

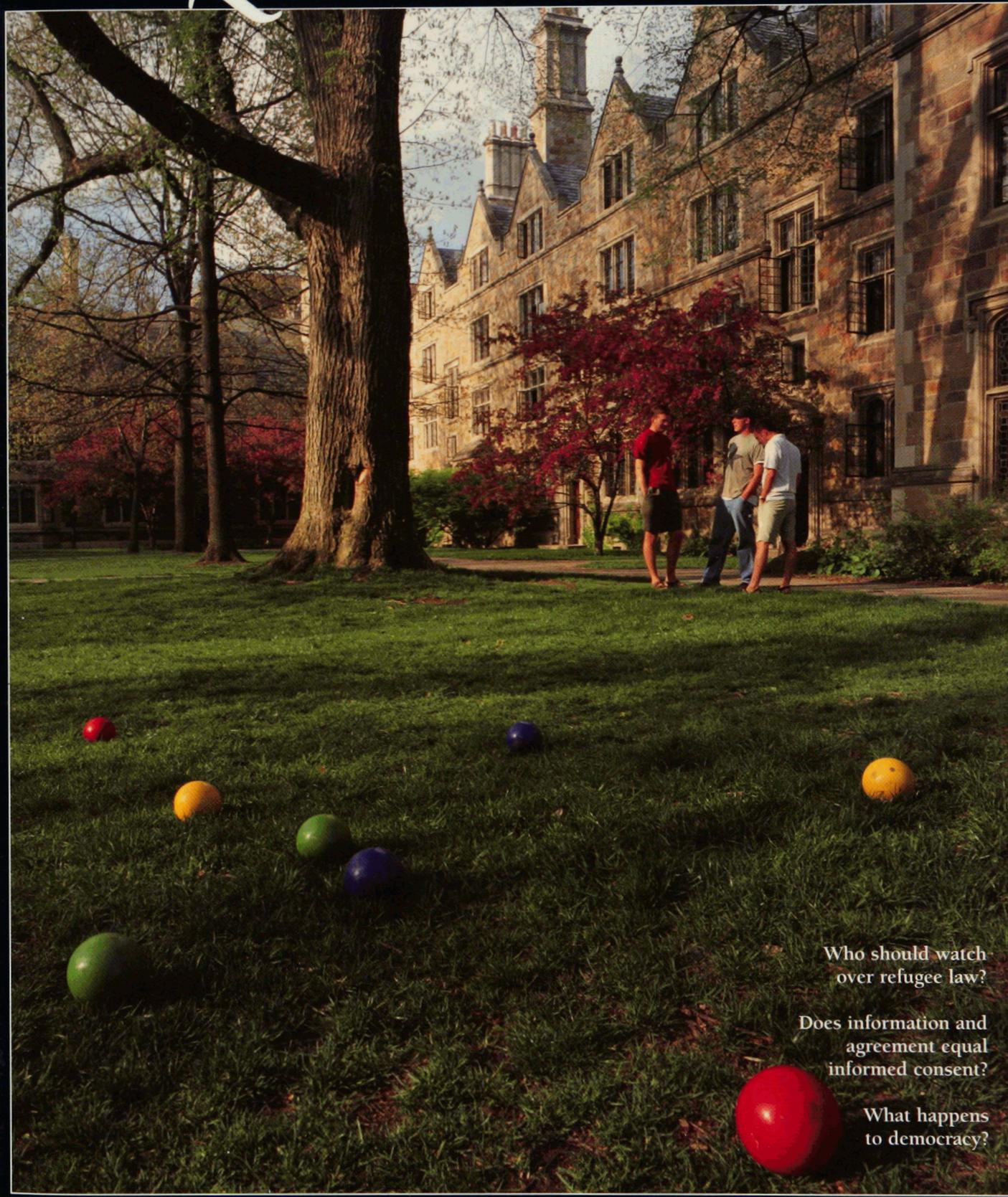
Law School  
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UNIVERSITY OF MICHIGAN  
LAW SCHOOL

VOLUME 45 • NUMBER 1  
SPRING 2002

*Law Quadrangle notes*

# LAW QUADRANGLE NOTES



Who should watch  
over refugee law?

Does information and  
agreement equal  
informed consent?

What happens  
to democracy?

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UNIVERSITY OF MICHIGAN  
LAW SCHOOL

## U P C O M I N G E V E N T S

- May 3 Honors Convocation
- May 4 Senior Day
- May 18-23 Clarence Darrow Death Penalty Defense College
- May 21 Washington, D.C., alumni club with Dean Jeffrey S. Lehman, '81, as speaker
- May 23-25 Child Welfare Law Summer Fellowship
- May 31-June 2 Class of 1952 Reunion
- June 14 Michigan Spring Seminars
- September 20-22 Reunions of classes of 1942, 1946/47, 1957, 1962, 1967, 1972
- October 10-12 Committee of Visitors
- October 17 Advisory Board Meeting, Center for International and Comparative Law
- October 18-19 Joint University of Michigan Law School/*European Journal of International Law* Symposium — "International Law Implications of the Global War on Terrorism: U.S. and European Perspectives"
- October 25-27 Reunions of classes of 1976, 1977, 1981, 1982, 1986, 1987, 1991, 1992, 1996, 1997

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

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### On the cover:

Croquet balls decorate the freshly green lawn as spring comes to the Law Quad.

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THE UNIVERSITY OF MICHIGAN  
LAW SCHOOL

VOLUME 45, NUMBER 1  
SPRING 2002

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POSTMASTER, send address changes to:  
Editor, *Law Quadrangle Notes*,  
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# MESSAGE FROM DEAN LEHMAN

This year, I have been devoting my messages to the ways that a great attorney's "voice" can shape his or her relationship with listeners. In prior messages, I have spoken about how the best lawyers speak up, attune themselves to their audience, show restraint, prepare well, and are also honest, gentle, and reflective.

In my concluding message of this series, I would like to focus on my experience of how outstanding lawyers deliver news. How they deliver bad news. And how they deliver good news.

The reason I want to concentrate on that particular feature of the lawyer's voice is because it is one that I often hear mentioned in a particular context. Each year, several times a year, I host lunches at the Law School in a series that I call "the Dean's Forum." In a typical Dean's Forum, ten or fifteen students have lunch with a lawyer who is now running a business. The lawyer speaks about career path. Frequently, the lawyer speaks about what it is like to be a client.

Often a student will ask our graduates what they think distinguishes a good lawyer from a bad lawyer. As often as not, the response concerns the way the lawyer delivers news.

The easiest examples concern the delivery of bad news. By bad news, I mean news of the form, "the course of action you describe may well be illegal or would expose you to civil liability." The best lawyers seem to know intuitively that the delivery of such news is a delicate art indeed.

Most of us have had the experience of seeing a lawyer deliver bad news with glee, or if not with glee then at least as a contemptuous scold. We know how detrimental that tone can be to the client's vision of the law, and of the legal profession.

But I have also had many opportunities to see gifted lawyers



PHOTO BY THOMAS TREUTER

**"The best lawyers would seem to be able to sustain a consistent voice through the presentation of bad and good news. A voice that maintains a respectful stance towards the law while also making it possible for a client to be effective in navigating its terrain."**

deliver bad news with astonishing skill. It has been fifteen years since I was in practice, but I retain a vivid memory of how a lawyer I worked with used to prepare himself to deliver bad news. As I reflect on that preparation, I believe that today I have a deeper appreciation of why his clients valued his counsel so much.

First, he would try to present a legal obstacle or a legal risk in a matter-of-fact way. Not as a matter of profound injustice or unfairness that gave cause for whining and tirades against the

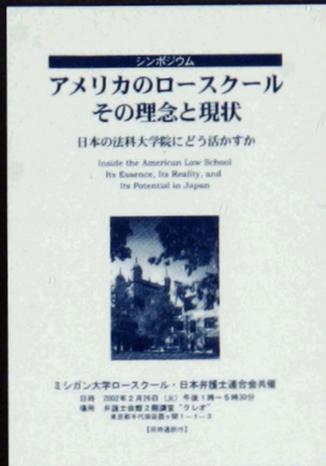
legal system, but as a feature of the world no different from the existence of a competitor with a high quality product. A challenge to be overcome.

Second, he would try to show the client that he was an ally in a larger endeavor. Invariably, that meant helping the client to think about how the same ends might be achieved through alternative means. A different, safer path through the forest.

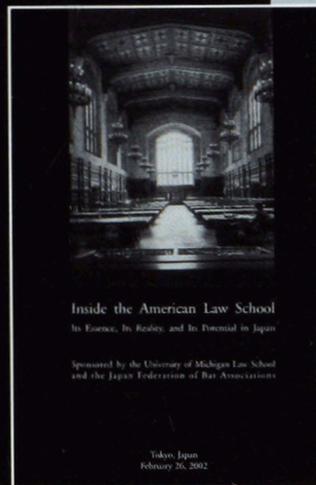
The delivery of good news can sometimes present a very different challenge. This challenge is not to sustain the client's ability to be effective. It is to sustain the client's sense of the law as a system worthy of respect.

When a lawyer discovers a clever solution to a problem, it is natural to want credit for cleverness. But as my mentor showed me, the best lawyers are able to claim credit not for manipulating a system that has no integrity, but rather for understanding the nuanced complexity of a legitimate feature of the business environment. The difference may be subtle at times, but this ability to present good news in a way that respects the law was essential to his ability to present bad news effectively.

The best lawyers would seem to be able to sustain a consistent voice through the presentation of bad and good news. A voice that maintains a respectful stance towards the law while also making it possible for a client to be effective in navigating its terrain. At the Law School we will continue to strive to help our students develop that consistency of voice, drawing on the vast experiential resources to be found among our 20,000 graduates.



# Japan assesses change through the American prism



Change is accelerating in Japan's legal system as social and economic shifts work like tectonic plates to alter the Pacific nation's legal geography.

Most significantly, Japan has embarked on a plan to establish graduate law schools based on the United States model by April 2004. The coming changes have drawn little general attention in the United States, but faculty members of the University of Michigan Law School have been keenly aware of them because of their longtime association with the University of Tokyo Faculty of Law and the vitality of their own Japanese Legal Studies Program.

In the midst of these changes, the Japan Federation of Bar Associations (JFBA) turned to the Law School to provide insight into American legal education. The result was the symposium "Inside the American Law School: Its Essence, Its Reality, and Its Potential in Japan," held in Tokyo in February.

This gathering, the first of its kind, brought together hundreds of Japanese legal and education professionals and policymakers for an insightful look into U.S. legal education provided by Law School Dean Jeffrey S. Lehman, '81, and Law School Professors Merritt B. Fox; Richard O. Lempert, '68; Suellyn Scarnecchia, '81; Carl E. Schneider, '79; and Mark D. West, who directs the Law School's Japanese Legal Studies Program.

In Japan as a Fulbright Scholar this academic year, West worked with Japanese alumni of the Law School and Japanese bar leaders to organize the jointly sponsored conference. "With only 18,000 lawyers — up from 13,000 just 10 years ago, the Japanese legal profession is still far too small," West noted. "Nearly one-third of all court districts in Japan have only one or no lawyers."

Program topics included: Accreditation and American Legal Education; American Legal Practice; The American Law School Classroom as an Intellectual Endeavor; Ethics and Skills in an American Law School; Student Selection for an American Law School; and The Financial Infrastructure of an American Law School. The program also included remarks by JFBA President Kazumasa Kuboi and JFBA Vice-President Hideaki Kubori, and a discussion of the implications of U.S. legal education methods in Japan by Eiji Tsukahara, chairman of JFBA's Subcommittee for Public Information and Support of the Law School Support Center.

More...

# A CONVERSATION ON JAPANESE LEGAL EDUCATION REFORM

Assistant Professor Mark D. West took time from his preparations for the conference to elaborate on its significance for the reforms that are taking place in Japanese legal education.

**Q:** What has led to the shortage of lawyers in Japan? Why has the apparent recognition of the need for more lawyers been so slow to materialize?

**A:** Japan's market for legal professionals is heavily regulated. In general, only the candidates with the highest 1,000 passing scores (up from 500 just a decade ago) are permitted to enter the Legal Research and Training Institute, where all lawyers are trained and eventually licensed. There have always been people (including lawyers, law professors, economists, and activists) who argued for more lawyers in Japan, but their voices were often drowned out by other lawyers, who feared both a decrease in the quality of lawyers and increased competition, and social critics, who feared a more litigious Japanese society. In the 1990s, however, real problems began to arise due to the lack of lawyers to enforce rights in Japan: scandals occurred in business and government with astonishing regularity, big players took advantage of ordinary people, and many disputants turned to cheaper but less savory solutions such as organized crime professionals to solve their problems. Those scandals started some changes in motion, but the real changes began to occur after big business found itself in trouble because of the lack of legal professionals. Business leaders complained, and institutional change followed.

**Q:** Do needs for some legal specialties stand out more than others?

**A:** Corporate transactional lawyers are in short supply; estimates are that there are only about 600 such specialists. That's really a small number for the world's second largest economy; some U.S. firms have more than that. Those people are what big business needs, not just to write contracts, but to create innovative solutions to Japan's chronic debt-related economic problems. Then again, there is virtually no organized plaintiffs' bar, either. Nor is there an organized criminal defense bar. But the real problems may be more basic; there is a drastic need for solo practitioners outside of Tokyo to handle divorces, children's rights cases, debt collection, neighbor disputes, real estate contracts, and so on.

**Q:** Is it simply a shortage of lawyers that is the difficulty, or is the overall legal system inadequate to handle the commercial, industrial, and social vitality of modern-day Japan? Will training more lawyers lead to other changes in the system?

**A:** The basic machinery is certainly in place, but some broad-scale changes may be needed. Judicial caseloads are already heavy, and cases often take a long time to wind their way through the courts. As the number of lawyers increases, the number of lawsuits may increase as well, which will create additional pressure to further increase the number of judges.



MARK D. WEST

**Q:** What role do you foresee for American legal educators — and perhaps practitioners — as Japan adapts its system of educating lawyers?

**A:** Because of their expertise in both method (Socratic teaching) and substance (especially in areas such as social science approaches to law and practical training), American legal educators are expected to play an increased role in the new system. No one knows yet exactly what this means, though. Some schools would like to hire American faculty members permanently. Others have talked openly of adopting exchange programs or other joint methods of education. Because of the Law School's strong and growing reputation in Japan and our historical ties with several prominent Japanese universities, we are poised to play a substantial role.

**Q:** Is there special significance to having this conference now?

**A:** The basic accreditation standards for law schools were announced at the end of 2001, and the details of the system — things like costs and funding, teaching methods, curriculum, the admissions process, and so on — will be filled in over the coming months. The conference is timed to give Japanese policymakers information about our system as they debate and draft these important rules.

**Q:** Do you foresee an impact on U.S. programs, like your own Japanese Legal Studies Program at the University of Michigan Law School, from changes that may occur in Japan?

**A:** We already are seeing a huge rise in interest in our LL.M. program by Japanese candidates. I expect that trend to continue as the size of the Japanese bar increases. The changes may also create exciting new opportunities for study and employment among the rising number of J.D. candidates at the Law School who are interested in Japan.

**Q:** This symposium is designed to shine a light on American legal education so that Japanese leaders may see and understand it better and perhaps adapt some of its practices to their needs. Is there also a benefit to looking at our own system in this light and in this venue? May we stand to benefit, too?

**A:** Looking at our system through a Japanese lens suggests three insights. First, Japan historically has done an outstanding job of giving undergraduate students a strong legal education. In fact, for all the talk about the large number of U.S. lawyers, 200,000 students are studying law in Japan — many more than in the United States. I would not advocate the adoption of the Japanese system in the United States, but we should carefully study the possible benefits of giving non-lawyers a similar education in law and legal institutions.

Second, Japan, long considered "Exhibit A" for the proposition that societies encourage economic growth by making engineers instead of lawyers, has recently provided strong evidence that such arguments were misplaced. Japanese corporations have been crying for more lawyers, not more engineers, to pull Japan out of its economic rut.

Third, the Japanese experience suggests that when we talk about the relation of lawyers to economic growth, it's important to focus on how the system is set up. My friend (Columbia Law School Professor) Curtis Milhaupt and I are currently working on an article in which we argue that in Japan (as elsewhere), talented college graduates basically seek positions of power, prestige, and profit. While those positions were once in the elite economic bureaucracy in Japan, they now are in the legal system, largely because of institutional changes such as those that we are discussing at the conference. And what are the talented college graduates doing in response to the changes? They're lining up to become lawyers. This response to rule changes suggests that in the United States as in Japan, we need to be very careful about the rules that we choose.

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## Michigan Law Review celebrates first 100 years

The Centennial Celebration program read like a *Michigan Law Review* table of contents — provocative, highly regarded specialists addressing thought-provoking topics — and the day unfolded much like reading the *Review* — well-considered expositions that stirred equally thoughtful responses.



"To commemorate this august occasion, the *Michigan Law Review* presents a series of lectures given by esteemed legal scholars on the development of law and legal scholarship over the past century, with a special focus on the timely issue of race and affirmative action," the leaders of the *Review* said in the program for the celebration, which was held in February.

It was a fitting way to mark the birthday of the *Review*, the third most-cited legal journal in the United States and the country's sixth oldest. Current and past *Review* staff members, law students, and others filled a Hutchins Hall classroom for the day's lectures. In the evening, more than 120 banquet participants heard keynote speaker and former *Review* editor the Hon. Harry Edwards, '65, of the U.S. Court of Appeals for the District of Columbia Circuit, recount how "the

opportunity to work on the *Review* had a profound effect on me."

The Centennial Celebration's table of contents-like lineup included these talks:

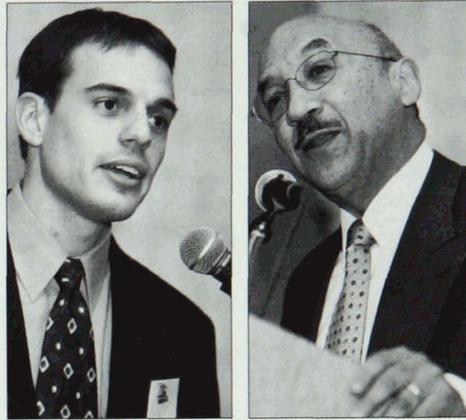
- "The Impact of Social Movements on American Public Law in the Twentieth Century," by William Eskridge, Deputy Dean and John A. Garver Professor of Jurisprudence, Yale Law School. With an introduction by Donald J. Herzog, the Edson R. Sunderland Professor of Law.
- "Defending Affirmative Action: What's Left?" by Kimberlé Crenshaw, Professor of Law, UCLA School of Law and Columbia Law School. With an introduction by Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law.
- "How Can We Live with Affirmative Action? Or Without It?" by Richard Epstein, James Parker Hall Distinguished Service Professor of Law, University of Chicago. With an introduction by A.W. Brian Simpson, the Charles F. and Edith J. Clyne Professor of Law.
- "The Rhetoric of Constitutional Law," by Erwin Chemerinsky, Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science, University of Southern California Law School. With introductory remarks by Professor of Law Rick Hills.

Speaker Richard Epstein addresses "How Can We Live with Affirmative Action? Or Without It?" during the Centennial Celebration of the Michigan Law Review.

Seated at left is Kimberlé Crenshaw, who spoke just before Epstein on "Defending Affirmative Action: What's Left?"



PHOTOS BY GREGORY FOX



The Michigan Law Review ranks among the country's elite legal journals, Editor-in-Chief Benjamin C. Mizer, left, explains to Centennial Celebration banquet participants.

Serving on the Michigan Law Review and teaching at the Law School helped develop self-confidence, an appreciation for the value of collegiality, and a healthy skepticism of ideological labels, the Hon. Harry Edwards, '65, of the U.S. Court of Appeals for the District of Columbia, explains in his keynote talk.

No footnotes in these talks, but otherwise the same rigor and attention to intellectual integrity and detail that marks printed articles in the *Review*. Indeed, complete versions of the Centennial Celebration talks will appear in the August issue of the *Review*, complete with citations.

One of six legal journals currently published at the Law School, the *Michigan Law Review* publishes six issues yearly, including its highly regarded annual "Book Review" issue. The *Review* was supervised by faculty members until 1940 and has been run entirely by students since then. "Among the legal academe, the *Michigan Law Review* is one of the best-loved and most respected legal journals in the country," according to Editor-in-Chief Benjamin C. Mizer.

(Indeed, Mizer and the *Review* staff are proud to report that three members of the editorial board for Volume 98 are or will be clerking at the U.S. Supreme Court. Carolyn Frantz, '00, currently clerks for Justice Sandra Day O'Connor; Eric Olson, '00, will clerk next year for the Hon. John Paul Stevens; and Sean Grimsley, '00, will clerk for O'Connor in 2003-04. Olson was editor-in-chief of the *Review* and Frantz and Grimsley were articles editors.)

Among current Law School faculty members, Dean Jeffrey S. Lehman, '81, and Carl E. Schneider, '79, the Chauncey Stillman Professor for Ethics, Morality, and the Practice of Law, served as editors-in-chief for the journal. In his welcome to Centennial Celebration participants, Lehman recalled the professional benefits that service on the *Review* brought to him and others. He said law schools support journals like the *Review* for three reasons:

- Editing. The editing process insures the publication of quality articles.
- Education. Working on a journal is among "the very best" educational opportunity available to a law student.
- A legal journal stimulates good scholarship, sharpens debate, and fuels discussion.

Edwards, who also has been a member of the Law School faculty, recalled the *Law Review* staff as "a close-knit group" and

added that "my time at Michigan, both as a student and as a law professor, enriched my professional life." He learned self-confidence and the value of collegiality and acquired a healthy skepticism for ideological labels, he explained.

Edwards also noted his concern that legal scholarship too often fails to consider how it may be applied. "It makes no sense to think of legal issues without reference to our goals for society," he said. "Legal scholars have an obligation to apply some pragmatism. Legal scholars must be descriptive and normative in their work."

