Review* 469-500 (Spring 1996).

Reply to Daniel Polsby, 44 *Buffalo Law Review* 541-44 (Spring 1996).

Daniel Halberstam

"Commercial Speech, Professional Speech, and the Constitutional Status of Bounded Speech Institutions," 147 *University of Pennsylvania Law Review* 771-874 (1999).

Peter Hammer

"Price and Quality Competition in Health Care Markets: The Comparative Institutional Case Against an Antitrust Exemption for Medical Self-Regulation," in (John D. Blum, ed.) *Achieving Quality in Managed Care: The Role of Law* 123-53, ABA Health Law Section (June 1997).

"Assisted Suicide and the Challenge of Individually Determined Collective Rationality," in *Law at the End of Life: The Supreme Court and Assisted Suicide* (Carl E. Schneider, ed.), University of Michigan Press (forthcoming 1999). A version of this essay, "The individual, the community, and physician assisted suicide," appeared in 42.3 *Law Quadrangle Notes* 84-88 (Summer 1999).

"Medical Antitrust Reform: Arrow, Coase and the Changing Structure of the Firm," in *The Privatization of Health Care Reform* (Gregg Bloche, ed.), Oxford University Press (forthcoming 1999).

"Questioning Traditional Antitrust Presumptions: Price and Non-Price Competition in Hospital Markets," 33 *Michigan Journal of Law Reform* (forthcoming 1999).

"Competing on Quality of Care: Developing a Competition Policy for Health Care Markets" (with William M. Sage), 33 *Michigan Journal of Law Reform* (forthcoming 1999).

James C. Hathaway

Reconceiving International Refugee Law, Kluwer Law International (1997).

"Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection" (with A. Neve), 10 *Harvard Human Rights Journal* 115-211 (1997).

"The Meaning of Repatriation," (in European University Institute, ed.) *Legal and Policy Issues Concerning Refugees From the Former Yugoslavia* 4-11 (1997); also published in *International Journal of Refugee Law* 551-58 (1997).

"Fundamental Justice and the Deflection of Refugees from Canada" (with A. Neve), 34(2) *Osgoode Hall Law Journal* 213-70 (1997).

Review: R. Barsky, *Constructing a Productive Other* (1996), *International Migration Review*.

"Is Refugee Status Really Elitist? An Answer to the Ethical Challenge," in (J.Y. Carlier and D. Vanheule, eds.) *Europe and Refugees: A Challenge?* 79-88 (1997).

"Can International Refugee Law Be Made Relevant Again?", *World Refugee Survey* 14-19 (1996). Reprinted in 41.3 *Law Quadrangle Notes* 106-8 (Fall/Winter 1998).

"Refugee Claims Arising from Generalized Oppression," in (G. Alfredsson and P. Macalister-Smith, eds.) *The Living Law of Nations* 61-67 (1996).

"The Need for a New Vision of International Refugee Law," in *Canadian Council of International Law Proceedings* 177-83 (1996).

"Toward the Reformulation of International Refugee Law," 15(I) *Refugee* 1-5 (1996).

Michael A. Heller

"The Boundaries of Private Property," 108 *Yale Law Journal* 1163-1223 (April 1999).

Faculty Publications

Faculty Publications

"Deterrence and Distribution in the Law of Takings" (with James E. Krier), 112 *Harvard Law Review* 997-1025 (March 1999).

"Making Something Out of Nothing: The Law of Takings and *Phillips v. Washington* Legal Foundation" (with James E. Krier), 7 *Supreme Court Economic Review* (1999).

"Revaluing Restitution: From the Talmud to Postsocialism" (with Christopher Serkin), review of (Hanoch Dagan) *Unjust Enrichment*, 97 *Michigan Law Review* 2101 (1999).

"Can Patents Deter Innovation? The Anticommons in Biomedical Research" (with Rebecca S. Eisenberg), 280 *Science* 698-701 (May 1998). Excerpted as "Upstream Patents = Downstream Bottlenecks" in 41.3 *Law Quadrangle Notes* 93-97 (Fall/Winter 1998).

"The Tragedy of the Anticommons: Property in the Transition from Marx to Markets," 111 *Harvard Law Review* 621-88 (1998).

"ABA Review of the UN Specialized Agencies: The IMF and World Bank" (with members of the ABA Section of International Law and Practice), 30 *International Lawyer* 441 (1996).

Don Herzog

"Envy: Poisoning the Banquet They Cannot Taste," in (Robert C. Solomon, ed.) *Wicked Pleasures: Meditations on the Seven Deadly Sins*, Rowman and Littlefield, Lanham, Maryland (1999).

Poisoning the Minds of the Lower Orders, Princeton University Press (1998). An excerpt, "Enlightenment," appeared in 41.2 *Law Quadrangle Notes* 80-83 (Summer 1998).

"Up from Individualism," 86 *California Law Review* 459-67 (May 1998).

"Liberalism Stumbles in Tennessee," 96 *Michigan Law Review* 1898-1909 (May 1998).

"The Trouble with Hairdressers," *Representations*, Issue 53 (Winter 1996).

Roderick M. Hills

"Back to the Future? How the Bill of Rights Might Be About Structure After All," 93 *Northwestern University Law Review* 977-1007 (Spring 1999).

"Dissecting the State: The Use of Federal Law to Free State and Local Officials from State Legislatures' Control," 97 *Michigan Law Review* 1201-1286 (March 1999).

"Truth or Consequences? The Inadequacy of Consequentialist Arguments Against Multicultural Relativism," a review of (Daniel Farber and Suzanna Sherry) *Beyond All Reason: The Radical Assault on Truth in American Law*, 15 *Constitutional Commentary* 185-208 (1998).

"The Political Economy of Cooperative Federalism: Why State Autonomy Makes Sense and 'Dual Sovereignty' Doesn't," 96 *Michigan Law Review* 813-944 (1998).

"Is Amendment 2 *Really* a Bill of Attainder? Some Questions about Professor Amar's Analysis of *Romer*," 95 *Michigan Law Review* 236-54 (October 1996).

Robert L. Howse

"The World Trade Organization and the Protection of Workers' Rights," *Journal of Small and Emerging Business Law* (forthcoming 1999).

The Regulation of International Trade (with Michael J. Trebilcock), 2nd ed., Routledge, London (forthcoming 1999).

Restorative Justice: A Conceptual Framework (with Jennifer Llewellyn), Law Commission of Canada, Ottawa (1999).

Alexandre Kojève: Outline for A Phenomenology of Right, translation with notes and an interpretative essay, co-translator and author of interpretative essay, Rowman and Littlefield (forthcoming 1999).

The World Trading System: Critical Perspectives (editor and author of introductory material), Routledge, London (1998).

"The Regulation of Trade in Electricity: A Canadian Perspective" (with Gerald Heckman), in (R. Daniels, ed.) *Ontario Hydro at the Millenium: Has Monopoly's Moment Passed?* McGill-Queen's, Montreal and Kingston (1996).

The Role of the Civil Justice System in the Choice of Governing Instrument (with Michael J. Trebilcock), Law Reform Commission of Ontario (1996).

"The Canadian Food Inspection System: A Case Study in Alternative Service Delivery," Institute of Public Administration of Canada, Toronto (1997).

"Industrial Policy in Canada and the United States" (with Marshal Chandler), in (Banting, Hoberg and Simeon, eds.) *Degrees of Freedom: Canada and the United States in a Changing World*, McGill-Queen's, Kingston and Montreal (1997)

"The Free Trade-Fair Trade Debate: Trade, Labour, and the Environment" (with Michael J. Trebilcock), in (J.S. Bhandari and A.O. Sykes, eds.) *Economic Dimensions in International Law: Comparative and Empirical Perspectives*, Cambridge University Press (1997).

"Searching for Plan A: National Unity and the Chretien Government's New Federalism," in (H. Lazar, ed.) *Canada: The State of the Federation 1997: Non-Constitutional Renewal*, Queen's Institute of Intergovernmental Relations, Kingston (1998).

"State Trading Enterprises and Multilateral Trade Rules: The Canadian Experience," in (P. Mavroidis and T. Cottier, eds.) *State Trading in the 21st Century*, University of Michigan Press (1999).

"Managing the Interface Between Trade Law and the Regulatory State: What Lessons to Draw (and not Draw) from the Jurisprudence of the U.S. Dormant Commerce Clause," in (P. Mavroidis and T. Cottier, eds.) *Non-Discrimination in International Trade Law*, University of Michigan Press (forthcoming).

"Comments on Roessler and Wilson Papers," in (OECD Trade Directorate) *Regulatory Reform and International Market Openness*, OECD, Paris (1997).

"Comment on R. Daniels, 'Have Boards Gone Overboard?'," *Canadian Business Law Journal* (1996).

"Liberal Accommodation" (review article), *University of Toronto Law Journal* (1996).

"The Specificity and Autonomy of Right: Alexandre Kojève's Legal Philosophy" (co-translator with Bryan-Paul Fost and Denyse Goulet, co-editor/co-author of interpretive note with Bryan-Paul Frost), *Interpretation: A Journal of Political Philosophy* (1996).

"Strengthening the Canadian Economic Union: Legal and Constitutional Options for the Federal Government," C.D. Howe Institute *Commentary* (1996).

"The Fair Trade-Free Trade Debate: Trade, Environment, and Labour Rights" (with Michael J. Trebilcock), 16 *International Review of Law and Economics* 61-79 (1996).

"From Dictatorship to Legitimacy — and Back Again: Leo Strauss's Critique of the Anti-Liberalism of Carl Schmitt," *Canadian Journal of Law and Jurisprudence* (January 1997). Reprinted in (D. Dyzenhaus, ed.) *Carl Schmitt: Politics and Law*, Duke University Press (1999).

"Do Institutions Matter? A Comparative Pathology of the HIV-Infected Blood Tragedy" (with Michael J. Trebilcock and Ronald Daniels), 82 *Virginia Law Review* 1407-91 (November 1996).

"Canadians are a Sovereign People: How the Supreme Court Should Approach the Reference on Quebec Secession" (with Alissa Malkiin), 76 *Canadian Bar Review* (1997).

"Settling U.S.-Canada Trade Disputes on Dumping and Subsidies: When the WTO, not NAFTA, is the Better Forum," C.D. Howe Institute *Commentary* (1998).

"Trade Liberalization and Regulatory Diversity: Reconciling Competitive Markets with Competitive Politics" (with Michael Trebilcock), 6 *European Journal of Law and Economics* 5 (1998).

"The *Turtles* Panel: Another Environmental Disaster in Geneva," *Journal of World Trade* (October 1998).

"Between the Lines: Exotericism, Esotericism and the Philosophical Rhetoric of Leo Strauss," *Philosophy and Rhetoric* (January 1999).

"Rethinking Consumer Protection Policy" (with Gillian Hadfield and Michael J. Trebilcock), *Journal of Consumer Policy* (1999).

"Institutions for Restorative Justice: The South African Truth and Reconciliation Commission" (with Jennifer Llewellyn), *University of Toronto Law Journal* (forthcoming 1999).

"Democratic Legitimacy and International Trade Law Adjudication," in *Courses of the Academy of European Law*, Oxford University Press (forthcoming 1999).

"The House that Jackson Built: Restructuring the GATT System," *Michigan Journal of International Law* (forthcoming 1999).

Douglas A. Kahn

Federal Income Tax, 4th ed., Foundation Press (1999).

Federal Taxation of Gifts, Trusts and Estates (with Waggoner and Pennel), 3rd ed. (1997).

"The Constitutionality of Taxing Compensatory Damages for Mental Distress When There Was No Accompanying Physical Injury," 4 *Florida Tax Review* 128-139 (1999).

"Tax Consequences of Assigning Life Insurance — Time for Another Look" (with L. Waggoner), *Florida Tax Review* (forthcoming).

"Taxation of Damages After *Schleier*: Where Are We and Where Do We Go From Here?", 15 *Quinnipiac Law Review* 305 (1995; published 1997).

Yale Kamisar

Modern Criminal Procedure (with LaFave, Israel, and King), 9th ed. (1999).

Constitutional Law (with Lockhart, Choper, Shiffrin, and Fallon), 8th ed. (1996).

Criminal Procedure and the Constitution (with Israel and LaFave), rev. ed. (1999).

"Confessions, Search and Seizure and the Rehnquist Court," 34 *Tulsa Law Journal* 465-500 (1999).

"The Warren Court and Criminal Justice," in (Bernard Schwartz, ed.) *The Warren Court: A Retrospective* 116-58, Oxford University Press (1996).

"Physician-Assisted Suicide: The Problems Presented by the Compelling, Heartwrenching Case," 88 *Journal of Criminal Law & Criminology* 1121-46 (1998), (Pope & John Lecture).

"On the Meaning and Impact of the Physician-Assisted Suicide Cases," 82 *Minnesota Law Review* 895-922 (1998) (Symposium).

"Physician-Assisted Suicide: The Last Bridge to Active Voluntary Euthanasia," in (John Keown, ed.) *Euthanasia Examined* 225-60, paperback edition with new Afterword, Cambridge University Press (1996).

"The 'Right to Die': On Drawing, (and Erasing) Lines," 35 *Duquesne Law Review* 481-521 (1996) (Symposium).

"The Future of Physician-Assisted Suicide," *Trial* 48-53 (July 1998).

"Assisted Suicide and Euthanasia: An Exchange" (with Ronald Dworkin and Herbert Hendin), *New York Review of Books*, November 6, 1997, 68-70.

"The Reasons So Many People Support Physician-Assisted Suicide — And Why These Reasons are Not Convincing," 12 *Issues in Law & Medicine* 113-31 (Fall 1996). Reprinted in 39.3 *Law Quadrangle Notes* 82-88 (Fall/Winter 1996).

"The Rights of the Accused in a 'Crime Crisis'," in (Jeffrey Abramson, ed.) *Postmorten: The O.J Simpson Case* 211-18 (1996).

"Euthanasia: Risposte ai quesiti" (Euthanasia: Answers to Queries), in *Quaderni Di Diritto E Politica Ecclesiastica* (*The Quarterly of Law & Ecclesiastic Policies*) 621-26 (December 1998).

"Killing *Miranda* in Baltimore: Reflections on David Simon's Homicide," *Jurist: Books-on-Law*, February 1999, Vol. 2, No. 2; Web site address: http://jurist.law.pitt.edu/lawbooks.

"Details Doom Assisted Suicide Measures," *New York Times*, November 4, 1998, p. A27 (op-ed piece).

"Call It Double Jeopardy," *New York Times*, February 14, 1997, p. A3/23 (op-ed piece).

"The *Miranda* Warning Takes a Body Blow," *Los Angeles Times*, February 17, 1999, p. B7 (op-ed piece).

"The Right to Assisted Death: Abortion Right is No Support," *Chicago Tribune*, March 14, 1996, 27; reprinted in *Legal Times*, March 25, 1996, 23.

"It Started with Quinlan: The Ever Expanding 'Right to Die' " (commentary on the 20th anniversary of the Karen Ann Quinlan case), *Los Angeles Times*, March 31, 1996, M2-M6, reprinted in *The Detroit News*, April 21, 1996, 6B (op-ed piece).

"Thirty Years after *Miranda* Reading Suspects Still Talk," *Los Angeles Times*, June 9, 1996, M2 (op-ed piece).

"*Miranda* Does Not Look so Awesome Now," *Legal Times*, June 10, 1996, 22 (op-ed piece).

"Opposition to Assisted Suicide Involves More Than Morality," *The Detroit News*, October 15, 1998, A12 (op-ed piece).

"Line Blurs Between Assisted Suicide, Euthanasia," *The Detroit News*, November 25, 1998, 11A (op-ed piece).

"Hard Time" (review of *The Oxford History of the Prison*, Norval Morris and David J. Rothman, eds.), *New York Times Book Review*, February 11, 1996.

"Jim Crow on the Bench" (review of A. Leon Higginbotham Jr., *Shades of Freedom), New York Times Book Review*, November 24, 1996.

"Equal Justice in the Gatehouses and Mansions of American Criminal Procedure" (1965), reprinted in (Richard Leo and George Thomas, eds.) *The* Miranda *Debate: Law, Justice, and Policing* (1998).

"Remembering the 'Old World' of Criminal Procedure" (1990), reprinted in *The Miranda Debate*, supra.

Ellen D. Katz

"State Judges, State Officers, and Federal Commands After *Seminole Tribe* and *Printz*," 1998 *Wisconsin Law Review* 1466-1545 (1998).

Thomas E. Kauper

"Merger Control in the United States and European Union," *St. John's Law Review* (forthcoming 1999).

"The Problem of Market Definition Under EC Competition Law," 20 *Fordham International Law Journal* 1683-1767 (1997). Also in (B. Hawk, ed.) *International Antitrust Law and Policy* 239-304 (1997).

James E. Krier

"Deterrence and Distribution in the Law of Takings" (with Michael A. Heller), 112 *Harvard Law Review* 997-1025 (March 1999).

"Making Something Out of Nothing: The Law of Takings and *Phillips v. Washington Legal Foundation"* (with Michael A. Heller), 7 *Supreme Court Economic Review* (1999).

"Risk Assessment," in *The New Palgrave Dictionary of Economics and Law*, McMillan (1998).

Property (with J. Dukeminier), 4th ed., Aspen (1998).

"The Cathedral at Twenty-Five: Citations and Impressions" (with Stewart J. Schwab), 106 *Yale Law Journal* 2121-39 (May 1997).

"The Takings-Puzzle Puzzle," 38 *William & Mary Law Review* 1143-50 (1996).

"Capture and Counteraction: Self-Help by Environmental Zealots" (George E. Allen Lecture), 30 *University of Richmond Law Review* 1039-54 (October 1996).

Faculty Publications

Faculty Publications

"Takings from Freund to Fischel," 84 *Georgetown Law Journal* 1895-1911 (May 1996).

"Internationale Handelsgesellschaft mbH v. Einfuhr-und Vorratsstelle fur Getreide under Futtermittel," 74 *Texas Law Review* 1247-50 (1996).

"Risk and the Legal System," *Annals of the American Academy of Political and Social Science* 176 (May 1996).

Jeffrey S. Lehman

"A Tribute to Theodore J. St. Antoine," 96 *Michigan Law Review* 2189-91 (August 1998).

"Ending Welfare, Leaving the Poor to Face New Risks" (with Sheldon Danziger), 12 *Forum For Applied Research and Public Policy* 6 (Winter 1997).

"Neighborhood Effects and Federal Policy" (with Timothy Smeeding), Chapter 11 of (J. Brooks-Gunn, G. J. Duncan, and J. L. Aber, eds.) *Neighborhood Poverty: Context and Consequences for Children*, Volume 1, New York: Russell Sage Foundation Press (1996).

"How Will Welfare Recipients Fare in the Labor Market?" (with Sheldon Danziger), *Challenge* (March-April 1996).

Richard O. Lempert

"Juries, Hindsight, and Punitive Damage Awards," 48 *DePaul Law Review* 867-94 (Summer 1999).

"Doing Well and Going Good: The Careers of Minority and White Graduates of the University of Michigan Law School, 1970-1996" (with David L. Chambers and Terry K. Adams), 42.2 *Law Quadrangle Notes* 60-71 (Summer 1999).

"Uncovering 'Non-Discernible Differences': Empirical Research and the Jury Size Case," reprinted in (J.M. Jacobstein and R. M. Mersky's compilation) *Jury Size: Articles and Bibliography from the Literature of Law and the Social and Behavioral Sciences*, Fred B. Roth & Co., Littleton, Colorado (1998).

"Civil Juries and Complex Cases: Let's Not Rush to Judgment," reprinted in part in (David L. Levine, Donald L. Doernberg, and Melissa L. Nelken) *Civil Procedure Anthology*, Anderson Publishing Co., Cincinnati, Ohio (1998).

"Damaska: Evidence Law Adrift, A Book Review," 48 *Hastings Law Journal* 397-401 (January/March 1998).

"Built on Lies: Preliminary Thoughts on Evidence Law as an Autopoietic System and the Current Interesting Times," 49 *Hastings Law Journal* 343-57 (January 1998).

"Befuddled Judges: Statistical Evidence in Title VII Cases," in (Bernie Grofman, ed.) *Controversies in Civil Rights*, The University Press of Virginia (forthcoming).

"After the DNA Wars: Skirmishing with NRC II," 37 *Jurimetrics Journal* 439-68 (1997).

"After the DNA Wars: A Mopping Up Operation," 31 *Israel Law Review* 536 (1997).

"Of Flutes, Oboes and the As If World of Evidence Law," special issue of *International Journal of Evidence and Proof* 316 (1997).

"Playing the 'Culture Card': Trials in a Multicultural Democracy," 5 *Cardozo Journal of International & Comparative Law* 113-31 (1997).

"Desert and Deterrence: An Assessment of the Moral Bases of the Case for Capital Punishment," reprinted in part in (Richard G. Singer and Martin R. Gardner) *Crimes and Punishment: Cases, Materials and Readings in Criminal Law*, 2nd ed., Matthew Bender Co. Inc. (1996).

"Modeling Relevance," reprinted in part in (Edward J. Imwikelreid and Glen Weissenberger, eds.) *An Evidence Anthology* 138-41, Anderson Publishing Co. (1996).

"A Right to Every Woman's Evidence," reprinted in part in (Edward J. Imwikelreid and Glen Weissenberger, eds.) *An Evidence Anthology* 183-88, Anderson Publishing Co. (1996).

Kyle D. Logue

"Smokers' Compensation: Toward a Blueprint for Federal Regulation of Cigarettes" (with Jon D. Hanson and Mike S. Zamore), 22 *Southern Illinois University Law Journal* 519 (Spring 1998).

"A Critique of the Proposed National Tobacco Resolution and a Suggested Alternative" (with Jon D. Hanson), 41.1 *Law Quadrangle Notes* 76-88 (Spring 1998).

"The Costs of Cigarettes: The Economic Case for Ex Post Incentive-Based Regulation" (with Jon D. Hanson), 107 *Yale Law Journal* 1163-1361 (1998).

"The Influence of Income Tax Rules on Insurance Reserves" (with David Bradford), chapter in (Kenneth Froot, ed.) *The Limited Financing of Catastrophe Risk*, University of Chicago Press (1998).

"The Effects of Tax-Law Changes on Equilibrium Prices in the Property-Casualty Insurance Industry" (with David Bradford), chapter in (David Bradford, ed.) *The Economics of Property Casualty Insurance*, University of Chicago Press (1998).

"The First-Party Insurance Externality: An Economic Justification for Enterprise Liability" (with Jon D. Hanson), excerpted in (Avery Wiener Katz, ed.) *Foundations of the Economic Approach to Law* 195-203 (1998), originally published at 76 *Cornell Law Review* 129-96 (1990).

"Toward a Tax-Based Explanation of the Liability Insurance Crisis," 82 *Virginia Law Review* 895-959 (September 1996).

"Tax Transitions, Opportunistic Retroactivity, and the Benefits of Government Precommitment," 94 *Michigan Law Review* 1129-96 (March 1996).

Andrea D. Lyon

"Be Careful What You Wish For: An Examination of Arrest and Prosecution Patterns of Domestic Violence in Two Cities in Michigan," 5.2 *Michigan Journal of Gender and Law* 253 (1999).

"Investigating and Trying a Homicide Case," *The Champion*, the journal of the National Association of Criminal Defense Lawyers (August 1998).

"Lessons from the Fall: A Review of Sol Wachtler's *After the Madness: A Judge's Own Prison Memoir*," 96.6 *Michigan Law Review* 1980-87 (May 1998).

Federal Death Penalty Defense Manual, National Association of Criminal Defense Lawyers (1997).

"New Opportunities for Defense Attorneys: How Record Preservation Requirements After the New *Habeas* Bill Require Extensive and Exciting Trial Preparation," 30 *The John Marshall Law Review*, No. 2, 389-98 (Winter 1997). A version was reprinted as "Record Preservation Requirements after 1996 *Habeas* Bill Require Extensive Trial Preparation" in *The Champion*, the journal of the National Association of Criminal Defense Lawyers 37-39 (August 1997).

Catharine A. MacKinnon

Sex Equality, Foundation Press (forthcoming 1999).

In Harm's Way: The Pornography Civil Rights Hearings (edited with Andrea Dworkin); "The Roar on the Other Side of Silence," introduction; Harvard University Press (1998).

"Remedies for War Crimes at the National Level," 6 *Journal of the International Institute* (Michigan) 1, 23 (1998).

"Gender-Based Crimes in Humanitarian Law," in (W.P. Heere, ed.) *Contemporary International Law Issues: New Forum New Applications*, 150-53, T.M.C. Asser Institout, The Hague (1998).

"Engendering Change," 40 *California Lawyer* (March 1998).

"Harassment Law Under Siege," *New York Times*, March 5, 1998.

Toward a Feminist Theory of the State, Spanish edition (1996); forthcoming in Italian; Harvard University Press (1989).

Sexual Harassment of Working Women: A Case of Sex Discrimination, Japanese edition (1998), Yale University Press (1979).

"*Oncale v. Sundowner Offshore Services Inc., Amici Curiae* Brief in Support of Petitioner," 8 *UCLA Women's Law Journal* 9-46 (1997). A version of this brief, "Same Sex Harassment, A Serious and Neglected Social Problem," appeared in 41.3 *Law Quadrangle Notes* 84-92 (Fall/Winter 1998).

"'Freedom from Unreal Loyalties': On Fidelity in Constitutional Interpretation," 65 *Fordham Law Review* 1773-80 (1997).

"Gender Literacy in Law," in (Kathleen Mahoney and John K. Wilson, eds.) *On the Bias*, New York University Press (1997).

"Sexual Harassment" and "Feminist Jurisprudence," in (Mankiller, Smith, Steinem et. al.) *The Reader's Companion to U.S. Women's History.*

"Comment: Law's Story as Reality and Politics," in (Paul Gewirtz and Peter Brooks, eds.) *Narrative and Rhetoric in Law*, Yale University Press (1996).

Deborah C. Malamud

"Intuition and Science in the Race Jurisprudence of Justice Blackmun" (part of symposium on the jurisprudence of Justice Harry A. Blackmun), *Hastings Constitutional Law Quarterly* (forthcoming 1999).

"Engineering the Middle Classes: Class Line-Drawing in New Deal Hours Legislation," 96 *Michigan Law Review* 2212-2321 (August 1998).

"The Jew Taboo: Jewish Difference and the Affirmative Action Debate" (part of the symposium "Twenty Years After *Bakke*: The Law and Social Science of Affirmative Action in Higher Education"), 59 *Ohio State Law Journal* 915-969 (1998).

"Perspectives on Affirmative Action," panel discussion/symposium on "Rethinking Racial Divides: Asian Pacific Americans and the Law," 4 *Michigan Journal of Race & Law* 187-240 (Fall 1998) (commentator, with Gabriel J. Chin, Sumi K. Cho, and Marina Hsieh).

"Collective Bargaining and the Professoriate," *Academe* 18-22 (November-December 1998).

"Assessing Class-Based Affirmative Action," 47 *Journal of Legal Education* 452-71 (1997).

"A Response to Professor Sander" (response to [Richard H. Sander] "Experimenting with Class-Based Affirmative Action" in same issue, 472-503), 47 *Journal of Legal Education* 504-11 (1997).

"Affirmative Action, Diversity, and the Black Middle Class," 68 *University of Colorado Law Review* 939-1000 (1997). (Part of Symposium on Affirmative Action: Diversity of Opinions, published with commentaries by Frances Ansley and Sumi Cho.)

"Values, Symbols, and Facts in the Affirmative Action Debate" (review essay), 95 *Michigan Law Review* 1668-1714 (1997).

"Class-Based Affirmative Action: Lessons and Caveats," 74 *Texas Law Review* 1847-1900 (June 1996). Reprinted as "Class-Based Affirmative Action — A Case of Look (Carefully) Before You Leap," in 39.3 *Law Quadrangle Notes* 61-72 (Fall/Winter 1996).

Ronald J. Mann

Payment Systems, Aspen Law & Business (1999).

Commercial Transactions: A Systems Approach (with Lynn LoPucki, Elizabeth Warren and Dan Keating), Aspen Law & Business (1998).

"Verification Institutions in Financing Transactions," 87 *Georgetown Law Journal* (forthcoming 1999).

"Secured Credit and Software Financing," 85 *Cornell Law Review* (forthcoming 1999).

"The Last Days of the Credit Card," 42.3 *Law Quadrangle Notes* 98-105 (Fall/Winter 1999).

"Why Secured Credit?" 41.1 *Law Quadrangle Notes* 70-73 (Spring 1998).

"Strategy and Force in the Liquidation of Secured Debt," 96 *Michigan Law Review* 159-244 (1997).