In other activities associated with its 100th birthday, the *Review* has adopted a new cover design this year and in June will publish a special issue of articles by eight Law School faculty members written in response to articles from the journal's archives. The participating faculty members are:

- Dean Jeffrey S. Lehman, '81.
- Edward H. Cooper, the Thomas M. Cooley Professor of Law.
- Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law.
- Thomas E. Kauper, '60, the Henry M. Butzel Professor of Law.
- Theodore J. St. Antoine, '54, the James E. and Sarah A. Degan Professor Emeritus of Law.
- James Boyd White, the L. Hart Wright Collegiate Professor of Law.
- James J. White, '62, the Robert A. Sullivan Professor of Law.
- Christina B. Whitman, '74, the Francis A. Allen Collegiate Professor of Law.

### From the Michigan Law Review, Volume 1, Issue 1:

"... The purpose is to give expression to the legal scholarship of the University, and to serve the profession and the public by timely discussion of legal problems, and by calling attention to the most important developments in the field of jurisprudence.

"There are, of course, several excellent legal journals already in the field, but no one of them serves quite the purpose which is the aim of this one. There is, moreover, in the great northwest, a field essentially unoccupied, while in the alumni of this department, now numbering considerably over six thousand members, there exists a loyal and influential constituency to whom, it is hoped, such a journal will prove especially attractive.

"The magazine will be made up of four chief departments: first, leading articles upon important and interesting legal subjects; second, notes and comments upon current topics and significant occurrences in the legal world; third, abstracts and digests of the most important recent cases; and fourth, reviews of books and comments on legal literature . . . .

"It will be the aim to make the journal practical without usurping the functions of the text-book or the digest, and scholarly without becoming so academic in its character as to be out of touch with the needs and aims of the lawyer today. . . ."

## Separate but unequal: America's public schools

Nearly 50 years after the U.S. Supreme Court unanimously decided that separate cannot be equal, American public schools have become more segregated, especially in northern cities, according to participants in a symposium on public education held at the Law School earlier this term.

The picture of public education is bleak, participants ranging from keynote speaker Jonathan Kozol to teachers, lawyers, professional educators, and child advocates concluded during the day-long program "Separate but Unequal: The Status of America's Public Schools."

Kozol, a widely-read author and an outspoken critic of the "apartheid" that he sees in northern inner-city public schools, claimed that schools in cities like New York, Detroit, and Chicago are "not just segregated, they are flagrantly unequal." Two years ago, New York City spent \$8,000 per year per inner-city student, he reported, while wealthy suburbs spent \$18,000 per student. Kozol's books like *Death at an Early Age*, *Amazing Grace*, and his latest, *Ordinary Resurrections*, have spotlighted the shortcomings of the American education system and shown what life is like for children living with unequal educations.

Kozol's appearance drew a Friday evening standing room only crowd to Honigman Auditorium in Hutchins Hall.

"The shame isn't that we have trampled on *Brown* but that we haven't even lived up to the poisonous promise of *Plessey*," he said. He reported that in the South Bronx, the site of his most recent book, *Ordinary Resurrections*, nearly one-fourth of the children see their fathers only at prison visits — there are no jobs for men in the community. One-fourth of the children there are not eligible for HeadStart, "and all the kids I write about attend profoundly segregated schools." There were only 26 white children among the 11,000 students in the area he wrote of, he said.

Kozol's impassioned writings were the inspiration for "Separate but Unequal," according to Charlotte Gillingham and Luttrell Levingston, the third-year law

students who served as co-symposium coordinators for the *Michigan Journal of Race & Law*, the program's primary sponsor. Joined by *Journal* Editor-in-Chief Teig Whaley-Smith, they noted in their welcome letter to participants that 48 years after *Brown vs. Board of Education* separate and unequal facilities still mark much of American education. They wrote: "Recent statistical analysis has shown that racial segregation has actually increased in the last decade in many metropolitan school districts. Many remain unconvinced that equality in school financing, much less equality in schools themselves, will be achieved."

"Should we renew the battle for integration?" they asked. "Or should we focus on revitalizing our public schools? What is quality education? Are non-traditional school methods the answer? Can the courts solve our educational crisis, and if not, how will reform be achieved?"

Three sets of panelists wrestled with these and other issues:

- Does Integration Matter? An exploration of "the continued resegregation of American schools; whether integration is an educational necessity; and how 21st century reform should address integration." Participants included:

Boston, Massachusetts, first-grade teacher Jane Ehrenfeld; Assistant Professor Carla O'Connor of the U-M School of Education; and Ruth Zweifler, executive director of the Student Advocacy Center of Michigan. Moderator was James Forman Jr., a public defender in Washington, D.C., co-founder of the Maya Angelou Charter School in Washington, D.C., and an adjunct professor at the Law School. (See related story page 9.)

- Abandoning Traditional School Methods. A look at vouchers, charter schools, and school choice to "examine both the legality and efficacy of each of these reforms and analyze the significance of race in these reform movements." Panelists included: David Domenici, co-founder and executive director of the Maya Angelou Public Charter School in Washington; Ray C. Johnson, president of Infinity Consultants and a national educational consultant; Pat Payne, director of multicultural education for the Indianapolis Public Schools; and Wilbur C. Rich, a political science professor at Wellesley College. Professor of Law Rick Hills moderated.

PHOTOS BY GREGORY FOX



Panelists consider the issue "Does Integration Matter?" From left are: Boston, Massachusetts, first-grade teacher Jane Ehrenfeld; Student Advocacy Center of Michigan Executive Director Ruth Zweifler; and U-M Assistant Professor of Education Carla O'Connor.

## Forman, graduates discuss Maya Angelou Public Charter School

Back in the 1990s James Forman Jr. had a dream — to develop a way for ex-offenders to earn their high school diplomas. As a public defender in Washington, D.C., he had seen too many young people run afoul of the law and then never earn the high school diploma and develop the work skills that they need.

When he discovered that David Domenici (see accompanying story) had a similar vision, they joined forces in 1997 to launch See Forever, which Forman describes as “one of the few places where ex-offenders can earn a high school diploma.” The school opened with 20 students who followed a rigorous, no-break schedule Monday-Friday. Its name was changed to the Maya Angelou Public Charter School after the famed poet spoke at a fundraiser for the school.

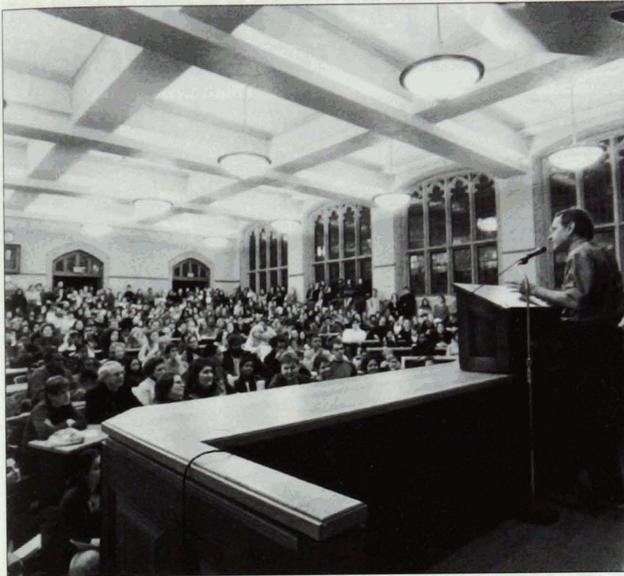
Forman, a visiting professor at the Law School during the fall term, taught the seminars Race, Poverty and the American City and Urban Education: Law and Reform. He described the Maya Angelou School during a program at the Law School that included a showing and discussion of the HBO documentary on the school called “Innocent Until Proven Guilty.”

Two of the school’s first graduates, Samantha Crandal and Phil Russell, joined Forman to help present the program. Crandal now attends Montgomery Community College in Maryland and Russell is helping to develop and run the charter school’s computer repair programs. Ninety percent of the school’s graduates go on to college.



Phil Russell and Samantha Crandal, former students at the Maya Angelou Public Charter School in Washington, D.C., are shown with school co-founder James Forman Jr. (right).

PHOTO BY MARTIN VLOET/  
UNIVERSITY OF MICHIGAN PHOTO SERVICES



The growth of “boutique schools” represents “a dagger in the heart of public education in this country,” keynote speaker Jonathon Kozol tells a standing room only audience as he opens the symposium “Separate but Unequal: The Status of America’s Public Schools.”



Jonathon Kozol answers questions and talks with audience members after delivering his keynote address.

■ What Now? Litigating for Educational Justice. An effort to “help us reveal not only what has worked — or failed — in the past” and “point us in a new collaborative direction.” Panelists included: Germaine Ingram, director of the Black Community Crusade for Children, Children’s Defense Fund; Nancy Fredman Krent, ’82, a partner with Hodges, Loizzi, Eisenhammer, Rodick & Kohn in Arlington Heights, Illinois, and the 2003-04 chair of the National School Boards Association’s Council of School Attorneys; University of Virginia Law School Assistant Professor James E. Ryan; and Hector Villagra, regional counsel for the Mexican American Legal Defense and Education Fund. Assistant Dean of Students Charlotte Johnson, ’88, moderated.

The day’s discussions brought agreement that integration is preferable to segregation — “both in terms of academics and of the social/psychological welfare of the students,” as O’Connor put it. There was less agreement on whether to pursue innovation inside or outside of

traditional public schools. And there was consensus that litigating education issues may increase their profile to the general public but that state legislatures and Congress must marshal the political will and take the lead — or perhaps follow the lead of grassroots citizen movements — to bring reform.

In fact, in Domenici’s view, equalizing educational opportunities may have to precede integration. There are only 227 whites in the District of Columbia’s public high schools, he reported, so “I’m not here to talk about integration because integration is not reachable in the near term. The task before us is to say ‘What can we do given the institutions and what we have in the present?’ Schools are segregated and poor. The first step is a moral step. It is to decide that these people are worth it.”

Kozol echoed Domenici in his wrap-up remarks: “We have to fight small and dream large. In the long run, it’s not purely a legal struggle, or a tactical struggle, or a political struggle. It’s a moral struggle.”

# Refugee and Asylum Law Fellows

Six Law School students will spend this summer working with agencies in this country, Africa, and Europe as Michigan Fellows in Refugee and Asylum Law. The 2002 Fellows and their placements are:

- David Burkoff, Refugee Policy Division of Human Rights Watch, New York.
- Bridgette Carr, Division of Refugee Work, International Secretariat of Amnesty International, London.
- Taylor Garrett, Jesuit Refugee Services, Lusaka, Zambia.
- Julie Pfluger, Irish Refugee Legal Services, Dublin.
- Erin Quinn, Office of the United Nations High Commissioner for Refugees, Brussels.
- Hana Soto, Branch Office of United Nations High Commissioner for Refugees, Washington, D.C.

The fellowship program is supported through a generous gift from Ronald Olson, '66, and his wife, Jane. Five fellowships were awarded last year.

Each of the fellows will spend approximately six weeks working under the supervision of an agency official that is familiar with the aims of the fellowship program.

Professor James C. Hathaway, director of the Law School's Refugee and Asylum Law Program, confers with each supervisor before arranging each placement match-up. Each supervisor "is aware that the fundamental purpose of the internship is to allow you to immerse yourself in the practical implementation of international refugee law" as well as contribute to the placement agency, Hathaway explains in his award letter to new fellows.

Carr will graduate in December this year; the other fellows will graduate in May 2003.

Burkoff, a graduate of Columbia University, has been an Eesti Fellow at the Embassy of Estonia in Washington, D.C., worked as a research assistant to the co-director of the Columbia (University) Human Rights Center, and has been an

PHOTO BY MARTIN VLOET/UNIVERSITY OF MICHIGAN PHOTO SERVICES



Michigan Fellows in Refugee and Asylum Law for 2002, from left, are: Taylor Garrett, Julie Pfluger, Bridgette Carr, David Burkoff, Hanna Soto, and Erin Quinn.

intern at the Centre for Advice on Individual Rights in Europe (AIRE) in London. At the Law School, he is associate editor of the *Michigan Journal of International Law* and co-chairperson of the Student Network for Asylum & Refugee Law (SNARL).

Carr, a graduate of Notre Dame University, speaks Spanish fluently and has taught English as a second language as a volunteer with AmeriCorps. At the Law School, she is a member of SNARL and a legal intern at Freedom House in Detroit, where she prepares documents and appeals to the Board of Immigration Appeals as well as refugee applications to Canada.

Garrett, a graduate of Southwestern University in Texas, spent last summer as an intern with the International Human Rights Law Group-Cambodian Defender Project in Cambodia. He analyzed legislation, co-drafted articles, advised Cambodian attorneys, and developed an internship program for Cambodian law students.

Pfluger also worked in Cambodia last summer, as a legal consultant to the Cambodian Women's Crisis Center, where she handled staff training on court procedure and trial preparation for clients.

She also has worked in Japan as a language consultant/cultural liaison with the Japan Exchange and Teaching Program and in South Africa as a legal advocate/HIV counselor with the National Institute for Crime & Offenders in Johannesburg. Pfluger earned her bachelor's degree at Illinois State University and her master's degree in social work from the University of Illinois. At the Law School, she is a member of the International Law Society.

Quinn earned her B.A. at UCLA and is pursuing a joint J.D./Masters of Public Policy at Michigan. A former Peace Corps volunteer/teacher in Romania, she also has taught English as a foreign language in Hungary and served as a law clerk at the Immigrant Legal Resource Center in San Francisco.

Soto captained her women's club soccer team at Brown University while earning her bachelor's degree in East Asian Studies. She worked last summer as a legal intern at Immigration Court in Portland, Oregon, where she researched legal issues, drafted memoranda and court orders, and reviewed and analyzed recent Ninth Circuit immigration-related decisions.

## Students' work contributes to Refugee Convention discussion

Voluntary agencies and governments benefited from research done by University of Michigan law students as nongovernmental organizations (NGOs) and ministerial conference participants marked the 50th birthday of the United Nations Refugee Convention last year in meetings in Geneva.

Students in Professor James C. Hathaway's interdisciplinary seminar on Emerging Responses to Forced Migration prepared a series of seven working papers to help illuminate the issue of how best to monitor implementation by countries of their duties under the Refugee Convention. The papers formed the basis of an International Council of Voluntary Agencies (ICVA) workshop the day before the ministerial conference on the Convention and its 1967 Protocol last December. The working papers also were distributed to all state delegations attending the ministerial conference.

The 1951 Refugee Convention, and the predecessor 1948 Genocide Convention, were the first two of the UN's human rights conventions. Neither provides for external supervision, mostly because "in the late 1940s and early 1950s the entire idea of interstate supervision of human rights was new, potentially threatening, and not truly accepted by states," according to Hathaway.

But, as Hathaway told ICVA on the eve of the ministerial conference, "with the adoption of the human rights covenants and more specialized treaties beginning in the mid-1960s, the establishment of an independent mechanism for interstate oversight of the human rights treaties has become routine. Unless there is some good, principled reason why refugee law should be immune from this general commitment, it is high time to reverse the historical aberration by bringing the commitment to oversight of refugee law into line with the practice in human rights law more generally." (A more complete version of Hathaway's talk begins on page 54.)

As a contribution to effecting that change, the working papers series included:

- "Reporting," by Archana Pyati.
- "Complaints," by Vanessa Bedford.
- "General Comments," by Elizabeth Marsh.
- "Investigative Capacity," by Barbara Miltner.
- "NGO/National Linkages," by Jennifer G. Pasinosky.
- "UN Linkages," by Aiman Mackie; and
- "Coordination with UNHCR [United Nations High Commissioner for Refugees] and States," by Tracey Glover and Simon Russell.

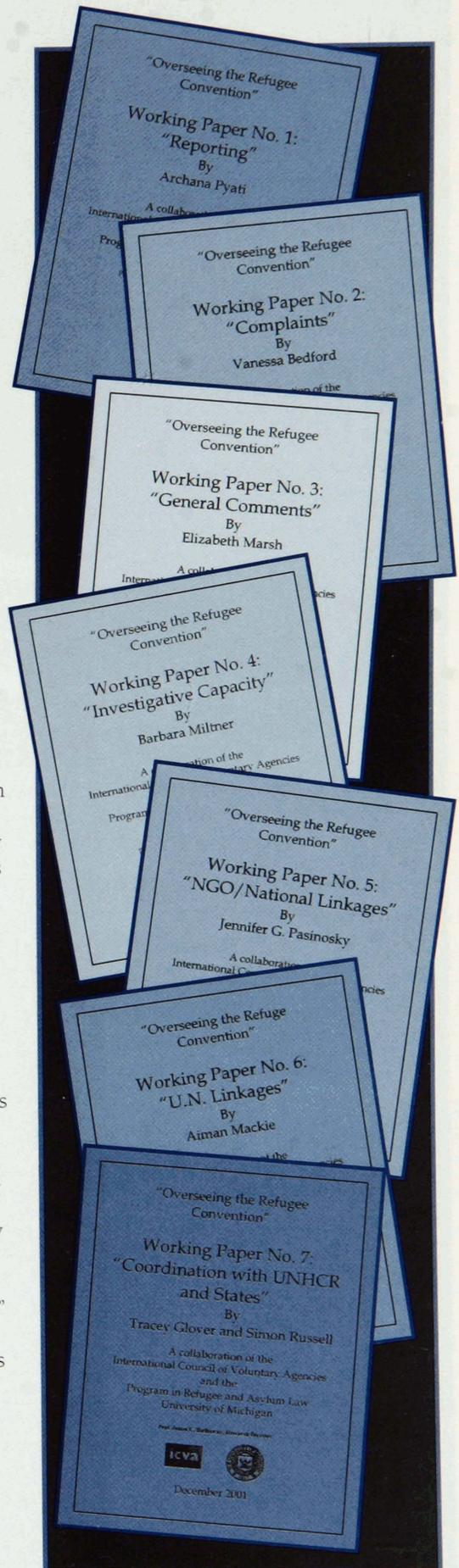
Taken together, the papers point to the need to establish an oversight body that is separate from UNHCR, the UN refugee agency. Glover and Russell note:

"As the 2001 UNHCR Note on International Protection sets out in a grim catalogue, state parties to the Refugee Convention regularly disregard their obligations. Often, state parties do not even understand their obligations. There is an urgent need for states, and others, to know in clear and certain terms what their duties and responsibilities are, and to be held accountable for them."

But UNHCR, whose work over the past 20 years has shifted from legal protection to emergency assistance, cannot provide the independent oversight that is needed, Glover and Russell say.

"Because of UNHCR's political and financial dependence on the very states it is supposed to be supervising, UNHCR is politically hamstrung. A new treaty body should be created to perform the oversight functions that UNHCR cannot reasonably be expected to fulfill, while simultaneously buttressing the activities of UNHCR that are so vital to refugees and to a strong system of international refugee protection."

In the ministerial meeting, participants decided to "urge all states to consider ways that may be required to strengthen the implementation of the 1951 Convention and/or 1967 Protocol and to ensure closer cooperation between states parties and UNHCR to facilitate UNHCR's duty of supervising the application of the provisions of these instruments."



# Senior Day: December 20, 2001

PHOTOS BY GREGORY FOX



**“Being great lawyers, therefore, means moving forward quickly, decisively, passionately. Work really hard. Stay up late. If, in the near future, you find that all of your ideas are good ideas, then you’ll know you’re not being creative enough. If you’re meeting all of your deadlines, then you’re not committing to enough. And if you’re satisfying all of your goals, you’re not aiming high enough. In a word: Stretch.”**

Professor Steven P. Croley had his audience laughing — especially his former Torts class summer starters — as he delivered commencement remarks for the Law School’s Senior Day ceremonies in December. And when the laughing subsided and the weight of the day dawned, he also offered thoughtful insights for graduates of all years. Following is an excerpt from his talk:

“And what comes next, two hours from now, tomorrow?”

“A senior partner from Sidley & Austin’s Chicago office once remarked to me something that I repeat to you subsequently, that a really good lawyer can tell you all about where the law is, and a great one can tell you where the law is going next. I suspect that’s not all there is to that distinction, but his claim stuck with me, and I think there is definitely something to it:

“A great lawyer understands how, and anticipates when, the law bumps up against the rest of society, creating some unwanted friction if the law has moved too fast, or more often, too slowly. A great lawyer anticipates where new law is needed, and recognizes when old law is

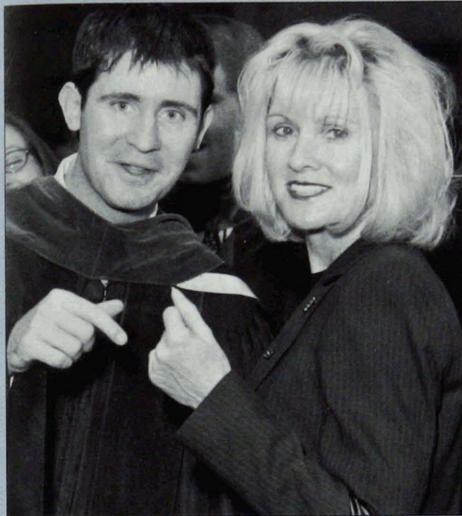
no longer necessary. A great lawyer sees the fit and lack of fit between the legal system and the economic and political systems of which it is part. A great lawyer is first to recognize how, in some new way, the law can be employed to achieve justice.

“For the past two or three years we’ve insisted that you show a single-minded focus on the study of law. . . . Now is the time to emerge from this period of intense focus on the law — a focus both wonderful and artificial — to connect the law with the rest of life, with political and economic and social institutions. Now is the time to be full-fledged lawyers, which means being also whatever you were before you came here and whatever else you want to become when you leave. . . .

“And what fantastic opportunities await you, and what fantastic opportunities you yourselves can create. Use this institution — the law — its many imperfections notwithstanding — to create wealth, to fight evil, to correct injustice, to achieve equality. You know, lawyers stick up for little people. They help the underprivileged maintain housing or receive public assistance.



*Graduate Elizabeth Marsh and her sister Alexandra enjoy reading a graduation card.*



Graduate Chris Nemeth and his mother, Marty Johnson, pause to pose for the camera.

“At the same time, though, play often. Be great lawyers, but be great children, and great parents, first. Be great siblings, and friends, and partners. Be great citizens. Expect the very most from yourselves — you should expect the most from yourselves — and expect the most from those around you, too. But be charitable and forgiving; when necessary, give yourselves and those around you a break. Now, all of these things are hard, individually hard, let alone in combination. But, to speak frankly, you’ve been lucky in life’s lottery; you’ve been blessed with talent and with privilege. And you’ve already shown you have determination, intelligence, and good judgment. On top of all of that, two and one-half years later now, you have the formal education and technical skills to do well, and to do a whole lot of good.

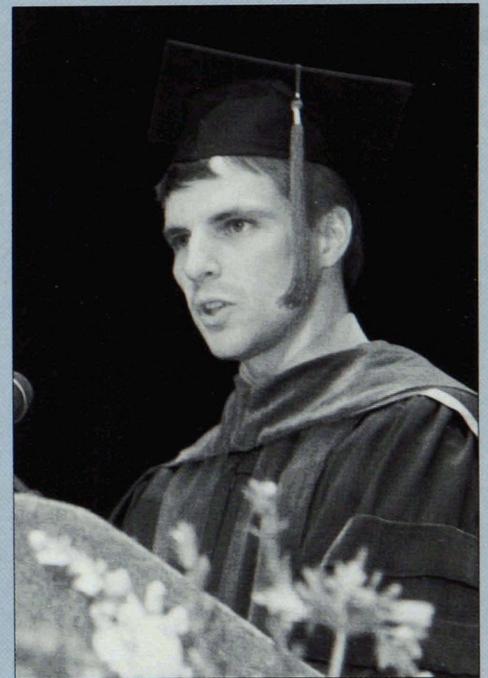
“So go. Meet tomorrow’s obstacles, and challenges, and opportunities. You owe it to yourselves, and to each other, and you owe it to the rest of us as well. Leave this place, happy to have been here, and happy to move on, and aware that the next stages of your life will pass by as quickly as this one.

“Go, University of Michigan Law School Class of 2001, hearing our heartfelt congratulations. We’re very proud of what you’ve done. And we can’t wait to hear about what you’ll accomplish next.”

In an unusual twist, this Senior Day ceremony included remarks from two graduating law students. For each Senior Day, graduates elect one of their number as a speaker, but this time Judd Robert Spray and Linda Maria Wayner tied in graduates’ balloting for a fellow-graduate to address them.

“We know now that we are about to become part of a system that people use to solve really complicated issues,” Spray noted.

Today’s world has changed since we started law school, said Wayner. “During our first year a millennium came and went. During our second year of law school the most disputed election in American history transpired. . . . We did not know then that the true threat to democracy would emerge in our third year. Years from now when our grandchildren ask, ‘Where were you on September 11?’, we will say, ‘I was in law school. I was with my friends.’”



“Now is the time to be full-fledged lawyers,” Professor Steven C. Croley says in his commencement address.

They help consumers vindicate their rights. And they safeguard the rights of the accused. And lawyers draft treaties to make the whole world safer, and they forge trade agreements to promote the well-working global economy. Lawyers close major business deals. They protect the environment. And they keep the constitution alive. Lawyers also hold people to the rules that define our society, and they make those rules, and they educate others by explaining what those rules mean. Lawyers do important small things and important big things. The very best people I know are lawyers. And I know a lot of other people. . . .

“Being great lawyers, therefore, means moving forward quickly, decisively, passionately. Work really hard. Stay up late. If, in the near future, you find that all of your ideas are good ideas, then you’ll know you’re not being creative enough. If you’re meeting all of your deadlines, then you’re not committing to enough. And if you’re satisfying all of your goals, you’re not aiming high enough. In a word: Stretch.

### First-year student wins Foley & Lardner scholarship

First-year law student Felicia N. Andrews, a Florida A&M University graduate from Detroit, has won one of the fourth annual First-Year Law Student Minority Scholarships awarded by Foley & Lardner. The firm awards a \$5,000 scholarship to a student at each of eight U.S. law schools. In addition to Michigan, the law schools include those at Duke University, University of Florida, Georgetown, Northwestern, Stanford, UCLA, and the University of Wisconsin.

"The scholarships assist minority students in pursuing a legal education and ultimately help facilitate a more diversified legal community," the law firm said in announcing awards for 2001. "Winners are selected based on several criteria, including interest in or ties to a city in which Foley & Lardner practices; significant involvement in community activities or minority student organizations; undergraduate record; and outstanding work or personal achievements. Financial need is not a consideration."

"Foley & Lardner's commitment to diversity is not just an abstract principle, but is rather a recognition that a diversified workforce, where experiences and perspectives are many and varied, is a substantial benefit to the firm and to our clients," said Alice Hanson-Drew, the firm's director of legal recruitment. Foley & Lardner has nearly 1,000 attorneys in offices in 16 markets in the United States and Brussels, Belgium.

## U.S. Attorney: Anti-terror measures 'deliberate, proactive, and constitutional'

The issue of balancing Americans' civil liberties and national security is as old as the U.S. Constitution's grant of war powers to Congress and the Bill of Rights that the states demanded as ransom for signing on to that Constitution. It has arisen again after the terrorist attacks of September 11 as law enforcement and security officials try to fight a new kind of war against a usually invisible enemy.

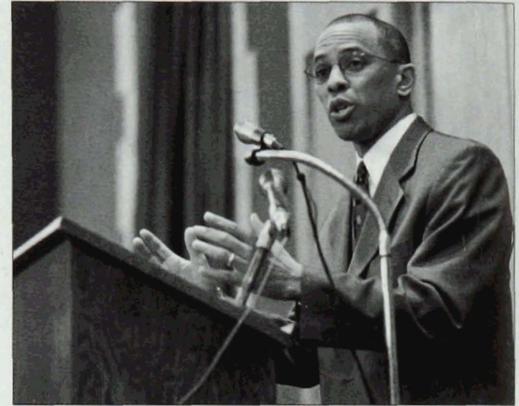
The question was discussed as part of the Law School's celebration of Martin Luther King Day earlier this year: Jeffrey G. Collins, U.S. Attorney for the Eastern District of Michigan, spoke at the Law School on "Maintaining and Enforcing Civil Rights in the New Age: Balancing Civil Liberties and National Security."

"It's hard to imagine a more significant and timely topic," Associate Dean for Academic Affairs Evan Caminker noted in his introduction of Collins. "This question is really an age-old question for our society," said Caminker, a scholar of the U.S. Constitution and federalism.

Collins was appointed by President Bush and sworn in last November. His 90-person office oversees 34 counties in southeastern Michigan, the state's most densely populated area. He has served on the Michigan Court of Appeals and Detroit Recorder's Court and as chief presiding judge of the Criminal Division of Wayne County Circuit Court. Collins is a past president of the Association of Black Judges of Michigan and has served as criminal law and trial advocacy instructor at Wayne State University Law School. His wife, Lois, an attorney in Detroit, is a 1990 graduate of the University of Michigan Law School.

Noting that the 15 groups that joined together to sponsor his visit are "a strong sign of unity that Dr. King would be proud of," Collins told his Law School audience that "the number one priority of the Department of Justice" is "to fight and win the war on terrorism. Our top priority is to protect American lives and to prevent future terrorist attacks. Our policies are deliberate, proactive, and constitutional."

Civil libertarians have criticized the Justice Department's battle against terrorism on several fronts, and Collins addressed a number of these criticisms head-on:



U.S. Attorney Jeffrey G. Collins

- Interviewing people from countries associated with terrorism is "nothing more than a request for help."
- Names of people who have been detained by federal authorities have been withheld to protect their privacy and to prevent terrorists from knowing who is in custody.
- Persons who face federal charges are entitled to free legal representation. Persons detained by the Immigration and Naturalization Service are entitled to time to retain an attorney but are not entitled to free legal representation, although a number of organizations have stepped forward to provide free legal counsel.
- Authority to monitor attorney/client conversations in jail existed prior to September 11, only 16 inmates were subject to this monitoring, "both attorney and client are told beforehand that they will be monitored," and there has been no increase in monitoring activity since September 11.

Shortly after Thanksgiving all 94 U.S. Attorneys met in Washington, D.C., with Attorney General John Ashcroft, Collins said. They discussed the war on terrorism and also re-acquainted themselves with the "spirit" they are defending through visits to the Lincoln, Jefferson, Korean, and Vietnam war memorials, and visits to the Pentagon and Ground Zero in New York City.

"If anything," he concluded, "the events of September 11 have brought us closer together... It has awakened the lion, [and] it has awakened the shepherd.

"For me personally, it has given me a greater appreciation for my family, friendships, and faith."

**Half-Way There** — More than 200 second-year law students attended the party spread for them at the Michigan Union in January to mark their successful progression to the mid-point of their law school careers. Midway Madness, featuring carnival-style foods, festive balloons, and a performance by entertainer Jonathan Park, was a welcome respite for students accustomed to cracking the books each night to be ready for recitations in classes the next day.



PHOTOS BY GREGORY FOX

Taking time from their conversation to pose for the photographer, law students Hana Sato and Jennifer Scheller (standing) and Laura Leelun, Erin Quinn, Tom Hogan, and Katherine Taylor reflect the evening's good times. For law student Amy Purcell, cotton candy is part of the evening's attraction.

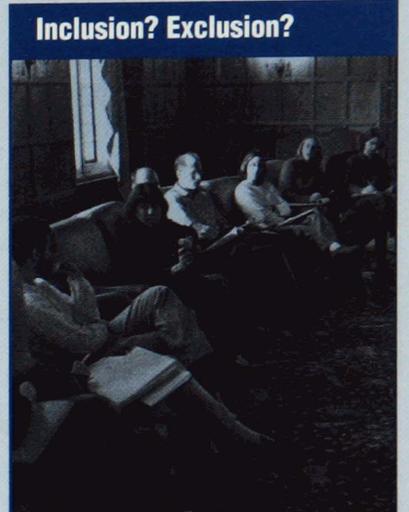


PHOTO BY GREGORY FOX

**Inclusion? Exclusion?**

U.S. Board of Immigration Appeals Judge Lori Rosenberg explains to Professor James C. Hathaway's Refugee Law Seminar that each case board members consider presents them with the dilemma of erring on the side of exclusion or inclusion in granting asylum. Rosenberg led discussion as she and seminar members evaluated the PBS documentary "Well-Founded Fear," a presentation on asylum interviews that aired in 2000 and was billed as providing "an inside look at what normally goes on behind closed doors." Among asylum seekers whose interviews were shown in the program were a Jew from Russia, an Anglican from Romania, a Chinese poet, and a young man from Albania.

**A look at the Class of 2004**

Data from the Office of Admissions show that 4,022 people applied for the 361 spots in the incoming first-year class this academic year.

Here is some other information on the Class of 2004:

- Enrollees' median Grade Point Average is 3.51 on a 4.0 system
- Women make up 42 percent of the class.
- Minorities make up 24 percent of the class.
- Enrollees come from Michigan and nearly 40 other states, making the Law School a national center of legal education.
- The median age is 24.

**Law Library shifts to Library of Congress system**

The Law Library has begun using Library of Congress (LC) classification numbers for all new monographs, regardless of language or topic. Library staffers say the changeover is occurring for several reasons:

- It will conform with the national system used in most other academic libraries.
- It will facilitate browsing.
- It will simplify processing.

"Our plan is to use the LC classification on the entire collection, requiring the application of the LC system to some 700,000 volumes that take up about 23 miles of shelving," according to a Law Library announcement. "This means re-labeling the books and changing the records in Lexcalibur, our online catalog. This will take many years."

The Library of Congress only recently completed its scheme for classifying law books, explained Margaret Leary, director of the Law Library. Until now, the Law Library has used a classification system that was devised here many decades ago that arranged material by form — treatises together, court reports together, journals together — and by jurisdiction, not by subject, she said.

"Libraries at law schools like Harvard, Columbia, Yale, and Chicago also developed their own classification systems," Leary continued. "Only Yale has completed a reclassification and Michigan hopes to take advantage of the work done at Yale to speed our reclassification process."

**Early interviews avoid schedule clashes**

The Office of Career Services is initiating an early interview period during the last week of August so that law students can schedule job interviews without interfering with their class schedules and so that employers can talk with students before they are in the midst of studies.

The early interview week will be August 26-30 and interviews will be held at Holiday Inn North in Ann Arbor, according to Susan Guindi, '90, assistant dean for Career Services. More than 100 rooms have been reserved for interviews and shuttle transportation between the Law School and the interview site will be provided, Guindi said.

The Office of Career Services mailed notices of the August interview program to potential employers earlier this spring. Employers who need registration forms or other information about the interview week may contact the Office of Career Services.

All student registration for interviews will be done via the Internet from July 1-31. The Office of Career Services also reminds law students to make arrangements for earlier housing if they are returning to Ann Arbor for the August interviews.

As in the past, there also will be on-campus interviewing in the fall.

**Guns? Crime? Are they related?**

Does carrying a firearm raise or lower your chance of becoming a victim of crime? To the American Enterprise Institute's John Lott, author of *More Guns, Less Crime*, his book title tells all. To Washtenaw County Prosecutor Brian Mackie, however, more guns just mean more chance of somebody getting shot.

Lott and Mackie squared off in "More Guns, Less Crime? A Debate on Gun Control," presented at the Law School last fall by the Law School student chapter of the Federalist Society for Law and Public Policy Studies and the John M. Olin Foundation. Professor Sherman Clark moderated. The program was occasioned by Michigan's passage in December 2000 of its so-called "shall issue" law that requires county gun boards to issue concealed weapon licenses to nearly any adult who applies.

Ninety-eight percent of the time people use guns defensively — "simply brandishing a gun is enough to make a criminal flee," Lott argued. During 1997-98, he reported, 40 percent of school shootings were stopped by citizens with guns. "The question you have to ask is what advice you give to a person to protect himself when police are not there to protect him," Lott said.

"If I believed it were as simple as 'more guns, less crime,' I'd be all for all of us being armed," countered Mackie, who also is past president of the Prosecuting Attorneys Association of Michigan. As to Lott's argument that unarmed women are especially vulnerable to attack, "somehow, [the idea] that you're going to watch a movie on the couch with your gun at the ready just doesn't make it," Mackie said.

**Inspiring Paths lead to special insights**

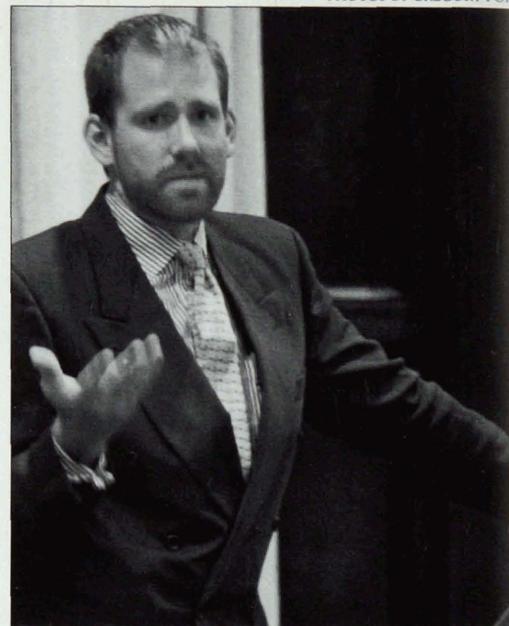
PHOTOS BY GREGORY FOX

By any standard, the Inspiring Paths speakers series has become a staple of the Law School calendar. Office of Public Service Director Robert Precht launched the series five years ago "to invite back to the Law School interesting lawyers, most of them graduates [of this Law School], to talk about their careers." Speakers share "how they came to the places they are now, and what strengths and self-doubts they had along the way," according to Precht.

Each program features a talk by the guest speaker followed by a question-answer session. Frequently, knots of students remain behind chatting with the speaker long after the formal program has ended. The luncheon talks regularly draw audiences of 100 or more.

Most speakers are lawyers affiliated with nonprofit public service organizations, while others have been with private firms or in other aspects of legal practice. Some have discussed opportunities for taking *pro bono* cases while also working for fee-paying clients, some have talked of always representing clients who cannot pay for legal help, and all have talked of how they came to use their legal skills to help those who might not have had assistance otherwise.

The Inspiring Paths lineup for this academic year included a public defender, a human



Associate Deputy Public Defender David Klaus, '93

rights worker-turned-professor, and a one-time practitioner who turned his legal background into forming a child assistance program that is unique for its combination of legal, psychological, developmental, and other expertise under a single umbrella:

■ David E. Klaus, '93, associate deputy public defender with the Alameda County (California) Public Defender's Office, described how he often relies on establishing reasonable doubt to make his case. "A 'reasonable doubt' is a doubt that is about the most important thing in your life," he said.

With 108 attorneys and 4,500 cases each month, Klaus' office includes Oakland and Berkeley in its jurisdiction. It is the second oldest public defender office in the United States, he noted.

"I don't want to kid you, this is not easy stuff, this is intense," said Klaus, who holds a black belt in karate. "We lose a lot," he admitted. Most clients plead out as guilty and many can be difficult, but "you have to go in there and fight and live with yourself when you lose your case. You must go in and pick yourself up and dust yourself off and go to the next case."



Visiting Professor and Amnesty International Legal Counsel Karima Bennoune, '94



*KidsVoice Founder and Executive Director Scott Hollander, '90*

So why keep at it? One reason is that it simply "is an important thing to do." Another is the satisfaction that accompanies successes. "The true heart of being a lawyer is to make the world better rather than to make it worse."

■ Karima Bennoune, '94, a visiting professor at the Law School and counsel for Amnesty International in London, told listeners that "human rights work is about what happens here, [and] what happens everywhere."

Bennoune's father, a native of the former French colony of Algeria, served six years in prison for his role in Algeria's war of independence against France. Many years later, when the two saw a movie based on a Chilean play about a woman who captures the man who once tortured her, Bennoune was struck by her father's belief that the woman should not kill her one-time torturer. "I think that sense of wanting justice but not revenge has certainly inspired me," she said.

She worked for a time with the International Institute of Human Rights in Strasbourg, then enrolled at the Law School. She secured two Bates Fellowships while a law student, one to work in Algeria

and the other to work with a Palestinian nongovernmental organization (NGO) in the West Bank. After graduation, she joined Wayne County Neighborhood Legal Services in Detroit. Initially, she worked on an immigration program, but switched to working with substance abuse cases after Congress prohibited Legal Services from working on immigration issues. "I absolutely consider that human rights work," she said of her work with substance abuse.

Following her own advice — "You really have to shake all the trees" — she located and landed a position as legal adviser with Amnesty International. Based in London, she traveled to Bangladesh, Lebanon, Saudi Arabia, and Afghanistan. (The evening before her Inspiring Paths talk, Bennoune presented the program "Human Rights in Afghanistan: A Pictorial Essay," that was sponsored by the Asian Pacific American Law Students Association, Michigan Law Students Association, and Public Interest Group.)

The human rights field offers "a lot of work and very few jobs," she said. To find those jobs, she advised: get all the practice experience you can — "Any practice experience will set you apart"; learn languages — "You'll be competing against Europeans who speak five languages"; minimize your debt; network — "Talk to everybody, and get started early."

■ Scott Hollander, '90, founder and executive director of KidsVoice in Pittsburgh, explained that "I wanted to do direct representation of children, but to do this in a way that represented their needs . . . not just on the presentation level, but on a bigger level that will change things."

The result for Hollander, after working successfully in private practice in Washington State and in Pittsburgh and with a child advocacy agency in Denver, was to take over a struggling child advocacy program back in his native Pittsburgh and re-shape it into KidsVoice.

In many ways he modeled KidsVoice after the interdisciplinary approach used by the Law School's Child Advocacy Law Clinic (CALC). "I took CALC in my second year and loved it. But I wasn't sure if I loved it because I loved being a lawyer working with kids, or just loved working with kids. There was this wonderful fellowship — an interdisciplinary approach to working with kids. It ended up influencing me greatly."

At KidsVoice there are "11 full-time child advocacy specialists [plus lawyers and others] so we bring that collective experience to each case and figure out what this particular case needs."

In addition, the interdisciplinary consideration of each case gives you "so much more to be armed with when you go to court."

Hollander also is an advisor to the CBS television series "The Guardian," which is set in Pittsburgh and deals with child advocacy issues. Hollander's brother David is creator and executive producer of the series. "My role," Scott Hollander quipped, "is to educate the director. I generate ideas."

The schedule for Inspiring Paths speakers during the winter term included:

- James Forman Jr., an attorney with the Public Defender Service in Washington, D.C., and a co-founder of the Maya Angelou Public Charter School in Washington. (See related story on page 9.)
- David A. Sutphen, '95, general counsel to U.S. Senator Edward M. Kennedy.
- Cheryl A. Leanza, '95, deputy director of the Media Access Project.

## Speakers discuss World War II internment cases

Japanese Americans had no strong allies to defend them against internment during World War II, but today there are many organizations ready to oppose any curtailment of Arab Americans' rights in the name of the war against terrorism, according to the lead attorney in a major case opposing internment. Dale Minami, of Minami, Lew and Tamaki in San Francisco, led the legal battle that reversed Fred Korematsu's conviction for refusing to obey the internment order. Won in a lower court 40 years after Korematsu's conviction, the decision had no impact on the earlier U.S. Supreme Court decision upholding the constitutionality of wartime Executive Order 9066, which led to the internment of more than 100,000 Japanese Americans.

Korematsu and others who opposed internment "were vindicated by history," Minami said. "They showed the kind of courage that we should emulate."

Minami appeared on the program "Korematsu: Then and Now: The Meaning of Civil Liberties in Wartime," with Yuzuru Takeshita, a University of Michigan professor emeritus of public health who spent four years in internment. Takeshita said that his experiences with internment caused him quickly to write a letter to his local newspaper warning against denial of the rights of Arab Americans in the wake of the September 11 terrorist attacks. "When injustice occurs it is incumbent on us to protest it," he said.

The program was sponsored by the Asian Pacific American Law Students Association.

## New European Union Center offers full program



Last fall's high expectations quickly began to come true as the new European Union Center (EUC), directed by Assistant Professor of Law Daniel Halberstam, began to schedule programs and otherwise draw from and contribute to the rich resources of the Law School and the University of Michigan. And early this year the center launched its own Web site ([www.umich.edu/~iinet/euc/home.html](http://www.umich.edu/~iinet/euc/home.html)) to provide thorough, up-to-date information on its activities.