"The Role of Secured Credit in Small-Business Lending," 86 *Georgetown Law Journal* 1-44 (1997). Reprinted at 40 *Corporate Practice Commentator* 81 (1998); excerpted in *Secured Credit* (LoPucki and Warren), 2nd ed. (1998); included in *10 Best Corporate and Securities Articles* (selected by *Corporate Practice Commentator* for 1998).

"Searching for Negotiability in Payment and Credit Systems," 44 *UCLA Law Review* 951-1008 (1997).

"Explaining the Pattern of Secured Credit," 110 *Harvard Law Review* 625-83 (1997). "Why Secured Credit," an essay based on this article and on "Strategy and Force in the Liquidation of Secured Debt," above, appeared in 41.1 *Law Quadrangle Notes* 70-73 (Spring 1998).

"The First Shall Be Last: A Contextual Argument for Abandoning Temporal Rules of Lien Priority," 75 *Texas Law Review* 11-49 (1996). Comment on Avery, Bostick and Samolynik, "The Role of Personal Wealth in the Evolution of Small Business Finance," 22 *Journal of Banking and Finance* 1062 (1998).

"Foreword: Path Dependence and Corporate Governance" (with Curtis Milhaupt), 74 *Washington University Law Quarterly* 317-25 (1996).

William Ian Miller

The Anatomy of Disgust, Harvard University Press (1997). Italian translation (1998). Spanish translation (1999).

Review of (Jon Elster) *Alchemies of the Mind: Rationality and the Emotions*, *London Review of Books* (1999).

"Near Misses," 38 *Michigan Quarterly Review* 1-15 (1999). Excerpted in 298 *Harper's* 26-27 (June 1999).

"In Defense of Revenge," in (Barbara A. Hanawalt and David Wallace, eds.) *Medieval Crime and Social Control* 70-89, University of Minnesota Press (1999).

"Sheep, Joking, Cloning and the Uncanny," in (Martha C. Nussbaum and Cass R. Sunstein, eds.) *Clones and Clones: Facts and Fantasies about Human Cloning* 78-87, W.W. Norton, New York (1998).

"Journal: Ann Arbor, December 1997," 67 *The American Scholar* 143-46, No. 2 (1998).

"Clint Eastwood and Equity: The Virtues of Revenge and the Shortcomings of Law in Popular Culture," in (Austin Sarat and Thomas Kearns, eds.) *Law in the Domains of Culture* 161-202, University of Michigan Press (1998).

"Gluttony," *Representations*, No. 60, 92-112 (Fall 1997). With additions in (Robert C. Solomon, ed.) *Wicked Pleasures: Meditations on the Seven Deadly Sins*, Rowman and Littlefield, Lanham, Maryland (1999).

Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland (paperback edition), University of Chicago Press (1996). Hardcover edition, University of Chicago Press (1990).

"Sanctuary, Redlight Districts, and Washington, D.C.: Some Observations in Neuman's Anomalous Zones," 48 *Stanford Law Review* 1235-46 (1996).

Richard H. Pildes

"The Theory of Political Competition," *University of Virginia Law Review* (forthcoming 1999).

"Electoral Exceptionalism and the First Amendment" (with Frederick Schauer), *Texas Law Review* (forthcoming 1999).

"Forms of Formalism," *University of Chicago Law Review* (forthcoming 1999).

"Not by 'Election Law' Alone" (with Samuel Issacharoff), 32 *Loyola Law Review* 1173 (1999).

"Why Rights are not Trumps: Social Meanings, Expressive Harms, and Constitutionalism," 25 *Journal of Legal Studies* 725 (1998).

"The New Progressives," comment on (Tracey Meares and Dan Kahan) "Do Rights Handcuff Democracy?" in same issue, *The Boston Review* (April-May 1999).

"Politics as Markets: Partisan Lockups of the Democratic Process" (with Samuel Issacharoff), 50 *Stanford Law Review* 643-717 (February 1998).

"Democrats and Technocrats" (with Cass Sunstein), *Journees d'etudes juridiques Jean Dabin* (forthcoming).

Faculty Publications

Faculty Publications

"The Structural Conception of Rights and Judicial Balancing," essays on comparative constitutional law, Centre for Constitutional Studies, Alberta, Canada (forthcoming).

"Cumulative Voting in the United States," in (F. Shelley, ed.) *Geography, Representation, and Reapportionment in the 1990s*, Syracuse University Press (forthcoming).

"Principled Limitations on Racial and Partisan Redistricting," 106 *Yale Law Journal* 2505-61 (1997).

"Two Conceptions of Rights in Cases Involving Political 'Rights'," 34 *Houston Law Review* 323-32 (1997).

"Experts, Economists, Democrats" (with Cass Sunstein), in (C. Sunstein) *Free Markets and Social Justice*, Oxford University Press (1997).

The Law of Democracy (with Samuel Issacharoff and Pamela Karlan), Foundation Press (1998). An excerpt, "The Right to Participate," was reprinted in 41.1 *Law Quadrangle Notes* 74-75 (Spring 1998).

"All for One" (with Samuel Issacharoff), *The New Republic*, November 18, 1996.

"Eludiendo la ponderación. El papel de las cláusulas de enclusión en el Derecho Constitucional," 14/15 *Cuadernos Constitucionales de la Cátreda Fadrique Furió Ceriol* 27-63 (April 1996), published by Valencia University, Spain; full translation of "Against Balancing: The Role of Exclusionary Reasons in Constitutional Law," 45 *Hastings Law Journal* 711 (1994).

"The Destruction of Social Capital Through Law," 144 *University of Pennsylvania Law Review* 2055-77 (1996).

"No Place for Political Gerrymandering" (with Samuel Issacharoff), *The Texas Lawyer* (August 5, 1996).

"Racial Redistricting Redux," *The American Prospect* 15 (Winter 1996).

Adam C. Pritchard

"Markets as Monitors: A Proposal to Replace Class Actions with Exchanges as Securities Fraud Monitors," 85 *Virginia Law Review* (forthcoming 1999).

"Finding the Constitution: An Economic Analysis of Tradition's Role in Constitutional Interpretation" (with Todd J. Zywicki), 77 *North Carolina Law Review* 409-521 (1999).

"Constitutions and Spontaneous Orders: A Response to Professor McGinnis" (with Todd J. Zywicki), 77 *North Carolina Law Review* 537-50 (1999).

"The Securities Litigation Uniform Standards Act of 1998: The Sun Sets on California's Blue Sky Laws" (with David M. Levine), 54 *Business Lawyer* 1-54 (1998).

"*United States v. O'Hagan*: Agency Law and Justice Powell's Legacy for the Law of Insider Trading," 78 *Boston University Law Review* 13-58 (1998). Reprinted in 1998-1999 *Corp. Prac. Comm.* 307-354.

"Legalize It? A Demand-Side Strategy for the War on Drugs," 2 *Chicago Policy Review* 51 (1997).

"Auctioning Justice: Legal and Market Mechanisms for Allocating Criminal Appellate Counsel," 34 *American Criminal Law Review* 1161-91 (1997).

"The New Securities Class Action: Federal Obstacles, State Detours" (with Richard H. Walker and David M. Levine), 39 *Arizona Law Review* 641-85 (Summer1997).

Book Review (with Donald J. Boudreaux) of (Leonard W. Levy) *License to Steal* (1996), 16 *Cato Journal* 152 (1996).

"Civil Forfeiture and the War on Drugs: Lessons from Economics and History" (with Donald J. Boudreaux), 33 *San Diego Law Review* 79-135 (1996).

"Innocence Lost: *Bennis v. Michigan* and the Forfeiture Tradition" (with Donald J. Boudreaux), 61 *Missouri Law Review* 593-632 (1996).

"Would you like to forfeit your house?" (with Donald J. Boudreaux), *Washington Times*, March 15, 1996, A22.

"Civil Forfeiture as a 'Sin Tax'," Independent Policy Report (with Donald J. Boudreaux) (1996), reprinted in (William F. Shughart II, ed.) *Taxing Choice: The Predatory Politics of Fiscal Discrimination* (1997).

Donald Regan

"Movement of Goods Under the Dormant Commerce Clause and the European Community Treaty," in (R. Goebel, ed.) *The European Union and the United States: Constitutional Systems in Evolution*, Kluwer (forthcoming 1999).

"Gewirth on Necessary Goods: What Is an Agent Committed to Valuing?" in (M. Boylan, ed.) *Gewirth: Critical Essays on Action, Rationality, and Community*, Rowman & Littlefield (1999).

Substantial reprint of "The Problem of Social Cost Revisited," in (K. dau-Schmidt and T. Ulen, eds.) *Law and Economics Anthology*, Anderson (1998). Originally appeared at 15 *Journal of Law and Economics* 427-37 (1972).

"Value, Comparability, and Choice," in (Ruth Chang, ed.) *Incommensurability, Incomparability, and Practical Reason*, Harvard University Press (1997).

Mathias W. Reimann

"Savigny's Triumph? Choice of Law in Contracts Cases at the End of the Twentieth Century," 39 *Virginia Journal of International Law* 571-605 (Spring 1999).

"Towards a European Civil Code: Why Continental Jurists Should Consult Their Transatlantic Colleagues," 73 *Tulane Law Review* (forthcoming 1999).

Introduction to the symposium "New Directions in Comparative Law" (with Ugo Mattei), 46 *American Journal of Comparative Law* 597 (1998).

"Stepping Out of the European Shadow: Why Comparative Law in the United States Must Develop Its Own Agenda," 46 *American Journal of Comparative Law* 637-46 (Fall 1998).

"Neuere Rechtsgeschichte in den Vereinigten Staaten," 20 *Zeitschrift für Neuere Rechtesgschichte* 277 (1998).

"Der Verzicht auf Prozeßkostensicherheit amerikanischer Kläger nach § 110," *Abs.* 2 *ZPO, IPRax* 250 (1998).

"In Such Forests Liberty was Nurtured" – Von den germanischen Wurzeln der anglo-amerikanischen Freiheit, in (G. Köbler & H. Nehlsen, Hrsg.) *Wirkungen europäischer Rechtskultur* (Festschrift für Kroeschell), 933 München (1997).

"Comparative Law and Legal History in the United States" (with Alain Levasseur), Report for the XVth International Congress of Comparative Law, Bristol (1998), 46 *American Journal of Comparative Law* 1-15 (1998 Supplement).

"Takeover: German Unification under a Magnifying Glass" (review of P. Quint, *The Imperfect Union*, Princeton 1997), 96 *Michigan Law Review* 301 (May 1998).

"Rechtsgeschichte und geschichtliches Recht im Common Law," in (G. Dilcher and P. Caroni, Hrg.) *Norm und Tradition* (1998).

Einführung in das Privatrecht der USA (*Introduction to Private Law in the U.S.),* C.H. Beck, Munich (1997).

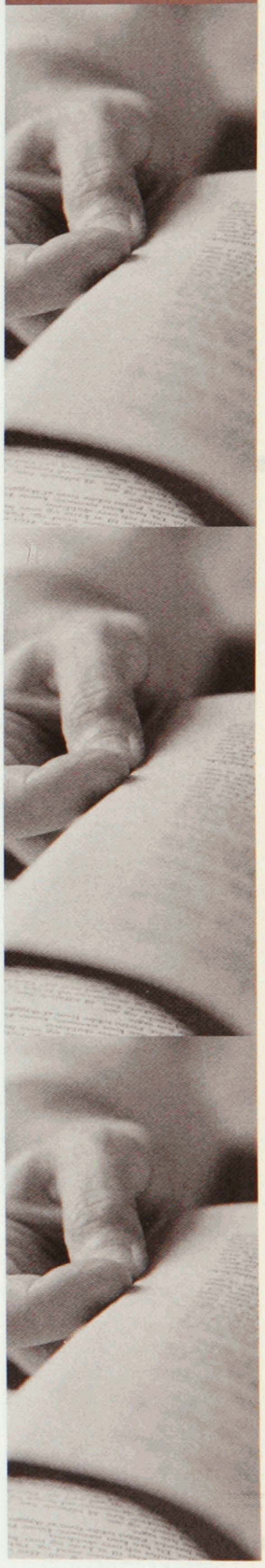
"Continental Imports: The Influence of European Law and Jurisprudence in the United States," 65 *Tijdschrift voor Rechtsgeschiedenis* 391 (1996).

"The End of Comparative Law as an Autonomous Subject," 11 *Tulane European and Civil Law Forum* 49-72 (1996).

Paul D. Reingold

"Why Hard Cases Make Good (Clinical) Law," 2 *Clinical Law Review* 545-71 (Spring 1996).

Faculty Publications



Terrance Sandalow

Rejoinder (a rejoinder to Bowen/Bok response to "Minority Preferences Reconsidered," below), 97 *Michigan Law Review* (forthcoming 1999).

"Minority Preferences Reconsidered," 97 *Michigan Law Review* (forthcoming 1999).

"Ted St. Antoine: An Appreciation," 96 *Michigan Law Review* 2199-2200 (1998). Also in 41.3 *Law Quadrangle Notes* 44-5 (Fall/Winter 1998).

"On Becoming a Law Professor," 1 *Michigan Journal of Race and Law* 580-93 (Summer 1996).

Suellyn Scarnecchia

"The Role of Clinical Programs in Legal Education," 77 *Michigan Bar Journal* 674-77 (July 1998).

"An Interdisciplinary Seminar in Child Abuse and Neglect with a Focus on Child Protection Practice," 31 *University of Michigan Journal of Law Reform* 33-56 (1997).

Jane S. Schacter

"The Confounding Common Law Originalism in Recent Supreme Court Statutory Interpretation: Implications for the Legislative History Debate and Beyond," 51 *Stanford Law Review* 1-63 (November 1998). An excerpt appeared as "Where Does the Supreme Court Look for Guidance?" in 42.1 *Law Quadrangle Notes* 72-81 (Spring 1999).

"Taking the Intersexional Imperative Seriously: The Case of Marriage," 75 *Denver University Law Review* 1255-64 (1998).

"*Romer v. Evans* and Democracy's Domain," 50 *Vanderbilt Law Review* 361-410 (March 1997).

"Skepticism, Culture and the Gay Civil Rights Debate in a Post-Civil Rights Era," 110 *Harvard Law Review* 684-731 (January 1997). (Review essay on Andrew Sullivan, *Virtually Normal* [1995] and Urvashi Vaid, *Virtual Equality* [1995].)

"'Counted Among the Blessed': One Court and the Constitution of Family," 74 *Texas Law Review* 1267-70 (1996).

Carl E. Schneider

The Practice of Autonomy: Patients, Doctors, and Medical Decisions, Oxford University Press (1998). "The Life of the Sick Person," chapter excerpted in 41.3 *Law Quadrangle Notes* 98-105 (Fall/Winter 1998).

Family Law in Action: A Reader (editor, with Lee E. Teitelbaum and Margaret F. Brinig), Anderson (1999).

"Justification by Faith," 29 *Hastings Center Report* 24 (January-February 1999).

"The Book Review Issue: An Owner's Manual," 96 *Michigan Law Review* 1363-75 (May 1998).

"Hard Cases," 28 *Hastings Center Report* 24 (March-April 1998).

"Rights Discourse and Neonatal Euthanasia," in (John H. Robinson, Roberta Berry, and Kevin McDonnell, eds.) *A Health Law Reader*, Carolina Academic Press (1998). Reprinted from 76 *California Law Review* 151 (1988). An abridged form appeared in 30.2 *Law Quadrangle Notes* 32-40 (Winter 1986).

"Testing Testing," 27 *Hastings Center Report* 22 (July-August 1997).

"Making Sausage," 27 *Hastings Center Report* 27 (January-February 1997).

"Bioethics in the Language of the Law," 40.2 *Law Quadrangle Notes* 52-59 (Summer 1997). Reprinted from 24 *Hastings Center Report* 16 (1994).

"Moral Discourse, Bioethics and the Law," 26 *Hastings Center Report* 37 (November-December 1996).

"The Law and the Stability of Marriage: The Family as a Social Institution," in (David Popenoe, Jean Bethke Elshtain, and David Blankenorn, eds.) *Promises to Keep: Decline and Renewal of Marriage in America*, Rowman and Littlefield (1996).

An Invitation to Family Law: Principles, Process, and Perspectives (with Margaret Friedlander Brinig), West Publishing (1996).

Thomas H. Seymour

"Scope of Employment: Have the Rules Changed in Massachusetts?", 20:1 *Western New England Law Review* 211-40 (1998).

"Choosing and Using Legal Authority: The Top Ten Tips" (with Terry Jean Seligmann), 6:1 *Perspectives: Teaching Legal Research & Writing* 1-5 (Fall 1997).

A.W. Brian Simpson

"Land Ownership and Economic Freedom," in (H.N. Schieber, ed.) *The State and Freedom of Contract* 13-43, Stanford University Press (1998).

Leading Cases in the Common Law, paperback ed., (1996).

"The Elusive Truth About Holmes," 95 *Michigan Law Review* 101-18 (1997).

"The Exile of Archbishop Makarios III," 4 *European Human Rights Law Review* 391-405 (1996).

"*Coase v. Pigou* Reexamined," 25 *The Journal of Legal Studies* 53-97, 99-101 (January 1996).

"Round Up the Usual Suspects: The Legacy of British Colonialism and the European Convention on Human Rights" (The Ninth Annual Brendan Brown Lecture, March 1995), 41 *Loyola Law Review* 630-711 (1996).

Philip Soper

"Legal Theory and the Claim of Authority," in (W. Edmunson, ed.) *The Duty to Obey the Law* 213, Rowman & Littlefield, Oxford (1999).

"Two Puzzles from the Postscript," 4 *Legal Theory* 359 (1998).

"Another Look at the Crito," 41 *American Journal of Jurisprudence* 103-32 (1996).

"Searching for Positivism" (review of [W. J. Waluchow] *Inclusive Legal Positivism*, Oxford University Press [1994]), 94 *Michigan Law Review* 1739-57 (May 1996).

"Law's Normative Claims," in (R. George, ed.) *The Autonomy of Law: Essays on Positivism* at 215, Clarendon Press, Oxford (1996).

Grace Tonner

"Designing Effective Legal Writing Problems" (with Diana Pratt), Vol. 3 *Journal of the Legal Writing Institute* (1997).

"The Jurisprudence of Yogi Berra" (with Edward H. Cooper et 37 alii), 46 *Emory Law Journal* 697-790 (1997).

"Memorial Dedication to Walter Trinkaus," 29 *Loyola L.A.L. Review* 1387 (June 1996).

Joseph Vining

"Fuller and Language," in (W. Witteveen and W. van derBurg, eds.) *Rediscovering Fuller*, University of Amsterdam Press, Amsterdam, (forthcoming 1999).

"On the Future of Total Theory: Science, Antiscience, and Human Candor," *Erasmus Institute Papers 1999-2001.*

"The Gift of Language," 73 *Notre Dame Law Review* 1581-98 (1998).

From Newton's Sleep, paperback edition 1997, Princeton University Press (1995). Portion reprinted as "Corporations, Criminal Law, and the Color of Money," in 40.1 *Law Quadrangle Notes* 87-88 (Spring 1997).

"Theorists' Belief," 72 *Notre Dame Law Review* 15-40 (1996).

"The Cosmological Question," 94 *Michigan Law Review* 2024-28 (May 1996).

Review: Greenawalt, *Fighting Words*, in *Common Knowledge*, Vol. 5, No. 3 (1996).

Faculty Publications

Lawrence Waggoner

Volume 1 of Restatement (Third) of Property, Wills and Other Donative Transfers (1999).

Restatement (Third) of Property, Wills and Other Donative Transfers, Tentative Draft No. 2 (1998), approved by the American Law Institute in May 1998 (480 pages).

Family Property Law: Wills, Trusts, and Future Interests (with Alexander and Fellows), 2nd ed., The Foundation Press (1997).

Federal Taxation of Gifts, Trusts, and Estates (with Kahn and Pennell), 3d ed., West Publishing (1997).

"Tax Consequences of Assigning Life Insurance — Time for Another Look" (with D. A. Kahn), *Florida Tax Review* 1999 (forthcoming).

"The Uniform Probate Code Extends Antilapse-Type Protection to Poorly Drafted Trusts," 94 *Michigan Law Review* 2309-51 (June 1996).

"Marital Property Rights in Transition," in (Lefcourt) *Women and the Law* (10th release 1996), originally appeared in 59 *Missouri Law Review* 21 (1994).

Mark D. West

"Information, Institutions, and Extortion in Japan and the United States: Making Sense of *Sokaiya* Racketeers," 93 *Northwestern University Law Review* (1999). An excerpt, "Making Sense of Japan's *Sokaiya* Racketeers," appeared in 42.2 *Law Quadrangle Notes* 72-83 (Summer 1999).

Review of (John Owen Haley) *The Spirit of Japanese Law*, 25/26 *Journal of Japanese Studies* (forthcoming 1999/2000).

"Naze sokaiya ha nakuraranainoka — Yusuri to kabunushi sokai no ho to keizaigaku" (Why Don't *Sokaiya* Go Away? The Law and Economics of Blackmail and Shareholders' Meetings) (with Kenichi Osugi), in three parts: 1145 *Jurisuto* 60-67; 1146 *Jurisuto* 114-120; and 1147 *Jurisuto* 97-103 (1998).

"Legal Rules and Social Norms in Japan's Secret World of Sumo," 26 *The Journal of Legal Studies* 165-201 (1997).

James Boyd White

From Expectation to Experience: Essays on Law and Legal Education, University of Michigan Press (forthcoming 1999).

"Humanities and The Law — A Kinship of Performance," 42.3 *Law Quadrangle Notes* 106-8 (Fall/Winter 1999).

"What We Know," 10 *Cardozo Studies in Law and Literature* 151-53 (December 1998).

Comment, 10 *Yale Journal of Law and the Humanities* 398-400 (1998).

"Reading Texts, Reading Traditions: African Masks and American Law," *Yale Journal of Law and the Humanities* (forthcoming).

"Writing and Reading in Philosophy, Law, and Literature," in (Freeman, ed.) *Law and Literature*, Oxford University Press (forthcoming).

"Talking About Religion in the Language of the Law," 81 *Marquette Law Review* 177-202 (Winter 1998).

"Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life" (Borchers Lecture at the University of Wisconsin), *The Kettering Review* (December 1997). Reprinted from 52 *University of Chicago Law Review* 684 (1985). Also reprinted (in Japanese) in *Gendai Shiso* (June 1986) and in (J. Nelson, ed.) *The Rhetoric of Human Sciences*, University of Wisconsin Press (1987).

"Plato's Crito: The Authority of Law and Philosophy," in *The Greeks and Us: A Festschrift in Honor of Arthur W.H. Adkins*, University of Chicago (1996). Reprinted from 63 *Cincinnati Law Review* 11 (1994).

"The Mystery of Meaning in Vermeer," 1 *Karakters*, No. 2, 9-24 (1996).

"Why I Write," 53 *Washington and Lee Law Review* 1021-37 (1996).

"Rhythms of Hope and Disappointment in the Language of Judging," 70 *St. John's Law Review* 45-50 (Winter 1996).

"Meaning in the Life of the Lawyer," 26 *Cumberland Law Review* 763-71 (1995/1996). Reprinted in 40.2 *Law Quadrangle Notes* 71-76 (Summer 1997).

"A Conversation between Milner Ball and James Boyd White" (Dialogue), 8 *Yale Journal of Law and the Humanities* 465-94 (Summer 1996).

"On the Virtues of Not Understanding," in (C. Maier and A. Needham, eds.) *Between Languages and Cultures*, University of Pittsburgh Press (1996).

"Reading One Poet in Light of Another: Herbert and Frost," in (J. S. F. Post and S. Gottlieb, eds.) *George Herbert in the Nineties: Reflections and Reassessments* (1996), and in 18 *George Herbert Journal* 59-80 (1996).

James J. White

Uniform Commercial Code, 4th ed., Hornbook Series (forthcoming 1999).

"Corporate Judgment Proofing: A Response to Lynn LoPucki's *Death Of Liability*," 107 *Yale Law Journal* 1363-1412 (1998).

Supplement to 4-volume practitioners' edition of (White & Summers) *Uniform Commercial Code*, West Publishing (1998).

"Freeing the Tortious Soul of Express Warranty," 72 *Tulane Law Review* 2089-2111 (1998).

"Comments at 1997 AALS Annual Meeting: Consumer Protection and the Uniform Commercial Code," 75 *Washington University Law Quarterly* 219-23 (Spring 1997).

"The Virtue of Speed in Bankruptcy Proceedings," 40.3 *Law Quadrangle Notes* 76-79 (Fall/Winter 1997).

"Gas Sale Contracts Under the Uniform Commercial Code," Chap. 9, 47th Oil & Gas Institute (1996).

"Rights of Subrogation in Letters of Credit Transactions," 41 *St. Louis University Law Journal* 47-74 (1997).

Supplement to 4 vol. practitioners' edition of *Uniform Commercial Code* (1996).

Bankruptcy: Cases and Materials (with Nimmer), 3rd ed., (1996).

Christina B. Whitman

Contributor to the memorial issue for Justice Lewis F. Powell Jr., 112 *Harvard Law Review* 607-10 (January 1999).

"Emphasizing the Constitutional in Constitutional Torts," 72 *Chicago-Kent Law Review* 661-93 (1997).

AFFILIATED OVERSEAS FACULTY

Christine M. Chinkin

"Gender Inequality and International Human Rights Law," in (A. Hurrell and N. Woods, eds.) *Inequality, Globalization, and World Politics* 95-122, Oxford (1999).

"Torture of the Girl-Child," in (G. Van Bueren, ed.) *Childhood Abused: Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment* 81-106, Dartmouth (1998).

"Alternative Dispute Resolution under International Law," in (M. Evans, ed.) *Remedies in International Law* 123-40, Hart Publishing (1998).

"Strategies to Combat Discrimination against Women," in (M. O'Flaherty and G. Gisvold, eds.) *Post-War Protection of Human Rights in Bosnia and Herzegovina* 173-94, Kluwer International (1998).

"The Role of Non-Governmental Organizations in Standard Setting, Monitoring, and Implementation of Human Rights," in (J. Norton, M. Andenas, and M. Footer, eds.) *The Changing World of International Law in the Twenty-First Century: A Tribute to the Late Kenneth R. Simmonds* 45-66, Kluwer International (1998).

"International Law and Human Rights," in (T. Evans, ed.) *Human Rights Fifty Years on a Reappraisal* 105-29, Manchester UP (1998).

"International Environmental Law in Evolution," in (T. Jewell and J. Steele, eds.) *Law in Environmental Decision-Making* 229-65, Clarendon Press (1998).

"The Potential and Pitfalls of the Right to Self-Determination for Women," in (S. Bowen, ed.) *Self-Determination and Political Change in the Occupied Palestinian Territories* 93-117, Kluwer (1997).

"Increasing the Use and Appeal of the Court," in (C. Peck and R. Lee, eds.) *Increasing the Effectiveness of the International Court of Justice* 43-56, Martinus Nijhoff (1997).

"Reservations and Objections to the Convention on the Elimination of All Forms of Discrimination Against Women," in (J. Gardner, ed.) *Human Rights as General Norms and a State's Right to Opt Out* 64-83, BIICL (1997).

"The Legality of the Imposition of Sanctions by the European Union in International Law," in (M. Evans, ed.) *Aspects of Statehood and Institutionalism in Contemporary Europe* 183-214, Dartmouth (1997).

"Feminist Interventions into International Law," 19 *Adelaide Law Review* 13-25 (1997).

"A Mirage in the Sand? Distinguishing Binding and Non-Binding Relations Between States," 10 *Leiden Journal of International Law* 223-47 (1997).

"Women's Human Rights: Guaranteed by Universal Standards or Discounted by Cultural Bias?" 5 *Collected Courses of the Academy of European Law,* Book 2, 11-58 (1997).

"Due Process and Witness Anonymity," 91 *American Journal of International Law* 75-79 (1997).

Amicus Curiae Brief on Protective Measures for Victims and Witnesses, submitted to the International Tribunal for the Former Yugoslavia in *Prosecutor v. Tadic,* reprinted 7 *Criminal Law Forum* 179-212 (1996).

"The East Timor Case *(Portugal v. Australia),"* 45 *International Comparative Law Quarterly* 712-25 (1996).

Report on the Fourth United Nations Conference on Women, Beijing 1995, 2 *International Journal of Discrimination and the Law* 119-28 (1996).

"Women's Rights as Human Rights under International Law," in (C. Gearty and A. Tomkins, eds.) *Understanding Human Rights* 553-72, Mansell (1996).

Christopher McCrudden

Regulation and Deregulation (ed.), Oxford University Press (1998)

"Mainstreaming Equality in the Governance of Northern Ireland," 22 *Fordham International Law Journal* 1696-1775 (1999).