"Our Web site is designed to report on Center activities and serve as a resource for academics and others interested in European integration," Halberstam said. "The EUC always welcomes suggestions for improving the site, especially in ways that may further assist an interdisciplinary and comparative approach to EU studies."

EUC's Web site provides information on lectures and seminars associated with the center as well as its mission, leaders, and faculty. The Web site was launched early this year with what was already a full schedule of

activities that reflected the promise Halberstam made for the center in his remarks at its opening last fall:

"The EU Center aims not only to bring together students and scholars across disciplines and schools, but also to engage with policymakers, business leaders, public administrators, and the relevant diplomatic communities in an effort to help forge the mutual understanding that is necessary for a productive transatlantic partnership."

EUC quickly has developed working partnerships with the Law School and other parts of the University like the Business School's William Davidson Institute, the economics, history, and political science departments, and the Center for European Studies.

EUC has a significant presence at the Law School. For example, at deadline time EUC activities associated with the Law School included:

- Grainne de Burca, professor of European law at the European University Institute, teaching classes at the Law School in March.
- Sinisa Rodin, LL.M. '92, teaching at the Law School in April and joining Nugent and others for public round table discussions of countries' accession into the European Union. Rodin is a professor at the University of Zagreb and a Fulbright Fellow and Visiting Scholar at Harvard Law School during the current academic year.
- The Hon. Francis G. Jacobs, advocate general of the Court of Justice of the European Communities, spending time at the Law School during the spring as a Helen DeRoy Fellow as well as a Jean Monnet Fellow at the EUC.

## Skadden Fellowship winners will work in Pittsburgh, Wilmington

Elisabeth Calcaterra and Matthew Meyer, both third-year law students who will graduate in May, are the 11th and 12th Michigan Law School students to receive Skadden Fellowships since 1995.

Fellows provide legal services to the poor, homeless, elderly, and those deprived of human or civil rights. The fellowship will allow Calcaterra to provide legal representation to medically needy foster care children at KidsVoice in Pittsburgh. (See related story on page 16.) Meyer will use his fellowship to create the Legal Assistance for Entrepreneurs Unit of the Community Legal Aid Society in Wilmington, Delaware.

Calcaterra, a student in the Law School's Child Advocacy Law Clinic, plans to begin her fellowship by providing direct representation to hundreds of abused and neglected children. She hopes to collaborate with doctors from area hospitals, juvenile court employees, and other legal professionals to identify specific welfare and medical needs of children in the welfare system. Through this collaboration, Calcaterra hopes to design a multi-disciplinary curriculum for legal and medical providers that will improve the advocacy and delivery of services to these children.

Meyer is the founder and director of Ecosandals.com, a nonprofit business that distributes Kenyan tire sandals. By providing legal assistance, he has insured that young adults in one of Kenya's poorest areas have appropriate legal structure to sell sandals

globally online. Meyer believes that individuals and community groups with entrepreneurial ideas need legal advice in order to grow effectively. With the fellowship, Meyer will create the Legal Assistance for Entrepreneurs Unit to provide quality legal assistance to entrepreneurs who otherwise would not have access to legal counsel. He hopes that through the creation of this unit an increased number of poor individuals will be able to earn a living wage, and a greater number of community groups will be able to better serve their neighborhoods.

"Beth and Matt join a distinguished group. Since 1995, 12 Michigan Law School graduates have become Skadden Fellows," says Law School Director of Public Service Rob Precht. "Fellows comprise a public interest law firm 'without walls' that our entire community can be proud of."

Each year, the Skadden Fellowship Foundation awards 25 fellowships to law school graduates throughout the country who are committed to furthering law in the public interest. Applicants create their own projects before they apply, and awardees receive an annual salary, fringe benefits, and student loan repayment assistance for the duration of the fellowship. According to the Skadden Fellowship Foundation, 90 percent of the fellows have remained in public interest or public sector work after completing their fellowship terms.

— Regan Preston

### Life experience

Law School can be more than full-time work for the best of us, yet each graduating class includes up to 15 percent of its members who have successfully managed to juggle the demands of a legal education and family and/or marital responsibilities. And each of these classes also includes several graduates who have been in the workforce for a time before taking on the demands of full-time legal education.

So it can be done. To offer some hints for success, Assistant Dean of Students David Baum, '89, each year brings together a panel of married and older law students to pass on their tips to others. Last fall's program offered tips like these:

- From 3L Ann Marie Byers, who worked for four years before entering law school and has two children: "If you already have learned to schedule your time, it can be a 'plus' to have been out" working for a while before entering law school.

- "Make sure you make time for that other person. Law school can encompass everything. For family members, best friends, make sure you schedule time. Basically law school is about scheduling time, just like you did at work."

- From 2L Kim D'Haene, who worked for a decade, then combined getting married, buying a house, and starting law school in the same summer: Have a house renovation party.

"It was our first group opportunity for my section. We cleaned gutters, wallpapered, painted — and my husband got to know all these people who were soaking up my time. When the wedding came up, people took notes for me and helped me catch up."

- "As an older student I think your sense of yourself doesn't come as much from your work."

- But in your work, "you have a whole lot of things to offer people in terms of life experience that people right out of college don't have."

- "Law school is a piece of you. Make sure the other pieces are solid."

Second-year law student Kim D'Haene, left, shares how she successfully combined getting married, buying and refurbishing a house, and beginning her legal studies during a program to provide tips for older and/or married law students.

Fellow-panelist Ann Marie Byers and Assistant Dean of Students David Baum, '89, listen at right.



PHOTO BY GREGORY FOX

**Appeals Court hears admissions case**

Oral arguments in the two affirmative action admissions cases involving the University of Michigan and the Law School, *Gratz v. Bollinger, et.al.* (undergraduate admissions) and *Grutter v. Bollinger, et.al.* (Law School admissions) were heard on December 6 in the Sixth Circuit Court of Appeals in Cincinnati. The courtroom was filled, as were two additional rooms where the arguments were projected by closed circuit television. U-M lead counsel on both cases, John Payton, argued for the University; Ted Shaw of the NAACP Legal Defense Fund argued for the student intervenors in the undergraduate case; Detroit attorney Miranda Massie argued for the Law School intervenors; and CIR-affiliated attorneys David Herr and Kirk Kolbo argued for the plaintiffs.

The judges' questions mainly focused on the "narrow tailoring" question of the constitutionality of the University's and Law School's methods of taking race into account in admissions. Judges also asked about U-M's admissions selection index in the undergraduate case and about the Law School policy's stated desire to have a "critical mass" of minority students. There was little questioning about the legal standard as related to the meaning and viability of the *Bakke* case (see on the Web, [www.umich.edu/~urel/admissions/faqs/bakke\\_sum.html](http://www.umich.edu/~urel/admissions/faqs/bakke_sum.html)).

There is no timetable for a decision from the Sixth Circuit. At deadline time the court had not yet released its decision.

## Juan Tienda Banquet keynoter: Uphold the rule of law

The rule of law, and racial, ethnic, and other diversity among those who apply it, is especially important as the United States struggles to cope with the impact of the terrorist attacks last fall, a federal judge told Juan Tienda Scholarship Banquet attendees this year.

Practicing law is "a sacred public trust" and "what the law needs now more than ever is competent and diverse counsel," the Hon. Reuben Castillo of the U.S. District Court for the Northern District of Illinois said in his keynote. "Our society becomes stronger when there is active respect for the law," he noted, but "there are signs I am picking up right now that the rule of law is under severe strains." For example, racial profiling is "wrong, it is anathema, it is a crutch to solid law enforcement, and it needs to be eliminated."

"The true test of how we feel is how we follow the law [and] in how we treat each other," he said.

Colorado Attorney General Ken Salazar, '81, a third generation Coloradoan and the first Hispanic to be elected to statewide office in Colorado, received the J.T. Canales award. Canales, who graduated from the Law School in 1899, was a Texas state lawmaker and champion of Hispanic rights. In 1918 he forced an investigation of the Texas Rangers for the agency's action toward Mexican Americans in the lower Rio Grande valley.

Hispanic people "have come a long way in 100 years, yet we have a great deal more progress to make," said Salazar, himself a former Juan Tienda Scholarship winner. Let's make this the "century of diversity and the



Keynote speaker the Hon. Ruben Castillo, left, and J.T. Canales Award winner Ken Salazar, '81, chat before the Juan Tienda Scholarship Banquet.

century of inclusion," Salazar urged. The diversity that characterizes his 350-person staff makes his office "better able to serve the people of Colorado," he said.

Three first-year law students received Juan Tienda Scholarships this year: Diego Bernal, Elizabeth Rios, and Laura Varela. The scholarship is named for Juan Luis Tienda, who attended the Law School from 1974-76 and died in an automobile accident as he was returning to begin his final year of legal studies. Tienda was president of La Raza Law Students Association, the predecessor to the current Latino Law Students Association, which sponsors the annual scholarship banquet. He also worked during the summers with the Michigan Migrant Legal Assistance Project.



Juan Tienda Scholarship winners Laura Varela, Elizabeth Rios, and Diego Bernal share congratulations.

PHOTOS BY GREGORY FOX

### Panel: Chin cases lead to change

The state and federal trials in the Vincent Chin case may not have convicted Chin's killers, but they did help to lead to the passing of laws allowing families to testify on the impact that the loss of a loved one has caused and to other laws that lengthen prison terms and increase fines if it can be proved that a crime is a hate crime, panelists reported during a discussion of "Hate Crimes in the Courts: Lessons from the Vincent Chin Case." The program, presented early in the winter term, was part of the campus-wide Hate Crime Symposium 2002, which included among its 33 sponsors/organizers the Law School and the Asian Pacific American Law Students Association. The series of programs was part of the University of Michigan's Martin Luther King Symposium.

Media attention and contacts with federal Justice Department officials associated with the Chin trials also helped to increase understanding that Asian Americans suffer from the same kinds of hate-fueled crimes as other racial groups, according to the panelists. Panel members included attorneys Roland Hwang (now of the Michigan State Attorney General's Office) and Harold Leon, who worked on the Chin cases, and counselor Ronald M. Aramaki of Health Management Systems of America.

Chin, a 27-year-old Chinese American, was fatally beaten with a baseball bat on June 19, 1982. The two men charged in the crime were sentenced to three years probation and fined. The light sentence enraged the Asian American community, which organized and successfully brought the men to trial on federal charges of violating Chin's civil rights. A Detroit jury acquitted one man and found the other guilty, but a retrial in Cincinnati in 1987 acquitted both.



## STRESS BUSTER MESSAGES

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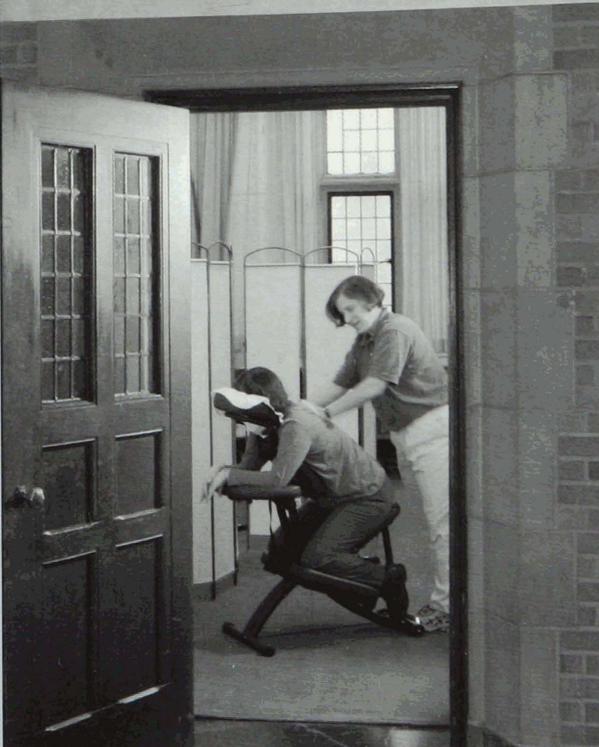
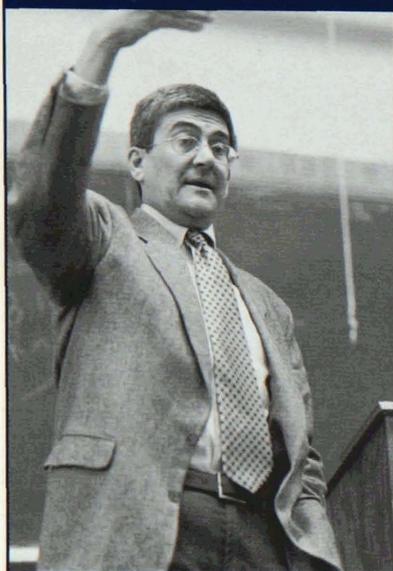


PHOTO BY GREGORY FOX

### Easing the Stress of Final Exams —

Remember the stress of final exams? Finals-taking law students got some help this year courtesy of the Alumni Relations Office and a generous gift from Joseph Goldstein, '72, and his wife Ellen. The Joseph and Ellen Goldstein Fund provided free massages for law students during December's final examinations. Here, Liz Prince of Think Massage of Ann Arbor works on third-year law student Katie Page. Students reported that the massages were a boon. "It was wonderful. I thought I was too stressed to relax, but it wasn't a problem," reported Ellen Gulbrandsen. Said Joe Krupan: "Okay, where can I sign up for my next one?" During the same exam period the Alumni Relations Office also provided free continental breakfasts. Here, law students Mike Kabakoff, Pyper Logan, and Seth Oppenheim take time to catch a bite.

**Speaker: Terrorists 'outside the mainstream'**


Yossi Olmert

Like Christianity and Judaism, mainstream Islam "enshrines the life of the person" and "does not accept the logic of committing suicide," an historian of the Middle East told a Law School audience last fall in a talk on "Terrorism, Israel, and the Middle East." Suicide attacks have been provoked by people "outside the mainstream of Islam," explained Yossi Olmert, who teaches at Bar-Ilan University in Israel. Also a columnist in Israel, Olmert formerly was director of Israel's Government Press Office and served as advisor to Israel's Prime Minister Yitzhak Shamir and Defense Minister Moshe Arens.

Describing himself as "very close" to the current government of Israel, Olmert stressed that terrorists account for only a tiny minority of even fundamentalist Muslims.

Disputes should be settled through negotiation, he said. But when fanatics are unwilling to engage in talks it is appropriate to respond like the United States did against Afghanistan after the September 11 suicide attacks on the World Trade Center and the Pentagon. "You should be proud of your armed forces because they are doing a magnificent job," he told listeners. "Fanaticism," he added, "is not justification."

## International Law Workshop keeps the globe under its lens

How do you balance environmental concerns with the expansion of free trade? What restrictions on development are appropriate for countries that are trying to develop their industrial bases and are playing catch-up with the world's major industrial nations?

Can the 20 percent of World Trade Organization member-nations that are developing countries be expected to see eye-to-eye on environmental issues with the 80 percent that already are industrialized?

These are the kinds of issues that trade boosters and environmentalists face in many parts of the world. As one expert put it, "very many strong tensions emerge" when you try to deal with environmental issues through a trade framework.

That characterization comes from Monica Araya, project director at the Yale Center for Environmental Law and Policy, whose talk "Facing Environmental Dilemmas While Bridging North-South Gaps" concluded the International Law Workshop (ILW) lecture series last fall. And the same sort of focused expertise came to bear when Richard Janda delivered the first program in the current term's ILW series in January. Janda, of the Faculty of Law and Institute of Air and Space Law at McGill University, spoke on "The End of Globalization? Aviation Governance in the Wake of September 11."

"A number of prominent public intellectuals have argued that September 11 and its effects demonstrate a retreat from globalization, even a meltdown of globalization, [but] it seems to me there's something manifestly implausible about this claim," Janda said. Actually, he explained in the course of his talk, the events of September 11 have "propelled it further. New York is a global city. It is a cosmopolitan place. . . . I think there is an important sense outside [the United States] that it was felt to be an attack on the whole world."

The ILW, coordinated by Professors Daniel Halberstam, James C. Hathaway, and Robert Howse and Assistant Dean for International Programs Virginia Gordan, showcases prominent thinkers and professionals who are working on major issues of international and comparative law. Each program includes a half-hour lecture followed by response from a

faculty member and questions from the audience.

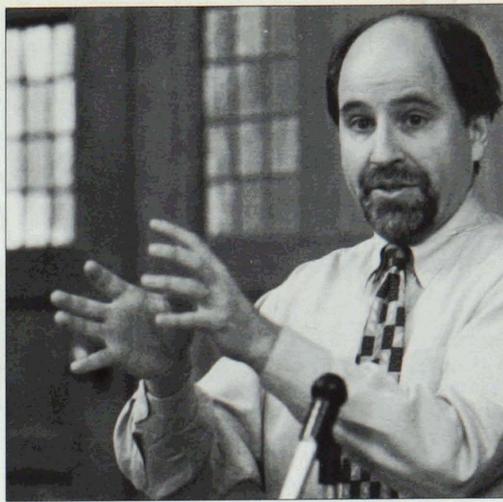
At deadline time the remainder of the current term's schedule included:

- Lan Cao of the College of William and Mary, Marshall-Wythe School of Law, speaking on "The Diaspora of International Ethnic Economies: Beyond the Pale."
- Ellen Dannin of the California Western School of Law, speaking on "Hail, Market, Full of Grace: Transnational Migration of Labor Law Reform."
- Irwin I. Cohn Professor of Law Reuven S. Avi-Yonah, University of Michigan Law School, speaking on "National Laws and Multinational Enterprises: An Essay on Comity, Extraterritoriality, and Harmonization."
- Hudson Janisch of the University of Toronto Faculty of Law, speaking on "The Reform of China's Telecommunications: A Window on WTO Accession."
- Lama Abu-Odeh, of Georgetown University Law Center, "Legal Theory in the Contemporary Arab World."
- Brian Langille, professor and associate dean for graduate studies at the University of Toronto Faculty of Law, "What is the International Labor Organization and Why?"
- Kerry Rittich of the Faculty of Law/ Women's Studies at the University of Toronto, "Engendering Development: A New Paradigm of International Gender Justice?"
- Sara Dillon, Suffolk Law School, "Building a Better WTO: The Limits of Interpretation."
- Werner Zdouc, Counsellor with the Appellate Body Secretariat of the World Trade Organization, "Intellectual Property Rules at the WTO and Access to Affordable Medicines for Developing Countries."
- Marco Bronckers of the University of Leiden and a partner with Stibbe in Brussels, "The Application of the WTO Law in the EU's Legal Order: From Front Door to Back Door."
- Howard F. Chang, University of Pennsylvania Law School, "Reflections on the Shrimp-Turtle Case."

- Ruti Tietal, New York Law School, "Humanity's Law: International Law for a Global Politics."

Araya's talk last fall culminated a rich series of ILW sessions, which included these programs:

- Christine Chinkin of the London School of Economics and an Affiliated Overseas Faculty member of the U-M Law School, speaking on "Women's International War Crimes Tribunal."
- Bob Hudec, Fletcher School of Law and Diplomacy at Tufts University and professor emeritus of the University of Minnesota Law School, "Getting to Probably: The Interpretation of International Agreements Concluded by Divided Governments."
- Armi von Bogdandy, Professor of European and International Economic Law and Judge at the OECD Nuclear Energy Tribunal, "The Great Sagas on European Integration — And What They Teach Us for the Development of the WTO."
- Forum on WTO Dispute Settlement with Petros Mavroidi of the University of Neuchatel, Howse, and others.



*Richard Janda of the Faculty of Law and the Institute of Air and Space Law at McGill University discusses the impact on the globalization of aviation practices of last fall's terrorist attacks on the United States.*

- J. Patrick Kelley, Widener University School of Law, "The World Trade Organization, Customary International Law, and the Structure of Global Governance."
- Suzanne Goldberg, Rutgers School of Law-Newark, "Sexuality, Feminism, and Asylum: The Conduct/Identity Conundrum."
- Miguel Poiars Madura of the Faculdade de Direito da Universidade Nova de Lisboa, "Europe and the Constitution: What If This Is As Good As It Gets?"
- Susan Esserman, '77, partner in Steptoe & Johnson LLP, Washington, D.C., and former Deputy United States Trade Representative, "Looking Ahead to a New Round of Trade Negotiations."



*Suzanne Goldberg of Rutgers School of Law-Newark, second from left, chats with Professor James C. Hathaway, Assistant Dean for International Programs Virginia Gordan, and Hessel E. Yntema Professor Emeritus Eric Stein after addressing the International Law Workshop. Goldberg spoke on "Sexuality, Feminism, and Asylum: The Conduct/Identity Conundrum."*

### Chicago 'my kind of town'

Members of the Chicago Committee on Minorities in Large Law Firms told a Law School audience earlier this year that the Windy City is a good place to work and live and offered hints for job hunting, finding mentors, and beginning a legal career. The committee, sponsored by 36 of the city's largest law firms, offers support services and networking for minority attorneys, explained Executive Director J. Danielle Carr.

Two of the panelists were Law School graduates: Jasmine C. Abdel-Khalik, '00, a second-year associate at Baker & McKenzie, and Gail C. Saracco, '90, a partner in the Corporate Department of Mayer Brown & Platt. Other panelists included: Vineet Gauri of Brinks Hofer Gilson & Lione; LaVon M. Johns-Harris of Altheimer & Gray; and Theodore I. Yi of Piper Marbury Rudnick & Wolfe. The program was sponsored by the Office of the Assistant Dean of Students.

Speakers discussed the importance of learning about the culture of a firm during the interview process, the value of having a mentor, the impact of family responsibilities, the possibilities for *pro bono* work, the social and cultural amenities of Chicago, and other subjects. "When you interview, be yourself," Gauri advised.

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## Whitman, '74, named Francis A. Allen Professor



PHOTO BY GREGORY FOX

*Christina Brooks Whitman, '74*

Christina Brooks Whitman, '74, who served nearly five years as associate dean for academic affairs for the Law School, has been named the Francis A. Allen Collegiate Professor of Law.

The professorship carries special meaning for Whitman, who was a student and later joined the Law School faculty while Allen was a leading professor and mentor. Allen also served the Law School as dean.

Whitman also is a professor of women's studies in the College of Literature, Science, and the Arts. She was recommended for the Allen Professorship by Law School Dean Jeffrey S. Lehman, '81, and College of Literature, Science, and the Arts Dean Shirley Neuman.

Whitman earned her B.A. and M.A. at the University of Michigan before receiving her J.D. *magna cum laude* in 1974. After graduation, she clerked for Justice Lewis F. Powell Jr. on the U.S. Supreme Court. She joined the Law School faculty in 1976 as one of the first women in its teaching ranks. She was named a Professor of Women's Studies in 2000.

Whitman's scholarship has focused on constitutional torts and evaluating the successes and values that underly the legal liabilities imposed on officials acting within their official responsibility.

## Stein reaps honors from Czech homeland



PHOTOS COURTESY OF THE OFFICE OF THE CHANCELLOR OF THE PRESIDENT OF THE CZECH REPUBLIC AND ERIC STEIN

*Czech Republic President Václav Havel presents Law School Professor Emeritus/ Czech native Eric Stein, '42, with the Medal of Merit First Degree in ceremonies at Prague Castle last fall. Inset (photo by Gregory Fox) shows details of the medal.*

Professor Eric Stein, '42, returned to his Czech homeland last fall like a conquering hero. In the capital of Prague, Czech Republic President Václav Havel presented Stein, the Hessel E. Yntema Professor Emeritus of Law, with a First Degree Medal of Merit "for outstanding scientific achievements."

The presentation came on October 28, the Czech National Independence Day. Two days earlier, Stein was made an honorary citizen of his birthplace of Holic, a centuries-old town two hours drive from Prague that Stein had left in his early teens.

Stein fled the rising power of Nazism in Czechoslovakia in 1939 and earned a doctorate of laws at the University of Michigan in 1942. He previously had earned a similar degree at Charles University in Prague. He served in the U.S. Army during World War II. Subsequently, he worked with the U.S. State Department and was involved with formation of the United Nations before he shifted to teaching and joined the Law School faculty in 1956.

*continued on page 26*

# FACULTY

Continued from page 25



Hessel E. Yntema Professor Emeritus of Law Eric Stein, '42, and his wife Virginia show the Holice town emblem and coat of arms.

A pioneer in development of the academic discipline of comparative and international law, Stein has been instrumental in making study of the European Union part of American international law programs. He was called into service for his native country as an advisor in developing the proposed new federal Czecho-Slovak constitution after the 1989 "Velvet Revolution," and he consulted on the Czech Republic's constitution following the breakup of the Czecho-Slovak federation.

Havel presented Stein with the Medal of Merit in ceremonies in the Castle in Prague. The Castle, whose magnificence was retained during the Communist regime, is considered one of the jewels of Europe and a significant contributor to Prague's reputation as one of the continent's most beautiful cities.

In the earlier ceremonies at Holice, Mayor Ladislav Effenberk presented Stein with a replica of the city's coat of arms. During his visit there, Stein also reminisced about his life in Czechoslovakia and his many years in the United States during a talk to students at the recently inaugurated state-of-the-art Holub Gymnasium high school.

The Czech ceremonies followed two other honors Stein received last fall closer to home:

- Attachment of his name to the university-wide professorship awarded to his colleague and former student Richard O. Lempert, '68. Lempert, a law professor and founding director of the University of Michigan's Life Sciences, Values, and Society Program, asked that his new university professorship be

named for Stein. Lempert also is a professor of sociology and former chairman of the sociology department.

- Being named winner of the 2001 University of Michigan Press Book Award for "his literary accomplishments, particularly *Thoughts From a Bridge: A Restrospective of Writings on New Europe and American Federalism* [University of Michigan Press, 2000], and the breadth and depth of his scholarly contributions to international law." This was Stein's second time to win the award; the first was for *Diplomats, Scientists and Politicians: The United States and the Nuclear Test Ban Negotiations* (1966), co-written with the late Harold K. Jacobson.



Holub Gymnasium students in Holice, Czech Republic, listen as Eric Stein, '42, reminisces about his life in Czechoslovakia and his career in the United States after being made an honorary citizen of Holice, his birthplace.

# Activities

**Reuven S. Avi-Yonah**, the Irwin I. Cohn Professor of Law, presented papers at the critical tax theory conference in New Orleans in April and at the tax simplification conference in December organized by the American Bar Association and the American Institute of Certified Public Accountants in the U.S. Congress. During the latter part of the fall term he also took part in a panel discussion on tax and trade at the International Fiscal Association Meeting in San Francisco and organized a workshop at the Law School on "Tax and Trade: Exploring the Interactions" for tax and trade academics and practitioners.

Clinical Assistant Professor **Melissa L. Breger**, '94, who is director of the Bergstrom Fellows summer training program, has been appointed a University Resolution Officer for the 2002-2004 term for University student disciplinary hearings. In March, she presented the paper "Revisiting One Mechanism for Child Abuse and Neglect Prevention: A National Overview of Voluntary Foster Care Placements" for the Medstart conference at the University.

Professor/Associate Dean for Academic Affairs **Evan Caminker**, a former deputy assistant attorney general in the U.S. Justice Department's Office of Legal Counsel, participated in the symposium "Congressional Power in the Shadow of the Rehnquist Court: Strategies for the Future" in February at the Indiana School of Law-Bloomington.

Affiliated Overseas Faculty member **Hanoch Dagan** lectured on "How Jewish Tradition Can Inform Contemporary Jewish Law: The Case of Unjust Enrichment

Law" at a program co-sponsored by the Canadian Friends of Tel-Aviv University and the Beth Tzedec Congregation in Toronto in February. Late last fall he presented his paper "On Marital Property" (co-authored with Carolyn J. Frantz, '00) at the Legal Theory Workshop at Emory University School of Law and at a faculty colloquium at UCLA School of Law.

Assistant Professor **Daniel Halberstam**, who also is director of the U-M's European Union Center, spoke on "The Duty to Cooperate in Federal Systems" at a workshop on multilevel constitutionalism at the Universidade Nova de Lisboa in Portugal in December. Earlier in the fall he spoke on "Fidelity to the Union in U.S. Constitutional Law" at a faculty colloquium at the University of Colorado and on the topic of "A Comparative Examination of Judicial Cooperation in the European Union and the United States" at the Symposium on Jurisdictional Reform in the European Union held in Hamburg, Germany, on the occasion of the 75th anniversary of the Max Planck Institute for Comparative Public Law and International Law.

Professor **James C. Hathaway** presented his paper on the potential for in-country protection of refugees (co-authored with doctoral student Michelle Foster) to an expert workshop organized by the UNHCR as part of its Global Consultations on International Protection in San Remo, Italy, in September. He then travelled to Sarajevo, where he offered an introductory course in refugee law to some 130 lawyers from across Europe, under the auspices of the European Council on Refugees. In October, he presented a

paper on the need for burden sharing mechanisms in refugee law to the Canadian Council on International Law's annual meeting in Ottawa. In November, Professor Hathaway was invited to train the more than 100 staff members of the newly established Irish Refugee Legal Service, in Dublin. In December, he was a panelist at the National Workshop for District Court Judges in San Diego where he analyzed the legality of the anti-terrorism provisions of the new U.S.A.-Patriot Act. Professor Hathaway then travelled to Geneva, where he delivered an address to the Global Consultation on International Protection and served as a member of the delegation of the International Council of Voluntary Agencies to the 50th anniversary meeting of state parties to the 1951 Refugee Convention.

Professor **Robert L. Howse** presented the paper "Association, Identity, and Federal Community" at the conference on "Multilevel Constitutionalism: Transatlantic Perspectives" at the Law Faculty of the New University of Lisbon and the paper "The Democratic Deficit in International Trade Law: Agency Costs and International Regimes" at the conference on "International Economic Governance and Non-Economic Concerns: Transparency, Legitimacy, and International Economic Law" in Vienna in December. In November, he presented "From Politics to Technocracy and Back Again — the Fate of the World Trade Organization" at the International Law Workshop at the University of Chicago Law School; conducted a two-day training seminar on World Trade

Organization law and policy for Paraguayan government officials in Asuncion; discussed European integration from a North American perspective at a colloquium on European integration at the Swiss Institute of Comparative Law, Lausanne; and co-organized with the University of Michigan School of Public Health and the U-M International Institute a workshop on science-based trade disputes and presented an overview of applicable WTO case law at the workshop. Earlier in the fall, he: was panelist on NAFTA investor-state dispute settlement for the workshop on Consumer and Commercial Law at the University of Toronto Faculty of Law; co-organized and presented a paper on interpretative choices in WTO jurisprudence at the forum on WTO Dispute Settlement at the Law School; spoke as part of the Theory and Practice of International Law speaker series at Columbia University School of Law; served as panelist on "The Greening of the World Trade Organization?" for the New York Bar Association; and presented his work on trade and human rights at the Massachusetts Institute of Technology Program on Human Rights and Justice.

**Yale Kamisar**, the Clarence Darrow Distinguished University Professor of Law, debated Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit on the bases for and the desirability of exclusionary rules in criminal cases as part of a symposium at Yale Law School sponsored by the Federalist Society in February. The Hon. John Walker, '66, chief judge of the U.S. Court of Appeals for the Second Circuit, moderated and participated.

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# Activities

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Assistant Professor **Ellen Katz** delivered the paper "Judicial Activism and Restraint: Congress, Race, and the Vote in the Rehnquist and Waite Courts" at the symposium on "Conservative Judicial Activism" at the University of Colorado School of Law last fall.

The 5th edition of the casebook *Property*, by Earl Warren Delano Professor of Law **James E. Krier** and Jesse Dukeminier of UCLA was published in February.

Roy F. and Jean Humphrey Proffitt Research Professor of Law **Ronald J. Mann** in December presided as reporter over the final meeting of the American Law Institute/National Conference of Commissioners on Uniform State Laws Drafting Committee to Revise the Payment Articles of the Uniform Commercial Code and presented the committee's work to the Council of the American Law Institute. The council approved the work for submission to the vote of the entire institute at its annual meeting in May 2002. In February, Mann discussed the "Economics of Strategic Alliances" at a National Bureau of Economic Research symposium in Florida and in January presented his research on credit card use in Japan at a workshop at the George Mason University Law School.

Clinical Assistant Professor **Bridget M. McCormack** directed a panel on "Academic Freedom and Clinical Legal Education" at the Association of American Law Schools annual meeting in January.

Assistant Professor **Adam C. Pritchard** was a commentator for the F. Hodge O'Neal Corporate and Securities Law Symposium, Institute for Law and Economic Policy in March. In December

he participated in the Korea Stock Exchange's International Conference on Self-Regulatory Institutions in the Korean Securities Markets, and earlier in the year took part in the Practising Law Institute's 33rd Annual Institute on Securities Regulation and the American Law Introductory Course of the Atlantische Akademie: Rheinland-Pfalz and the German-American Lawyers Association.

Clinical Assistant Professor **David A. Santacroce** has been named treasurer of the Clinical Section of the Association of American Law Schools. In December he discussed the relationship between federal law and a state's delivery of retraining and re-adjustment assistance to large groups of dislocated workers as a keynote speaker for the California Rapid Response Round Table in Palm Springs. He also did workshops at the round table on creating dialogues with businesses to get them to provide timely notice of mass layoffs and plant closings.

In February, Harry Burns Hutchins Collegiate Professor of Law **Joseph Vining** lectured on "Corporate Crime and the Religious Sensibility" as part of the program "Religion and the Criminal Law: Legal and Philosophical Perspectives" sponsored by the Arizona State University College of Law and Departments of Philosophy and Religious Studies. The same month Vining addressed the issue "Is There an Implicit Theology in the Practice of Ordinary Law?" in a program on "The Theology of the Practice of Law" at Mercer University; also on the program were L. Hart Wright Collegiate Professor of Law **James Boyd White**, Old Testament theologian Walter Brueggemann,

and British novelist/biographer Peter Ackroyd.

Assistant Professor **Mark D. West** represented the Law School as the sole U.S. law school participating in the symposium "Inside the American Law School: Its Essence, Its Reality, and Its Potential in Japan," in Tokyo in February (see story p. 3). Late in the fall term he presented the paper "Institutional Change and M&A in Japan: Diversity through Deals" (co-authored with Curtis Mulhaupt of Columbia Law School) at the authors workshop for the conference "Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross-Border Deals" in New York and at Kyushu University in Japan. He also lectured on "American Lawyers and American Legal Education" at Tezukayama University in Japan.

## VISITING AND ADJUNCT FACULTY

Visiting Professor **Karima Bennoune**, '94, in March served as commentator for the conference "Censoring Feminism," sponsored by the U-M's Institute for Research on Women and Gender, and spoke on "Surroundings and Society, Shaping our Children" at the Medstart conference at the University. In February she gave a workshop for the Cranbrook Educational Community's World Affairs Seminar on "What is Torture? A Human Rights Lawyer's Perspective." In January she delivered "Comments on Human Rights and the War on Terrorism" for the program "War on Terrorism: Legality of the American Response at Home and Abroad," sponsored by the *Journal of International Law* at Michigan State

University-Detroit College of Law.

Visiting Professor **Howard F. Chang** presented his paper "Immigration Restrictions as Employment Discrimination" at the Workshop on Labor and Employment Law at New York University Law School in November and at the Michigan Legal Theory Workshop in January. Also in January, he presented his paper "Liberal Ideals and Political Feasibility: Guest-Worker Programs as Second-Best Policies" at an immigration symposium at the University of North Carolina at Chapel Hill. He presented his paper "Aliens, Public Benefits, and Devolution of Federal Power to the States: A Skeptical View of Nondevolvability" at an immigration symposium at New York University Law School in October. He served as secretary on the Executive Committee of the Association of American Law Schools Section on Law and Economics for 2001-2002.

Adjunct Professor **Laurence Connor**, '65, was moderator for the first Annual Advanced Negotiation and Dispute Resolution Institute in March at the Institute for Continuing Legal Education in Ann Arbor. He also spoke on "Drafting Mediation Summaries."

Adjunct Professor **James Forman Jr.** was featured in *The New Urban Leaders*, by Brookings Institution Senior Fellow Joyce Ladner, for his work with the Maya Angelou School in Washington, D.C. He currently is launching the Maya Angelou Leadership Development Institute to train D.C. teenagers to advocate for themselves and their communities on issues of juvenile justice and police/community relations.

# Visiting and Adjunct Faculty winter 2002

Visiting faculty members from universities around the world and adjunct teachers who share their experiences and professional skills add significant richness and depth to Law School classes. Here are the visiting and adjunct faculty who are at the Law School during this second half of the 2001-2002 academic year.

**Elizabeth M. Barry, '88**, who is teaching Higher Education Law, is associate vice president and deputy general counsel in the Office of General Counsel for the University of Michigan. At deadline time, it was announced that she is to become managing director of the University's Life Sciences Institute. She was previously director of Academic Human Resources for the University and was a university attorney for Harvard. Barry has lectured at Harvard University Graduate School of Education.

**Eyal Benvenisti**, who is teaching The Rights of Minority Groups, is the Hersch Lauterpacht Professor of Public International Law and director of the Minerva Center for Human Rights at the Hebrew University of Jerusalem. He earned his LL.B. *cum laude* at the Hebrew University, and then earned his LL.M. and J.S.D. degrees at Yale Law School. His experience includes serving as a law clerk at the Israel Supreme Court; serving as a visiting fellow at the Max Planck Institute for Comparative Public Law and International Law; and as a visiting professor at the Harvard, Columbia, and U-M law schools. He joined the Hebrew University of Jerusalem Faculty of Law in 1990, and served as a member of the International Law Association Committee on International Law in National Courts from 1994-98. Professor Benvenisti is co-editor of *Theoretical Inquiries in Law*. He has received numerous awards including the Yale Law School's Ambrose Gherini Prize, the

Francis Deak Prize for an outstanding article by a younger author published in the *American Journal of International Law*, and the Fulbright-Yitzhak Rabin Award, which is awarded by the United States-Israel Educational Foundation to an established Israeli scholar. Professor Benvenisti's teaching and research interests include administrative law, constitutional law, and international law.

**Howard F. Chang**, professor of law at the University of Pennsylvania Law School, is teaching Immigration and Nationality, and International Trade Law. Prior to joining the Penn law faculty in 1999, he was a professor of law at the University of Southern California Law School, where he began teaching in 1992. He has been a visiting professor at the New York University School of Law, Harvard Law School, and Stanford Law School, and a visiting associate professor at the Georgetown University Law Center. From 1988 to 1989, he served as a law clerk for the Hon. Ruth Bader Ginsburg on the U.S. Court of Appeals for the D.C. Circuit. He received his A.B. from Harvard College, an M.P.A. from Princeton University, a J.D. from Harvard Law School, where he served as supervising editor of the *Harvard Law Review*, and a Ph.D. in economics from M.I.T. Professor Chang has taught and written on a wide variety of subjects, including immigration law, international trade regulation, and environmental

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# Visiting, adjunct faculty

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law. He served on the Board of Directors of the American Civil Liberties Union of Southern California from 1995 to 1998 and on the Executive Advisory Board of the Asian Pacific American Legal Center of Southern California from 1995 to 1996.

**Ellen J. Dannin**, '78, is a professor of law at California Western School of Law. She earned a B.A. with high honors and high distinction from the University of Michigan and a J.D. with honors from the University of Michigan Law School. After graduation, Dannin served as a judicial clerk for Judge Cornelia G. Kennedy, '47, of the U.S. Court of Appeals for the Sixth Circuit before becoming a trial attorney with the National Labor Relations Board. She joined the law faculty at California Western School of Law in 1991. Her teaching interests include labor and employment law and civil procedure. Dannin has also taught at the University of Massachusetts, Amherst, in the Masters Program in Union Leadership and Administration, and at Massey University, New Zealand, and has been a consultant to the United States and New Zealand Departments of Labor. She has written extensively on collective bargaining, privatization, and labor-management cooperation. Her current work includes a series of quantitative studies exploring the employer's right to implement its final offer at impasse (with Gangaram Singh, San Diego State University). At the Law School, she is teaching Labor Law and a seminar, Immigrants, Work, and Justice.

**Sheldon H. Danziger**, who joins Dean Jeffrey S. Lehman, '81, to teach Social Welfare Policy, is the Henry J. Meyer Collegiate Professor in the University of Michigan School of Social Work. He is director of the School's Social Work Research and Development Center on Poverty, Risk, and Mental Health, and he serves as a professor of public policy in the School of Public Policy, as well as being a faculty associate in the Population Studies Center.

**Timothy L. Dickinson**, '79, is a partner with Dickinson Landmeier LLP, in Washington, D.C., where he practices in international commercial transactions, foreign sales and investments, economic sanctions and foreign claims, FCHP, export regulations and enforcement, European Community law, and public international law areas. He also has taught at Georgetown Law Center as an adjunct professor. Here at the Law School, Dickinson is co-teaching Transnational Law with Hessel E. Yntema Professor of Law Matthias W. Reimann, LL.M. '83.

**Karthigasen Govender**, LL.M. '88, co-taught Constitutionalism in South Africa with Wade H. McCree Jr. Collegiate Professor of Law David L. Chambers at the Law School in January. Govender has been a professor in the Department of Public Law at the University of Natal, where he has taught constitutional, administrative and family law as well as evidence and criminal procedure. He is also a member of the South African

Human Rights Commission.

**Saul A. Green**, '72, joined Miller Canfield Paddock and Stone in September 2001 as director of the Minority Business Group. He also coordinates the firm's anti-racial profiling education and training programs for public law enforcement agencies and retailers. In addition, he is contributing to the firm's Litigation and Dispute Resolution Practice Group. Green was nominated United States Attorney for the Eastern District of Michigan by President William J. Clinton, confirmed by the Senate on May 6, 1994, and served until May 1, 2001. As United States Attorney he was chief federal law enforcement officer for the Eastern District of Michigan. He served as Wayne County Corporation Counsel from 1989 to 1993, having previously served as chief counsel, United States Department of Housing and Urban Development, Detroit Field Office from 1976 to 1989, and as an assistant United States attorney from 1973 to 1976. Green also attended the University of Michigan for his undergraduate studies and earned his B.A. in pre-legal studies in 1969. He teaches a seminar on Racial Profiling.

**Lawrence A. Hamermesh** is associate professor of law at Widener Law School's Delaware campus. He received a B.A. from Haverford College, and a J.D. from Yale Law

School. Following graduation from Yale, he worked as an associate attorney for Morris, Nichols, Arsht & Tunnell in Wilmington, Delaware, from 1976-84. He was a partner in the firm from 1985-94. Hamermesh joined the faculty at Widener in 1994 as associate professor of law. He is admitted to practice in Delaware. Hamermesh teaches and writes in the areas of: corporate finance, mergers and acquisitions, securities regulation, business organizations, the virtual chancery court, corporate takeovers, and equity/equitable remedies. Here at the Law School, he is teaching Corporate Finance and Enterprise Organization. Since 1995, Hamermesh has been a member of the Corporation Law Council of the Business Law Section of the Delaware State Bar Association, which is responsible for the annual review and modernization of the Delaware General Corporation Law. He is also president of ACLU Delaware and treasurer of Delaware Volunteer Legal Services and has been active in a number of professional and civic organizations.

**Alison Hirschel** received her B.A. from the University of Michigan and graduated from Yale Law School. She clerked for the Hon. Joseph S. Lord III in the U.S. District Court for the Eastern District of Pennsylvania. For 12 years, she worked at Community Legal Services in Philadelphia as a staff attorney, co-director of the Elderly Law Project, and

# Visiting, adjunct faculty

## FACULTY

deputy director. Since coming to Michigan, Hirschel has practiced elder law with Michigan Protection and Advocacy Service Inc. and the Michigan Poverty Law Project. Her practice has always included individual and impact litigation, legislative and administrative advocacy, and community education efforts. In 1997, she was named the first Yale Law School Arthur Liman Fellow. Hirschel also served as a Reginald Heber Smith Fellow and she has won a number of other awards for her advocacy for the poor elderly. She speaks and writes frequently about elder law and public interest law. Hirschel, who is teaching Law and the Elderly, has taught elder law at the Law School since 1998 and previously taught at the University of Pennsylvania from 1991-97.