"Human Rights Codes for Transnational Corporations: What Can the Sullivan and MacBride Principles Tell Us?" 19 *Oxford Journal of Legal Studies* 167-201 (1999).

"International Economic Law and the Pursuit of Human Rights: A Framework for Discussion of the Legality of 'Selective Purchasing' Laws Under the WTO Government Procurement Agreement," 2(1) *Journal of International Economic Law* 3-48 (1999).

"The Legal Approach to Equal Opportunities in Europe: Past, Present, and Future," 3 *International Journal of Discrimination and the Law* 193-208 (1998).

"Merit Principles," 18 *Oxford Journal of Legal Studies* 543-79 (1998).

"Social Policy Issues in Public Procurement: A Legal Overview," in (Sue Arrowsmith and Arwel Davies, eds.) *Public Procurement: Global Revolution* 219-39, Kluwer (1998).

"The First Amendment of the American Constitution and Article 10 of the European Convention on Human Rights — Two Diverging Concepts of Freedom of Expression," in (Manfred Wichmann and Wolfgang Heinz, eds.) *Freedom of Expression and Human Rights Protection,* Friedrich-Naumann-Stiffung (1998).

"Benchmarks for Change: Mainstreaming Fairness in the Governance of Northern Ireland," Committee on the Administration of Justice (1998).

"Equality: A Proposal in Light of the Multi-Party Talks Agreement," Committee on the Administration of Justice (1998).

"Report on Care: United Kingdom" (with Jill Rubery), European Commission's Networks on Gender and Employment and Gender and Law, Equal Opportunities Unit, Commission of the European Communities (1998).

"Fair Employment," in *British Personnel Management,* CCH (1998).

"The Heart of the Agreement: A Bi-National Future" (with John McGarry and Brendan O'Leary), *The Sunday Business Post,* May 17, 1998.

"Equality and Social Justice" (with John McGarry and Brendan O'Leary), *The Sunday Business Post,* May 10, 1998.

"All-Ireland Bodies at Work" (with John McGarry and Brendan O'Leary), *The Sunday Business Post,* April 26, 1998.

"Answering Some Big Questions" (with John McGarry and Brendan O'Leary), *The Sunday Business Post,* April 19, 1998.

"Mainstreaming Fairness," Committee on the Administration of Justice (1996).

Bruno Simma

"Kompetenzen und Grundrechte: Beschränkungen der Tabakwerbung aus der Sicht des Europarechtes" (with Joseph H. Weiler and Markus Zöckler), *Schriften zum Europäischen Recht,* Vol. 59, Duncker & Humblot, Berlin (1999).

"Völker und Europarecht in der aktuellen Diskussion: Akten des 23, Österreichischen Völkerrechtstages" (with Constanze Schulte), *Linde Verlag,* Wien (1999).

"From Bilateralism to Community Interest in International Law" (Hague Lecture), in *Recueil des Cours (Collected Courses of the Hague Academy of International Law*), Vol. 250 (1997).

"ILC" (Völkerrechtskommission), in (Helmut Volger, ed.) *Lexikon der Vereinten Nationen* Oldenbourg, München (in print).

"Le rôle relatif des differentes sources du droit international" (don les principes généraux de droit) (with Andreas Paulus), in *Droit international pénal, Le droit international face aux crimes,* Paris (forthcoming 1999).

"NATO, the UN, and the Use of Force: Legal Aspects," 10 *European Journal of International Law* 1-22 (1999).

"Le pacte international des droits économiques, sociaux et culturels: Mécanismes jurisprudence et perspectives," in (Terre des Hommes France, ed.) *Halte à la mondialisation de la pauvreté* (1998).

"The Work of the International Law Commission at Its Fiftieth Session" (1998), in 67 *Nordic Journal of International Law* 431-87 (1998).

"The Impact of Nuremberg and Tokyo: Attempts at a Comparison," in (N. Ando, ed.) *Japan and International Law: Past, Present and Future* (1999).

"Methodologies of International Law and the Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A View from Positivism" (with Andreas Paulus), *93 American Journal of International Law* (1999).

Einsatzmöglichkeiten für Streitkräfte im Rahmen der Vereinten Nationen, unter besonderer Berücksichtigung des Handlungsspierlraums von Regionalorganizationen (with Thomas Graf), (forthcoming 1999).

"Formen interstaatlicher Interaktionsregeln für wirtschaftliche Prozesse" (with Andreas Heinemann), in (W. Korff et al., eds.) *Handbuch der Wirschaftsethik* (forthcoming 1999).

Faculty Publications

Faculty Publications

"Human rights considerations in development cooperation activities of the European Community" (with Jo Aschenbrenner and Constanze Schulte), in (Ph. Alston et al., eds.) *The European Union and Human Rights* (forthcoming 1999).

"Reservations to Human Rights Treaties — Some Recent Developments," in *Liber Amicorum Professor Seidl-Hohenveldern* (1998).

"The 'International Community': Facing the Challenge of Globalization" (with Andreas Paulus), 9 *European Journal of International Law* 266-77 (1998).

"Verwaltungshandeln im Außenwirtschaftsrecht. Die Berücksichtigung menschenrechtlicher Gesichtspunkte bei der Auslegung und Anwendung nationaler Vorschriften zur Steuerung der grenzüberschreitenden Wirtschaftstätigkeit" (with Daniel-Erasmus Khan), in *Festschrift für Wolfgang Fikentscher* (1998).

"'Die vergessenen Rechte': Bemühungen zur Stärkug des VN-Sozialpakts," in *Verfassung, Theorie und Praxis des Sozialstaats: Festschrift für Hans F. Zacher* (1998).

"The Work of the International Law Commission at Its Forty-Ninth Session," 66 *Nordic Journal of International Law* 527-51 (1997).

Neus europäisches Völkerrecht nach dem Ende des Ost-West-Konfliktes? (Hanspeter Neuhold, Bruno Simma, Hrsg.) Nomos (1996).

EMERITI FACULTY

Francis A. Allen

Book Reviews of (Michael Mello) *Against the Death Penalty: The Relentless Dissents of Justices Brennan and Marshall,* and (Herbert H. Haines) *Against Capital Punishment: The Anti-Death Penalty Movement,* 16 *Law and History Review* 631 (Fall 1998).

"The Poignant Paradoxes of Criminal Justice," 48 *Florida Law Review* 539-50 (1996).

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

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

Whitmore Gray

"Globalization of Contract Law," in (Nuevos Horizontes, Ranieri, ed.) *Centro Jurici del ITESM Monterrey, Mexico* 9-13 (1997).

Jerold Israel

Modern Criminal Procedure, Basic Criminal Procedure, and *Advanced Criminal Procedure,* 9th eds. (with Kamisar and LaFave), West Publishing Company (1999).

Criminal Procedure Treatise, 2nd ed. (with LaFave and King), West Publishing Company (forthcoming 1999).

White Collar Crime in a Nutshell, 2nd ed., (with E. Podgor), West Publishing Company (1997).

Criminal Procedure and the Constitution 1996, 1997, 1998, and 1999 editions (with Kamisar and LaFave), West Publishing Company.

1996, 1997, and 1998 Supplements to 8th ed. of *Modern Criminal Procedure, Basic Criminal Procedure,* and *Advanced Criminal Procedure* (with Kamisar and LaFave), West Publishing Company.

"Federal Criminal Procedure as a Model for the States," 543 *Annals of the American Academy of Political and Social Science* 130 (1996).

White Collar Crime: Law and Practice (with Podgor and Borman), West Publishing (1996).

"Excessive Criminal Justice Caseloads: Challenging the Conventional Wisdom," 48 *Florida Law Review* 761-79 (December 1996; published 1998).

John H. Jackson

The GATT and Economic Law (a collection of essays), Cambridge University Press (forthcoming 1999).

"Editorial Comment: Outside Counsel in WTO Dispute Processes" (with M. Bronckers), 2 *Journal of International Law* 155 (1999).

"Forward," 30 *Law and Policy in International Business* 189-91 (Winter 1999).

"United States Law and China's WTO Accession Process" (with S. Rhodes), 2 *Journal of International Economic Law* (forthcoming 1999).

"Banana Road Map: Procedural Overview of the WTO-EC Banana Dispute (with M. Salas), 2 *Journal of International Economic Law* (Winter 1999).

The World Trade Organization: Constitution and Jurisprudence, Pinter-Royal Institute of International Affairs, Chatham House, London (July 1998).

"Global Economics and International Economic Law," 1.1 *Journal of International Economic Law* 1-23 (1998).

"Dispute Settlement and the WTO: Emerging Problems," 1 *Journal of International Economic Law* 329 (1998).

"Constituent Representation: Exploring the Context of the Key Policy Questions, Some Preliminary Observations," in (Alan V. Deardorff and Robert M. Sterns, eds.) *Constituent Interests and U.S. Trade Policies* 311 (1998).

"The Uruguay Round Results and National Sovereignty," in (Jagdish Bhagwati and Mathias Hirsch, eds.) *The Uruguay Round and Beyond: Essays in Honor of Arthur Dunkel* 293 (1998).

"Designing and Implementing Effective Dispute Settlement Procedures: WTO Dispute Settlement, Appraisal, and Prospects," in (Anne O. Krueger, ed.) *The WTO as an International Organization* 161 (1998).

Preface, in (Bérangère Taxil) *Les conséquences de la création de l'OMC pour les pays en développement,* University of Paris (1998).

"Symposium on the First Three Years of the WTO Dispute Settlement System: Introduction and Overview," 32 *The International Lawyer* 613-17 (Fall 1998).

"Roundtable Summary and Looking to the Future: Summary of Presentations" (Jackson et al.). 32 *International Lawyer* 943-49 (Fall 1998).

"The WTO Dispute Settlement Procedure: A Brief Overview," in *Contemporary International Law Issues: New Forms, New Applications* 384-93, Proceedings of the Fourth Hague Joint Conference, July 2-5, 1997, T.M.C. Asser Institut (1998).

Implementing the Uruguay Round (with Sykes) (1997).

The World Trading System: Law and Policy of International Economic Relations, 2nd ed. (1997). An excerpt, "Keeping the President on the Fast Track," appeared in 40.3 *Law Quadrangle Notes* 74-75 (Fall/Winter 1997).

"Reflections on Constitutional Changes to the Global Trading System," 72 *Chicago Kent Law Review* 511 (1996). Also Chapter 11 in (Frederick Abbott and David Gerber, eds.) *Conference on Public Policy and Global Technology Integration at Chicago-Kent Law School* (1997).

"Appraising, the Launch and Functioning of the WTO," Vol. 39 *German Yearbook of International Law,* Duncker & Humblot, Hamburg (1997).

"The Great 1994 Sovereignty Debate: United States Acceptance and Implementation of the Uruguay Round Results," in (Jonathan I. Charney et al., eds.) *Politics, Values and Functions: International Law in the 21st Century — Essays in Honor of Professor Louis Henkin,* Kluwer (1998) and in *Journal of Transnational Law* (1997).

"The WTO Dispute Settlement Understanding: Misunderstandings on the Nature of Legal Obligation," 91 *American Journal of International Law* 60-64 (January 1997). Also appears in (James Cameron and Karen Campbell, eds.) *Dispute Resolution in the WTO* 69 (1998).

"The WTO Dispute Settlement Procedures — A Preliminary Appraisal," in (Jeffrey J. Schott, ed.) *The World Trading System: Challenges Ahead* 153 (1996).

"Regulating International Economic Behavior — The WTO and the Challenge of Constructing Institutions to Manage Global Interdependence," in (Ulrich Immenga et al., eds.) *Festschrift fur Ernst-Joachim Mestmacker* 611 (1996).

"International Legal Perspectives on Japan-North American Economic Frictions: Reflections on Problems of International Economic Relations," in (Michael K. Young and Yuji Iwasawa, eds.) *Trilateral Perspectives on International Legal Issues: Relevance of Domestic Law and Policy* 263 (1996).

"Perspectives on Regionalism in Trade Relations," Forward to 27 *Law & Policy in International Business* 873-78 (Summer 1996).

"Los Procedimientos de Solucion de Diferencias en la OMC," in *Revista de Derecho Internacional Economico,* Vol. 1, No. 2 (September 1996).

"Reflections on Restructuring the GATT," Chapter 11, in (Jeffrey J. Schott, ed.) *Completing the Uruguay Round: A Results-Oriented Approach to the GATT Trade Negotiations,* Institute for International Economics, Washington, D.C.

"Regulating International Economic Behavior: Reflections on the Broader Setting of International Financial Markets and Institutions," Chapter 1 in (Joseph Norton, ed.) *Emerging Financial Markets and the Role of international Financial Organizations* (1996).

"Future and Emerging Challenges to the World Trading System," *Festschrift fur Professor Ernst-Joachim Mestmacker* (1996).

"The Uruguay Round and the Launch of the WTO — Significance and Challenges," Chapter 1 of American Bar Association book on the Uruguay Round (1996), reprinted from World Trade Organization.

"The New Constitution for the World Trading System — a WTO is Born," *IALS Bulletin* (Institute for Advanced Legal Studies, London, England), Issue 23 (May 1996). Portion reprinted as "Goodbye GATT, Hello WTO," in 39.3 *Law Quadrangle Notes* 73-77 (Fall/Winter 1996).

"Reflections on International Economic Law," 17 *University of Pennsylvania Journal of International Economic Law* 17-28 (Spring 1996).

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

"The World Trade Organization and the 'Sovereignty' Question," *Legal Issues of European Integration* 179 (Law review of the Europa Instituut) (1996/1).

Frank R. Kennedy

"Some Suggestions for the Bankruptcy Commission" (with Gerald K. Smith), in *Annual Survey of Bankruptcy Law 1995-1996* 477-83.

"The Bankruptcy Court and Its Jurisdiction," in *Annual Survey of Bankruptcy Law 1995-1996* 485-507.

"Reform of Partnership Provisions," in *Annual Survey of Bankruptcy Law 1995-1996* 657-64.

John W. Reed

"Does Time Make Ancient Good Uncouth?" 32 *International Society of Barristers Quarterly* 330-339 (1997).

Theodore J. St. Antoine

Labor Relations Law: Cases and Materials (with C. Craver and M. Crain), Lexis, xxii, 1187, 10th ed. (1999).

"John H. Jackson: Master of Policy — and the Good Life," 20 *Michigan Journal of International Law* 161-64 (1999).

The Common Law of the Workplace: The Views of Arbitrators, editor, BNA, xxv, 368 (1998).

"How the Wagner Act Came to Be: A Prospectus," 96 *Michigan Law Review* 2201-11 (1998).

"Mandatory Arbitration of Employee Discrimination Claims: Unmitigated Evil or Blessing in Disguise?" 15 *Cooley Law Review* 1-9 (1998).

"Mandatory Arbitration — Comments," 1 *Employee Rights and Employment Policy* 269, 286 (Fall 1997).

"Why Mandatory Arbitration May Benefit Workers," *ADR Currents* 1, AAA (Fall 1997).

Supplement, *Labor Relations Law: Cases and Materials* (with L. Merrifield and C. Craver), Michie Company, v, 131 (1997).

"The Law of Arbitration," in (Stern and Najita, eds.) *Labor Arbitration Under Fire* 1-41 (1997).

Supplement, *Labor Relations Law: Cases and Materials* (with L. Merrifield and C. Craver), Michie Company, v, 131 (1997).

"Arbitration: Back to the Future," 39.2 *Law Quadrangle Notes* 62-68 (Summer 1996).

Eric Stein

Thoughts from a Bridge: Retrospective of Writings on New Europe and American Federalism, University of Michigan Press (forthcoming 1999).

Czecho/Slovakia: Ethnic Conflict, Constitutional Fissure, Negotiated Breakup, University of Michigan Press (1997). An excerpt, "Václav Havel and the Velvet Divorce," appeared in 40.3 *Law Quadrangle Notes* 80-83 (Fall/Winter 1997).

"On Living In, and With, Divided-Power Systems: A Reminiscence," in (Bruyant, ed.) *Liber Amicorum for Michel Waelbroeck* 154-67 (1999).

"Peaceful Separation: 'A New Virus'?", 36 *Columbia Journal of Transnational Law* 25-39, Nos. 1 & 2 (1997).

"Constitutional 'Refolution' in the Ex-Communist World: The Rule of Law" (Symposium), *12 American University Journal of International Law and Policy* 62-72 (1997).

"Out of the Ashes of a Federation: Two New Constitutions," 45 *American Journal of Comparative Law* 45-69 (Winter 1997).

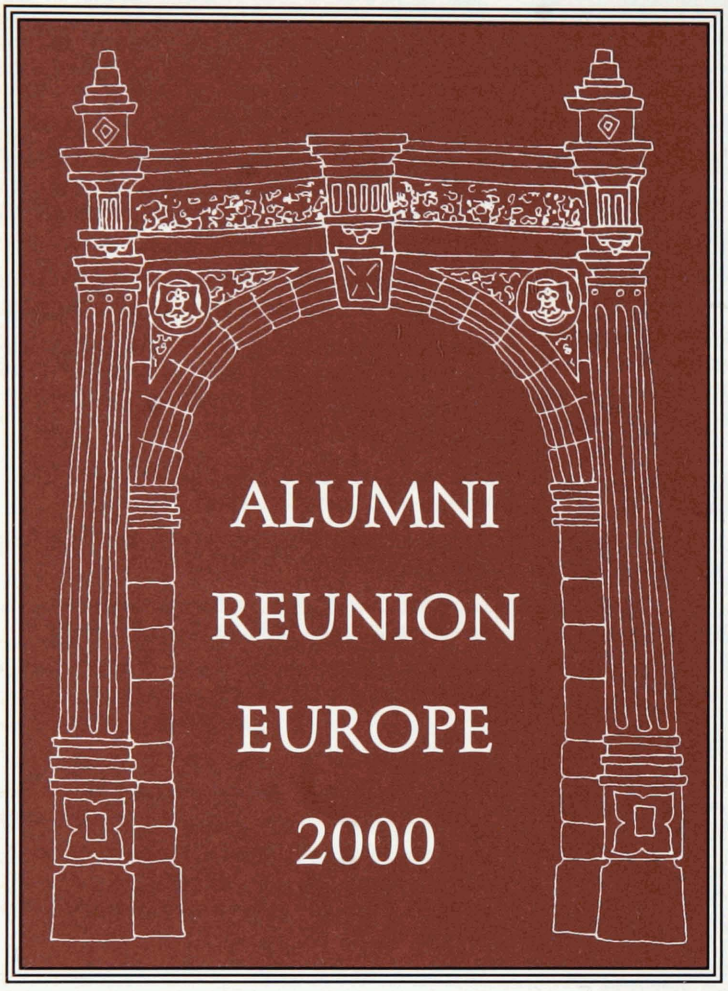
"International Law in Domestic Legal Orders: A Comparative Perspective," *Proceedings of the 89th Annual Meeting of the American Society of International Law* 289-301 (April 1997).

"On Peaceful Resolution of Ethnic Differences," Festschrift for Emst-Joachim Mestmäcker 321-27, *Nomos Verlalgsg,* Baden-Baden (1996).

Peter Steiner

Thursday-Night Poker: How To Understand, Enjoy, — and Win, Random House (1996).

Faculty Publications



European reunion set for June in Heidelberg

Plans are underway for a Europe 2000 alumni reunion in Heidelberg, Germany, beginning Thursday evening, June 22, and continuing through Saturday, June 24.

"We look forward to a weekend that will combine intellectual substance and camaraderie, stimulating panel discussions, and enjoyment, and fun," said Dean Jeffrey S. Lehman, '81.

"The reunion will begin with a reception on Thursday evening, June 22, at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, whose facilities have been generously provided by its director, Jochen Frowein, M.C.L. '58," added Virginia Gordan, assistant dean of international programs.

"Panels with opportunities for discussion will take place at the Institute on Friday during the day and on Saturday morning. There will be a reunion banquet at a lovely location in Heidelberg on Friday evening, and we plan a scenic river barge ride for the graduates on Saturday afternoon."

This is the Law School's third reunion in Europe for European alumni, research scholars, and visiting faculty. Non-European alumni also are welcome to attend.

For more information, contact:

Edith Baise,
University of Michigan
Law School
Development and
Alumni Relations
721 S. State Street
Ann Arbor, Michigan
48109-3071
Telephone: 734.998.9184
Fax: 734.998.7340
E-mail: ebaise@umich.edu

Susan Esserman, '74, named U.S. deputy trade representative

The U.S. Senate has confirmed Susan G. Esserman, '74, as deputy United States trade representative with the rank of ambassador.

"I want to thank the members of the United States Senate for their strong edorsement of Susan Esserman to serve as deputy U.S. trade representative," U.S. Trade Representative Charlene Barshefsky said in announcing the confirmation. "Susan Esserman is a highly valued member of our team and brings a strong background in international trade policy and enforcement to this position. She has served as an extraordinarily effective general counsel at USTR and I look forward to working with her in her new role as deputy USTR as we continue our efforts to open global markets and eliminate unfair trade barriers."

As deputy U.S. trade representative, Esserman will be the second-ranking official of the Office of the U.S. Trade Representative. She has the responsibility of developing the U.S. agenda for the World Trade Organization (WTO) Ministerial to be held in Seattle in November, a gathering that is to launch new global negotiations to expand opportunities for U.S. manufacturing, service, and agriculture industries and workers.

Her responsibilities include development of trade policy and negotiations in the WTO and other multilateral forums, as well as Europe, Russia, and the newly independent states of the former Soviet Union, the Middle East, and Africa.

Esserman previously served as general counsel to the Office of the U.S. Trade Representative, acting general counsel in the U.S. Department of Commerce, and as assistant secretary for import administration, a position that also required Senate confirmation. In addition, she practiced law privately for 15 years, specializing in international trade matters.

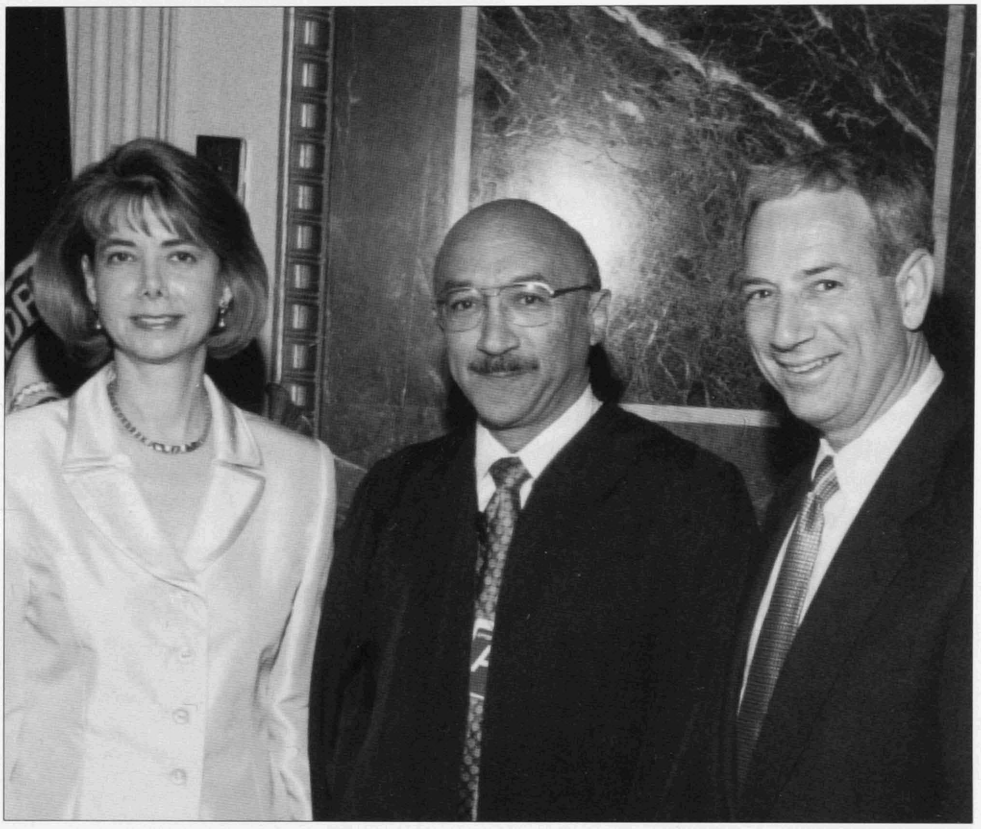


PHOTO COURTESY ANDREW H. MARKS, '73

Esserman is a member of the advisory board of the Law School's Center for International and Comparative Law. She is married to Andrew H. Marks, '76, a partner with Crowell & Moring LLP and, at the time of the swearing in, president of the Washington, D.C., Bar.

Susan Esserman, '74, is shown with her husband, Andrew H. Marks, '73, right, and the Hon. Harry T. Edwards, '65, chief judge of the U.S. Court of Appeals for the District of Columbia Circuit, after Judge Edwards swore her in as deputy United States trade representative.

Clinton nominates Lewis, '73, to Sixth Circuit bench

As this issue went to press, President Clinton nominated Kathleen McCree Lewis, '73, a partner st Dykema Gossett in Detroit, to the Sixth U.S. Circuit Court of Appeals. Lewis is married to David Baker Lewis, '70, with Lewis & Munday in Detroit, and is the daughter of Dores McCree and the late Wade H. McCree, who was appointed in 1966 as the first African American judge on the Sixth Circuit Court of Appeals. Wade McCree later served as U.S. solicitor general and taught at the Law School. Kathleen Lewis' nomination is subject to congressional approval. She is nominated to replace the Hon. Cornelia G. Kennedy, '47, who took senior status last spring.

Three graduates elected Fellows of the American Bar Foundation

The honor of becoming a Fellow of the American Bar Foundation is limited to one-third of one percent of the attorneys licensed to practice within each jurisdiction — and three University of Michigan Law School graduates have been elected to the prestigious group.

Richard D. McLellan, '67, Robert M. Vercruysse, '69, and the Hon. William C. Whitbeck, '66, were elected in June as fellows. Established in 1955, the fellows program supports the American Bar Foundation's research program.

McClellan, of Dykema Gossett in Lansing, chairs the Michigan Corrections Commission and the Michigan Law Revision Commission. He is a past secretary of the Michigan International Trade Authority, served on the Michigan Jobs Commission Board, and has been a member of the National Food and Drug Advisory Committee of the then-U.S. Department of Health Education and Welfare. In 1990, he was the U.S. presidential observer of the election in the People's Republic of Bulgaria.

Vercruyssee, of Vercruyssee, Metz & Murray in Bingham Farms, Michigan, is a fellow of both the College of Labor and Employment Lawyers and the Michigan State Bar Foundation, and also is a member of the American Employment Law Council. With the American Bar Association, he serves on the Equal Employment Opportunity Committee and the ABA/EEO Liaison Committee for Michigan. With the Michigan Bar, he is a member and past chair of the Labor and Employment Law Section and a former member of the Labor Law Council. He has been a visiting professor at the Law School, and is editor of the "Michigan Employment Law Letter."

Judge Whitbeck, chief judge *pro tem* of the Michigan Court of Appeals, also is a fellow of the Michigan State Bar Foundation. He is a member of the State Bar's Committee on Appellate Court Administration and the Appellate Bench Bar Conference Planning Group.

In addition, he has been active in government service — he is a past director of the Detroit area office of the U.S. Department of Housing and Urban Development, and has served as counsel to Michigan Governor John Engler, as director of the Office of the State Employer, and as director of policy for the Michigan Public Service Commission.

Glad to Meet You —

Dean Jeffrey S. Lehman, '81, and Denis Rice, '59, welcome summer associates Meera Deo and Jean Taylor at a reception in San Francisco in July. Each summer the Law School holds a number of receptions around the country to give graduates and summer associates the chance to meet each other and hear a report from the dean on current events at the Law School. Summer receptions also were held in Chicago, Los Angeles, New York, and Washington, D.C.

PHOTO BY GREGORY BAISE

Clerkships

add building blocks to legal careers

For many graduates of the Law School, serving as a clerk at a trial or appeals court provides experiences and insights to augment their preparation for legal practice or other careers that will draw on their legal training.

In trial courts, clerks may observe lawyers and judges in action in the advocacy proceedings of actual trials; clerks also gain an insider's view of the ways courts function and perhaps the ways that judges and lawyers may work together in the pursuit of a just solution.

In appellate courts, clerks hone their research, writing, and analytical skills as they review trial records and other documents in an effort to resolve disputes that continue after trial or arise later and lead to the filing of appeals.

Clerking experiences vary greatly, but all offer the chance to glean an insider's view of the workings of one of the cornerstones of the legal system.

The list below, compiled at deadline time, is not all-inclusive because it depends on the graduates to make the Law School aware of their clerkships, but it is indicative of the breadth and depth of clerking experience available to Law School graduates in a wide variety of courts.