**Gareth Jones** was educated at University College, London; University of Cambridge; and Harvard Law School. Professor Jones currently teaches at the University of Cambridge and also has taught in the United States at the Harvard, Berkeley, University of Texas, University of Chicago, and University of Michigan law schools. Here at the U-M Law School, he is teaching the seminar History of the Criminal Trial. He is a member of the American Law Institute and a Foreign Member of the Royal Netherlands Academy of Arts and Science, as well as Queen's Counsel and Fellow of the British Academy.

**Orit Kamir**, LL.M. '95, is a professor of law at the Hebrew University, specializing in interdisciplinary cultural analysis of law, law and film, and feminist legal thought. In her capacity as a feminist legal scholar and activist, Professor Kamir drafted a sexual harassment bill that was adopted by the Israeli Parliament and legislated into law in 1998. Since the legislation of the Sexual Harassment Prevention Law, Kamir has been actively engaged in oral and written presentation and explication of its new legal concepts to the Israeli public, academic, legal and otherwise interested, as well as to international forums of feminist legal scholars and activists. Kamir received her LL.M. and S.J.D. at the University of Michigan Law School, and wrote her dissertation in the field of law-and-literature under Professors James Boyd White and William I. Miller. Prior to that, she clerked in the Israeli Supreme Court and in the Israeli Parliament, and served as legal advisor to Israeli organizations such as the Israel Women's Network. Kamir is teaching Feminist Theory and Jurisprudence.

**Atsushi Kinami**, LL.M. '84, who is joining Professor Carl E. Schneider, '79, to co-teach Comparative Family Law, is a professor of law at Kyoto University, where he has taught since 1981; he became a full professor there in 1992. Professor Kinami earned his LL.B. at Kyoto University and then his LL.M. at the University of Michigan Law School. In

1997, he taught a course on the Japanese legal system at the U-M Law School, and he was a visiting research scholar here in 1999-2000. At Kyoto, he teaches American law and does comparative research on American law. Kinami and Schneider, the Chauncey Stillman Professor of Ethics, Morality, and the Practice of Law, are currently collaborating on research into why Japanese "bengoshi" decided to become lawyers and how they have made decisions about their careers.

**Marvin Krislov**, vice president and general counsel of the University of Michigan, is teaching a seminar on The Role of In-House Counsel. As general counsel for the University, he is responsible for the University's legal affairs, including establishing goals and strategies, serving as senior legal counsel to the Board of Regents and the University administration and its units, and managing the University's relationships with outside counsel. Krislov received a B.A. *summa cum laude* from Yale University in 1982. A Rhodes Scholar, he studied at Oxford University's Magdalen College, where he received an M.A. in modern history in 1985. He served as editor of the *Yale Law Journal* and earned a doctor of laws degree from Yale Law School in 1988. From 1988 to 1989 he worked as a law clerk for Judge Marilyn Hall Patel of the U.S. District Court in San Francisco. Prior to coming to

the University of Michigan, he was acting solicitor in the U.S. Department of Labor, and deputy solicitor, serving as the primary legal advisor to the Secretary of Labor. He also served as associate counsel in the Office of Counsel to the President, where he handled litigation and policy matters; was a trial attorney for the U.S. Department of Justice's Civil Rights Division, where he prosecuted racial violence and police brutality cases in grand jury investigations and at trials throughout the country; and taught at the National Law Center at George Washington University.

**Margaret A. Leary** is director of the Law Library. From 1973 to 1981, she served as assistant director and from 1982 through 1984 as associate director. She received a B.A. from Cornell University, an M.A. from the University of Minnesota School of Library Science, and a J.D. from the William Mitchell College of Law. She is teaching the seminar Advanced Legal Research.

**Andrea D. Lyon** is an associate clinical professor of law, director of the Center for Justice in Capital Cases at DePaul University College of Law, and director of the Clarence Darrow Death Penalty Defense College held each spring at the U-M Law School. She is teaching the practice simulation Criminal Trial Advocacy. Lyon graduated from Rutgers University in 1973 and from the Antioch

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## Visiting, adjunct faculty

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School of Law in 1976. She joined the Cook County Public Defender's Office that year, where she worked in the felony trial division, post conviction/*habeas corpus* unit, preliminary hearing/first municipal (misdemeanor) unit, and the appeals division. Her last position there was as chief of the Homicide Task Force, a 22-lawyer unit representing persons accused of homicides. She has tried more than 130 homicide cases, both while in the Public Defender's Office and since. She has defended more than 30 potential capital cases at the trial level and has taken 18 through penalty phase; she has won all 18. In 1990, she founded the Illinois Capital Resource Center and served as its director until joining the University of Michigan Law School faculty as an assistant clinical professor in 1995. A winner of the prestigious National Legal Aid and Defender Association's Reginald Heber Smith Award for best advocate for the poor in the country, she is a nationally recognized expert in the field of death penalty defense and a frequent continuing legal education teacher throughout the country. In 1998, she was awarded the "Justice for All" award at the National Conference on Wrongful Convictions and the Death Penalty.

**Osamo Morita** is a member of the Faculty of Law at the University of Tokyo, where he teaches classes in basic civil code (contracts and torts) and is involved in the Japanese law and economics movement. He is teaching Payment Systems with Professor Ronald J. Mann.

**Cyril Moscow**, '57, an adjunct professor at the Law School since 1973, is teaching Business Planning for Publicly Held Corporations. He is a partner at Honigman, Miller, Schwartz & Cohn in Detroit, where he practices corporate and securities law. He is the co-author of texts on Michigan corporate law and securities regulation, and is chair of the State Bar subcommittee on the revision of the Business Corporation Act.

**Steven Rhodes**, '73, is the Chief Bankruptcy Judge for the Eastern District of Michigan and serves on the Bankruptcy Appellate Panel for the Sixth Circuit. His undergraduate degree is from Purdue University. He formerly served as a law clerk for District Judge John Feikens, '41, as an Assistant U.S. Attorney, and as a U.S. Magistrate. He is a fellow of the American College of Bankruptcy, and a former associate editor of the *American Bankruptcy Law Journal* and the *Michigan Law Review*. Rhodes has lectured and written widely on bankruptcy law and procedure and has taught at the Law School since 1992. He is teaching Bankruptcy.

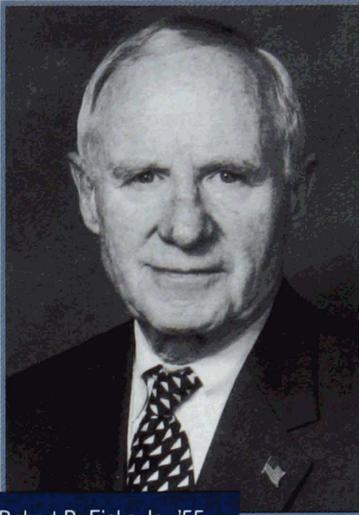
**Mark D. Rosenbaum** is general counsel for the American Civil Liberties Union in Los Angeles. He received a B.A. from the University of Michigan and a J.D. from Harvard Law School, where he was vice-president of the Harvard Legal Aid Bureau. He served as staff counsel for the American Civil Liberties Union from 1974 to 1984 and has been general counsel from 1984 to the present.

Rosenbaum has taught at Loyola Law School, Harvard Law School, and the University of Southern California Law Center. He began teaching at Michigan in 1993. His areas of expertise include poverty and homelessness legislation, immigrants' rights, workers' rights, civil rights, and First Amendment issues. He is teaching Fourteenth Amendment and a seminar, Public Interest Litigation.

**Daniel Rothenberg**, who earned his Ph.D. at the University of Chicago, is an assistant professor at the University of Michigan and a Fellow in the Michigan Society of Fellows. He has also taught in the Human Rights Program

at the University of Chicago and in the Department of Criminology, Law and Society at the University of California, Irvine. Rothenberg conducts research on a variety of issues including: international human rights, transitional justice, truth commissions, labor migration to the United States, and social impact of state terror and institutionalized violence. He has worked as a consultant for a number of human rights and democratization projects in Latin America. He teaches on Genocide, Tribunals, and Truth Commissions.

**Edward R. Stein**, '66, specializes in civil litigation at Stein, Moran, Raimi & Goethel in Ann Arbor. He is a fellow of the American College of Trial Lawyers, a member of the American Board of Trial Advocates, and is listed in *The Best Lawyers in America*. He regularly teaches for the National Institute for Trial Advocacy, and is the recipient of its Distinguished Service Award and Prentice Marshall Faculty Award. He frequently lectures on various aspects of trial practice, and most recently has lectured extensively on the use of electronic demonstrative evidence. Stein regularly teaches Trial Practice at the Law School.



Robert B. Fiske Jr., '55

## Robert B. Fiske's generosity aids graduates, government

"Synergy" is a word that Robert B. Fiske Jr., '55, uses often when he talks of the complementary nature of private and public practice. A senior member of Davis Polk & Wardwell's Litigation Department in New York, Fiske has spent more than 40 years moving between the private and public aisles. He knows well that public and private legal work are the fraternal twins of the legal profession.

Either his private or public career would be the envy of any lawyer. He's done both with great success — representing high profile clients like General Electric, Exxon, Clark Clifford, and others, as well as serving as an Assistant U.S. Attorney, U.S. Attorney, Independent Counsel, and, more recently, a member of the commission headed by Judge William Webster to review the FBI's internal security procedures in the wake of the Robert Hanssen spy case.

"It energizes you to move between the private and public spheres," Fiske says, leading up to the use of his favorite word: "There's a synergy between them — and this is something I talk about to law students all the time. The experiences I had in private practice made me do a better job in the government positions. Conversely, the experiences I had in public service significantly enhanced my private practice."

In fact, he recalls, he just had completed four years as U.S. Attorney for the Southern District of New York when he was called on for his successful defense of

Babcock and Wilcox against General Public Utilities in the \$4 billion suit that grew out of the Three Mile Island nuclear plant accident in 1979. After considering several attorneys, Babcock and Wilcox settled on him, Fiske explained. "They said, well, he seems to have a pretty good track record as a U.S. Attorney."

"On a broader basis, I think it's very helpful for people in government to have had the benefit of experience in the private sector. It gives them a deeper, more rounded experience and enables them to make more balanced judgments."

Talking about the Michigan Law School and his time in public service, Fiske says, "These are two of the things that have meant the most to me in my career."

In recognition of these influences, Fiske has given the Law School a gift of \$2 million to establish an endowment to support three Law School graduates each year who want to go into government legal work. Each Robert B. Fiske Jr. Fellow will receive a \$5,000 first-year stipend and, for three years, debt repayment assistance on the full amount of all college and law school educational loans.

"The rising costs of legal education make it more difficult for today's graduates to enter government service," Fiske says, and he hopes his gift will help them take such posts. "My endowment basically addresses the financial considerations," he explained. "I think it is harder today for people because they have loans that put them in a more difficult position than it was for a lot of us 30-40 years ago."

Fiske said he had been considering his gift for some time, but believes it is made more significant by the terrorist attacks of September 11. "This benefits both the Law School and the government," he noted. "It will give Michigan Law School graduates the opportunity to have a public service experience that otherwise they might not have been able to afford. It also will give the government a continuing flow of highly-talented and highly-motivated young lawyers."

Fiske points out that it is an advantage for someone who is going to do public service to do it early. If you get early public service in government, that often provides the basis from which you can come back later in a higher, more responsible position.

That's how it was for him, he explained. "Very early in my career, I was an Assistant U.S. Attorney [for the Southern District of New York]; if I hadn't had that experience I wouldn't have later been named U.S. Attorney, or Independent Counsel."

Law School Dean Jeffrey S. Lehman, '81, praised Fiske's role in helping Law School graduates to enter government service. "Bob Fiske personifies the ideal of a lawyer as a public servant, both through his government service and in service to the legal profession," Lehman said.

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The three **Fiske Fellowship** recipients are...



Steven Y. Bressler, '01

**Steven Y. Bressler, '01**, who will be working at the U.S. Department of Justice, Civil Division, Federal Programs Branch. Bressler will be an Attorney General's Honors Program Trial Attorney. He will defend U.S. government programs from constitutional and other civil challenges as lead counsel at trial and occasionally on appeal.

**Undergraduate Degree:** Oberlin College, B.A. in Economics

**Judicial Clerkship:** With the Hon. Norma L. Shapiro, U.S. District Court for the Eastern District of Pennsylvania, 2001-2002 term.

**Comment:** *"Sometimes, I am sure I will find myself defending the government when my personal politics would have me at the plaintiffs' table. But I believe in government, and so I believe the government will be a very worthwhile client to represent. Through government we may act collectively to change the world, protect the poor, guarantee civil rights and a living wage (or, as many argue, the opportunity to grow your business freely), and channel power in favor of those who are otherwise powerless. It is through government that we may try, at least, to make cities, our nation, and the world better."*



Bethany Buck Hauser, 3L

**Bethany Buck Hauser, 3L**, who will be working with the U.S. Department of Justice Tax Division. She will serve as an appellate or civil trial attorney, depending on staffing needs.

**Undergraduate Degree:** Carleton College, B.A. *magna cum laude* in English

**Comment:** *"In the end, every program that relies on government spending depends on the government's ability to collect taxes. Perhaps more importantly, many of the values of our society are written into the tax code. From tax code provisions that aim at redistributing wealth, to those which reward a particular type of economic behavior — whether charitable giving, investment in military weapons research, or offering pension benefits to employees — to those provisions which aim merely at keeping the tax code from distorting economic activity by driving corporate decision-making, the sensible application of that provision depends upon the intelligent enforcement and interpretation of the code. . . ."*

*"It may sound strange to be so enthusiastic about it, because, well, it's taxes. But to me it's an opportunity to work on big, complicated, important cases that come out right only because some of the best legal minds out there are working on both sides of the problem."*



Raja Raghunath, 3L

**Raja Raghunath, 3L**, plans to work with the National Labor Relations Board (NLRB) as a field attorney. His duties will include investigating petitions concerning the representation of employees; conducting hearings under the National Labor Relations Act and the Fair Labor Standards Act; investigating charges of unfair labor practices; appearing as counsel in NLRB hearings and litigation; and involvement in "all necessary legal services."

**Undergraduate:** Duke University, B.A. in Public Policy Studies and English

**Comment:** *"I am committed to working in the field of labor law and for the enforcement of labor rights domestically, and I eventually plan to apply that work experience to the enforcement of labor standards internationally in the context of international trade law and regulation."*

*"I have always been interested in social justice, and am committed to working for its achievement both in the country of my birth and internationally. I chose law school so that I could learn the skills necessary to further my policy-making abilities, and to discover the specific ways in which I could best direct my energies into the areas of greatest interest to me. I have come to regard labor law, and more broadly the enforcement of labor rights on a domestic and global scale, as such a precise area of interest and commitment."*



PHOTO BY MARTIN VLOET/UNIVERSITY OF MICHIGAN PHOTO SERVICES

Benefactor Robert B. Fiske Jr., '55, seated at center, poses with the first Fiske Fellows and alternates prior to dining together in Ann Arbor in March. Next to Fiske are Frank Karabetsos and Bethany Buck Hauser. Standing behind them are, from left, Steven Y. Bressler, Raja Raghunath, and Jon C. Lewis Clark.

*Two alternates also were selected. They are...*



Frank Karabetsos, 3L

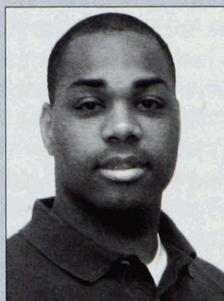
**Frank Karabetsos, 3L**, who plans to work in the executive branch of the federal government

**Graduate and Undergraduate Degrees:** M.A. in International Relations, University of Chicago; B.A. in Philosophy and English Literature, University of Michigan

**Legal Clerkships:** Clerk to the Hon. Edward A. Quinnell, 25th Judicial Circuit, Marquette, Michigan; law clerk with International Law Commission of the United Nations, Geneva, Switzerland; and law clerk with the Public Defender Service for the District of Columbia, Washington, D.C.

**Comment:** *"Though the United States comprises one sovereign nation among many, globalization increasingly connects us within the larger web of the international community. We must employ our political, economic, and technological power to deter and prevent terrorism and aggression, while encouraging international cooperation, democracy, and freedom. In essence, we need leaders in our government to fulfill our nation's responsibility to lead the international community. . . ."*

*"Though public service work exacts financial sacrifices, I made the decision long ago to embark on such a career. My education and three legal clerkships in public service institutions have prepared me for this journey. The challenge of working on exciting and important issues, serving my country with honor and distinction, and striving to achieve a better life for all our citizens offers rewards money cannot buy."*



Jon C. Lewis Clark, 3L

**Jon C. Lewis Clark, 3L**, (dual J.D./M.P.P. degree) will be an Assistant Corporation Counsel within the Legal Counsel Division of the New York City Law Department. The division responds to requests for legal advice from elected officials and city agencies, drafts state and local legislation proposed by the mayor and city agencies, and reviews rules proposed by city agencies.

**Undergraduate Degree:** Dartmouth College, B.A. in Government with minor in Sociology

**Comment:** *"Over the past six years, I have spent much of my time working and learning from lawyers and judges about ways in which I can devote my life to the community through public service. In our discussions, many of these professionals belabor the lack of members of the legal community willing to make the necessary sacrifices. Having listened, and hopefully learned from their years of experience, I have decided that helping the community is something I should do with my own life."*

*"I am pursuing a legal career in public service because I believe that only through such a career can I begin to point my life down this principled path. I now have the opportunity to reach back and strengthen the foundation of my community and other communities in need so that others may raise themselves up as well."*

# FROM RUSSIA WITH...

PHOTO COURTESY OF JEFFREY KAHN



Third-year law student Jeffrey Kahn stands outside the offices of the president of Bashkortostan, one of the Russian Federation's ethnic-based republics. Kahn reports on the 1998 Bashkir presidential election in a chapter of his forthcoming book *Federalism, Democratization, and the Rule of Law in Russia*, to be published this spring by Oxford University Press.

# LAW?

*Third-year law student writes critical study of the new Russian federalism*

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“What an exciting place,” he said of the new Russia. “After spending my entire secondary school education in the height of the cold war, just as I was becoming politically aware, everything was suddenly changing.” He knew then that he wanted to follow where the end of the Soviet Union left off.

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## *A designer election*

Whatever democracy might mean in Moscow, autocracy is alive and well in Bashkortostan, an internal republic in central Russia roughly the size of France. President Murtaza Rakhimov has ruled the republic since the Soviet era. But in 1998, Rakhimov faced a potentially serious election challenge. How to ensure victory?

Being a sophisticated autocrat, Rakhimov knew that crude ballot stuffing just wouldn't do. He began by personally appointing half of the electoral commission that oversaw the race. Next he drove away potential adversaries. Competitors' campaign workers were threatened and independent journalists beaten, their print-runs confiscated. Newspapers, radio and television were Rakhimov's exclusive realm. He even controlled the skies: the republic's official airline distributed his campaign literature in-flight from Moscow. Rakhimov fulfilled the constitutional requirement for contested elections by ordering his Minister of Forestry to oppose him.

On election day in Bashkortostan the voting process was squeaky clean. After all, everything was decided weeks earlier. In an interview with the chairman of the election commission, I posed a hypothetical about one erstwhile opponent, Aleksander Arinin, a man with democratic credentials whose candidacy was registered and then revoked three successive times during the campaign. What would happen to an absentee ballot cast for him a fortnight before election day (when he was a registered candidate)? Without pausing to think, the chairman replied that such a vote was impossible: no ballots had ever been printed with Arinin's name on them. Somehow, the authorities already seemed to know that it wouldn't really matter.

To no one's surprise, Rakhimov won with over 70 percent of the vote. It was little consolation that “Against All Candidates” took second place, beating the hapless Minister of Forestry by eight points. After all, the minister had joked with reporters at a polling station on election day, what made them so sure he was voting for himself?

— Jeffrey Kahn

**Think back for a moment to those heady days: the Berlin Wall coming down. The Soviet "satellite" ring unlinking. Former dissidents like playwright Václav Havel coming to power. Mikhail Gorbachev beginning a revolution that would eventually lead to the collapse of the Soviet Union . . . and the end of the cold war.**

These are the kinds of events that ignited Jeffrey Kahn's curiosity about Russia and things Russian. It's a fascination that has shaped his undergraduate, masters, doctoral, and, since 1999, his legal studies. Today he is a third-year law student about to graduate and also the author of a pioneering book on the Russian Federation to be published this spring by Oxford University Press.

Kahn's book, *Federalism, Democratization, and the Rule of Law in Russia*, already is drawing pre-publication praise from experts in the field. "I have not seen a better account, or a more perceptive one, in any language," William E. Butler, a renowned expert on Russian law who teaches at the University of London, says of Kahn's account of the collapse of the Soviet Union and the post-Soviet period.

In an evaluation for the June 2002 "Book Review" issue of the *Michigan Law Review*, Butler writes: "Dr. Jeffrey Kahn's admirable and thoroughly researched study offers invaluable materials and insights on what has been transpiring in the world of Russian federalism (and beyond) from the earliest Soviet days to the present, with particular emphasis and depth on the post-soviet decade. . . . Kahn's study is the best and most thoughtful account of the early experience."

Writing the book demanded a rigorous time-share with his legal studies, Kahn confesses. But his legal studies also deepened his understanding of the trials and evolution of the Russian Federation. Professors Daniel Halberstam, Sallyanne Payton, Brian Simpson, Eric Stein, '42, and others at the Law School and University offered him advice and support in the final

stages of the manuscript. He also likes to joke that his book's acknowledgments are probably the first in an Oxford-published book to be datelined Muskegon, Michigan, his hometown.

"What an exciting place," he said of the new Russia. "After spending my entire secondary school education in the height of the cold war, just as I was becoming politically aware, everything was suddenly changing." He knew then that he wanted to follow where the end of the Soviet Union left off.

So Kahn headed for Yale, where he studied Russian and made the first of many research trips to Russia — to the consternation of family and friends anxious about Russia's often violent politics and rising crime. But, he reminds you, these were the days when Boris Yeltsin "came to power standing on a tank." Of course, at that time, Yeltsin was still a symbol of hope in democracy, never before experienced in Russian history.