The following graduates have notified the Law School that they are beginning their second clerkship this year:

Rick A. Bierschbach, '98
The Hon. Sandra Day O'Connor
Supreme Court of the
United States
(First clerkship:
The Hon. A. Raymond Randolph
U.S. Court of Appeals for the
District of Columbia)

Jordan B. Hansell, '98
The Hon. Antonin Scalia
Supreme Court of the
United States
(First clerkship:
The Hon. J. Harvie Wilkinson III
U.S. Court of Appeals for the
Fourth Circuit)

Elise M. Bruhl, '96
The Hon. Marjorie Rendell
U.S. Court of Appeals
for the Third Circuit
(First clerkship:
The Hon. Marvin Katz
U.S. District Court for the
Eastern District of Pennsylvania)

Blanche B. Cook, '95
The Hon. Damon J. Keith
U.S. Court of Appeals for the
Sixth Circuit
(First clerkship:
The Hon. Gregory K. Scott
Colorado Supreme Court)

Diana S. Ortiz, '97
The Hon. John C. O'Meara
U.S. District Court for the
Eastern District of Michigan
(First clerkship:
The Hon. Conrad L. Mallett Jr.
Michigan Supreme Court)

Michael J. Thomas, '96
The Hon. J. William Brammer Jr.
Arizona Court of Appeals
(First Clerkship:
The Hon. Harris L. Hartz
New Mexico Court of Appeals)

The following graduates have notified the Law School that they have clerkships for 1999-2000. All clerks listed below graduated in 1999 unless otherwise indicated.

William F. Brockman
The Hon. Paul V. Niemeyer
U.S. Court of Appeals for the
Fourth Circuit

Elizabeth C. Burke
The Hon. John R. Gibson
U.S. Court of Appeals for the
Eighth Circuit

Continued on page 72

Continued from page 71

Michael T. Cahill
The Hon. James B. Loken
U.S. Court of Appeals for the Eighth Circuit

Julie W. Caldwell
The Hon. Ruth I. Abrams
Massachusetts Supreme Judicial Court

David B. Charnin
The Hon. David W. McKeague
U.S. District Court for the Western District of Michigan

Dallae Chin
The Hon. David H. Coar
U.S. District Court for the Northern District of Illinois

Eric J. Ciccoretti
The Hon. John Feikens
U.S. District Court for the Eastern District of Michigan

Adam B. Cox
The Hon. Stephen Reinhardt
U.S. Court of Appeals for the Ninth Circuit

Kyle M. DeYoung
The Hon. Suzanne B. Conlon
U.S. District Court for the Northern District of Illinois

Abhay Dhir
The Hon. Jerry Buchmeyer
U.S. District Court for the Northern District of Texas

Michael G. Dickler
The Hon. Wayne R. Anderson
U.S. District Court for the Northern District of Illinois

Brian T. Donadio
The Hon. Jay C. Waldman
U.S. District Court for the Eastern District of Pennsylvania

Adam E. Engel
The Hon. Napoleon A. Jones Jr.
U.S. District Court for the Southern District of California

Nicole A. Epstein
The Hon. Frank W. Bullock Jr.
U.S. District Court for the Middle District of North Carolina

John P. Erkmann
The Hon. Dana Fabe
Alaska Supreme Court

Olivier N. Farache
The Hon. Howard A. Levine
New York Court of Appeals

Jon R. Fetterolf
The Hon. Edmund V. Ludwig
U.S. District Court for the Eastern District of Pennsylvania

Matthew T. Findley
The Hon. Robert L. Eastaugh
Alaska Supreme Court

Charlotte Gibson
The Hon. Patrick E. Higginbotham
U.S. Court of Appeals for the Fifth Circuit

David R. Grand
The Hon. Bernard A. Friedman
U.S. District Court for the Eastern District of Michigan

Hector E. Gutierrez
District of Columbia Court of Appeals

Matthew I. Hall
The Hon. David F. Levi
U.S. District Court for the Eastern District of California

Adam D. Harris
The Hon. Ellen Segal Huvelle
District of Columbia Superior Court

Lisa M. Kramarenko
The Hon. Milton I. Shadur
U.S. District Court for the Northern District of Illinois

Raymond S. Lara
The Hon. Alex Martinez
Colorado Supreme Court

John C. Larson
The Hon. George A. O'Toole Jr.
U.S. District Court for the District of Massachusetts

Greg P. Lauro
The Hon. Reynaldo G. Garzo
U.S. Court of Appeals for the Fifth Circuit

Stephen D. Leggatt
The Hon. James L. Ryan
U.S. Court of Appeals for the Sixth Circuit

Joshua A. Levy
The Hon. Joan A. Lenard
U.S. District Court for the Southern District of Florida

Daniel S. Liberman
The Hon. Douglas Woodlock
U.S. District Court for the District of Massachusetts

Camille C. Logan
The Hon. Noel Fidel
Arizona Court of Appeals

Margaret H. Mack
The Hon. Fred I. Parker
U.S. Court of Appeals for the Second Circuit

Wendy M. Marantz
The Hon. A. Wallace Tashima
U.S. Court of Appeals for the Ninth Circuit

Elsie Mata
The Hon. Alvin W. Thompson
U.S. District Court for the District of Connecticut

Michael J. McLaughlin
Massachusetts Superior Court

Benjamin Means
The Hon. Rosemary S. Pooler
U.S. Court of Appeals for the Second Circuit

Elizabeth W. Milnikel
The Hon. Bruce M. Selya
U.S. Court of Appeals for the First Circuit

Daniel E. Morrison
The Hon. Sarah Evans Barker
U.S. District Court for the Southern District of Indiana

Christopher M. Newman
The Hon. Alex Kozinski
U.S. Court of Appeals for the Ninth Circuit

Emily K. Paster
The Hon. Thomas S. Ellis III
U.S. District Court for the Eastern District of Virginia

Matthew J. Perry
The Hon. Jeffrey Amestoy
Vermont Supreme Court

Elliot M. Regenstein
The Hon. Kenneth F. Ripple
U.S. Court of Appeals for the Seventh Circuit

Ann R. Robbins
The Hon. Stephen M. Sims
Allen Superior Court

Carolyn C. Russell
The Hon. Lesley Brooks Wells
U.S. District Court for the Northern District of Ohio

Joshua M. Ryland
The Hon. Paul R. Matia
U.S. District Court for the Northern District of Ohio

Saura J. Sahu
The Hon. Julian A. Cook Jr.
U.S. District Court for the Eastern District of Michigan

Joel H. Samuels
The Hon. Barry Ted Moskowitz
U.S. District Court for the Southern District of California

Amar D. Sarwal
The Hon. F. A. Little Jr.
U.S. District Court for the
Western District of Louisiana

Katharine R. Saunders
The Hon. Eric L. Clay
U.S. Court of Appeals for the
Sixth Circuit

Jason A. Schmidt
Seventh Circuit Staff Attorney
U.S. Court of Appeals for the
Seventh Circuit

Christopher Serkin
The Hon. John M. Walker Jr.
U.S. Court of Appeals for the
Second Circuit

Lara M. Shalov
The Hon. Michael D. Hawkins
U.S. Court of Appeals for the
Ninth Circuit

William R. Sherman
The Hon. John C. Coughenour
U.S. District Court for the
Western District of Washington

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

Jessica M. Silbey
The Hon. Robert E. Keeton
U.S. District Court for the
District of Massachusetts

Jeffrey S. Silver
The Hon. Paul Borman
U.S. District Court for the
Eastern District of Michigan

Regina M. Slowey
The Hon. John Feikens
U.S. District Court for the
Eastern District of Michigan

Ilene J. Strauss
The Hon. Emilio M. Garza
U.S. Court of Appeals for the
Fifth Circuit

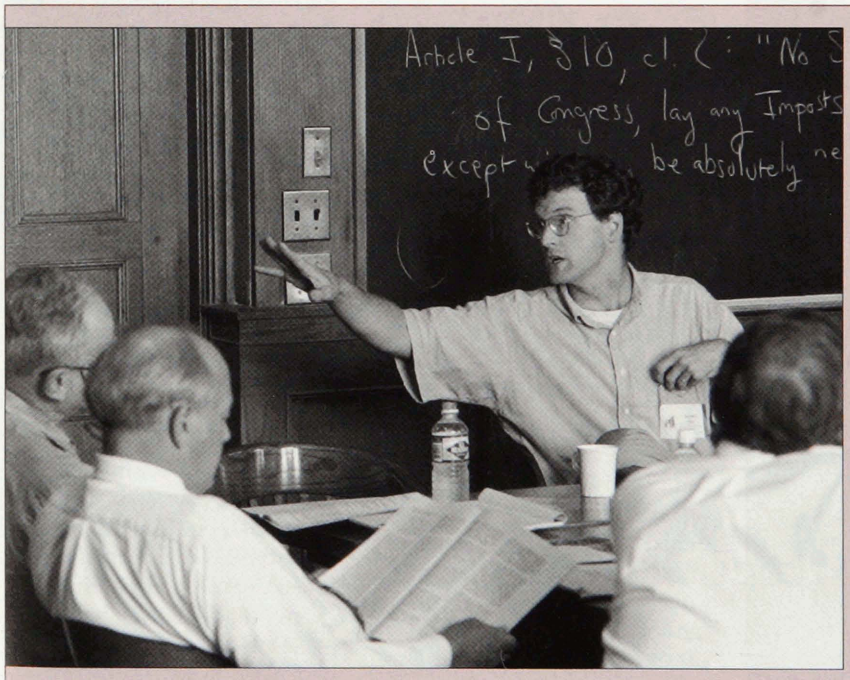
Steven K. Taylor
The Hon. Samuel Conti
U.S. District Court for the
Northern District of California

Scott T. Varholak
The Hon. Catherine C. Blake
U.S. District Court for the
District of Maryland

Alexander C. Wexler
The Hon. Charles P. Sifton
U.S. District Court for the
Eastern District of New York

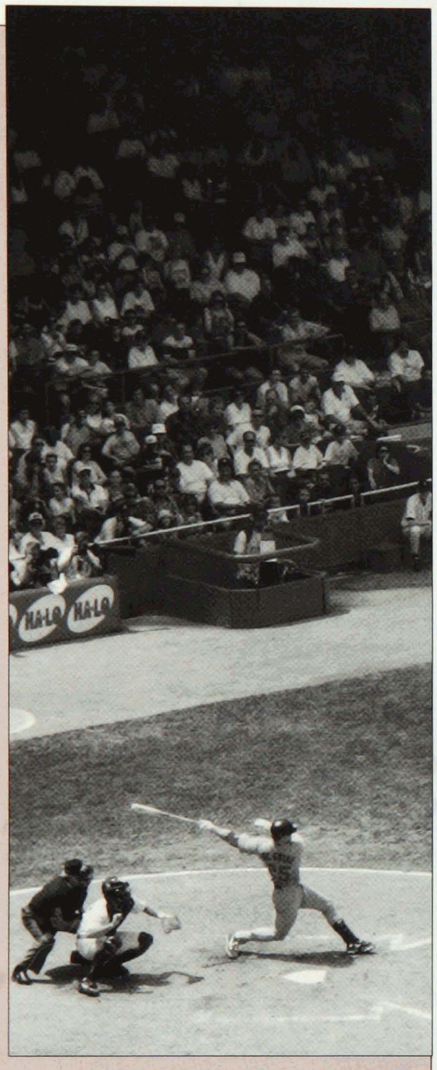
Kristin B. Wilhelm
The Hon. Cornelia Kennedy
U.S. Court of Appeals for the
Sixth Circuit

Andrew W. Worseck
The Hon. Suzanne B. Conlon
U.S. District Court for the
Northern District of Illinois



Back to Class —

Growing numbers of state-operated programs, like investment options for public university tuition coverage, are making states more like commercial operators, Professor Ronald J. Mann, at right, tells graduates gathered for the Law School's Michigan Spring Seminars in May. Mann shares the podium with Professor Rebecca Eisenberg for the presentation on "New Issues in Intellectual Property." Above, Professor Roderick Hills Jr. makes a point during the presentation on "Foreign Relations and the New International Law." About 65 graduates attended the annual day of activities, which featured two seminars in the morning, open-air lunch under the tent in the Law Quadrangle, and an afternoon continuation of each morning program.



Take Me Out to the Ballgame —

Nearly 300 Law School graduates from the Detroit area gathered at historic Tiger Stadium on a sunny Sunday afternoon in June to watch the third of a three-game series between Detroit's Tigers and St. Louis' Cardinals. Below, Bill Cassebaum, '56, shares the afternoon with Thomas R. Stevick, '91, and Stevick's son, Andrew. A record total of 125,371 fans watched the three games, hoping, no doubt, to see homerun king Mark McGuire, right, slam one or more pitches out of the park. He didn't, and was 2-for-4 in the final game of the series, which Detroit lost 8-4. This is the last season for professional baseball at Tiger Stadium, and, as you can see here, Law School graduates were glad to be part of it.

PHOTOS BY GREGORY BAISE

1937

William A. McClain, who is of counsel at Manley Burke Lipton and Cook in Cincinnati, has received the Trustees' Award from the Cincinnati Bar Association. A longtime leader in the Cincinnati legal community, McClain in 1942 became the first African American to serve as assistant city solicitor for the City of Cincinnati. He later became deputy solicitor and city solicitor. He also was the first African American to serve on the Hamilton County Court of Common Pleas and the first African American member of the Cincinnati Bar Association and the Cincinnati Lawyers Club.

50TH REUNION

The Class of 1949 reunion will be October 1-3

45TH REUNION

The Class of 1954 reunion will be October 1-3

1956

Charles B. Renfrew of the law offices of Charles B. Renfrew, San Francisco, was re-appointed to a second one-year term as a public trustee on the Board of Trustees of the American Inns of Court Foundation. The American Inns of Court are dedicated to enhancing ethics, professionalism, and civility within the legal profession.

40TH REUNION

The Class of 1959 reunion will be October 1-3

1961

The Honorable **William J. Giovan** of the Wayne County Circuit Court was appointed by the Michigan Supreme Court as chair of the court's Advisory Committee on the Rules of Evidence. This statewide committee of the bench and bar will make recommendations to the court regarding the Michigan Rules of Evidence. Other members of the committee include University of Michigan Law School Professor Emeritus John W. Reed; the Honorable **Thomas G. Power, '74**, 13th Circuit Court, Traverse City; **James C. Howarth, '67**, law office of James C. Howarth, Detroit; and **Ellen Carmody, '83**, a shareholder with Law, Weathers & Richardson, Grand Rapids.

Hanson S. Reynolds, a partner with the Boston law firm Rackemann, Sawyer & Brewster, was elected president of the American College of Trust and Estate Counsel, a national elective organization of trust and estate attorneys. Members are nominated by their peers and elected by the membership at large. Reynolds previously served as the organization's Massachusetts chair, chair of the Fiduciary Litigation Committee, and a member of the Board of Regents. He focuses his practice on trusts and estates, probate litigation, and fiduciary investments.

35TH REUNION

The Class of 1964 reunion will be October 1-3

1966

Frederick K. Hoops was named principal of the Detroit-based law firm Kitch Drutchas Wagner DeNardis & Valitutti, where he was the founding principal for the past 24 years. He specializes in estate planning, business planning, business syndication, securities offerings, business, National Association of Securities Dealers arbitration, taxation, and civil litigation. He resides in Novi with his wife, Cynthia.

Robert M. Meisner spoke at the 20th Annual Community Association Law Seminars held in Marina del Ray, California. His topic was "Dealing With a Difficult Owner" in a community association setting. He also spoke at the Community Association Institute's 45th National Conference in Arlington, Virginia, on "Duty of the Board of Directors to Act or Not Act in a Community Association Setting." Meisner is the principal member of the Bingham Farms law firm Meisner & Associates, P.C.

1967

Calvin E. Bellamy received an honorary doctor of human letters degree from Purdue University Calumet, Hammond, Indiana, for his extensive involvement in and service to economic, cultural, and benevolent initiatives in northwest Indiana. He is a Munster, Indiana, resident and chairman and chief executive officer of Hammond-based Bank Calumet.

Gordon O. Pehrson Jr. is now a partner in the Washington, D.C., office of the law firm Hopkins & Sutter.

30TH REUNION

The Class of 1969 reunion will be October 1-3

1970

Steven G. Schember was elected to a one-year term as treasurer of the Outback Bowl, a New Year's Day football game matching teams from the Big Ten and Southeastern Conference. He is a senior litigation attorney with the Tampa, Florida, office of Shumaker, Loop & Kendrick, L.L.P.

1972

Denis R. LeDuc was elected to the five-member Board of Directors of Margate Industries Inc., of Yale, Michigan. He is a partner in the Mt. Clemens law firm Neal and Hader, a judicial magistrate in the 42-1 District Court of Macomb County, and Macomb County Public Administrator.

1974

25TH REUNION

The Class of 1974 reunion will be November 5-7

Richard J. Gray, **Barbara S. Steiner**, and **Larry M. Wolfson** recently celebrated their 25th anniversary as members of the Chicago law firm Jenner & Block. Gray is a partner in the litigation department. Steiner is a partner in the litigation department and serves on the executive committee. Wolfson is a partner in the commercial law department. The trio has been responsible for recruiting dozens

Law School graduates listed in *The Best Lawyers in America*

We've always known that the University of Michigan Law School produces some of the best lawyers in America, and we're pleased to have that belief rewarded with a continuous stream of notices of graduates who have been named to *The Best Lawyers in America* for 1999-2000. Attorneys included in *The Best Lawyers* are nominated and selected by their peers for excellence in the field of legal services. Unfortunately, data parsing does not allow for a one-time gleaning of all Law School graduates in the compilation. Here are those we've learned of since the last appearance of *Law Quadrangle Notes*:

At least four attorneys with Clark Hill P.L.C., Detroit:

William B. Dunn, '64, a real estate law specialist and a member of the American Bar Association Standing Committee on Ethics and Professional Responsibility;

Martin C. Oetting, '52, corporate law;

David H. Paruch, '75, immigration; and

Douglas J. Rasmussen, '65, trusts and estates.

At least five attorneys with Fraser Trevilcock Davis & Foster, P.C., of Lansing and Detroit:

Stephen L. Burlingame, '76, who practices in the areas of business, real estate, employment, and healthcare law.

Michael E. Cavanaugh, '68, whose practice areas include commercial litigation, association law, employment and labor law, and administrative law.

Peter L. Dunlap, '67, whose practice areas include legal malpractice and licensure, arbitration, products liability, and personal injury liability.

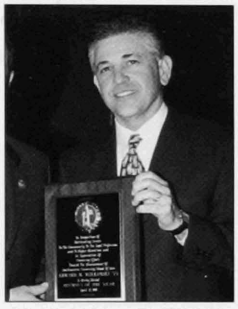
Darrell A. Lindman, '78, a specialist in employee benefits law, qualified retirement plans, nonqualified deferred compensation, exempt organization issues, church and governmental plans, and compensation planning.

Ronald R. Pentecost, '57, who practices in the areas of commercial litigation, banking, business, and labor law.

of University of Michigan Law School graduates to Jenner & Block over the years.

William F. Mills, of the Grand Rapids law firm Gruel Mills Nims & Pylman L.L.P., has been inducted into the International Academy of Trial Lawyers. Membership is limited to 500 lawyers nationwide, and there are presently 400 members.

1976



Edward M. Wolkowitz, LL.M., was honored as Alumnus of the Year by the Southwestern University School of Law Alumni Association for his extensive public service and his work as a highly effective leader in bankruptcy law and municipal government. Wolkowitz is a partner in the law firm Robinson, Diamant & Brill, a bankruptcy trustee for the Office of the United States Trustee of the Central District of California, and a member of the Los Angeles Superior Court Panel of Approved Receivers.

1977

Due to a desire to expand her practice area and "an offer too interesting to pass up," **Martha Mahan Haines** has become an attorney fellow in the Office of Municipal Securities, Securities and Exchange Commission, Washington, D.C. She resides in McLean, Virginia.

George A. Vinyard has rejoined the Chicago law firm Sachnoff & Weaver, Ltd., in an of counsel capacity. He previously practiced securities, corporate, and computer law with Sachnoff & Weaver from 1977-94. Before rejoining the firm, he served as vice president, intellectual property, and associate general counsel of 3Com Corporation, a global leader in networking and data communications equipment.

20TH REUNION

The Class of 1979 reunion will be November 5-7

1980

Robert M. Kalec has joined the Troy, Michigan, law firm Dean & Fulkerson as a shareholder. He is an accomplished trial and appellate attorney who has tried complex civil and criminal matters in both federal and state courts throughout the United States. He resides in Northville, Michigan, with his wife, Ann, and their three sons.

David Kantor was among the fewer than six percent of practicing Minnesota attorneys to be elected as a Leading American Attorney by his peers. The honor was the result of an extensive survey by American Research Corporation in which Minnesota attorneys were asked to whom they would recommend a friend or relative in need of specialized legal services. Kantor is a member of the Banking Department of Leonard, Street and Deinard, P.A., where he handles banking, commercial real estate finance, regulatory compliance, residential mortgage lending, and consumer credit matters.

1981

Colorado Attorney General **Kenneth L. Salazar** is the first Hispanic elected to statewide office in Colorado. "The fact that I'm the first Hispanic elected statewide sends a good signal to all people in Colorado that it's really a land of opportunity for everyone who is here," he said after his election in November. Salazar previously has served as the governor's chief legal counsel and as executive director of the Colorado Department of Natural Resources.

Lawrence M. Shapiro is managing partner of Shapiro Professional Association, which he founded in 1997 in Minneapolis. He also is immediate past president of Sholom Home Community Alliance, a nonprofit corporation that owns and operates two nursing homes and three elderly housing facilities in Minneapolis and St. Paul.

15TH REUNION

The Class of 1984 reunion will be November 5-7

1984

Martiné R. Dunn has become partner-in-charge at the Cincinnati office of the law firm Benesch Friedlander Coplan & Aronoff L.L.P. The first African American partner-in-charge or managing partner of an office of a major Cincinnati firm, Dunn practices in the areas of real estate law, financing transactions, and corporate and business law.

Walter E. Spiegel was elected chair of the U.S. Department of Commerce Regulations and Procedures Technical Advisory Committee. The committee, which is comprised of industry representatives appointed by the Secretary of Commerce, advises the Commerce Department on United States export control policy. Spiegel is senior international trade counsel for NCR Corporation in Dayton, Ohio.

Bruce M. Wiener has established a financial planning practice in Potomac, Maryland, where he specializes in planning and investments for individuals and small businesses. He previously practiced law in law firms and for the federal government in Washington, D.C. He resides in Potomac with his wife and two sons.

1985

David J. Herring has accepted the dean's position at the University of Pittsburgh School of Law, where he had served as interim dean since July 1, 1998. He was formerly a clinical assistant professor of law and supervising attorney at the University of Michigan Child Advocacy Law Clinic, and in 1998 he received the Chancellor's District Teaching Award from the University of Pittsburgh.

David B. Kopel is the research director of the Independence Institute, a free-market think tank in Golden, Colorado. He is also an adjunct professor of law at New York University School of Law, and is currently co-writing (with Ronald K. Noble) a coursebook titled *Gun Control and Gun Rights.*

Cristoforo Osti, LL.M., has left Bonelli é Associati and joined Grimaldi é Associati, as a partner resident in the Rome office.

1986

David Abramowitz has been appointed chief counsel to the Democratic staff of the Committee on International Relations of the U.S. House of Representatives. He was formerly an attorney-advisor at the U.S. Department of State, where he worked on arms control, the Middle East, and legislative issues.

In December 1998, **Sandra A. Hoffmann** completed her doctorate in environmental economics at the University of California, Berkeley (Department of Agricultural and Applied Economics). She is presently an assistant professor in the Department of Urban and Regional Planning and the LaFollette Institute of Public Affairs at the University of Wisconsin-Madison, where she teaches environmental policy, administrative law, and regional economics.

Lynn M. McGovern has become a partner with the Chicago office of Skadden, Arps, Slate, Meagher & Flom L.L.P., practicing in the area of lease finance.

1987

James J. Davis Jr. has accepted a joint position as clinical instructor at Stanford Law School and supervising attorney at the East Palo Alto Community Law Project. The dual appointment allows him to train students in the practice of poverty law while maintaining an active caseload. He was previously a supervising attorney for Alaska Legal Services Corporation.

1988

Eric M. Acker and his wife, **Maria (Mazur) Acker, '90**, announce the February 5 birth of their first child, Anna Sophia Acker. Just days later, Maria Acker was elected to partnership in the law firm Gray Cary Ware & Freidenrich, where she is a member of the intellectual property and technology group.

Jack Chin has received tenure and promotion to full professor at the University of Cincinnati College of Law, where **Christo Lassiter, '83**, also serves as a member of the faculty.

John Nixon has been elected a shareholder with Blank Rome Comisky and McCauley LLP in Philadelphia. He concentrates his practice in ERISA and employee benefits, including executive compensation, governmental plans, fiduciary liability, tax qualification, and employee benefits litigation.

1989

10TH REUNION

The Class of 1989 reunion will be November 5-7

Barron F. Wallace has become a shareholder in the Texas law firm Wickliff & Hall, where he practices public finance and administrative law.

1990

Timothy W. Brink was elected to partnership in the Chicago-based law firm Lord, Bissell & Brook, where he concentrates on bankruptcy and creditors' rights matters, as well as represents lenders, landlords, trade vendors, and other creditors in bankruptcy proceedings and out-of-court financial restructurings. He was previously associated with the Los Angeles-based firm Sheppard, Mullin, Richter & Hampton.

David J. Kaufman was named to a two-year appointment as editor in chief of the American Bar Association section of business law bi-monthly magazine, *Business Law Today*. Kaufman will preside over the 18-person editorial board, assist in steering the editorial focus of the magazine, select writers, and manage the editorial process. He will also serve on the section's governing body, the section council. A partner in the corporate department of Katten Muchin & Zavis in Los Angeles, Kaufman concentrates his practice in mergers and acquisitions, and securities.

James R. Rowader Jr. and **Theresa M. Harris, '91**, announce the April 21 birth of their daughter, Isabel Reecy Harris Rowader. In addition, Rowader was promoted to the position of manager, labor relations, and senior counsel at Target Stores, a division of Dayton Hudson Corporation, where he has been employed for the past five years. Harris continues to work as corporate counsel for the Department Store Division of Dayton Hudson Corporation, where she practices in the areas of general corporate, intellectual property, marketing, contracts, and litigation.

Dan Hurley and **Barbara McQuade**, trial prosecutors with the U.S. attorney's Office in Detroit, were spotlighted in a story in the *Detroit Free Press* in July as the first husband-wife team to prosecute a case in the eastern District of Michigan. And "officials don't know of another such pairing elsewhere," the story said. The couple acted as prosecutors in a case against an accused Internet child pornographer. "When it came up, I didn't have any second thoughts at all about it," Chief Assistant U.S. Attorney Alan Gershel told the *Free Press*. "They are both very bright, very capable, and very professional. In fact, having them try the case together made all kinds of sense to me." Hurley volunteered for the case when it was transferred to Detroit, then asked McQuade as his partner. "I didn't have a problem with it," Gershel said. "They work together very well and keep each other sharp. They are total professionals." McQuade gave the opening and final arguments; she and Hurley

divided assignments for questioning witnesses. "The jury didn't know we were married," McQuade said. "That's as it should be."

1991

Martin D. Litt and **Steven B. Smith** have been elected to partnership with the law firm Holme Roberts & Owen L.L.P. Litt works out of the Denver office, specializing in complex commercial litigation, employment litigation, and Year 2000 issues. Smith, in the Colorado Springs office, specializes in community resources law and providing counsel to nonprofit organizations, as well as sports law and intellectual property law.

Donald R. Lorenzen has been elected partner in Holleb & Coff's health law department. A former computer systems consultant for Andersen Consulting, he is also a member of the firm's intellectual property and technology department.

1992

Michelle M. Gallardo was appointed vice chair of the Labor & Employment Law Committee for the American Bar Association-Young Lawyers Division. She also was selected as a contributor to *Employment Discrimination Law, Second Supplement,* to be published by the ABA section of labor and employment law.

1993

Jennifer Krolik Moulton of London was admitted to the rolls of solicitors for England and Wales, and is therefore a dual-qualified lawyer entitled to practice both in the United Kingdom and in the United States. For the past 18 months, she has been an associate in the insurance and reinsurance litigation department of the firm Norton Rose, a London-based international law firm.

1994

5TH REUNION

The Class of 1994 reunion will be November 5-7

Kyle R. Hauberg of Auburn Hills has joined the Bloomfield Hills office of Dykema Gossett as an associate in the real estate practice group. His practice will focus on general real estate matters.

Laura Lindstrand has been awarded a contract by the cities of Lynnwood and Edmonds, Washington, to develop and direct a court-based advocacy program for victims of domestic violence. The goals of the program are to ensure fair representation of victims within the criminal justice system, to increase conviction rates of perpetrators of violent crimes, and to assist victims with safety planning and with obtaining aid from community agencies and support groups. She previously worked in the areas of domestic law and general litigation as a staff attorney with Legal Aid of Central Michigan. She resides north of Seattle with her husband.

Wedding becomes occasion for Law School reunion

Mountains, waterfalls, and snow made up the setting for a combined union and reunion this spring, when **Rachael Meny, '95**, wed Matthew Hinsch (unfortunately not a Michigan graduate — he's a lawyer, too, but via Boalt School of Law at UC-Berkeley), with more than a dozen of her fellow University of Michigan Law School graduates among the guests.

Hiking boots were the fashion of the day — even for the bride and her mother — and appropriately so: The April 10 wedding was held in Yosemite National Park. "The wedding was idyllic, held in the snow . . . with a backdrop of imposing mountains and waterfalls flowing," according to **Kinnari Shah, '95**, who wrote *Law Quadrangle Notes* of the day's events.

The bride has left Brobeck, Phleger & Harrison to join the San Francisco law firm Kecker & Van Nest, where she focuses on general litigation.

Also in attendance were **Aylice Toohey** and her husband **Eric Gorman, Ruth (Armstrong) Schoenmeyer,** and husband **Joel Schoenmeyer, '96, Stacey Mufson, Gina Roccanova, Paul Tauber, Karen Zatz, Kristina Maritczak, Jim Kenniff** and wife Alice, **Rob Baker,** and **Anthony Montero.** (All those named in boldface are from the Law School class of 1995 unless otherwise noted.)

Shah recently joined the San Francisco office of the Newport Beach-based firm Stradling Yocca Carlson & Rauth in the public law department. She was previously with Brown & Wood L.L.P. She noted the following comings and goings among the other Michigan alumni attendees:

Toohey has left Jenner & Block, Chicago, to join the U. S. Attorney's office in Chicago. **Schoenmeyer** also has left Jenner & Block, to join the real estate legal department of McDonald's Corporation. **Mufson** is now working in the employment and labor law department at Lillick & Charles L.L.P., San Francisco. **Roccanova** also is in San Francisco, in the employment law practice group of Howard Rice Nemerovski Canady Falk & Rabkin. And **Tauber** is in the corporate department with Coblentz, Patch, Duffy & Bass, San Francisco.

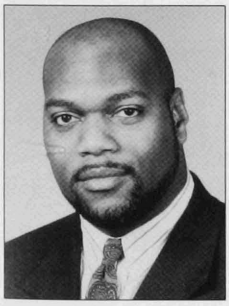
1995

Paul J. Tauber, formerly with Marron Reid L.L.P., has joined the corporate business practice of the law firm Coblentz, Patch, Duffy & Bass, L.L.P., as a senior associate. Tauber has a broad background in corporate transactions, including financing, technology, and securities matters.

1996

Bruce M. Ching has left the University of Cincinnati, where he was a legal writing instructor, to join the University of Oregon in the same capacity.

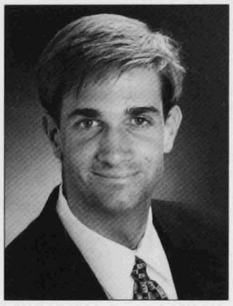
Michael P. Matthews has joined Williams & Connolly of Washington, D.C., as an associate. He previously served as a law clerk for Chief Judge J.P. Stadmueller of the U.S. District Court for the Eastern District of Wisconsin and as an adjunct professor at Marquette University Law School.



Travis Richardson was elected to the Cook County Bar Association's Board of Directors and received the Association's 1999 Junior Counsel and Presidential Awards. He also was appointed vice chair of the Chicago Bar Association's Coordinating Council for Minority Affairs. Richardson is an associate with the Chicago-based law firm Arnstein & Lehr in the litigation department.

Mike Thomas is currently employed as a law clerk to Arizona Court of Appeals Judge J. William Brammer Jr. in Tucson.

1998



James S. Birge has joined the law firm Baker & Daniels as an associate in the Indianapolis office, where he is a member of the healthcare and insurance teams.

David Copley Forman has become a partner in the law firm Stoel Rives L.L.P., in the Portland, Oregon, office. A member of the corporate, securities and finance group, his practice emphasizes mergers and acquisitions, debt and equity financing, and other general business and corporate matters.

Krista L. Lenart, has joined Dykema Gossett, as an associate in the litigation practice group in Ann Arbor. Her practice will focus on general litigation matters. She is an Ypsilanti resident.

IN memoriam

'27	Lester F. Johnson	April 26, 1999
'29	Sylvan Rapaport	June 19, 1999
'31	M. Paul Smith	August 27, 1998
'34	Pierre V. Heftler	May 28, 1999
	Clarence W. Moore	March 5, 1997
'36	William P. Cherrington	August 28, 1998
	Robert E. Hensel	June 25, 1999
	A. Belden Wagner-Hatch	April 13, 1999
'37	Patrick J. Quealy	July 12, 1997
	Robert A. Sloman	December 28, 1998
'38	Charles E. Nadeau	July 1, 1998
	Maurice A. Pettibone	March 25, 1998
'39	Clark G. Schell	March 26, 1998
	William K. Zewadski	July 21, 1997
'40	Frederick Colombo	June 12, 1999
	William J. DeLancey	
	Charles K. Van Winkle	June 26, 1998
'41	J. Laurence Barasa	June 8, 1999
	James W. Brammer	April 18, 1999
'42	William R. Beasley	June 1, 1999
	George M. Winwood	April 29, 1999
'43	Alfonse J. D'Amico	March 16, 1997
'45	Galvin R. Keene	September 3, 1998
	Fred M. Nelson	
'47	Vincent E. Johnson	February 6, 1999
'48	Walter J. Barkey	February 15, 1999
	Robert F. Browning	May 3, 1999
	William D. Dexter	December 21, 1998
	Charles B. Godfrey	June 18, 1999
	David S. Magee	July 19, 1998
	James E. O'Donohoe	March 20, 1998
'49	Willard G. Bowen	November 12, 1998
	George D. Lutz	January 18, 1999
'50	Edward L. Dobbins	August 27, 1997
	Richard E. Morgan	February 3, 1999
	Gellert A. Seel	January 6, 1999
'51	Asa Kelly	January 14, 1998
	Rene J. Ortlieb	September 7, 1997
	Arthur F. Southwick	March 3, 1997
'52	Basil W. Brown	October 28, 1997
	Peter M. Dluz	May 8, 1998
	Warren L. Taylor	April 17, 1999
'53	Jay M. Nolan	September 2, 1998
'54	Malcolm D. Basinger	August 16, 1998
	Chris G. Papazickos	July 1, 1998
	John L. Schwendener	December 11, 1998
'55	Raywood H. Blanchard	November 17, 1998
	Robert C. Fox	June 30, 1999
'56	John N. Brown	September 20, 1998
	Peter J. Gartland	June 23, 1999
	Harvey W. Moes	April 10, 1998
'59	Myrl O. Wilkinson	October 25, 1997
'60	Bruce K. Carroll	
'63	Mark Sumner Smallwood	October 31, 1997
'64	William A. Baker	December 23, 1997
	John Lambros	May 17, 1999
	Douglas O. Meyer	January 16, 1999
'67	James B. Boskey	June 14, 1999
'69	Roy J. Josten	June 1, 1999
'74	B. H. Giles	April 23, 1999
'77	Stephen M. Fleming	April 8, 1998
	Scott Allen Handelsman	January 8, 1999

President William J. Clinton issues his Call to Action to the legal profession at the East Room of the White House on July 20. "We'll know we have succeeded when our law schools, our bar associations, and our law firms not only represent all Americans, but look like all America," the President said. On the dais with the President are, from left, Bill McBride, managing partner of the Tampa, Florida, office of Holland & Knight; Attorney General Janet Reno; and Deputy Attorney General Eric Holder.

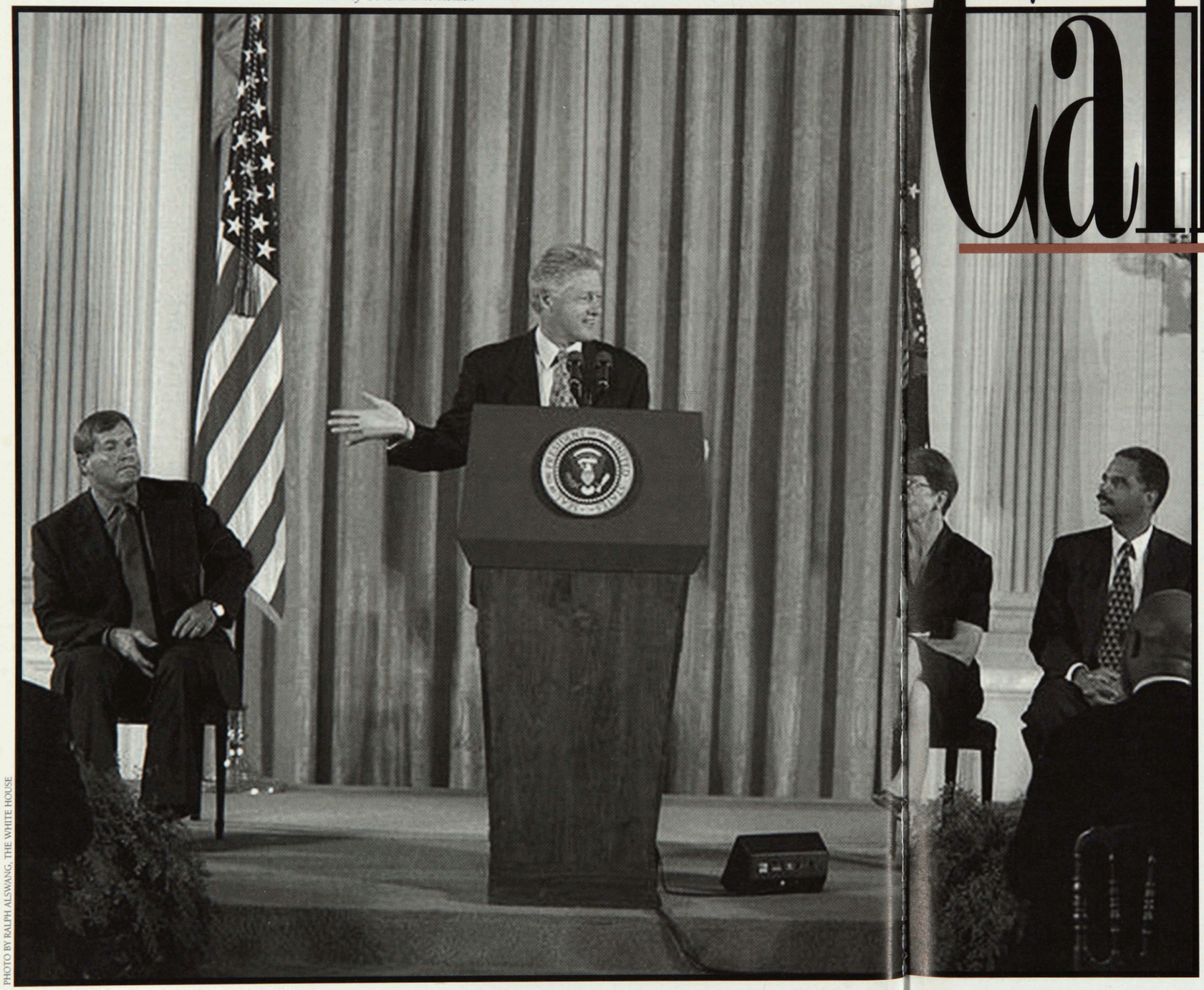


PHOTO BY RALPH ALSWANG, THE WHITE HOUSE

A Call to the legal profession

When President Clinton spoke to the more than 200 leaders gathered in the East Room of the White House one afternoon in July, Dean S. Jeffrey Lehman, '81, listened with intense interest from the front row.

The sole law school dean among the 31-person committee that had worked for several months to prepare the event, Lehman cares about broadening participation in legal studies and the legal profession and enhancing the provision of *pro bono* services — the same values that President Clinton stressed that afternoon.

The President chose an historic spot and historic occasion for his "Call to Action, Seeking a Renewed Commitment to Achieve Racial Justice in Society and Racial Diversity Within the Legal Profession." He convened the group 36 years after President John F. Kennedy's first "Call to Action" to ask the nation's top lawyers to focus on civil rights. Kennedy's action led to formation of the Lawyers Committee for Civil Rights. This year, President Clinton emphasized the legal profession's role in building "the one America that we all long to live in."

As Lehman recalled the event, it was an impressive moment, undertaken with the utmost seriousness. "To my right sat Gregory Williams, the president of the Association of American Law Schools. To

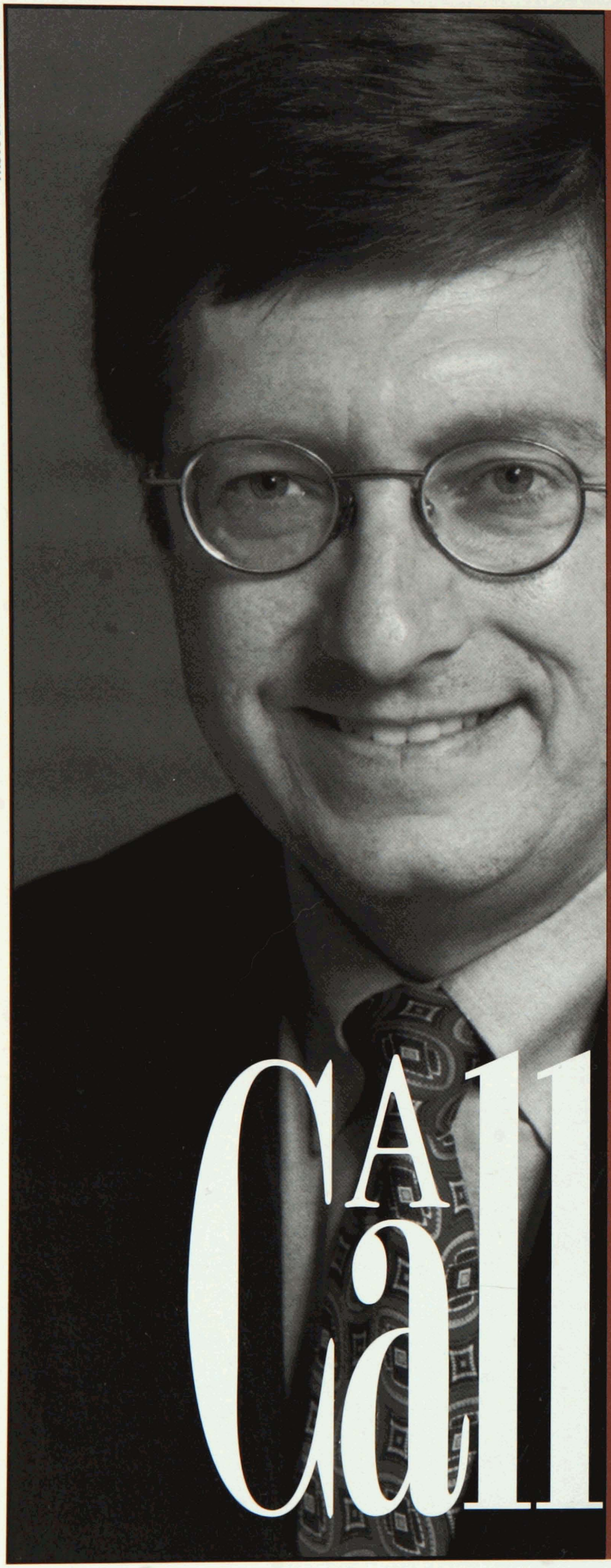


PHOTO BY ROBERT KALMBACH

A Call to the legal profession

Dean Jeffrey S. Lehman, '81

my left were Beverly McQueary Smith, president of the National Bar Association; Dan Kolb, '65, co-chair of the Lawyers Committee for Civil Rights; Phillip Anderson, president of the American Bar Association; former Secretary of State Warren Christopher; civil rights veteran and presidential adviser Vernon Jordan; and Detroit Mayor Dennis Archer.

"Attorney General Janet Reno spoke, followed by Deputy Attorney General Eric Holder. General Holder explained the genesis of the event — how the President had asked him to design a way to involve lawyers in the ongoing struggle to create One America, and how he had in turn formed the planning committee that led to the day's events. Next, William McBride, managing partner of Holland and Knight, spoke movingly about his law firm's commitment to diversity and *pro bono* service, and the importance of both commitments to the profession.

"Then President Clinton began his remarks. He spoke forcefully about the need for diversity in the legal profession, and of continuing the progress that has been made since President Kennedy's call to the bar 36 years ago. He spoke about the importance of having a profession and law schools that look like the rest of America. He expressed his 'respectful disagreement' with the Fifth Circuit's decision in the *Hopwood* case against the University of Texas Law School."

Said President Clinton: "Just as your predecessors, with the Constitution as their shield, stared down the sheriffs of segregation, you must step forward to dismantle our time's most stubborn obstacles to equal justice — poverty, unemployment and, yes, continuing discrimination. Behind every watershed event of the civil rights struggle, lawyers, many *pro bono*, remained vigilant, securing equal rights for employment, education, housing, voting, and citizenship for all Americans."

"The struggle for one America today is more complex than it was 36 years ago, more subtle than it seemed to us that it would be back then," he said. "For then there was the clear enemy of legal

segregation and overt hatred. Today, the progress we make in building one America depends more on whether we can expand opportunity and deal with a whole range of social challenges. In 1963, the challenge was to open our schools to all our children. In 1999, the challenge is make sure all those children get a world-class education."

He also urged renewed emphasis on *pro bono* work, and said that if every American law firm met the American Bar Association standard of devoting three percent of annual billable work time to *pro bono* services "that would be 40 million hours of legal help. That's a lot of personal problems solved, a lot of headaches gone away, a lot of hurdles overcome, a lot of businesses started. Think of what we could do."

The President asked participants to "recommit yourselves . . . to fighting discrimination, to revitalizing our poorest communities, and to giving people an opportunity to serve in law firms who would not otherwise have it," and to "invite more lawyers of all backgrounds to join your firms."

"How are we going to build one America if the legal profession which is fighting for it doesn't reflect it?" he asked. "We can't do it."

"We'll know we have succeeded when our law schools, our bar associations, and our law firms not only represent all Americans, but look like all America," he said.

Afterward, Lehman spoke with the President about the lawsuit against the Law School's admissions policies. "The President expressed his support for our position and voiced his strong concern for what would happen to legal education if we were to lose," the dean said. "He emphasized the special role that the very finest public law schools have to play in the overall system of higher education."

FEATURE

Legal organizations heed the

Call to action

A number of professional legal organizations have committed themselves to the goals that President Clinton set forth in his Call to Action on July 20. Among them:

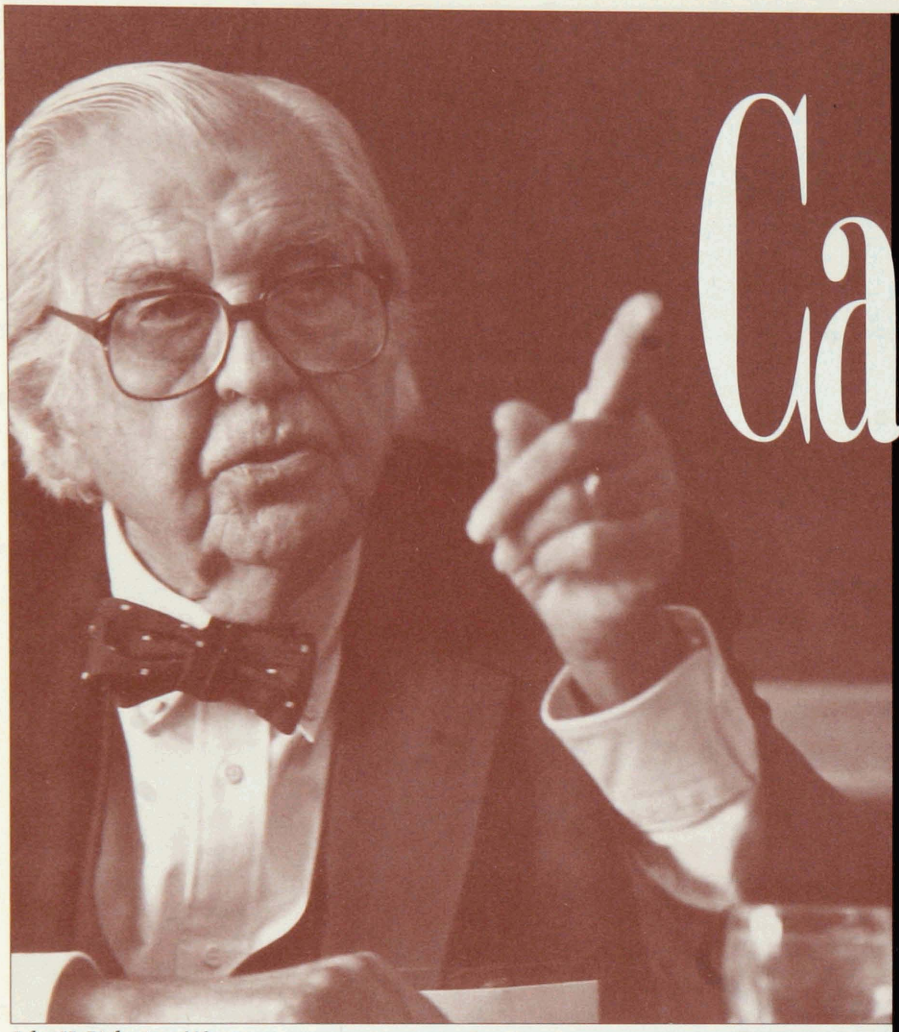
➙ The President pledged support from the Department of Justice and the White House Office on the President's Initiative for One America.

➙ The American Bar Association announced a new initiative to ensure greater racial and ethnic diversity in the legal profession that will involve lawyers, academics, law firms, and bar associations throughout the country.

➙ The American Corporate Counsel Association will encourage its members to retain minority counsel and law firms.

➙ Leading law firms will apply the American Bar Association's three percent *pro bono* standards — that the firms' lawyers commit 50 hours per year or three percent of billable time to *pro bono* work — with full credit for time spent.

➙ The Association of American Law Schools is strengthening its commitment to the professional ethic of community service by helping to enhance law students' opportunities to volunteer their legal skills in their communities. *(See related story page 85.)*



Call to action

John H. Pickering, '40

David L. Chambers

Pickering, '40, wins ABA medal

John H. Pickering, '40, a founding partner of Wilmer, Cutler & Pickering, of Washington, D.C., and an advocate of service to the poor as a basic responsibility of lawyers, has been awarded the American Bar Association's highest honor, the ABA Medal.

"John's leadership has inspired lawyers of several generations to serve in their communities," ABA President Philip S. Anderson said of Pickering. "He is a national treasure."

The ABA Medal is given only when there is a worthy recipient. In awarding Pickering the honor, the ABA took note of Pickering's role in establishing and continuing Wilmer's policy that all its lawyers donate 10 percent of their practice to *pro bono* work. Pickering began the practice with the founding of his firm in 1962.

"The ABA has viewed service to the poor as a fundamental responsibility of lawyers, and in

Report: more *pro bono* in law schools

The Association of American Law Schools (AALS) commitment to the ethic of community service outlined in President Clinton's "Call to Action" by the legal profession (see story, page 81) reflects a new AALS report finding that "most students do not participate in law-related *pro bono* projects" and made recommendations to law schools on ways to increase the number of opportunities available to their students.

The AALS report, "Learning to Serve," is the product of the eight-member Commission on *Pro Bono* and Public Service Opportunities, appointed by then AALS President Deborah Rhode. The chairman of the commission is David L. Chambers, the Law School's Wade H. McCree Jr. Collegiate Professor of Law.

The commission gathered information from 123 law

the last decade has issued what we call the *Pro Bono* Challenge, urging law firms to commit to donating a percentage of their professional service to the poor," Anderson said. "John Pickering was ahead of his time, both in recognizing that responsibility and in steadfastly fulfilling it. He also made sure that others in his firm were equally committed to that goal."

A member of the Law School's Committee of Visitors since it began in 1962, Pickering was a DeRoy Fellow at the Law School in 1984 and the School's commencement speaker in 1992.

In the ABA, Pickering has been a member of the House of Delegates since 1984, chaired the Commission on Legal Problems of the Elderly for 10 years, and then chaired the Senior Lawyers Division.

A past president of the District of Columbia Bar, he also has served the U.S. Court of Appeals for the District of Columbia Circuit in several capacities: as a member of its Committee on the Administration of Justice; as the first chairman of its Advisory Committee on Procedures; and as chairman of its Appellate Mediation Project.

Pickering began practicing law in Washington, D.C., after completing three years of active duty with the U.S. Naval Reserve in 1946. Before joining the Naval Reserve, he had practiced law in New York City and been a law clerk for U.S. Supreme Court Justice Frank Murphy, '14.

"Over the course of practicing law, Pickering has frequently been recognized for his lifetime commitment to improving the quality of life for all citizens through the use of his legal skills," the ABA said in its announcement of Pickering's award. "Frequently, his honors have focused on his activities for advancing civil rights, supporting and developing *pro bono* service to the poor, and articulating and protecting the legal needs and rights of elderly persons. He also has been cited for leadership in combating gender bias in the legal profession and for thoughtful contributions to legal education."

The award was presented during the ABA's 1999 annual meeting at Atlanta in August. Last year, Pickering received the William J. Brennan Jr. Award from the District of Columbia Bar for "his exemplary legal career dedicated to service in the public interest" and the Lifetime Achievement Award from the Maryland Gerontological Association. In 1996 he received the first annual Outstanding Older American Award from the National Council on Aging and was named Lawyer of the Year by the Bar Association of the District of Columbia.

In another honor, Pickering's firm was cited in the program for the banquet that followed President Clinton's Call to Action to the legal profession in July as one of 31 "model programs" that further the values that the President discussed. (See related story, page 81.) "Washington, D.C.'s Wilmer, Cutler & Pickering's role in establishing that community's City First Bank offers an inspiring example of how lawyers can help inner-city residents secure financial stability and improve their residential community," said the citation in the program for the Lawyers for One America Dinner on July 20. "Committing more than 3,000 hours of *pro bono* time and the specialized skills of more than 30 of its lawyers to this project, Wilmer, Cutler used its expertise in banking and regulatory work and corporate, tax, and other business practices to address a systemic problem in the District's poorest neighborhoods: the unavailability of loans at reasonable rates for potential homeowners and small businesses.

"Thanks to the community leaders' vision and the firm lawyers' expertise, the concept of a community bank — first envisioned at a meeting in 1993 — is now a reality. City First Bank offers credit and financial services to individuals, businesses, and nonprofits, and thus it provides the financial resources to take advantage of the human capital already available."

FEATURE

---

school deans, 110 law school administrators, and 419 program forms prepared by law school staff members at the request of their deans. The commission also held day-long focus groups in Washington, D.C., San Francisco, and Chicago to discuss the issue with staff administrators of *pro bono* programs, law school deans, law students, and clinical professors and met separately with representatives of eight national organizations involved in working with law school-based or practicing lawyers' *pro bono* projects.

"The commission's central finding is simply stated: at some American law schools, no students participate in law-related *pro bono* projects and, at most American law schools, only a minority of the student body participate in such a project during their law school years. Our central conclusion is equally brief and blunt: law schools should do more."

Two concrete programs already have emerged from the study, according to the report:

1. A new section on public service programs has been created within the AALS as a forum for exchanging information and ideas.

2. The commission has received a grant from the Open Society Institute to add two people to the AALS staff for at least a year to launch the new section on public service programs and work with law schools to create or expand *pro bono* programs.

In addition to providing legal assistance for people who otherwise might be unable to secure it, the report says, *pro bono* programs provide "important educational values" to law students and "important values to the law school itself" through involvement in the communities of which they are a part.

"Our central recommendation is that law schools make available to all law students at least once during their law school careers a well-supervised law-related *pro bono* opportunity and either require the students' participation or find ways to attract the great majority of students to volunteer."