From Yale, Kahn went to St. Antony's College at Oxford University, where he earned a masters (with distinction) and a doctorate before entering law school. His doctoral dissertation, "A Federal Facade: Problems in the Development of Russian Federalism," won the Hodgson Martin Prize for Best Dissertation in the Centre for Russian & Eastern European Studies at Oxford.

During this time he did research and traveled widely in the Russian Federation — "As far east as Yakutsk, six time zones from Moscow, and as far south as Elista, in the North Caucasus" he notes — and talked with scores of government leaders and citizens, including the presidents of Tatarstan and Kalmykia. After enrolling at the Law School, he has three times been asked by the London-based AIRE Centre to help organize and lecture at the Council of Europe's summer school in Moscow for Russian human rights lawyers. Following a federal clerkship in New York after graduation, Kahn would like to combine his interest in Russia and comparative law in government or academia.

He has also delivered lectures on Russian politics in the United States, Britain, Russia, and Finland, and published articles on Russian federalism in several

journals. He has a chapter, "What is the New Russian Federalism?" in (Archie Brown, ed.) *Contemporary Russian Politics: A Reader* (Oxford University Press, 2001). His analysis of Russian President Vladimir Putin's federal reforms appeared in February in Radio Free Europe/Radio Liberty's *Russian Federation Report*, and this spring his note on Russia and the European Court of Human Rights will be published by the *Michigan Journal of Law Reform*.

Kahn's forthcoming book began with "an undergraduate thesis I wrote at Yale in 1993 on conceptions of sovereignty at play in the politics of building the new Russia," he explains in his acknowledgments. "As I worked, Boris Yeltsin's conflict with the Russian parliament grew increasingly intense, ultimately culminating in a tank attack against the Russian White House, where the parliament was headquartered."

The Russian experiment in federalism is an ongoing one, Kahn says. For example, by the time he had entered the Law School and begun adapting his dissertation into a book, Putin had proclaimed that he would create a "dictatorship of law" in Russia. Kahn delved into the Law Library's extensive Russian law collection to write a new chapter to analyze these changes.

Today's Russian Federation, just as the U.S.S.R. before it, is an astonishingly varied country, Kahn explains. In some ways the Russian Federation is even more complex than its predecessor U.S.S.R., he notes. "During the cold war, few scholars were permitted to study or travel outside of Moscow or Leningrad, but the Russian Federation has 89 constituent units, including 21 so-called republics based on non-Russian ethnic groups within the Federation. From the point of view of comparative politics and law, Russia has a great deal to offer."

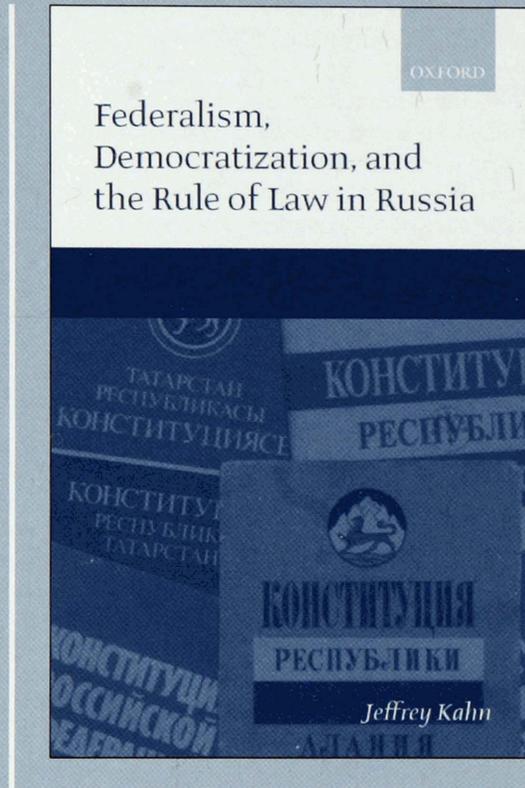
"The Russian Federation as we know it today was built in the rubble of the Soviet empire," he says. "I decided early on that whether the Russian Federation would hold together or break apart would largely depend on these ethnic republics." Kahn's book is a study of the validity of that prediction.

(Go to next page for an excerpt from Kahn's book.)

# Federalism and the Russian Federation

The following excerpt is from *Federalism, Democratization, and the Rule of Law in Russia* (forthcoming 2002, Oxford University Press), by third-year law student Jeffrey Kahn. This excerpt appears with permission. Footnotes and citations have been omitted.

By Jeffrey Kahn



As Oliver Wendell Holmes observed, “[t]he interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints.” Russian federal governance, to put it mildly, does not suffer from arthritis.

What is the relationship between federalism, democracy and the rule of law? It has frequently been asserted, first, that federal government is possible in a non-democratic regime, and second, that this holds true even when fundamental legal principles are absent. The Union of Soviet Socialist Republics is cited as the classic example of such a state structure. I dispute the validity of these theoretical and empirical assertions. Like a Potemkin village — the fabled sham settlements built by the Empress Catherine’s favorite minister to deceive foreigners touring her conquered lands — the Soviet Union was a federal facade that hardly masked the most centralized state in modern history. This facade has had tremendous repercussions for the subject of this book: the development of post-Soviet Russian federalism. Unlike Potemkin’s false fronts, so quickly dismantled once his *paramour* had passed by with her court, the institutional and conceptual architecture of Soviet “federalism” was not so easily deconstructed following the collapse of the Soviet monolith. The keystone republic of the Soviet Union and its acknowledged successor — the Russian Soviet Federated Socialist Republic (RSFSR) — was itself a multinational state partially comprised of a score of so-called “Autonomous Soviet Socialist Republics” (ASSRs). When the Soviet Union collapsed, the RSFSR retained the fundamentals of the old Soviet superstructure, building the new Russian Federation upon its crumbling foundations. The magnitude of such an undertaking is difficult to conceive: a new state was built almost overnight in both the real and ideological rubble of the *ancien régime*.

This book is a study of Russian (i.e. *Rossiiskii*) federalism, on its own terms and in comparative perspective with other federal systems. What is this "new" Russian federalism? How have its institutions, old and new, influenced the development of Russia's new state system, its attempts at democracy, and the development of the rule of law? What effect has the division of federal and regional political agendas had on Russia's beleaguered transition from authoritarianism? Is Russia what its constitution, in its very first words, purports it to be: a democratic, federal, rule-of-law state?

This book relates to several debates in political science and law. In a departure from the classic exposition of federal theory by William Riker, I dispute the assertion that federalism is possible in an authoritarian environment. The immediate implication of this approach is the rejection of the surprisingly unchallenged view of the Soviet Union as an authoritarian, yet nevertheless federal, system of government. The outward display of federal structures was just a thin veneer that masked a highly centralized state, one in which the vanguard role of the profoundly anti-federal Communist Party was enshrined at the heart of its Potemkin constitution. Of course, no serious scholar would dispute the fact that the Soviet Union was an authoritarian (and, at times, terrifyingly totalitarian) state. However, although few took the claim to be a "people's democracy" at face value, the Soviet assertion to have adopted a federal system of government was rarely the subject of critical study.

The nature of federal systems places special emphasis on written compacts, formal structures, and institutional arrangements. This book combines a range of methodologies — most obviously those of comparative politics, federal theory, law, and post-Soviet area studies — but orients itself primarily within a legal-constitutional, institutionalist approach. That is, it seeks to combine the structuralist and legalist emphases of the "old institutionalism" with an awareness of the influence of both individual and institutional actors, the changeable nature of formal and informal

political "rules of the game," and the interplay between state and society that are all hallmarks of the "new institutionalism."

Comparative questions of federalism have long fascinated both political scientists and legal scholars. Amazingly, however, these two disciplines have each developed extensive scholarly literatures on the subject that scarcely acknowledge one another. The "greats" do not engage in cross-disciplinary discussion, as even a cursory glance at the bibliographies of specialists in either field will confirm. In fact, within disciplines, the harshest criticism seems to involve insinuations that a scholar is over-employing the methodology of the other discipline. The result has been a terrible loss for both areas of scholarship.

One of the major goals of this book is, where appropriate, to bridge that gap, bringing together the insights of comparative law and comparative politics. American legal thinking (understandably) has focused on the specific constitutional problems uniquely experienced in the American experiment with federal government. Nevertheless, the insights developed in this field on the theoretical and philosophical nature of federalism put forward in treatises, law reviews, and opinions of the federal circuit courts and U.S. Supreme Court are of tremendous value to comparative political scientists interested in all federal systems. Perhaps counter-intuitively, area-studies specialists on Russia and the post-Communist states of Eastern Europe can also benefit from this scholarship — not to mimic the American approach (a very dangerous illusion), but to adopt and adapt a rich learning experience of how to combine the rule of law with federal democracy.

The British legal scholar Lord Dicey noted that citizens in a federation become a "nation of constitutionalists." Post-Soviet legal scholars, at the command of newly elected (but rarely new) political elites, drafted the institutions and structures of a new legal order at a furious rate of speed. As another British legal scholar, Professor Bernard Rudden, explained: "During the last years of its life the Soviet Union turned to law like a dying monarch to his withered God . . . with the fervor of one who sees in legislation the path to

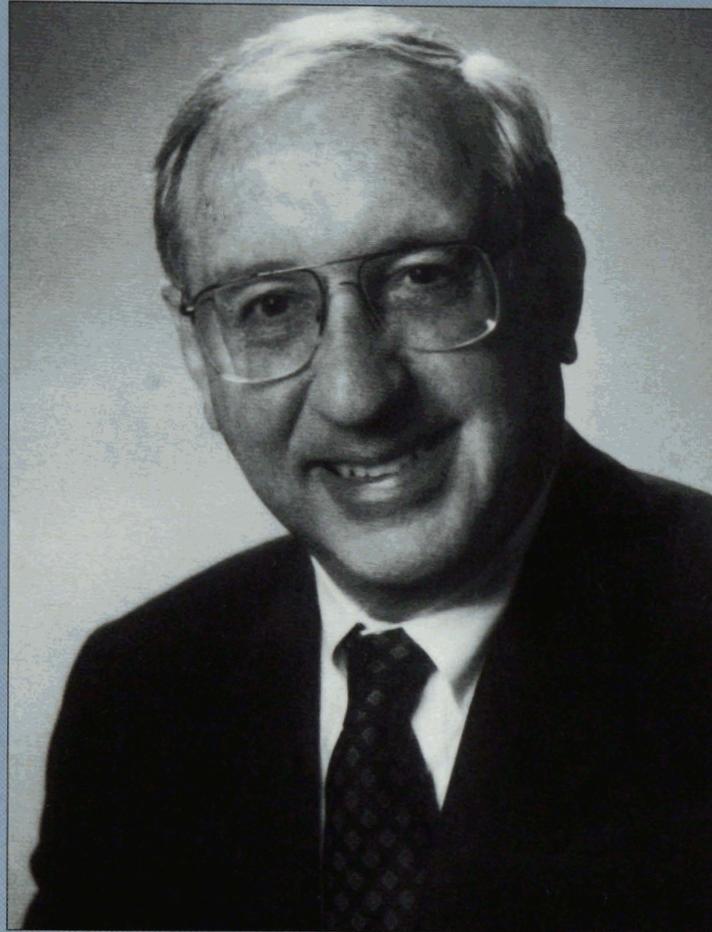
paradise." Although this speed was not always conducive to exemplary legal draftsmanship, the phenomenon provided a bounty of new political and legal documents to study. Declarations of sovereignty, constitutions, bilateral treaties, and judicial opinions are the core of primary sources around which this book is structured. These documents provide a rich opportunity to compare the underlying principles of this federation with the foundations of other federal systems, as well as to examine the success of the Russian Federation in meeting its own officially documented aspirations.

Hardly any of these documents are available in English translation. Many of them have not even been compiled in Russian collections. Extensive use has been made by the author of the embassy-like "permanent representations" (*postoiannye predstavitel'stva*) that republics operate in Moscow. In addition, extended stays in many of the republics have provided access to official and unofficial periodicals and in some cases to the stenographic records of republican parliaments. (In two republics, legislative sessions were observed in action.)

As important as official documents certainly are, their formal prose may nevertheless conceal how institutions function in practice. As Oliver Wendell Holmes observed, "[t]he interpretation of constitutional principles must not be too literal. We must remember that the machinery of government would not work if it were not allowed a little play in its joints." Russian federal governance, to put it mildly, does not suffer from arthritis. Interviews with federal and republican officials, opposition politicians, judges, lawyers, legal academics, and other political actors have been used to augment written primary sources. In two cases, the presidents of republics were interviewed (Mintimer Shaimiev of the Republic of Tatarstan, and Kirsan Ilumzhinov of the Republic of Kalmykia). Interviews were conducted between June 1995 and December 1998 over the course of five research trips to the far compass points of the Russian Federation.

## BUTZBAUGH, '66, WINS MICHIGAN BAR'S TOP HONOR

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*Alfred M. Butzbaugh, '66*

Former State Bar of Michigan President Alfred M. Butzbaugh, '66, has won the Roberts P. Hudson Award, the State Bar's top honor for "unselfish rendering of outstanding and unique service to and on behalf of the State Bar of Michigan, the legal profession and the public."

Butzbaugh, senior partner in Butzbaugh and Dewane PLC in St. Joseph, Michigan, served as president of the Bar in 1999-2000. He previously had served the Bar as treasurer and vice president.

A longtime advocate of equal access to justice, Butzbaugh chaired the State Bar's Access to Justice for All Task Force from 1996-99.

He has served as president of the Berrien County Bar Association and was a member of the Representative Assembly

representing the county from 1973-79 and 1996-present. A fellow of the Michigan State Bar Foundation and the American Bar Association Foundation, he also is a member of the State Bar of Texas, the American Bar Association, and the Federation of Insurance and Corporate Counsel.

In his home community, he helped initiate Youth Sports for Benton Harbor, an endowment program to establish sports programs for children, and has been a mentor for the Benton Harbor Area Schools.

The Hon. Victoria A. Roberts, U.S. District Judge for the Eastern District of Michigan, also received the Hudson Award. Roberts, president of the State Bar of Michigan in 1996-97, was the first African American woman to hold that position. She was named to the bench in 1998.

ABA'S INDIVIDUAL RIGHTS  
SECTION HONORS  
**JOHN H. PICKERING, '40**

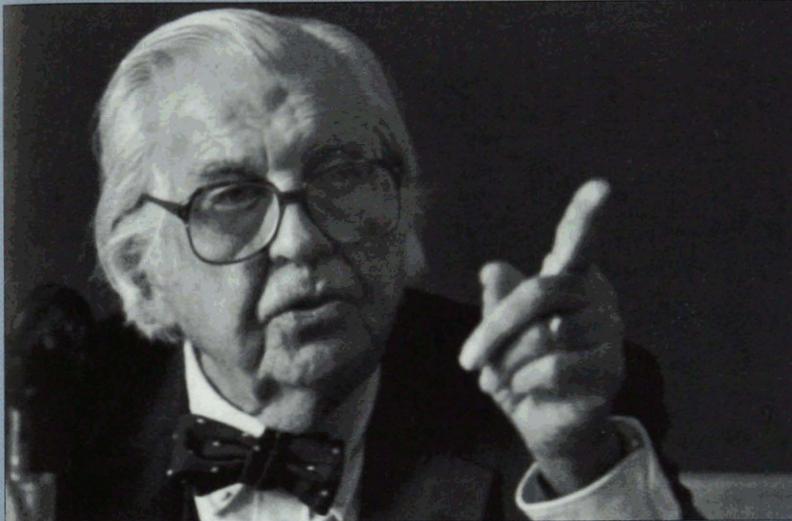


PHOTO BY PETER VATES

John H. Pickering, '40

John H. Pickering, '40, a national leader in advocating for the legal rights of underrepresented persons, is the 2002 recipient of the Robert F. Drinan Distinguished Service Award from the American Bar Association Section of Individual Rights and Responsibilities.

Pickering is a founding partner of the Washington, D.C., law firm of Wilmer, Cutler & Pickering. The award recognizes individuals whose sustained commitment to the ABA section has advanced its mission of providing leadership to the legal profession in protecting and advancing human rights, civil liberties, and social justice. It was created last year to honor Drinan, a past chair of the ABA section, former member of Congress, and professor at Georgetown University Law Center.

"John has dedicated himself to making legal services available to those who would not otherwise have them, and through those legal services countless individuals have asserted their rights to be treated with fairness and dignity and to be protected against arbitrariness or abuse. He is a living testimonial to the preservation and advancement of individual rights and responsibilities that our section is committed to uphold," said Zona F. Hostetler, section chair.

Pickering was a founding member of the Section in 1966 and is the ABA Senior Lawyers Division's liaison to the section's governing council and to the ABA Coordinating Group on Bioethics and the Law. A past chair of the Senior Lawyers Division, Pickering represents the division in the ABA House of Delegates. He also is a member of the ABA Standing Committee on Legal Aid and Indigent Defendants and a former member of the ABA Standing Committee on Lawyers' Public Service Responsibility.

Pickering chaired the ABA Commission on Legal Problems of the Elderly from 1985 to 1993 and again in 1995-96. Under his stewardship, the commission developed programs, materials, and information addressing particular legal needs of elderly persons; spearheaded ABA development of policies on elder law and other issues affecting the elderly, such as access to health care; and worked to enhance access to legal services for elderly persons nationwide.

Pickering also has been influential in encouraging lawyers to perform free legal service for low income persons and in efforts to improve the administration of justice. In 1999, he received the ABA Medal, the association's highest honor.

**COMMEMORATION**



PHOTO BY GREGORY FOX

Judge Avern L. Cohn, '49, holds a portrait of his father, Irwin I. Cohn, '17. At right is Reuven S. Avi-Yonah, the Irwin I. Cohn Professor of Law. Cohn and Avi-Yonah are shown at a reception at Inglis House earlier this year to honor Avern Cohn for his gift to establish the professorship in honor of his father. Judge Cohn, of the U.S. District Court for the Southeastern District of Michigan, also brought to the reception the framed certificate of his father's admission to practice law. Irwin I. Cohn graduated from the Law School before he was 21; the certificate is dated September 25, 1917, Irwin Cohn's 21st birthday and the first day that he legally could practice law.

**OFFICE OF PUBLIC  
SERVICE ROLLS  
OUT PAGE FOR  
GRADUATES**

Law School graduates interested in public service work have a new resource made available through the Office of Public Service (OPS).

Visit [www.law.umich.edu/CurrentStudents/PublicService/alumni.htm](http://www.law.umich.edu/CurrentStudents/PublicService/alumni.htm) for job postings on JobNET, links to other postings, and OPS Director Rob Precht's *Going Public: A Lawyer's Primer for Finding a Second Career in Public Service*. The Primer's 120-plus pages offer information to assist with analyzing your skills and assessing your appropriateness for a career shift.

## JEAN LEADWITH KING, '68

HONORED AS CHAMPION  
OF WOMEN'S EQUITY

PHOTOS BY BILL WOOD/UNIVERSITY OF MICHIGAN PHOTO SERVICES



Ann Arbor attorney Jean Leadwith King, '68, honored in January for a career dedicated to advancing equality for women.

The stories about Jean Leadwith King, '68, are legion.

- There's U-M softball coach Carol Hutchins' tale of being a young Michigan State basketball player who was grateful to be playing and never had thought about inequities in relation to male athletes — until she met King. The attorney's questions were simple and direct, Hutchins recalled: Do women athletes have the same food allowance as men? Do women athletes travel on buses like the men, or in vans? Is women's travel lodging two to a room, like the men's, or four? "The law only works if you use it," King quickly taught Hutchins and her teammates.
- Or Vicki Neiberg, founder of the Alliance to End Sex Discrimination at Michigan State University, a friend and disciple of King who confesses that "if you have worked with Jean, your work is never done."
- Or Ann Arbor attorney Barbara Kessler, who once told the *Detroit Free Press* that "people don't realize that many of the blessings that exist for young women in sports today are there in large measure because of the clanging of the chains by Jean King. Not only has she worked for equity for women in sports and education, but she has worked hard to advance women in the legal profession. She is really an example for us all."

These and more than 100 other friends and admirers packed a room in the Michigan League in January to honor King in a program sponsored by the University of Michigan's Center for the Education of Women and the Institute for Research on Women and Gender. Doctoral student in history Eric A. Stein (no relation to Law Professor Emeritus Eric Stein, '42), who wasn't born yet when King began her work for women's equity, noted how King has "served as a personal example of affecting change."



Laughter abounds as Jean Leadwith King, '68, opens a gift to reveal a long chain. The chain refers to the compliment to King from a fellow attorney: "She rattled our chains." At right is Carol Hollenshead, director of the Center for the Education of Women.

He should know. His Working Paper #63, "Women's Activism Against Sex Discrimination: The 1970 HEW Investigation of the University of Michigan," details the watershed case that eventually led to passage of Title IX guaranteeing gender equity in education.

Prepared under a grant from the Institute for Research on Women and Gender, Stein's research traces the groundbreaking work that King led against sex discrimination at the U-M. "The Michigan case — the first investigation of a public university — set the tone for investigation of other universities and helped to establish sex discrimination as a legitimate issue of concern for university employees, students, and administrations," Stein noted in his draft.

Other speakers included CEW Director Carol Hollenshead; U-M Regent Rebecca McGowan; and State Senator Alma Wheeler Smith, who also read a letter from U.S. Rep. Lynn Rivers. In addition, King received a framed resolution from Washtenaw Community College, where she has taught her "Women and the Law" course for many years.

"Every time a woman cracks the glass ceiling I applaud Jean King," said Smith. "Every time a women is elected to office in Michigan I applaud Jean King. The thing I learned from Jean King is that we can't wait for justice, fairness, and equity, because if we sit and wait they will pass."

Said McGowan: "I'm here to thank you for making this a stronger and far better university than it otherwise could have been."