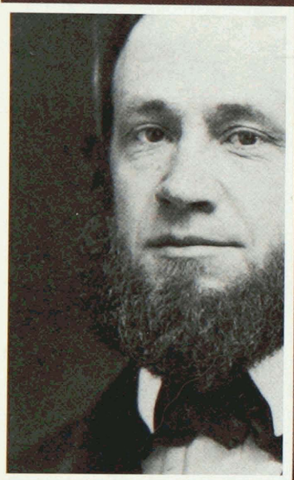
The commission also recommended that "all law schools adopt a formal policy to encourage and support faculty members to perform *pro bono* work" and suggested a six-part plan for doing so. The suggested plan includes: an expectation of annual *pro bono* service; universal application of the policy; expectation that *pro bono* work be in addition to normal teaching, research and writing, and institutional service within the school; provision for support, like secretarial and other assistance; freedom for faculty to choose the *pro bono* work they wish to do; and annual reporting on such work to faculty, staff, and students.

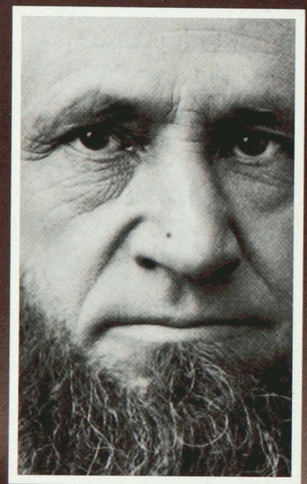
"The commission believes that active faculty participation in *pro bono* work is highly important for the sake of their students," the report said. "Law teachers teach as much about professional responsibility by what they do as by what they say. . . . If we appear to be insincere about our *pro bono* responsiblities, we also will encourage law students to be skeptical, indeed cynical, about the many other moral principles that distinguish our profession from a trade."

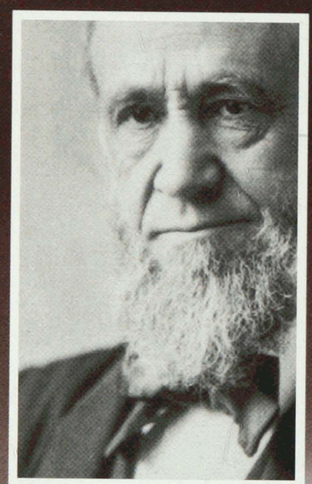
In addition to Chambers, commission members included: the Hon. Judith Billings, Utah Court of Appeals and chair of the ABA Standing Committee on *Pro Bono* and Public Interest; Richard Boswell, professor, University of California at Hastings; Sande Buhai, director of *pro bono* programs and clinical professor, Loyola Law School, Los Angeles; Robert Drinan, professor at Georgetown University Law Center and chair of the ABA Committee on Professionalism; Thomas Ehrlich, former president of Indiana University and of the Legal Services Corporation; Kristin Booth Glen, dean of City University of New York School of Law; and Michael Millemann, professor and director of clinical law programs, University of Maryland School of Law.

(Chambers and two co-authors found in a recent study that University of Michigan Law School graduates of the years 1970-96 consistently exceed American Bar Association guidelines in the amount of *pro bono* work that they do. The study was reported in [Chambers, Lempert, and Adams] "Doing Well and Doing Good: The Careers of Minority and White Graduates of the University of Michigan Law School, 1970-1996," 42.2 *Law Quadrangle Notes* 60-71 [Summer 1999]).

THE STRENGTH OF THE LAW

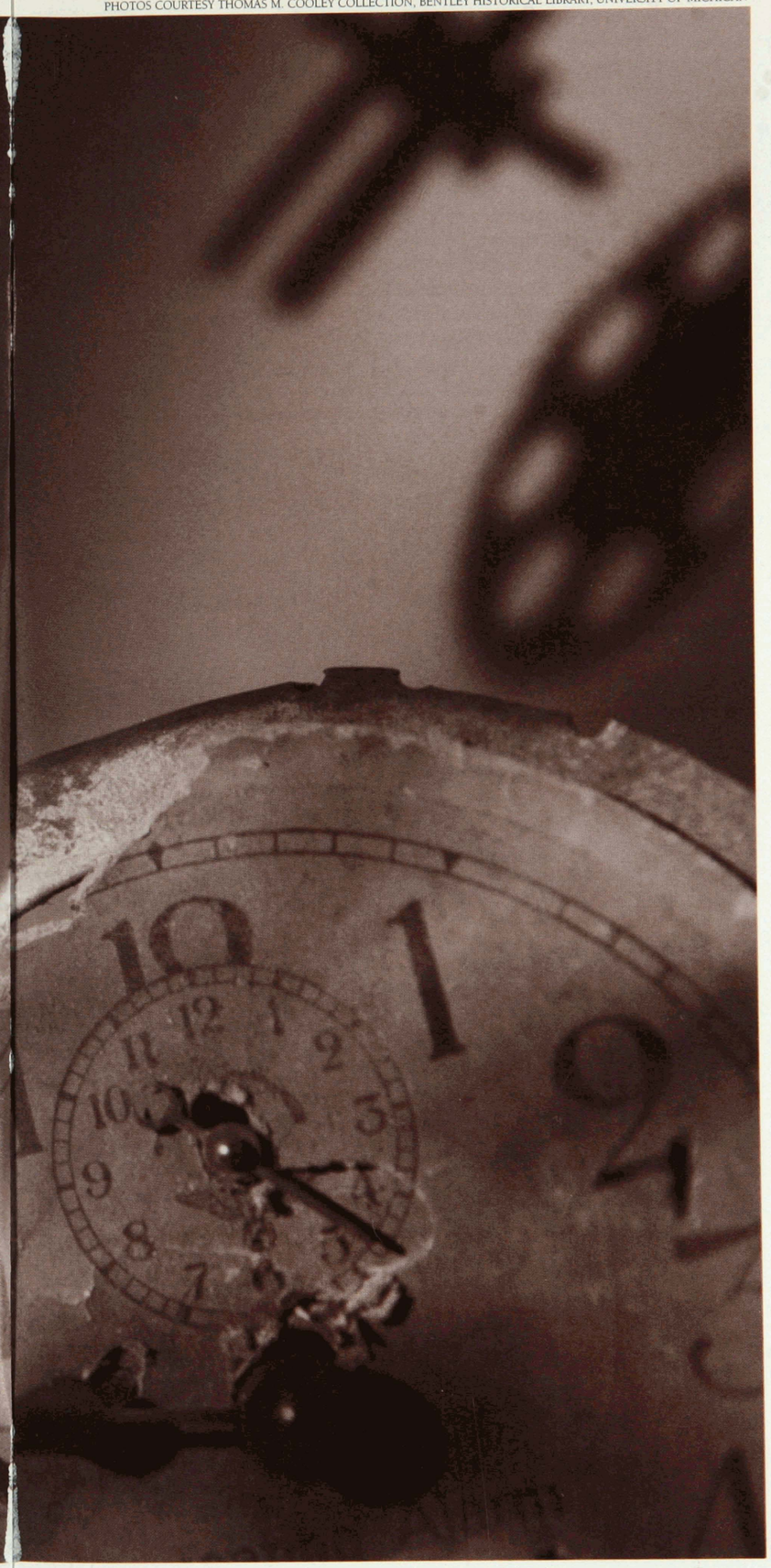






Thomas M. Cooley from young professor to elder statesman.

PHOTOS COURTESY THOMAS M. COOLEY COLLECTION, BENTLEY HISTORICAL LIBRARY, UNIVERSITY OF MICHIGAN



FEATURE

Thomas McIntrye Cooley (1824-1898), one of three charter faculty members when the University of Michigan launched its law department in 1859, was the only one of the three to move to Ann Arbor. He was elected secretary of the faculty and quickly became *de facto* dean through his work as liaison with the Board of Regents and other parts of the University. Over the next three decades, his teaching, writing, judicial terms, and other public work made him one of the best known and most respected lawyers in the United States.

Cooley's death in 1898 nearly coincided with the passing of his century and its agrarian tradition. Now, on the brink of another century and its changes, Paul D. Carrington, Harry Chadwick Professor and former dean at Duke University Law School, celebrates Cooley and his philosophical descendants in *Stewards of Democracy: Law as a Public Profession.*

Carrington, who taught at the University of Michigan Law School from 1965-78 and served on the Ann Arbor school board from 1970-73, started out to write a biography of Cooley. He concluded by tracing Cooley's career as a symbol of one strain in modern American approaches to the law. He writes:

"As a judge and legal scholar, Cooley regarded the Republic as a client whose instructions, given in the form of legislation enacted by elected representatives, ought be obeyed as best they could be understood even if ill-advised, unless they were in conflict with express constitutional protections of private or group interests interpreted to conform to the common understanding of their meanings. In short, he strove to facilitate constitutional self-government even if that might require him to perpetuate policies with which he disagreed."

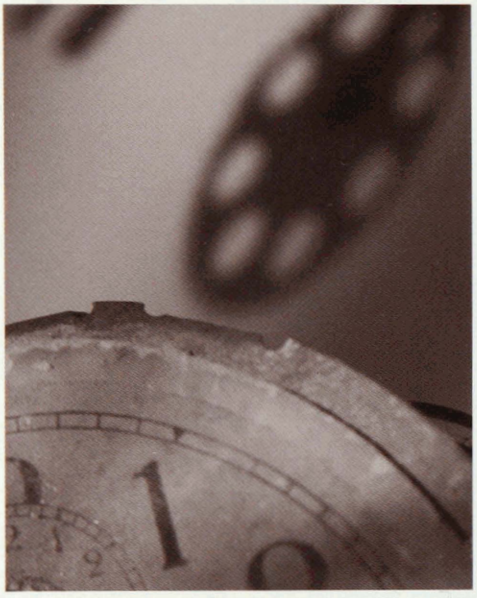
Harvard celebrated its 250th anniversary in November 1886. It was therefore a time for self-praise in Cambridge. Among the events fitting the occasion was the award of an honorary doctorate to Thomas McIntyre Cooley of Ann Arbor, Michigan. Cooley was then the most respected lawyer in America and was among the most widely respected persons in American public life. Indeed, given that John Marshall had many critics, Cooley was perhaps the nineteenth-century American lawyer most esteemed by his contemporaries. Nothing could have been more appropriate than that he would be invited to honor Harvard with a ceremonial utterance.

Cooley had two years earlier retired from a quarter-century of service as the

founding dean, esteemed teacher, and intellectual leader of a university law school in Ann Arbor that had for a time far surpassed Harvard in its ability to attract students. His former students were so active in public life that they might also have surpassed Harvard's alumni in their service to the Republic.

In addition to his role as an educator, Cooley in 1865 had been elected to the Supreme Court of Michigan and had served that court for twenty years, many of them as Chief Justice, often as the court's intellectual leader. His court had been regarded in the 1870s as possibly the ablest appellate court in America. Its decisions were closely read even in Boston. Many lawyers had favored, and some had sought, his appointment to the Supreme Court of the United States; on one occasion, a leading legal publication, the *Central Law Journal* of St. Louis, spoke of his qualifications for the court as "transcendent." The appointment was withheld, apparently because he was viewed by the barons of his Republican party as too independent. In 1885 his judicial career had come to an end when he was defeated for re-election in a tide of Democratic votes.

Despite the distinction of his teaching and judicial careers, it was Cooley's professional legal writing that had won him the greatest fame. In 1868, he had published his *Constitutional Limitations*, a work recounting and comparing the interpretations of the constitutions of the states and of those few provisions of the antebellum federal constitution applicable to state government. That work was still, in 1886, the most scholarly and most widely used American law book; it was then in its fifth edition. It was said that no other work had "been cited more freely or with a greater measure of commendation"; one reviewer may have expressed the prevailing opinion when he went so far as to say that it is impossible to exaggerate its merits. It is an ideal treatise, and not only a standard authority, but almost exclusively sovereign in its sphere. It is cited in every argument and opinion on the subjects of which it treats, and not only is the book authoritative as a digest of the law, but its author's opinions are regarded as almost conclusive.



Charter faculty member Thomas M. Cooley in 1861 as a lecturer in constitutional law, two years after the University of Michigan opened its law department.

Cooley had also published, in 1873, a new edition of Joseph Story's *Commentaries on the Constitution* of the United States, adding to that dated but popular work an account of then-recent post-war amendments imposing new restraints on the powers of state governments. In 1876, he had published a useful treatise on taxation which, like its predecessors, analyzed judicial interpretations of constitutional provisions. He had published yet another treatise in 1879, on torts, a field then emerging from the interstices of common law pleading, a work in which he aptly described the role of an American common law court. And in 1880, he had published a short text, *The General Principles of Constitutional Law*, which by 1886 was required reading at the Harvard Law School for students enrolled in James Bradley Thayer's course in constitutional law. While several of these works would be the object of later editions prepared by other hands, when he came to Cambridge Cooley had ceased his endeavors as a legal writer.

Although after 1886 Cooley would no longer judge, teach, or (with one exception) write law, his career as a lawyer was not at an end. He remained in demand as a speaker and as an author of articles in popular periodicals on public issues of the day having legal dimensions. He served as a neutral in the resolution of several disputes involving the railroad industry, then America's largest and most complex business. When the Interstate Commerce Act was approved in 1887, there was great concern over the selection of the commissioners to exercise the modest power over railroads conferred on the new Interstate Commerce Commission. The aged Cooley had no interest in the appointment, but was importuned by President Cleveland to chair the Commission. Cleveland believed him to be perhaps the one person in America sufficiently disinterested to be trusted on all sides to give the embattled Commission a chance of useful service. Illness forced Cooley to leave the Commission in 1891, but his early leadership of that body provided significant guidance for the national, independent administrative agencies established in the decades to follow.

In 1893, the American Bar Association graced itself by electing Cooley its president. Over the course of the next century, the Supreme Court of the United States cited Cooley's writing frequently, almost certainly more than those of any other legal writer. But these later events only underscored the eminence that Cooley had already achieved by 1886, an eminence that Harvard was bound to acknowledge.

The award, appropriate though it was, caused a moment of tension. That tension signified changes in the American legal profession occurring at that moment. Those present honored both the declining agrarian-democratic aspirations or homely pretensions of the nineteenth-century American law represented by Cooley and the rising technocratic aspirations or pretensions of the profession most clearly reflected in the emerging character of the Harvard Law School.

The year 1886 was a time when the resolution of the enduring conflict between democracy and professionalism was being re-ordered by the secondary and tertiary effects of industrialization. The resolution effected at that time seemingly fit the needs, or at least the tastes, of an industrializing society. The outcome was academization, an ardent embrace by the profession of academic credentials and the idea of intellectual meritocracy.

When receiving his degree, Cooley acknowledged this tension. He spoke briefly at a dinner in Hemenway Gymnasium, along with Justice [Oliver Wendell] Holmes, then of the Supreme Judicial Court of Massachusetts, and Dean Langdell [Harvard Law School Dean Christopher Columbus Langdell]. With appropriate modesty, Cooley saluted the Harvard Law School as an institution that had rendered great service to the nation and promised greater service in the future. But he spoke in terms unsettling to those present:

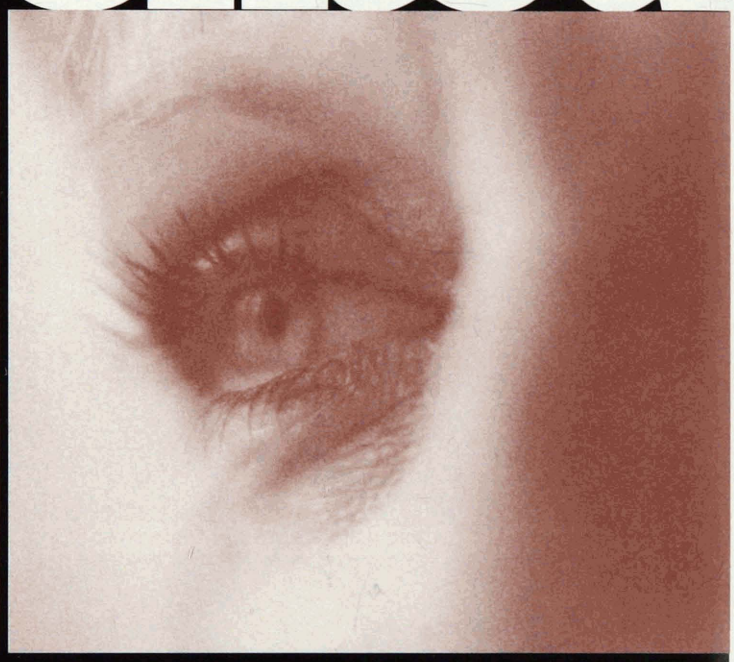
> [W]e fail to appreciate the dignity of our profession if we look for it either in profundity of learning or in forensic triumphs. Its reason for being must be found in the effective aid it renders to justice and in the sense that it gives of public security through its steady support of public order. These are commonplaces, but the strength of law lies in its commonplace character; and it becomes feeble and untrustworthy when it expresses something different from the common thoughts of men.

That utterance stated a guiding premise of Cooley's career, a premise shaping the conduct of his law school, the character of his scholarship, his judicial behavior, his public comments on the political issues of his day, and his future leadership of the Interstate Commerce Commission. That premise was an axiom of American public law to many of those who professed and practiced it in the half century preceding 1886. Nevertheless, its assertion at Harvard almost surely offended his host, Christopher Columbus Langdell, whose novel case-method teaching had been celebrated earlier that day and was on the verge of becoming a standard of a new professional class. In the hands of Langdell, the case method was the emblem of a technocratized profession, one committed primarily to the conduct of private affairs and the management of private relations through the use of expert knowledge of increasingly complex legal texts presumed to be incomprehensible to laypersons.

Cooley's remark also struck Justice Holmes with sufficient force that he was moved to respond to Cooley on another celebratory occasion at Northwestern University in 1902, four years after Cooley's death. On that occasion, Holmes called forth "the lightning of genius" to correct the failings of the "common thoughts of men." In 1886, Holmes was known to those present not only as a local judge, but also as the author of *The Common Law*. He was destined for elevation to the Supreme Court of the United States, but remained relatively obscure until his canonization in the 1920s by some of the leaders of the newly emerging legal academy. Then he came to overshadow Cooley and others as the most memorable lawyer of his time and as the intellectual patron of the newly emerging subprofession of academic law, a subprofession that over the following century drew its inspiration less from its public responsibility and more from its academic status.

Cooley spoke at Harvard not only as a late Jacksonian, but also as an early Progressive. His words not only were in keeping with the antecedent tradition established in the eighteenth century, but also foretold many of the thoughts and aspirations of a generation of twentieth-century reformers who inherited his professional morality. Thus, in the first half of the twentieth century, Langdell's reforms were in part appropriated by those sharing Cooley's perception that the primary mission of the legal profession is to provide stewardship for the institutions of democratic self-government. Cooley's professional morality was perpetuated in the careers of Progressive lawyers and judges such as Louis Brandeis, Ernst Freund, and Learned Hand, and would abide in the later careers of others such as Byron White.

Confrontation Confronted



BY
— RICHARD D. FRIEDMAN
— MARGARET A. BERGER,
COUNSEL OF RECORD,
AND
— STEVEN R. SHAPIRO,
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

The following article is an edited version of the *amicus curiae* brief filed with the Supreme Court of the United States in the October Term, 1998, in the case of *Benjamin Lee Lilly v. Commonwealth of Virginia* (No. 98-5881). "This case raises important questions about the meaning of the confrontation clause, which has been a vital ingredient of the fair trial right for hundreds of years," Professor Richard Friedman and his co-authors say. "In particular, this case presents the Court with an opportunity to reconsider the relationship between the confrontation clause and the law of hearsay." On June 10 the Court handed down a decision in favor of Lilly. Justice Stephen Breyer, a member of the plurality, wrote a concurring opinion citing this brief favorably and suggested that a future case might call for the Court to adopt its approach. **(See story on page 53.)**

The petitioner, Benjamin Lilly, was convicted in the Virginia Circuit Court of the capital murder of a student during a carjacking. The trial court entered judgment on the jury's verdict on March 7, 1997, and imposed the death sentence recommended by the jury. The Virginia Supreme Court affirmed the conviction and the sentence on April 17, 1998, in *Lilly v. Commonwealth,* 499 S.E.2d 522 (VA 1998).

With petitioner at the time of the shooting were Gary Wayne Barker and petitioner's brother, Mark Lilly. At the petitioner's trial, Barker, who had been allowed to plead guilty and to avoid the death penalty, testified against him; Mark Lilly, who had not been tried or allowed to plead, invoked his privilege against self-incrimination. The court then admitted the in-custody confession given by Mark Lilly to the police in which he named his brother as the triggerman. Mark Lilly was subsequently permitted to plead guilty to noncapital murder, and recanted portions of his confession at petitioner's sentencing.

On appeal, the Virginia Supreme Court held that Mark Lilly's in-custody confession had been properly admitted as a statement against interest under a "firmly rooted" Virginia hearsay exception, and that the confession therefore satisfied the confrontation clause.

This case presents the Court with an opportunity to restore the confrontation clause to its proper place as one of the fundamental guarantees protected by the Constitution, one with deep roots in the Anglo-American tradition, and indeed, throughout Western jurisprudence. Decisions of this Court have tended to merge the confrontation right with the ordinary law of hearsay, perceiving both as principally guarantors of the reliability of evidence.

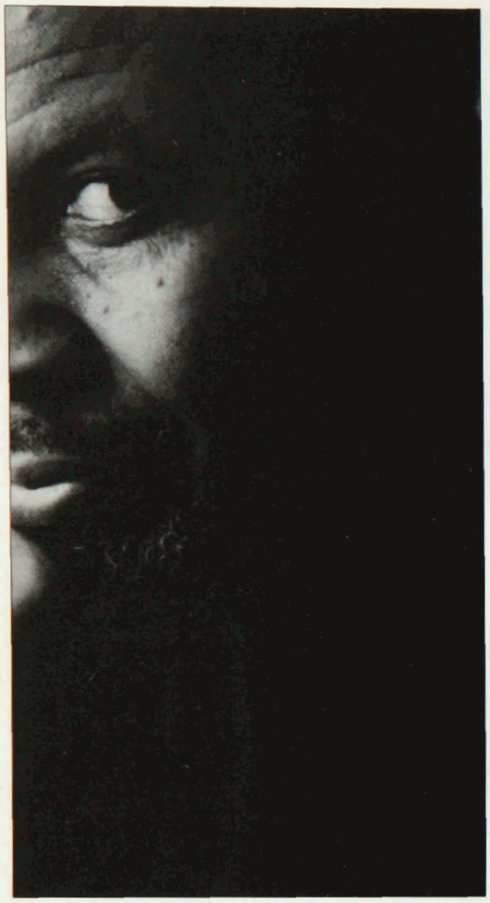
This approach, we submit, has not worked. It denigrates the confrontation right and the fundamental sense of procedural fairness that the right protects. It ignores the language of the clause, the history of the right, and the role of the right in the Sixth Amendment. It provides insufficient guidance and affords too much discretion to lower courts in interpreting the confrontation clause. It simultaneously leads to overly rigid hearsay law. The price to our system of justice is exemplified by intolerable results such as the one reached by the court below in this case.

We believe that it is necessary to break the link between confrontation and hearsay, both so that a robust understanding of the confrontation right can be developed and so that ordinary hearsay law will not be confused by an imposed correspondence with a right that has been inadequately articulated. A majority of this Court, in *White v. Illinois,* 502 U.S. 346, 353 (1992), rejected a proposal by the government to uncouple the confrontation clause from the hearsay rule as an "argument . . . [that] comes too late in the day," but that conclusion was apparently based primarily on the Court's concern that the government's reading of the clause "would virtually eliminate its role in restricting the admission of hearsay testimony."

By contrast, the approach we present here would reinvigorate the clause, giving it force independent of hearsay law. At the same time, though our approach is markedly different analytically from the current doctrine, the results of our approach would, at least for the most part, square with those reached in the Court's decisions.

The most crucial step in achieving a better sense of the confrontation clause is recognizing its unique purpose. The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with witnesses against him." The concerns that led to the confrontation clause predate modern hearsay law. Two consequences flow from this acknowledgement. First, if a declarant is acting as a witness — whether in or out of court — the clause undeniably applies and violations of its core principles cannot be excused on the basis of hearsay exceptions. Second, not every hearsay declaration raises a confrontation clause issue. Within its proper realm, we believe the confrontation clause states a simple and categorical rule, which is central to the Anglo-American concept of justice: the accused has a right to confront all adverse witnesses. This means, at the very least, the right to cross-examine the witness under oath.

We will present in this brief some varying understandings of what the term "witnesses" should be understood to mean in the clause. Formulating a precise definition is not a simple matter, but under any plausible definition, Mark Lilly was acting as a witness within the meaning of the clause when he made the crucial accusation in this case. The admission of such statements sets up, in effect, an inquisitorial system in which prosecutors are free to take unsworn statements from



... if a person acts as a witness against an accused, the accused must have an opportunity to confront that person.

witnesses behind closed doors, out of the presence of the accused or of counsel, who are given no opportunity for cross-examinaton, and then use those statements to convict a defendant — all because of the courts' perception that such testimony is trustworthy. This practice was recognized to be unacceptable long before the confrontation clause was adopted. And it is at the very core of what the clause was meant to prevent. Just as the rights to trial by jury and to counsel are not qualified by the court's evaluation of the merits of the case, the right to confront the witness is not qualified by the court's evaluation of the accuracy of the witness' statement.

The argument

Anglo-American traditions, civilized practice, and the structure of the Sixth Amendment call for a categorical right to confrontation independent of the hearsay doctrine. The right of an accused to confront the witnesses against him predates, and is independent of, the law of hearsay. It has received its fullest development within the Anglo-American tradition, but it has also been a critical feature of other judicial systems, which have nothing resembling our law of hearsay. The history and broad recognition of the confrontation right demonstrate that it is not an adjunct of, or an attempt to constitutionalize, the law of hearsay. Rather, it is a fundamental and categorical rule as to how the testimony of witnesses should be taken.

The right to confrontation has a long history that antedates the hearsay rule. The ancient Hebrews required accusing witnesses to give their testimony in front of the accused. So did the Romans. When medieval continental systems began to rely on the testimony of witnesses, they allowed the parties to examine the witnesses — but on written questions. These systems took the testimony behind closed doors, for fear that witnesses would be coached or intimidated.

By contrast, the open and confrontational way in which testimony was taken was the most critical characteristic of the common law trial. In the middle of the 16th century, Sir Thomas Smith wrote a well-known account of a typical English criminal trial, which he described as an "altercation" between the accusing witness and the accused. Beginning nearly a century before Smith wrote, and continuing for centuries afterwards, numerous English judges and commentators praised the open and confrontational nature of the English trial in contrast to its continental counterpart.

For example, Sir Matthew Hale lauded the "open Course of Evidence to the Jury in the Presence of the Judges, Jury, Parties and Council" in English procedure. Among other advantages, this procedure allowed "Opportunity for all Persons concern'd" to question the witness and "Opportunity of confronting the adverse Witnesses." In a passage closely following Hale, Blackstone articulated many of the same advantages — including "the confronting of adverse witnesses" — of "the English way of giving testimony, *ore tenus*."

Thus, by 1696, in the celebrated case of *R. v. Paine*, it was clearly established that, even if a witness had died, his statement made to a justice of the peace could not be admitted against a misdemeanor defendant because the defendant was not present when the examination was taken and so "could not cross-examine" the deponent.

To be sure, the norm of confrontation was not always respected. First, *Paine* itself distinguished felony cases. Since the mid-16th century, justices of the peace had been required to examine felony witnesses, and these examinations were admissible at trial if the witness was then unavailable and the examination was taken under oath. This anomalously lenient treatment — which was probably one of the abuses at which the confrontation clause was aimed — was controversial by the early 17th century, and it was eliminated by statute in the 19th century.

Second, a set of courts in England, including the equity courts, followed the continental system rather than the common law, relying largely on testimony taken out of court and out of the presence of the parties. These courts appeared to be arms of unlimited royal power, and so many of them, notably the court of Star Chamber, did not survive the upheavals of the 17th century.

Third, the crown, eager to use the criminal law as a means of controlling its adversaries, sometimes used testimony

taken out of the presence of the accused. Thus, it is in the treason cases of Tudor and Stuart England that we find the battle for the confrontation right most clearly fought.

As early as 1521, treason defendants, often using the term "face to face," demanded that the witnesses be brought before them. Sometimes these demands were heeded, sometimes not — but what is most notable is that they found recurrent support in acts of Parliament, which repeatedly required that accusing witnesses be brought "face to face" with the defendant. By the middle of the 17th century, the battle was won, and courts clearly understood that treason witnesses must testify before the accused, subject to questions by the accused.

Well into that century, prosecutorial authorities often tried to use confessions of alleged accomplices of the accused that were not made according to the usual norms of testimony, under oath and before the accused. The case of Sir Walter Raleigh is the most notorious, but far from the only one. The theory — remarkably similar to the one adopted by the lower court in this case — was that self-accusation was "as strong as if upon oath." But the judges soon realized the iniquity of allowing an exception to the usual norms of testimony simply because the accomplice accused himself as well as another.

In 1662, shortly after the Restoration, the judges of the King's Bench ruled unanimously and definitively that, though a pretrial confession was "evidence against the Party himself who made the Confession" and, if adequately proved, could indeed support conviction of that person without witnesses to the reason itself, the confession "cannot be used as evidence against any others whom on his Examination he confessed to be in the Treason." This fundamental principle seems never since to have been seriously challenged until recently — in cases like the current one.

The confrontation right naturally found its way to America. Thus, a Massachusetts statute of 1647 provided that "in all capital cases all witnesses shall be present wheresoever they dwell." But the Americans did not simply draw on English law. American criminal procedure developed in a distinctive way. The right to counsel in felony trials developed far more quickly in America than in England, and with it rose an adversarial spirit that made the opportunity for confrontation of adverse witnesses especially crucial. In addition, the right became especially relevant to American concerns when Parliament began in the 1760s to regulate the colonists through inquisitorial means like the Stamp Act, which provided for the examination of witnesses upon interrogatories. It is clear that the framers were aware of the abuses in the 16th and 17th century treason trials of the defendants' demands for meeting their accusers "face to face." They knew as well about the procedural reforms achieved by the Glorious Revolution, which included requiring treason to be proved through the testimony of two trial witnesses.

In the Revolutionary period, the right to confrontation was frequently expressed, especially in the early state constitutions. Some used the time-honored "face to face" phrase; others, following Hale and Blackstone, adopted language strikingly similar to that later used in the confrontation clause of the Sixth Amendment.

Note that in this account of the background of the Confrontation Clause, we have not mentioned reliability. To be sure, one of the advantages perceived by those who lauded the common law system of open confrontation of witnesses was its contribution to truth-determination. But neither in the statutes, nor in the case law, nor in the commentary was there a suggestion that, if the courts determined that a particular item or type of testimony was reliable, then the accused lost his right of confrontation. On the contrary, the confrontation principle was a categorical rule, a basic matter of the procedures by which testimony was taken.

Similarly, the law against hearsay has not played a role in this account. It could not have: Hearsay doctrine, like evidentiary law more generally, was not well developed even at the time the clause was adopted, much less during the previous centuries. As late as 1794, Edmund Burke remarked in the House of Commons that the rules of "the law of evidence . . . [were] very general, very abstract, and comprised in so small a compass that a parrot he had known might get them by rote in one half hour, and repeat them in five minutes." The tendency to meld the confrontation right and hearsay is a latter-day development. It likely reflects the influence of Wigmore, who subordinated the confrontation right to hearsay. More recent commentators regard Wigmore's view as anachronistic because their research teaches that the hearsay rule evolved in both England and America considerably later than Wigmore argued.

It is noteworthy that the word hearsay appears neither in *Mattox v. United States* 156 U.S. 237 (1895), the first of several cases to note that the "primary object" of the clause was to prevent the use of testimony taken *ex parte*, nor in *Pointer v. Texas* 380 U.S. 400 (1965), which held that the clause expresses a fundamental right applicable against the states. As its language plainly indicates, the clause was not an attempt to constitutionalize the nascent law of hearsay. Rather, it plainly expressed the fundamental principle that if a person acts as a witness against an accused, the accused must have an opportunity to confront that person.

Our historical discussion has shown that evidentiary concerns were not a significant factor in adoption of the confrontation clause. Rather, the clause was meant to protect a categorical procedural right that, like the right to counsel, was in place by the time the Bill of Rights was adopted. The conclusion is fortified by the placement of the clause in the Sixth Amendment.

If one looks at the grand design of the Sixth Amendment, in accordance with ordinary canons of statutory analysis that construe a provision as a harmonious whole, one sees a bundle of procedural protections for a criminal defendant that have more than accuracy in factfinding at their core. The right to counsel is recognized as fundamental even if it interferes with factfinding in a particular case. And the right to a jury trial is not suspended because a judge may be more capable than jurors of correctly evaluating complicated expert testimony, such as competing statistical analyses of the significance of DNA evidence. Nor has the interpretation of the Compulsory Process Clause turned solely on "accuracy in factfinding."

Only the Confrontation Clause has of late been stripped of any role other than furthering evidentiary objectives. We urge the Court to recognize that this interpretation ignores significant values at the core of the right to confrontation, and leads to intolerable results that cannot be adequately policed by the Court.

This perspective is borne out by recent developments under the European Convention on Human Rights. This convention contains nothing resembling a hearsay rule, of course, because most of the judicial systems falling under it do not have hearsay law. But Articles 6(1) and 6(3)(d) of the convention contain, respectively, a general protection of a criminal defendant's right to a fair trial and a specific protection of his right "to examine or have examined witnesses against him." Under these provisions, the European Court of Human Rights has issued a series of decisions establishing a right of confrontation, which it has referred to as such.

Thus, the Court has repeatedly held that defendants' confrontation rights were violated by the use at trial of statements made before trial to investigative or prosecutorial authorities, where the defendant had no opportunity to examine the witness. And the English Court of Appeal has recently relied on the same provisions of the convention in reaching a similar conclusion.

We thus face the great irony that the confrontation right, one of the great glories of the Anglo-American system of criminal procedure, is now receiving its clearest articulation in decisions by and following a continental court. The reasons are clear enough: The Europeans are unencumbered by the peculiar hearsay doctrine of the common law tradition. They recognize that confrontation is a categorical rule that expresses a fundamental human right.

In search of more constant results

A categorical right of confrontation would yield more constant results, eliminate the courts' need to evaluate trustworthiness in applying the Sixth Amendment, and permit the continuing development of the hearsay rule without requiring the overruling of prior precedents of the Court. The Court's current approach to confrontation produces intolerable results, as illustrated by the case below.

The court has declared an exact fit between the hearsay rule and the confrontation clause when the out-of-court statement satisfies a "firmly rooted" hearsay exception. (The court has said that "a 'firmly rooted' hearsay exception is so trustworthy that adversarial testing can be expected to add little to its reliability.") This formula, which masquerades as a categorical rule that results in consistent interpretations of a basic constitutional right, instead gives lower courts enormous leeway to admit hearsay against a criminal defendant, subject to correction only in the rare instance in which this Court grants *certiorari*.

The test to be used in determining when an exception is "firmly rooted" is far from clear. In *White* (502 U.S. at 357), the Court affirmed the Illinois court's admission of statements made in the course of receiving medical care that identified the defendant as having sexually abused a four-year-old child. The Court justified its conclusion that such statements are "firmly rooted" by noting that a hearsay exception for such statements is recognized in the Federal Rules of Evidence, and is "widely accepted among the states." But before the Federal Rules' enactment in 1975, the exception generally did not include statements such as the one involved in *White*, describing an injury's cause, even if relevant to diagnosis or treatment. Moreover, numerous post-*White* courts have admitted statements under cover of the exception and over confrontation clause objections even though the trustworthiness rationale of the exception was not satisfied because the declarant was too young to appreciate that "the efficacy of her medical treatment depends upon the accuracy of the information provided to the doctor."

On the other hand, in *Lee v. Illinois*, 476 U.S. 530 (1986), this Court held that the Illinois courts had erred in admitting an accomplice's confession against his codefendant. The majority rejected the state's "characterization of the hearsay involved . . . as a simple 'declaration against penal interest,'" explaining that "[t]hat concept defines too large a class for meaningful confrontation clause analysis." Consequently, the confession was not automatically admissible as "firmly rooted," even through the Federal Rules, and numerous state codifications, had expanded the hearsay exception for declarations against interest to encompass statements against penal interest.

Viewed together, *White* and *Lee* lead to circular reasoning. *White* indicates that when a state proffers a statement that fits within an exception that is "firmly rooted" — *i.e.*, widely accepted by the states for some time, and present in the Federal Rules — trustworthiness can be inferred. Thus, the need for confrontation disappears — even if the exception was extended by the rules themselves beyond prior law and even if the particular application is poorly grounded in the rationale of the exception. *Lee* says that an inherently untrustworthy statement cannot be automatically admitted as "firmly rooted" even if the exception under which it is offered has been generally accepted for a while, and is incorporated in the Federal Rules. Taken together, these cases beg the question of how a court should respond when reviewing evidence proffered under a refashioned traditional class exception, or a nontraditional class exception, that has been accepted for some period of time in its jurisdiction and others.

The default test of "particularized guarantees of trustworthiness," which applies when an exception is not firmly rooted, also fails to offer sufficient guidance or to protect a defendant adequately, as this case illustrates. Nothing in the actual holding of *Lee* bars a court from admitting an accomplice's confession, such as the statement in this case, if it concludes that the particular confession is sufficiently reliable. So long as the Court retains its trusworthiness view of confrontation, and does not abandon *Lee* in favor of a *per se* rule that certain kinds of confessions never

satisfy the confrontation clause, courts will continue to have enormous, virtually unreviewable, discretion in determining trustworthiness on a case-by-case basis.

The facts of this case demonstrate the amorphous nature of a trusworthiness inquiry. True, Mark Lilly admitted to participation in a series of crimes. But the "totality of circumstances that surround the making of the statement" (see *Idaho v. Wright*, 497 U.S. 805, 820 [1990]), raises numerous factors — which we assume petitioner will present to this Court — that might plausibly account for Mark Lilly falsely incriminating his brother.

It cannot be fair to deprive a defendant of the ancient right to face his accuser because a judge mixes some dubious generalizations about human behavior — such as that one is unlikely to make a statement confessing a crime unless the entirety of the statement is substantially true, or that brothers would not falsely incriminate each other — with his own view of the surrounding facts to conclude that the statement is probably true. Hearsay exceptions may hinge on such cliches, but a defendant should have the right to challenge his accuser in the courtroom when the out-of-court statement falls within the perimeter of core values on which the Sixth Amendment right of confrontation rests.

Law of confrontation independent of the law of **hearsay**

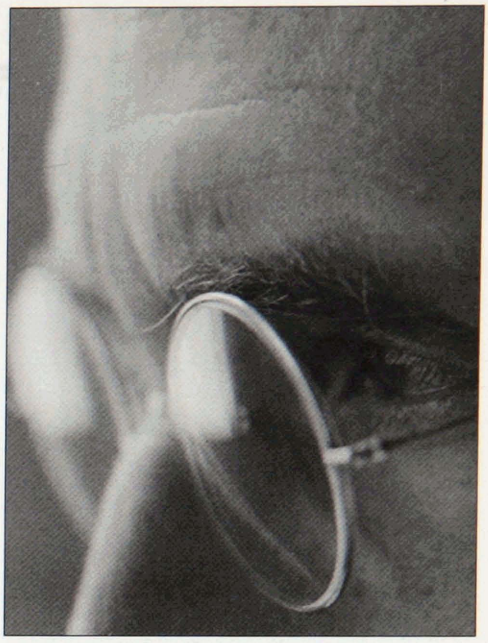
Neither the "firmly rooted" test nor the requirement of "particularized guarantees of trustworthiness" provides a satisfactory test of confrontation that guides the lower courts or ensures that a defendant is accorded the procedural protections guaranteed by the Sixth Amendment.

A categorical approach would exclude in-custody confessions unless the defendant was afforded his right of confrontation. Our arguments indicate that the constitutional right of confrontation is independent of, and should not be made subordinate to, the ordinary law of hearsay. We contend that applicability of the confrontation clause to an out-of-court statement does not depend on a court's assessment of the statement's reliability. Rather, the clause states a fundamental procedural protection, and applies categorically to certain types of statements. In this section, we will present two proposals for defining that category of statements. While we urge the Court to declare that such a categorical right exists, we do not believe that to decide this case the Court must choose one of these variants, or any other particular proposal, or that it must define the boundaries of the clause with precision. Under *any* reasonable demarcation of the category of statements covered by the clause, accomplice confessions like the one here of Mark Lilly lie at the heart of the clause, and nowhere near the edge.

A testimonial view. Under one approach, the key question is this: In making the statement at issue, should the declarant be deemed to have been *as a witness* within the meaning of the confrontation clause? If not, then under this approach the clause does not apply. On the other hand, if the declarant was acting as a witness, and the accused has not had an adequate opportunity to confront her, then the statement may not be admitted against the accused (unless he has forfeited the confrontation right by causing the witness's unavailability). See Akhil Reed Amar, *The Constitution and Criminal Procedure* 125-31 (1997) and Richard D. Friedman, "Confrontation: The Search for Basic Principles," 86 *Georgetown Law Journal* 1011, 1022-26 (1998).

This view finds obvious support in the language of the confrontation clause — which speaks in unqualified terms of the accused's right to confront "the witnesses against" the accused. It is supported also by the history of the clause and in its manifest role in our system of criminal procedure. As we have shown, the clause constitutionalizes a long-established procedural rule governing the manner by which witnesses give testimony for adjudication in the Anglo-American system, a manner far different from the inquisitorial style used by Continental courts.

When, then, should a declarant be deemed to have acted as a witness in making a statement against an accused?



So long as the Court retains its trusworthiness view of confrontation, and does not abandon *Lee* in favor of a *per se* rule that certain kinds of confessions never satisfy the confrontation clause, courts will continue to have enormous, virtually unreviewable, discretion in determining trustworthiness on a case-by-case basis.

Put another way, when is her statement testimonial? Obviously, she acts as a witness if she testified in court, at the trial of the defendant; the defendant then has a right to be present at the trial and cross-examine her. It is hardly less obvious that the declarant is acting as a witness if she gives the prosecution an affidavit, or otherwise makes a formal pre-trial statement under oath about the alleged crime to the authorities. (Statements made at a grand jury proceeding, therefore, should not be usable at trial unless the declarant testifies and is subject to cross-examination. This rule would eliminate the current practice of subjecting grand jury statements to a "particularized guarantees of trustworthiness" analysis when they are offered under a residual hearsay exception.) Indeed, it has often been said that *ex parte* affidavits and other "formalized testimonial materials" were the focus of the confrontation clause.

Justices Scalia and Thomas explicitly included "confessions" in the category of "formalized testimonial materials." Thus, their analysis would — properly — bring statements like Mark Lilly's in this case within the ambit of the confrontation clause. A better and less strained approach to the same result, we suggest, is to recognize that formality is not a prerequisite to deeming a statement testimonial, and so bringing it within that ambit. Rather, formality is a necessary but not sufficient condition for making testimony *acceptable*. In particular, the oath is perhaps the oldest and most nearly universal requirement for the giving of testimony. If unsworn confessions to the authorities were not deemed to be statements within the protection of the confrontation clause, then we would have a system in which the authorities could take statements for use at trial, made by declarants knowing they would be so used — testimony in any real sense of the word — absent not only confrontation but also the basic protection of the oath; indeed, the authorities would have an *incentive* to take the statement without the oath, simply so that the confrontation clause could not be invoked. Thus, it appears that statements made knowingly, even informally, to the authorities investigating a crime should be considered testimonial and so within the coverage of the confrontation clause.
In short, under the testimonial approach, this is an easy case. Mark Lilly's custodial confession lies at the core of the confrontation case, not near its fringes.

A prosecutorial restraint view. A somewhat different focus rephrases the key question to ask whether *the government participated* in making the declarant a witness against the defendant. This approach views the confrontation clause as integral to a central objective of the Bill of Rights — to restrain the capricious use of governmental power. The colonists were well aware that the criminal law is a powerful tool in controlling perceived enemies of the state, and knew of the potency and secrecy with which a government can act. To counter these dangers, out-of-court statements procured by the prosecution or police, or their agents, should stand on a different footing than statements obtained without governmental intrusion. Requiring confrontation when the prosecution has played a part in producing the evidence enables the public to scrutinize the process by which the government is exercising its power, and complements the other rights that the Sixth Amendment grants — trial by jury, a public trial, specification of the charges, and right to counsel.

Under this approach, confrontation protects the defendant against statements that the government might elicit through its enormous power to coerce or induce. If confrontation is not required, the government has the huge advantage of choosing whether to offer the contents of the statement through the testimony of the often discreditable declarant, or through the testimony of a presumptively upright person involved in law enforcement (assuming a hearsay exception otherwise applies).

There may be instances in which the prosecutorial restraint model might yield a different result than the testimonial approach. But this is not such a case. Mark Lilly's in-custody statement to the police falls squarely within the ambit of the confrontation right a prosecutorial restraint approach would grant.

A categorical approach is consistent with the results reached by the Court in its prior decisions. Plainly, the approach to the confrontation clause that we suggest and the doctrine enunciated by the Court are different analytically. Our approach is, however, consistent with all, or virtually all, of the *results* reached by the Court. Indeed, we believe that, though the Court has not consciously articulated our approach, its decisions have reflected the force of that approach. We do not contend, of course, that adoption of our approach will answer all questions under the confrontation clause or that it will eliminate all difficult cases. But some cases that have appeared troublesome to the Court become very straightforward under our approach.

First consider *Pointer v. Texas,* 380 U.S. 400 (1965), the case that first established that the confrontation right is a fundamental one incorporated by the Fourteenth Amendment, its companion *Douglas v. Alabama*, 380 U.S. 415 (1965), and *Lee v. Illinois,* 476 U.S. 530 (1986). These cases all had two features. First, in each of these cases, the declaration at issue was a statement knowingly made in a judicial proceeding or to investigative authorities, providing information material to a criminal investigation. Thus, under any variation of the approach we have presented, the declarants must be deemed to have been witnesses within the meaning of the confrontation clause. Indeed, in both *Douglas* and *Lee*, as in this case, the declaration was the confession of an alleged accomplice. Second, in these cases the accused did not have an adequate opportunity to confront the witness. Thus, in each of these three cases the conclusion is easy that the accused's confrontation rights were violated — without any need for anything like the dubious reliability analysis of *Lee.*

By contrast, in *Dutton v. Evans,* 400 U.S. 74 (1970), and *United States v. Inadi,* 475 U.S. 387 (1986), the first of these features was not present, so statements appear not to have been within the realm of the confrontation clause as we have defined it. In *Dutton,* the statement was made by one prisoner to another. In *Inadi,* the statements were made by one member of a conspiracy to another, without any inducement by agents of the prosecution; they were not testifying but carrying on the ordinary business of the conspiracy. Thus, in neither of these cases were the declarants acting as witnesses when they made the statements in issue. A similar argument has force with respect to at least some of the statements made by the four-year-old declarant — such as those to her babysitter and to her mother — in *White v. Illinois*, 502 U.S. 346 (1992).

In other cases, the second aspect of the *Pointer-Douglas-Lee* line has not been present, because the accused was held to have had an adequate opportunity to confront the witness before trial. That was so in *Mattox v. United States,* 156 U.S. 237 (1895), one of the oldest confrontation clause cases, in which the witness had testified, subject to cross-examination, at the accused's first trial but died before his second trial. And in *California v. Green,* 399 U.S. 149 (1970), the accused had an opportunity at a preliminary hearing to examine the witness, who appeared at trial but was then uncooperative.

In *Mattox*, the prosecution could not have produced the witness at the trial in question, and in *Green* the prosecution did produce him. In other cases, though the accused had some previous opportunity to examine the witness, he still raised a confrontation clause argument that the prosecution had not done what it could to secure the live testimony of the witness at the trial in question. In *Barber v. Page*, 390 U.S. 719 (1968), the Court agreed that the prosecution had failed to make a good faith attempt to secure the attendance of the witness at trial; in addition, it held that in the circumstances the defendant's prior opportunity to examine the witness had not been sufficient. Plainly, the holding of *Barber* is not inconsistent with our approach. Even assuming the defendant has had a previous opportunity to confront the witness, it is still preferable that the witness testify live, and the prosecution ought to make reasonable efforts to secure his attendance. In *Mancusi v. Stubbs,* 408 U.S. 204 (1972), and *Ohio v. Roberts*, 448 U.S. 56 (1980), the Court held that the prosecution's efforts were satisfactory. Again, nothing in these cases is inconsistent with our approach: Given that the accused had previously had an adequate opportunity to examine the witness, if the witness was unavailable at trial despite good faith efforts, the confrontation clause should not preclude use of the earlier testimony.

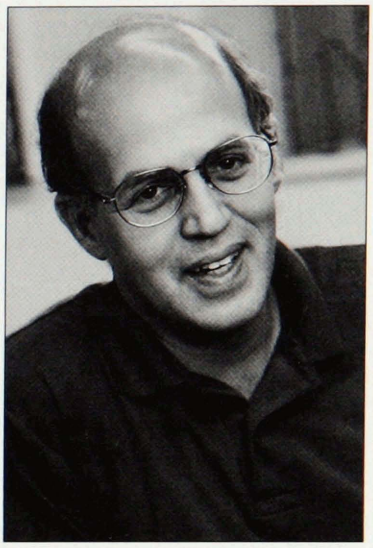
Finally, we note *Williamson v. United States*, 512 U.S. 594 (1994). A straightforward result would have recognized that admission of the statement at issue, an accomplice's confession to the police, presumptively violated the confrontation clause. Instead, the Court issued a highly restrictive construction of the hearsay exception for declarations against penal interest, expressed in Federal Rule of Evidence 804(b)(3). The basis for this decision is unfortunate. If extended to declarations against interest in general — and neither the Court's decision nor the rule gives any basis for declining to do so — it limits the usefulness of a much-used exception across a broad range of cases, civil as well as criminal; the interpretation in *Williamson* was far more restrictive than most prior authorities suggested. *Williamson* is thus a good indication that the melding of the confrontation clause and of hearsay doctrine tends not only to denigrate the constitutional protection, but also to make hearsay law unduly rigid.

The Court will, we believe, continue to make decisions that reflect the demands of the confrontation right, because that right is such a fundamental, and intuitively appealing, aspect of civilized jurisprudence. But if it continues to use hearsay law as the vehicle for those decisions, it will be unable to articulate either a robust understanding of the constitutional right or a sensible, truth-oriented, doctrine of hearsay.

Conclusion

The Court could reach the proper result in this case without revisiting its approach to the confrontation clause. But to do so would just be to put one more patch on a tattered garment. It would leave lower courts perplexed on how to apply the clause, because there would still be no constant guide to the Court's decisions. It would continue to make effective appellate review impractical, because decisions would still depend so heavily on analysis of the evidence in the particular case. It would require continuing reliance on hearsay doctrine to do the work that should be performed by the confrontation clause — to the detriment of both. It would mean that the Court's stated grounds of decision lack persuasive power. And it would miss out on the great principle underlying the clause, one integral to the Sixth Amendment and with roots both deep and broad: When the government prosecutes an accused, the accused has a categorical right to confront "the witnesses against him."

The decision of the Virginia Supreme Court should be reversed.



Professor **Richard D. Friedman** *earned a B.A. and a J.D. from Harvard and a D.Phil. in modern history from Oxford University. His research focuses principally on evidence and Supreme Court history. He is the general editor of* The New Wigmore, *a multi-volume treatise on evidence, and has been designated to write the volume on the Hughes Court in the* Oliver Wendell Holmes Devise, *a history of the United States Supreme Court. Professor Friedman clerked for Judge Irving R. Kaufman of the U.S. Court of Appeals for the Second Circuit. He was then an associate for the law firm of Paul, Weiss, Rifkind, Wharton & Garrison in New York City. He came to the Law School as a visiting professor in 1987 from Cardozo Law School and joined the regular faculty in 1988.*

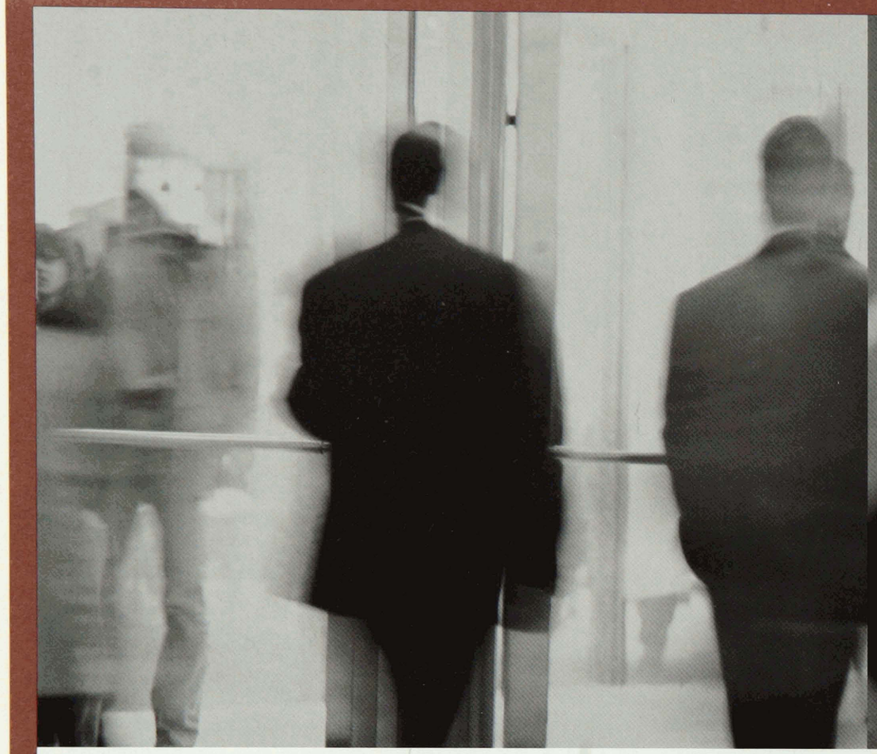
The last days of the CREDIT CARD

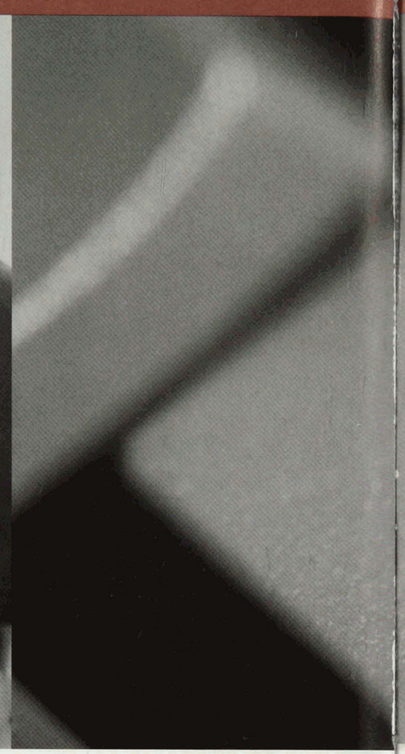
— BY RONALD J. MANN

This essay is based on remarks delivered at the fall 1998 meeting of the Law School Committee of Visitors. Much of the information in this essay is discussed in greater detail in *Payment Systems and Other Financial Transactions* (Aspen, 1999), and in "Searching for Negotiability in Payment and Credit Systems," 44 *UCLA Law Review* 951 (1997), both by the same author.

My story begins 30 years ago, when consumer payment transactions were handled almost exclusively by either checks or cash. These devices are the most traditional of payment systems, paper-based, passing from hand to hand for collection, much like the negotiable instruments of old.

The only other major payment option was the nascent credit-card system. And remember (if you can), at that time the credit card was far different from what we use now. The standard credit card of the mid-1960s was little more than an agreement for deferred payment between a particular merchant and a particular customer. Major retailers — gasoline companies, department stores, and the like — issued such cards to regular customers with some objective evidence of





The current world is far different, with advances in information technology driving what appears to be an ineluctable trend away from the paper-based payment and collection systems of the past to electronic payment and collection systems. The most interesting part of the change is how information technology has effected the rapid alteration of our methods of payment.

creditworthiness. Because those early credit cards represented person by person arrangements between the retailers and their customers, they did not raise any significant logistical problems in collections: the retailer aggregated all of the charges and sent a monthly bill to each customer.

At the same time, the introduction of the first all-purpose cards (the old BankAmericards, for example) had just made a large advance by providing a way for merchants to gain immediate payment from customers unknown to the merchant. By obviating the need for the merchant to evaluate the credit of each of its customers, that general credit card — the ancestor of the modern Visa, MasterCard, American Express, and Discover cards — provided the first general payment system that could serve as a significant competitor to the traditional cash and check systems. Even that system, however, retained the traditional paper-based feature of the cash and checking systems: collection proceeded by transmission of the paper credit-card slip from the merchant to the bank issuing the credit card, just as collection of a check proceeded by transmission of the check from the merchant to the bank on which the check was drawn.

The current world is far different, with advances in information technology driving what appears to be an ineluctable trend away from the paper-based payment and collection systems of the past to electronic payment and collection systems. The most interesting part of the change is how information technology has effected the rapid alteration of our methods of payment. In the past, advances in information technology have been part of the force behind the rise of the general purpose credit card from that small entrée 30 years ago into the $700 billion-a-year business it is now (21 percent of retail payment transactions). But there is little reason to think information technology will stop changing. On the contrary, information technology is just as likely in the next few decades to dispatch the credit card just as effectively, rapidly sending the credit card the way of the trading stamp.

The rise of the credit card

Let me start by sketching three general ways in which information technology has been central to the successful rise of the credit card.

Fraud. The merchant's ability to verify the identity of the customer is central to any non-cash payment system. In the days of negotiability, the standard identification system used a combination of personal recognition and the signature. Thus, it was expected that the merchant who accepted a negotiable instrument or a check in the 19th century and early 20th century would recognize the customer and require the customer to place his signature on the instrument. When the instrument was transmitted to the drawee (normally, at least by the 20th century, the bank on which the check was drawn), the drawee was expected to compare the signature to a signature card bearing a specimen signature to determine if the instrument was genuine.

Although that arrangement has a certain quaint elegance, it has many problems. For one thing, it pretty much rules out transactions between complete strangers, a problem that has increased in significance with the rise of interstate travel throughout this century. The credit-card industry provided the first practical response to that problem when it adopted the technique of requiring the genuine cardholder to place a specimen signature on the back of the card. Then, even if the merchant could not directly identify the customer, the merchant could verify the identity of the customer by comparing the signature of the customer at the time of the transaction to the signature on the back of the card. That approach apparently provides enough comfort to permit transactions between strangers to begin to proceed, but it obviously has some severe problems. For one thing, it doesn't take Professor Moriarty to figure out that forgery of a signature on a credit-card slip is fairly easy to pull off when the thief can steal the credit card that contains the specimen signature on its back. Moreover, given the frequency with which consumers fail to sign the back of their cards (or allow the signature to wear away from the card), the thief often can add his own signature as the apparent specimen signature.

That relatively intractable problem, however, can be ameliorated significantly through the application of information technology. In the modern era, the approval of the signature has become an insignificant part of the authorization of the transaction. Instead, the issuer typically requires the merchant to obtain a contemporaneous on-line authorization from the issuer before completing the transaction. As part of that transaction, the merchant transmits to the issuer information that identifies the merchant's location and its type of business, the card

Just as information technology fueled the rise of the credit card in the last three decades, it is likely in the next few decades to bring competing systems to the fore unless the credit-card industry adapts to the dynamics of economic activity in the 21st century. Although any discussion of these new systems is largely speculation at this point, the difficulties with existing credit-card systems are sufficiently clear to illuminate the possibilities for improvement.

number, and the amount of the transaction. It is simple for the issuer to compare that information to its records to determine if the card number is valid and if the card's credit line permits a transaction of that amount. The issuer also can use sophisticated pattern-analyzing programs that evaluate the likelihood that a transaction is, in fact, genuine. The software might determine that it should question a single large dollar transaction to purchase an item like jewelry or a stereo 1,000 miles from the consumer's billing address, on the theory that such a transaction would be typical for a thief. Conversely, the software would be much less likely to challenge a transaction to purchase an expensive meal in the same distant location, on the theory that the cardholder simply might be travelling.

In response to persistent problems with forged cards, card issuers also have upgraded the technology of the cards considerably. Modern cards include on their magnetic strip an encrypted "card verification" value. During the authorization transaction, that value is transmitted to the issuer, who can determine whether the value is the correct one for the indicated card. If the value does not match the issuer's records, the issuer can decline the transaction. Thus, unless a forger has access to the issuer's algorithm for allocating card verification values (a type of misconduct that apparently has not yet occurred), a forger cannot produce a forged card that would pass muster in such a transaction. This technology cannot help issuers in transactions that occur remotely, such as those that use credit cards to purchase by mail order or over the Internet. Yet in those areas issuers can protect themselves by the relatively simple device of limiting mailings to the cardholder's billing address: a thief might get the card, but he won't get a lot of pleasure out of the card if all of the mail-order purchases are sent back to the original cardholder.

Thus, technology-based analysis has rendered the signature completely irrelevant to the modern authorization process, a development illustrated most clearly by the almost complete disappearance of the credit-card slip from the clearing process for credit-card transactions. Specifically, by the late 1990s, less than 10 percent of credit-card transactions were cleared through transmission of the paper "slip" to the issuer; the standard practice now leaves that slip with the merchant, leaving the process of collection to a much less cumbersome description of the transaction that proceeds from the merchant through the system in a purely electronic form.

The bottom line is that credit-card fraud has dropped significantly in the past decade, even though the volume of credit-card transactions has been growing significantly during that time, so that credit-card fraud now is a lower percentage of retail credit-card purchases than checking fraud is of retail checking purchases. The day is coming when it will actually be cheaper for a merchant to accept a credit card than it is to accept a check.

Pricing. Another key to the rise of the credit-card industry has been major improvements in the effectiveness with which issuers price credit cards. When the all-purpose credit card first appeared in the marketplace, the interest rates on amounts borrowed under the card were quite high, largely because of the difficulty that an issuer would have in obtaining enough information to form a reliable opinion that any particular cardholder was sufficiently creditworthy to justify a lower price.

Information technology, however, has directly reduced the cost of obtaining information about potential cardholders, as well as the cost of analyzing that information. Issuers now rely on sophisticated, credit-scoring programs developed by companies such as Fair, Isaacs. These programs use a voluminous database of previous credit-card transactions to develop a model that predicts likely repayment behavior based on very few data points about each potential cardholder. Using these models, it is easy for issuers to identify with considerable accuracy the individuals who are least likely to default. As a result, issuers can offer credit cards to these individuals at rates much lower than would have been possible even a few years ago.

Of course, the flip side of this trend is not so sanguine, because the same credit-scoring technology that helps issuers identify the most creditworthy among the mass of potential cardholders helps issuers identify the marginally creditworthy out of the same mass. And given the availability of credit-scoring assessments of those individuals, the issuer is now much more confident about its ability to assess the weakness of those individuals, and

therefore much more willing to extend credit to them, albeit at quite a high interest rate.

Although these transactions have been profitable for the industry as a whole (because the high interest more than compensates for the relatively high rate of default), the policy implications are certainly not unambiguously positive. Most obviously, many think that the end result of this trend — a huge increase in credit-card lending to the marginally creditworthy — has driven a significant rise in consumer bankruptcies during the late 1990s, a rise that is particularly troubling given the generally positive state of the economy during the same period.

Funding. The third area in which information technology has reconfigured the credit-card industry is in funding. When the general purpose credit card first appeared, it was issued by banks that funded it the same way they funded all of their lending transactions: out of their customer's demand deposits. In this area, information technology has driven the rise of securitized credit-card financing. That transaction allows banks to package together huge pools of credit-card receivables and sell individual interests in the pools to individual investors. Because these transactions give credit-card issuers access to the public capital markets, they significantly lower the cost of the funds used by credit-card issuers.

Although it might not be obvious at first glance, information technology facilitates securitization in two major ways. For one thing, it requires sophisticated information processing tools to identify and segregate pools of similar receivables suitable for segregation. Similarly, the attractiveness of these securities is a function of the reliability of the securities, and that reliability is evident only because of the ability of investors (and underwriters) to assess the quality of the pool as a whole at a low cost. Without advanced information technology, neither of those tasks could be performed at any practicable cost.

The (coming?) fall of credit cards

None of the foregoing should suggest that the modern credit card is the perfect payment system. On the contrary, just as information technology fueled the rise of the credit card in the last three decades, it is likely in the next few decades to bring competing systems to the fore unless the credit-card industry adapts to the dynamics of economic activity in the 21st century. Although any discussion of these new systems is largely speculation at this point, the difficulties with existing credit-card systems are sufficiently clear to illuminate the possibilities for improvement.

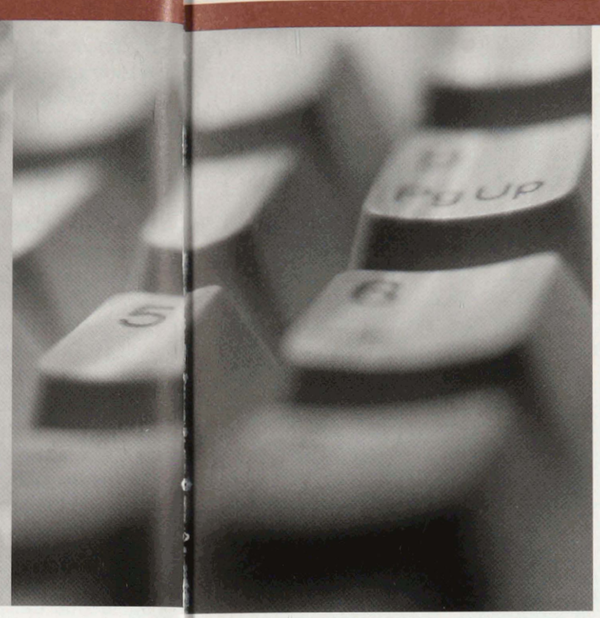
Stored-value cards for retail transactions. The first venue at which credit cards face a challenge is at the retail point of sale. Notwithstanding the advantages discussed above, credit cards have two serious problems for modern point-of-sale transactions. The first is their dependency on a contemporaneous on-line telephone connection to conduct the authorization transaction that is so crucial to the system's protections against fraud. These connections impose a significant cost on transactions that use the system, both because of the time required (20-40 seconds for each transaction) and because of the costs of maintaining a separate telephone line for each cash register. These costs are particularly high for locations (like grocery stores and pharmacies) that depend on a high volume of transactions with relatively low average sales amounts.

The second, related, problem is the need for the networks that clear credit-card transactions to impose a per-transaction fee, currently in the range of a dime. Although this seems like a small amount in the context of a $50 grocery purchase, it more or less rules out the credit card as a device for small-dollar transactions at locations such as vending machines and parking meters. Essentially, the problem is that the clearance networks on which credit cards depend are (at least in their current form) too cumbersome to accommodate these smaller transactions.

The primary technological response to these problems is the "smart" stored-value card: a credit card-like device enhanced by the addition of a powerful computer chip. Because this chip can include data and programs of much greater volume and sophistication than those that can be etched into the magnetic strip of a standard credit card, the chip allows the card to become self-authenticating, thus bypassing the need for an on-line contemporary authorization.

Essentially, the card carries around in its computer chip securely encrypted evidence that the card is authentic, as well as packets of data that reflect funds that the customer previously has loaded onto the

The primary technological response to these problems is the "smart" stored-value card: a credit card-like device enhanced by the addition of a powerful computer chip.



The apparent solution is some form of "electronic money" that functions much like the smart card in the sense that it converts "value" into digital packets ("ecoins" is the terminology of the most successful system to date) that the merchant can examine and accept as cash at the time of the transaction.

card (either at a bank-provided terminal or, in the near future, by a bank connection provided on the customer's home computer). When the merchant's terminal examines the card, it can determine that the card is authentic and remove the appropriate value from the card — all without any remote telephone connection, and all within about five seconds. The merchant's terminal obtains reimbursement for the stored-value card transactions by sending its records of those transactions periodically to the card issuer.

Notwithstanding these possible advantages, it is not at all clear that stored-value cards will obtain a substantial portion of the credit card's retail market share. Stored-value cards remain something of a novelty in the United States, limited for the most part to "closed" systems such as university and corporate campuses. But they already have caught on quite broadly in Europe, apparently because the less reliable telephone systems in Europe never facilitated the market penetration that credit cards have obtained in this country. Moreover, stored-value cards seem to be catching on in broader applications in this country, especially in areas where credit cards are impractical. Several cities (Boston, and perhaps Ann Arbor) are in the process of installing stored-value card readers on their parking meters, which could lead fairly rapidly to acceptance of the cards by merchants more generally.

Electronic money for Internet transactions. The second arena in which credit cards face a challenge is in the burgeoning market for Internet-based electronic commerce. In the current market, credit cards are undisputedly the mechanism of choice over the Internet, capturing about 90 percent of transactions. Nevertheless, as with retail transactions, some obvious problems with credit cards put them at risk in that context as well.

The first problem is the reality that credit cards are quite risky for Internet transactions, for the same reason that they are risky in mail-order transactions. The impossibility of any face-to-face meeting makes it much easier for a purported cardholder to defraud the merchant and almost impossible for the merchant to apprehend the "fraudster." Moreover, even if the true cardholder in fact authorizes the transaction, it is relatively easy for the cardholder to disavow the transaction by denying its identity. Indeed, current FCC rules do not allow issuers to challenge cardholder attempts to disavow Internet or mail-order transactions. The end result is that the credit card is an expensive payment device for the on-line merchant: the credit-card networks impose charges in the range of 2 percent of the transaction amount to process the payment, on top of which the merchant retains the risk of losing the entire payment if the transaction is disavowed.

Additionally, as mentioned above, credit cards are not cost-effective for very small charges. Many experts expect that the next few years will spawn a large number of very low fee information merchants, charging pennies a transaction for items ranging from news stories to weather information to (most importantly) up-to-the-minute sports information. For those "micro-transactions," a dime-per-transaction charge is prohibitive. Of course, the merchants could impose flat monthly fees or aggregate single-transaction charges and bill customers once a month, but if they want to charge contemporaneously on an item-by-item basis, they cannot proceed until a cheaper payment device emerges.

The apparent solution is some form of "electronic money" that functions much like the smart card in the sense that it converts "value" into digital packets ("ecoins" is the terminology of the most successful system to date) that the merchant can examine and accept as cash at the time of the transaction.

This solution solves both of the problems that limit the effectiveness of credit cards in the Internet market. First, it is perhaps the safest of all payment systems. Because of the highly sophisticated encryption employed by the systems currently in operation, the chance of fraud is quite small. Moreover, because the system offers a payment that is final at the moment of the transaction, the merchant bears none of the risks of disavowal that afflict credit-card transactions on the Internet. Similarly, because the system operates on an entirely electronic basis, the per-transaction clearing costs are nominal; designers expect that the systems will not charge per-transaction fees even on the smallest of transactions.

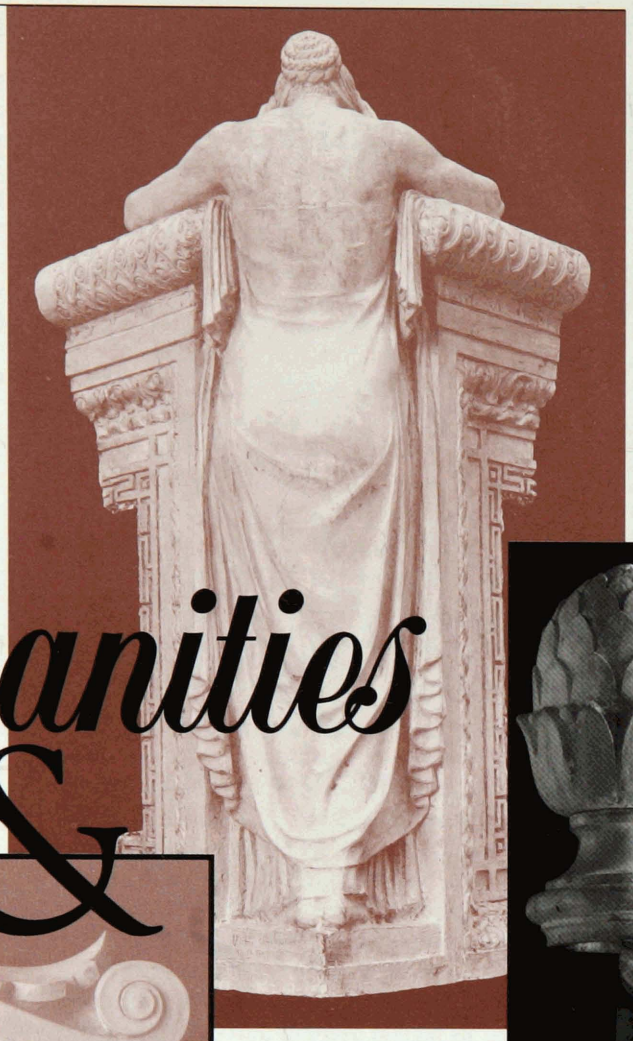
As an added bonus, electronic money has considerable privacy-related advantages over the credit-card system. One common concern about Internet commerce is the ability of financial institutions to collect and distribute information about their customers that will facilitate the creation of consumer profiles of a daunting level of detail. Concerns about data privacy already have caused the European Union to promulgate a prominent data-privacy directive that limits the ability of merchants to resell such information. Consumer advocates, however, remain concerned (particularly because of the limited regulation of such matters in the United States).

The advantage of electronic money is that it is "payor anonymous." What that means is that when a bank receives electronic coins from a merchant, the bank cannot tell which customers gave the coins to the merchant. Thus, unlike the situation in credit-card transactions (where issuers have detailed information about each of their customers' transactions), an electronic money system provides the issuer no information about each customer other than the date that it converted funds from its regular account into electronic money.

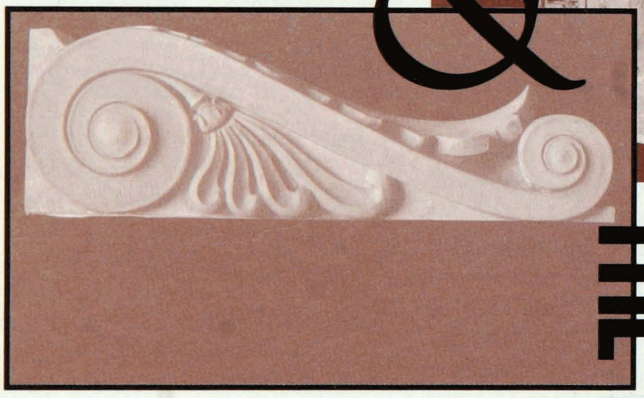
It is much too soon to tell whether those advantages will lead to a substantial role for electronic money. It has been successful in test markets in Finland and Australia, but was not widely used in a test by a small bank in the United States. Much of the potential advantage of electronic money could be dissipated if credit-card networks enhance the efficiency of their clearance systems and adopt voluntary privacy restrictions. But neither of these actions seems likely at this time.

Only time will tell if electronic money or stored-value cards displace the credit card as the non-cash payment device of choice in modern retail transactions. But one thing is certain: advances in technology will change our payment mechanisms just as quickly in the future as they have in the past. And credit-card networks will survive only if they take advantage of technology to improve their systems just as rapidly.

Professor **Ronald J. Mann** *received his J.D. from the University of Texas at Austin, where he graduated first in his class and was managing editor of the* Texas Law Review. *He clerked for Justice Lewis F. Powell of the U.S. Supreme Court, served as an assistant to the Solicitor General of the United States, and practiced as a commercial real estate lawyer in Houston. He joined the Law School faculty in 1997. His research centers on commercial transactions and intellectual property.*



Humanities & THE LAW



A KINSHIP OF PERFORMANCE

The following essay is adapted from "A Visiting Scholar Considers The Law and the Humanities," which appeared in The Key Reporter *of* Phi Beta Kappa *in summer 1998 as a partial report of the author's year as a* Phi Beta Kappa *Visiting Scholar. The selection here is a summary of a lecture the author delivered during his travels to eight colleges and universities throughout the United States. A more complete version will appear in* From Expectation to Experience: Essays on Law and Legal Education, *a collection of the author's essays being published this year by the University of Michigan Press.*

— BY JAMES BOYD WHITE

Let us begin by considering three fragments of works that would be the object of study in the humanities: a piece of Emily Dickinson's famous poem, "Because I could not stop for Death"; the pair of scales in the well-known painting by Vermeer at the National Gallery in Washington, D.C., in which a woman stands at a table on which gold coins are scattered, holding those scales pensively in her hand; and the location of the door in the chapel at Ronchamp by Le Corbusier,

which is atypically on the south side of the church rather than at the west end. With these I compare a quotation from *Brown v. Board of Education*. The question is: What connections can be drawn among these various items, or between what we do when we study and respond to the first set of items and what we do when we study and respond to the last?

Let us start with the first set, trying to work out what it is that humanists typically do; then we can turn to the activities of the law, which at first seem utterly different but which in the end reveal surprising similarities.

The first and most important characteristic of humanistic work is that it focuses on a text or other artifact made by others, in other cultural circumstances, and usually in the past. The distinctive concern of the humanist is with the meaning of the artifact we examine — that is, its *meaning* to the maker and the original audience, and its meaning to the present viewer and the audience today.

Because each of the items with which we begin is a fragment of something larger, the first task is to define the "whole" of which the item is a part — the whole poem, or painting, or church. But this approach leads us to other wholes — the whole *oeuvre* of the maker, or the whole world of poems or paintings or churches that defined the expectations of the maker and the original audience, indeed the whole cultural context against which it is a performance.

Thus, to understand Vermeer we need to understand something of the school of Dutch painters who preceded him and began to represent, as he did, the informal interiors of bourgeois homes and the ordinary lives of the people who lived there, including the women.

To understand Dickinson, we need to understand something of the sentimentalizing conventions governing 19th century American verse, especially women's verse, for only then will we see her resisting some, using others, to make a verse that is extraordinarily her own. In the poem I use, for example, the comfortable way "Death" is represented at the beginning, as a kindly gentleman neutralized by his companion "Immortality," is consistent with the tendencies of her day, but the poem reverses these, and ends with great bleakness, converting "Immortality," with all of its promise of heaven, into "Eternity," something very different indeed.

She begins:

Because I could not stop for Death —
He kindly stopped for me —
The Carriage held but just Ourselves —
And Immortality.

But she turns the tables by concluding:

Since then — 'tis Centuries — and yet
Feels shorter than the Day
I first surmised the Horses' Heads
Were toward Eternity —

Much the same is true of Le Corbusier, for his church, which seems so odd at first, like nothing one has ever seen — on the outside like a sculpted haystack, on the inside dark and disorienting — turns out, as we work our way into it, to have the same basic architectural form as other churches. Initial strangeness proves familiar and illuminating. But neither part of the experience, neither the strangeness nor the familiarity, would be available to one who did not know what to expect of the design of the church in this culture.

Humanistic study thus involves attunement to the culture and context against which the work in question is a performance. Like travel to a different country, the experience of this attunement changes our own imagination, and we return to our own world with different eyes. It is, in fact, part of the point of such work to expose and thus subject to the possibility of criticism some of our own unconscious presuppositions and attitudes.

The meaning of a work of the kind we are discussing is thus fundamentally experiential in kind: the surprise into familiarity that Le Corbusier's church at Ronchamp offers, for example, or the despair enacted in the shift from "Immortality" to "Eternity," or the frustration of asking questions about the Vermeer painting that it will never answer. The experience is never complete; it is not the same for everyone; and to work our way into it is an activity that changes our own mind and imagination.

To summarize, then, we can say that the work of the humanities is about artifacts and texts from other cultures and times; that it is about their meaning, as fully understood as possible; that this meaning requires an understanding of the context against which the original work is a performance; that this meaning cannot be fully restated, both because of the gap between one culture and another and because of the gap between different parts of the self.

What connection can there be between this set of activities and the law?

It may seem at first none at all: The law is, after all, the bureaucratic arm of a bureaucratic state; it is about consequences or results in the real world, not about texts or language or the world of the imagination; it is about power, not beauty or truth. It is very often seen as a branch of public policy, in which legal questions are collapsed into questions of social science or political preference. More familiarly, perhaps, law is often seen simply as a set of rules, to be obeyed or disobeyed. Of course, the law can be imagined, sometimes usefully, in each of these ways, especially when viewed from the outside. But when it is viewed from the inside, by someone who lives on its terms, it can be seen as a field of life and practice, as a set of intellectual and imaginative activities, and, as such, far closer to the humanities than we normally imagine.

To take one crucial aspect of their work, lawyers, like humanists, are constantly concerned with the understanding and interpretation of texts that are made by others, in other cultural circumstances, and usually in the past; and the lawyers' interest is always in what these texts mean, or should be said to mean. Consider, for example, the passage from *Brown v. Board of Education*, to which I alluded earlier:

"We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reasons of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Like the examples given earlier, this is a fragment of a larger text, and the lawyer's first task is to locate it in the larger whole of which it is a part. In this case, the meaning of the phrase "in the field of education" raises serious questions: Does the Court mean to limit its holding to public education, permitting segregation in restrooms, parks, and swimming pools, for example? Or is the educational aspect of this case really an accident? Or is there some other explanation for this language? Such questions will carry us both to the rest of the opinion and beyond it, to its larger context.

In law as in the humanities, the relevant "whole" thus expands to include not

merely the single work of which a passage is a part, but the range of contexts against which it is a performance, here including earlier cases relied on as authority for segregation by race, like the infamous *Plessy v. Ferguson*; cases that cut the other way, like *Sweatt v. Painter,* which insisted that "equality" meant full educational equality and not simply equal equipment or facilities; the language of the Fourteenth Amendment itself; the debates about its adoption; the history giving rise to it; and contemporaneous debates in the public arena about states' rights and about the evils of segregation.

Like the poem, the church, and the painting, the opinion can only be read as a response to its preexisting world, against which it is a performance. This means, in turn, that the meaning of the opinion is, despite appearances, not essentially propositional but experiential in kind: It is performance against a background, and understanding the opinion requires attunement to that background.

The difficulties of reading a case in its original context are greatly increased when we try to translate the meaning we are beginning to understand into the present, and thus into a world different not only from that of the case itself, but from any that was then imagined. What does *Brown* mean today? The promise it held out, of an integrated society within a single generation, and an end to racial hatred and contempt, can now be seen as a hollow one. Of course, many African American students do go to integrated schools, and to integrated colleges, but it cannot be denied that a great many schools are effectively segregated, not in the first instance by law but by residential patterns. Furthermore, there are those who want schools that will focus upon African American culture, seeking to instill pride and discipline — a kind of proposed self-segregation on the grounds of better education — which complicates the basic premise of *Brown*, that integration is an inherently good thing.

The question of present meaning that probably has the most bite at the moment is that of affirmative action: Is the promise of *Brown* fulfilled merely by forbidding the state to segregate by law, or does it require — or at least permit — affirmative state action to end the patterns of racial

The main point remains, which is that in both the law and the humanities we are struggling with problems of meaning, of cultural difference, of the authority of different languages.

dominance and abuse that have characterized American society nearly from the beginning? Or does *Brown's* hostility toward racial segregation support the view that the state should be prohibited from drawing racial lines, even those that benefit the minority? These are questions *Brown* raises but does not answer; in finding or making answers to them, the law will seek simultaneously to be true to *Brown* and, of necessity, to give it new meaning in a new world.

When we look back to *Brown* and ask what it means for the present, it is not enough, then, for us to try to understand this gesture in the context in which it occurred; we must translate it from one world to another world, and, in translating, change its meaning.

To generalize quickly from this all too brief summary, it is evident that, like the humanities, the law takes as its subject texts or artifacts made by others, in other cultural circumstances, and in some way in the past; that the law is concerned with their meaning, in the first instance to the lawmakers and the world they addressed, in the second instance to "us," that is, the present world; that this meaning is fundamentally performative and experiential in kind, inhering in a performance against a context; that this meaning cannot be reflected without distortion in our world and language; that its meaning to "us" is therefore a translation that entails a transformation, carried on under simultaneous and opposed fidelities to the original and to the world into which it is carried. The reading of texts in the law is thus an art in many ways like the art of reading humanistic texts.

Of course, there is more to say on this subject, for the law has its own constraints and its own significances. But the most notable distinction — the fact that it is an exercise of official power — does not much affect what I say, except to make it even more important that the process of thought and imagination by which legal texts are read be sensible, wise, and good. The main point remains, which is that in both the law and the humanities we are struggling with problems of meaning, of cultural difference, of the authority of different languages. One of my deepest beliefs is that to read the work of a mind engaged with one form of this struggle may help us to understand a mind engaged in another, and help us confront our own languages, uncertainties, and translations as well. As lawyers, we have much to learn from the efforts of others in other forms; and perhaps it works the other way, too — that is, painters, poets, and architects have something to learn from their sister discipline, the law.

James Boyd White *is the Hart Wright Professor of Law and also professor of English and adjunct professor of classical studies. As the national* Phi Beta Kappa *Visiting Scholar during the academic year 1997-98, he visited and lectured at eight colleges and universities across the United States. He is a graduate of Amherst College, Harvard Law School, and Harvard Graduate School, and spent a year as a Sheldon Fellow in Europe. He has practiced law in Boston and taught at the University of Colorado Law School and the University of Chicago, where he was a professor in the Law School, the College, and on the Committee on the Ancient Mediterranean World. His books include* Acts of Hope: The Creation of Authority in Literature, Law and Politics *(1994);* "This Book of Starres": Learning to Read George Herbert *(1994);* Justice as Translation: An Essay in Cultural and Legal Criticism *(1990);* Heracles' Bow: Essays in the Rhetoric and Poetics of the Law *(1985);* When Words Lose Their Meaning *(1984);* Constitutional Criminal Procedure *(with James Scarboro, 1976); and* The Legal Imagination *(1973).*