King has practiced law in Ann Arbor since graduating from the Law School. She and her husband, John, have three children, one of whom, Nancy King, also is a Law School graduate. Nancy King, '87, is an assistant dean at Vanderbilt University Law School and co-author of a criminal procedure casebook with Alene and Allan F. Smith Professor Emeritus Jerold H. Israel, Clarence Darrow Distinguished University Professor Yale Kamisar, and Wayne R. LaFave of The Center for Advanced Study at the University of Illinois Urbana-Champaign.

Jean King founded the Women's Caucus of the Michigan Democratic Party, the first women's caucus in a major U.S. political party. She was elected to the Michigan Women's Hall of Fame in 1989 and served on the Federal Glass Ceiling Commission during the 1990s. She co-chaired the Michigan Abortion Referendum Campaign

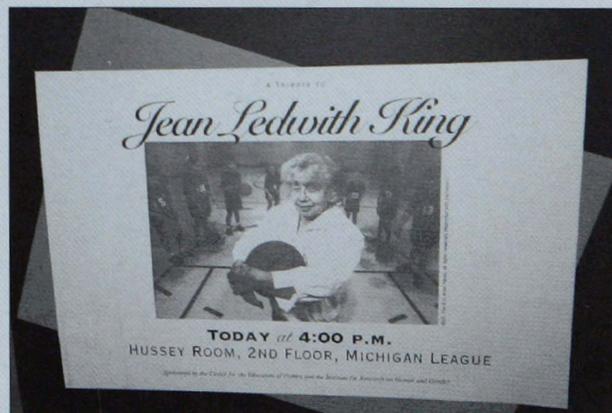
in the early 1990s and helped found the Religious Coalition for Abortion Reform in 1973.

And she has not slowed. Last year she led the successful legal battle that forced Huron High School in Ann Arbor to upgrade its facilities for female softball players to equal those for men at the same school. She currently is leading the battle to force the Michigan High School Athletic Association to schedule the same men's and women's sports during the same seasons.

"What Jean does has an effect in 50 states and all over the world," said Neiberg.

As for King, when she finally got her turn to speak, her words were filled with thanks to those who had worked with her and to her family, who had made her work possible. Oh, yes, she advised, do compare the salaries of men and women track coaches. And finally, "Thank you very much. I just hope you don't believe everything you heard."

Sure.



## FRANK H. WU, '91: YELLOW BELONGS IN THE CONVERSATION

Asian Americans occupy a limbo in the black-white dialog that characterizes race relations in the United States today, Howard University Law Professor Frank H. Wu, '91, says in his newest book, *Yellow: Race in America Beyond Black and White* (Basic Books, 2002).

"My premise is straightforward," Wu writes. "Race is more than black and white, literally and figuratively. Yellow belongs. Gray predominates." Three to four percent of the U.S. population is Asian American, second only to Hispanics in the rate of growth, but "Asian Americans have been excluded by the very terms used to conceptualize race," Wu says.

"People speak of 'American' as if it means 'white' and 'minority' as if it means 'black.' In that semantic formula, Asian Americans, neither black nor white, consequently are neither American nor minority. I am offended, both as an academic and as an Asian American. Asian Americans should be included for the sake of truthfulness, not merely to gratify our ego. Without us — needless to say, without many others — everything about race is incomplete."

Wu has taught law at Howard University since 1995, and often has spoken at the U-M Law School and elsewhere. A frequent commentator on minority issues and civil rights for print and broadcast media, Wu has written book chapters on affirmative action and immigration and is co-author of *Race, Rights, and Reparation: Law and the Japanese American Internment* and *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice*, a policy analysis of affirmative action.

*Yellow* blends Wu's first-person accounts — of being the only Asian American youngster growing up in a Detroit suburb, as a legal scholar and as a

citizen — with social science and legal research that documents the growing numbers and role of Asian Americans in U.S. life — the World War II internment camps, the Los Angeles riots in 1992, the harmful "model minority myth" that stereotypes Asian Americans as over achievers, the anti-Asian sentiment of the 1980s and the related murder of Chinese American engineer Vincent Chin by two white auto workers in Detroit in 1982, and pop culture media fads regarding Asians and Asian Americans.

Stereotypes, "the cultural baggage that we all carry around," shape how we deal with each other in our society, Wu told host Neal Conan on NPR's *Talk of the Nation* as they discussed *Yellow* and answered call-in questions. Perhaps he should have called his book *Gray*, Wu only partly joked Conan. "What I suggest is that it's more complicated than that," he said of the black-white approach to most U.S. discussion of race, "that we need to see more, literally, than black and white. If we only see black and white we don't see millions of people."

Wu told Conan he'd prefer to lay aside racial issues but "people keep bringing up race" and that fact of life forced him to write *Yellow*. "I felt compelled to write it, because people keep bringing it up. I keep trying to find more time to be with my wife, to ride my motorcycle, to walk my dog."

Yale Kamisar, the Law School's Clarence Darrow Distinguished University Professor of Law, has high praise for *Yellow*. "Frank Wu writes with power, intelligence, and a keen wit," says Kamisar. "Whether he is discussing the 'model minority myth,' the World War II internment of Japanese

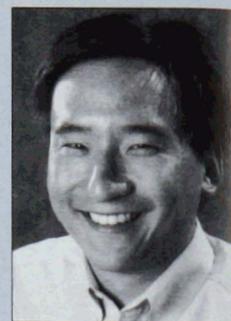
Americans, the recent 'Chinese spy' case, affirmative action and Asian Americans, intermarriage and the mixed race movement — or answering the question 'Do Asians eat dogs?' — Wu is illuminating, insightful, and knowledgeable."

"This fascinating blend of Wu's personal experiences and his experiences as a lawyer, professor, and reporter provides a different and much-needed perspective on an important and often neglected subject," reviewer Danna Bell-Russel of the Library of Congress wrote in *Library Journal*. And Stanley Karnow, author of *In Our Image: America's Empire in the Philippines*, said: "Frank Wu's perceptive, provocative, and highly readable book is a unique contribution to our understanding of the Asian American experience."

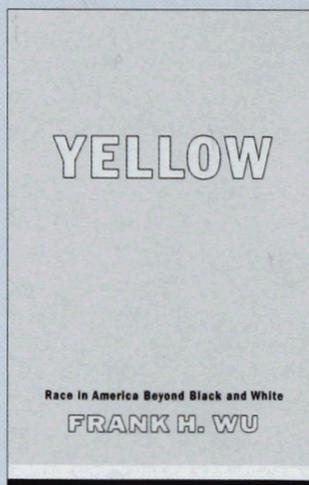
Wu himself characterizes *Yellow* as exposition, conversation starter, and thought-provoker more than recipe for solution. In the Epilogue that follows his final chapter "The Power of Coalitions," he writes:

"All people yearn to belong and to be comforted with the absolute affection we enjoyed when we were children, but we also strive to stand out as important and deserving in our own right. . . . As persons and as a people, we ought to make choices that allow us to lead lives of integrity whether we prefer the universal or the individual. . . ."

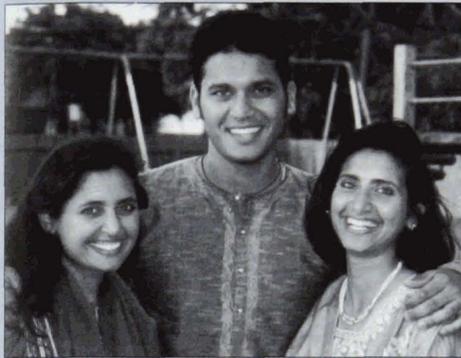
"Over time, we have extended civil rights to an ever-greater range of people while reducing the invidious distinctions among us. We still have work to do to fulfill our potential. All American dreams depend on optimism and perpetual rejuvenation. Americans were idealists once and we can become idealists again. We must approach perfection even if we cannot reach it."



Frank H. Wu, '91



**TUNG CHAN, '98,  
ROOPAL SHAH, '95,  
HELP LAUNCH PEACE  
CORPS-STYLE INDICORPS**



*Roopal Shah, '95, right, in India with her sister Sonal and their brother Anand*

New Year's Eve. All the passengers are settling in on their bunks preparing to sleep with their locked bags under their heads. It's late evening and we are on an overnight bus traveling across the Indian state of Gujarat, toward the western city of Bhuj. On the bunks around me, Roopal Shah '95, her sister Sonal, and their brother Anand discuss logistics for the next few days of travel around rural India.

As I try to snap a photo, Anand reminds me that this is not a sightseeing trip. This is a working trip. And an important one at that — since it is the final trip the Shahs will be taking together in India before publicly launching Indicorps, the non-profit organization the Shahs founded. This year Indicorps will begin to offer 10 competitive fellowships that send young Indian American college graduates and professionals to areas like Bhuj and the surrounding rural villages to work on year-long public service projects.

"It's like a Peace Corps for Indian Americans. It's a leadership program based on public service," Roopal explains, except that there is the added cultural dimension of reconnecting Indian Americans to the philosophy and heritage of India. Sonal



PHOTOS BY ANAND SHAH/COURTESY OF INDICORPS

*Tung Chan, '98, second from left, samples Kutch attire.*

adds, "The personal growth of the fellow and his or her connection to India is a top priority for Indicorps" — and this is evidenced by the extensive one-month long orientation program in India where fellows do short-term development projects like one-day workshops for slum children, participate in team-building activities in the style of *Outward Bound*, learn Hindi and possibly other local languages, and prepare for their long-term projects.

On this working trip, Roopal has flown in from San Diego, California, where she is an Assistant U.S. Attorney, Sonal has flown in from Washington, D.C., where she is a director for the U.S. Department of Treasury, and I have come from New York City where I practice corporate law with Cleary Gottlieb Steen & Hamilton, to meet with Anand, who is spending the year in India to work full time on developing Indicorps. We are to visit a number of potential project sites and assess the viability of placing Indicorps fellows at each site.

For the 10 days that I travel with the Shahs, we will visit six projects and nine different cities or villages. Our first stop is Ludiya, a rural Kutch village about 70 miles outside of Bhuj and 20 miles from the Pakistani border. Last year, this region was devastated by an earthquake, killing between 20,000 and 40,000 people. It was the largest disaster in 2001, seconded by the World Trade Center attack. The damage, of course, was startling. In the city of Bhuj, you could see large rifts in the standing buildings. Straight lines shifted into crooked ones. Rubble where the hospital used to be. Out in the rural areas, entire villages were leveled.

The village we will visit is a testament to Manav Sadhna, an Indian public service organization that has worked with tremendous dedication to help rebuild the region. In only eight months with the assistance of Manav Sadhna the villagers in the area have built schools, community centers, a health clinic, check dams, and over 455 Bhungas (mud huts). Indicorps is planning to work in conjunction with Manav Sadhna to take the rebuilding of the villages one step further by developing a local economy.

Indicorps will be sending two fellows out to the village area. One will help develop a women's cooperative to sell the traditional exquisite handiwork that the village women do. The Kutch area is known for the women's fine embroidery with bright threads on silk and cotton. They wear their stunning handiwork daily and in the semi-desert dust, you can see their brilliant clothes even from a distance. The other fellow will help develop a business growing herbal ayurvedic medicines. The fellow will develop necessary growing procedures and train local people to grow crops and sell them to a wider community.

Listening to Roopal, Sonal and Anand discuss the projects, I am tempted to take their photograph again. After all, they are developing one of the most exciting international exchange opportunities for Indian Americans who want to be a part of India and her future. Plus it's New Year's Eve, the beginning of one exciting year.

For more information on Indicorps, please visit the Web site [www.indicorps.org](http://www.indicorps.org) or call the U.S. offices at (858) 483-0933.

— Tung Chan, '98

# CLASS notes



Rodman N. Myers, '43



Bernard J. Kennedy, '58



Stuart Shanor, '62

## POSTPONED REUNIONS RE-SCHEDULED FOR THIS FALL

*Due to the traumatic events of September 11, 2001, reunions for Law School Classes of 1976, 1981, 1986, 1991, and 1996 were cancelled last fall. Reunions for these classes will take place October 25-27.*

## 60TH REUNION

The Class of 1942 reunion will be September 20-22

## 1943

Rodman N. Myers recently was re-elected President of the Board of the Bloomfield Township Public Library. He is a member of the Corporate Law Department of the Detroit-based law firm of Honigman Miller Schwartz and Cohn LLP.

## 55TH REUNION

The Class of 1946/1947 reunion will be September 20-22

## 1948

The Hon. Charles B. Blackmar, who served on the Supreme Court of Missouri from 1982-92, has received one of the three Spurgeon Smithson Awards for 2001 from the Missouri Bar Foundation. The annual awards are made to judges, legal educators, and/or lawyers deemed "to have rendered outstanding service toward the increase and diffusion of justice among men."

James E. Tobin of Miller Canfield Paddock and Stone PLC has been selected to receive the 2002 Distinguished Service Award from the Labor and Employment Law Section of the State Bar of Michigan.

## 1949

William M. Osborn is the author of a new book, *The Wild Frontier: Atrocities During the American-Indian War from Jamestown Colony to Wounded Knee*, published by Random House.

## 1950

The Library of Congress has signed a five-year contract with Preservation Technologies LP, founded by Richard E. Spatz to de-acidify 8.5 million of the library's 18.7 million books. Spatz developed the process to lengthen the lifespan of books printed on acid paper.

## 50TH REUNION

The Class of 1952 reunion will be May 31 – June 2

Chair: Wallace D. Riley  
Fundraising Co-Chairs:  
William H. Bates; Warren G. Elliott;  
Dudley J. Godfrey Jr.;  
Burton L. Ansell;  
Committee: Richard J. Bahls;  
Carl L. Horn; Bristol E. Hunter;  
Kiehner Johnson; James A. Kendall;  
Patrick J. Ledwidge;  
Martin C. Oetting; Ralph Sosin

## 1954

Stanley R. Weinberger has joined the law firm of Dykema Gossett PLLC as a member in the firm's Chicago office.

## 45TH REUNION

The Class of 1957 reunion will be September 20-22

Chair: Jules M. Perlberg  
Committee: Roger T. Watson

## 1958

Thomas Hoya, an administrative judge with the Environmental Protection Agency, taught classes in English and in Russian at International University in Moscow last spring. He taught environmental law to third-year

law students in English and taught in Russian to master's degree candidates in the School of Environmental Science.

Bernard J. Kennedy is retiring from National Fuel Company in Buffalo, New York, after a career of more than 40 years. He joined National Fuel in 1958, was named president in 1987 and chief executive officer in 1988.

## 1960

Clifford H. Hart has been board certified as a trial advocate by the National Board of Trial Advocacy (NBTA).

I. Samuel Kaminsky is assuming the status of counsel in the law firm of Kaminsky Thomas Wharton & Lovette based in Johnstown, Pennsylvania.

## 1962

## 40TH REUNION

The Class of 1962 reunion will be September 20-22

Chair: Thomas P. Scholler  
Committee: Peter D. Byrnes;  
Roger B. Harris; Paul W. Jones;  
A. David Mikesell;  
C. Barry Montgomery;  
L. William Schmidt Jr.;  
S. Ronald Stone; John A. Wise Jr.

Jerry A. Fullmer has been awarded the 2001 Crystal Owl Award, given annually by the Cleveland Regional Office of the American Arbitration Association to a labor arbitrator for service above and beyond the call of duty to the alternative dispute resolution community. Fullmer has been a labor arbitrator since 1985.

Stuart Shanor has been named president-elect of the American College of Trial Lawyers based in Irvine, California. Shanor practices in Roswell, New Mexico.

## 1963

**John A. Scott** was elected and is serving as chairperson of the Probate and Estate Planning Section of the State Bar of Michigan. Scott lives in Traverse City.

## 1964

**William B. Dunn**, a member of the law firm Clark Hill PLC, has been elected to a three-year term on the Board of Directors of Detroit Downtown Inc. Founded in 1922, Detroit Downtown is a private, nonprofit organization that works to provide a clean, safe, beautiful, and inviting downtown Detroit.

**Paul Ostergard** has been asked to be the new president and CEO of Junior Achievement International, based in Atlanta, Georgia.

**Kurt M. Penn** has joined the Chicago headquarters of the real estate law firm Sheldon Gould & Company International LLC.

## 1966

**Michael G. Harrison** of Lansing-based Foster Swift Collins & Smith has been included in the 2002 edition of *Who's Who in American Law*, a compilation of the country's most distinguished legal professionals.

## 1967

### 35TH REUNION

The Class of 1967 reunion will be September 20-22

Co-Chairs: James M. Amend;  
Christopher B. Cohen;  
James B. Fadim

Committee: Roger M. Golden;  
Samuel J. Goodman; Sally Katzen;  
James P. Kleinberg; Michael J. Levin;  
William C. Pelster; John A. Sebert Jr.

**Michael Adelman** has been elected president of the South Central Mississippi Bar Association for 2002. The association represents approximately 250 lawyers. Adelman is a senior partner in Adelman & Steen LLP, based in Hattiesburg.

**A. Vincent Buzard**, a Rochester partner in the statewide law firm of Harris Beach LLP, New York, was elected secretary of the 70,000-member New York State Bar Association during its 125th annual meeting in Manhattan. Buzard, a resident of Pittsford, New York, will assume office June 1, 2002.

**Jeffrey G. Heuer**, managing partner of the Detroit-based law firm Jaffe Raitt Heuer & Weiss, announces that the law firm opened an office in Ann Arbor this year.

**Richard D. McLellan** was invited to the White House to participate in the U.S. Sub-Saharan Africa Trade and Economic Cooperation Forum last October. The forum was part of the implementation of the African Growth and Opportunity Act (AGOA), enacted on May 18, 2000, as a bipartisan initiative designed to fuel economic growth in Africa, reduce poverty, create new jobs, and provide new income. McLellan, a member of the Lansing, Michigan, law firm of Dykema Gossett PLLC, also was a recent participant in a Congressional and Business Delegation economic development mission to three sub-Saharan countries.

## 1968

**Robert M. Dubbs**, of counsel with the Philadelphia-based law firm Obermayer Rebmann Maxwell & Hippel LLP, was recently appointed by the National Cancer Institute (NCI), in Bethesda, Maryland, to the Consumer Advocates in Research and Related Activities (CARRA) network.

**Lee Hornberger** has been certified as a Specialist in Labor and Employment Law by the Ohio State Bar Association. Hornberger is based in Cincinnati, Ohio.

## 1969

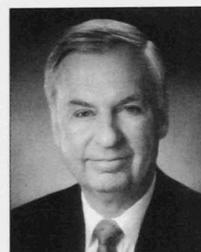
**Ronald Grossmann**, chair of the Employee Benefits Practice Group of the Portland, Oregon-based law firm Stoel Rives LLP, has become a Fellow of the American College of Employee Benefits Counsel, a nationwide professional organization that recognizes distinguished service and professional attainment in the field of employee benefits.

**Robert M. Vercruysse**, a director of the Bingham Farms, Michigan-based firm of Vercruysse Metz & Murray, has been selected to be included in Woodward/White's 2002-2003 edition of *The Best Lawyers in America* in the category of Labor and Employment Law Management.

**Victor M. Zerbi Jr.**, County Judge of Garfield County, Colorado, was selected to receive the rarely awarded "Above and Beyond Public Service Award" by the Glenwood Springs Human Services Committee and the *Glenwood Post Independent* newspaper.



William B. Dunn, '64



A. Vincent Buzard, '67



Robert M. Dubbs, '68

PHOTO: COURTESY STEPHEN HRONES



## STEPHEN HRONES, '68, SAMPLES TRIAL PRACTICE IN ENGLAND

It was "serendipity," attorney Stephen Hrones, '68, reports of his recent foray into English legal practice. Serendipity may have gotten him into the case, but Hrones came out of it with an on-the-scene appreciation of the differences between English and American trial practices.

He found the English system to be more formal than the U.S. system, less populist, and more weighted toward protecting the defendant. He detailed his observations in a two-part series in the *Boston Law Tribune* last September.

A partner in Hrones & Garrity in Boston, Hrones traveled four times to London in the course of his work with a U.S. Navy petty officer who had suffered traumatic brain injury as the result of being struck by an automobile in London.

"The most striking difference between the two systems is that there is no right to a jury trial in civil cases in England, except in a very limited number of cases such as defamation, fraud, and wrongful arrest," Hrones reported in the *Boston Law Tribune*. "It is difficult for most Americans to contemplate a system where important decisions in major cases with large damage awards are left up to one individual with his particular background and tilt, let alone a judge who becomes accustomed to the routine of the system and does not bring a fresh perspective."

We Americans, he noted, "prefer the 'commonsense judgment of the jury to the more tutored but perhaps less sympathetic reaction of the single judge,'" as the U.S. Supreme Court put it in *Duncan v. Louisiana* in 1968.

Among the other differences Hrones found:

- There usually are no contingent fee arrangements in English tort cases and "the losing side pays the attorney fees for the winning party."
- All plaintiffs, regardless of whether the defendant is insured, have unlimited insurance coverage from a pooled fund.
- The judge gets all the witness statements, called "bundles," before the trial commences. "Thus, the outcome of the trial is often determined to a large degree before it even begins."
- "Since there are no juries, rules of evidence take on much less importance" and barristers "argue the case during direct and cross-examination and ask very leading questions even of their own witnesses, as it is believed the judge will not be unduly influenced as would a jury."
- Compared to U.S. trial practices, British barristers are unusually formal and civil toward the judge and even bow when the judge enters or leaves the courtroom.
- Television cameras are not allowed even into the courthouse, in marked contrast to the American practice of trials that are fairly open to media coverage. "We Americans want the truth to out. They give greater weight to the defendant's right to a fair trial in this respect."
- Witnesses are not allowed to practice their testimony beforehand.
- The plaintiff cannot be called by the defense to testify if he has chosen not to testify in his own presentation.
- There is no automatic right to appeal. The first step in an appeal is to petition the trial judge. If denied, you then can apply to a single justice of the appellate court. If denied there, the case is over.

Hrones also notes two practices that he considers enhancements to the administration of justice:

- "Counsel cannot learn what judge sits on the case until a few days before, thus there can be no forum shopping."
- And "the defendant is encouraged to make a settlement offer because if he makes an offer, and the judgment is for less than that offered, the plaintiff must bear all costs of both sides for work subsequent to the offer."

## 1970

**Richard J. Erickson** has retired after nearly 30 years of military and civilian service with the Department of the Air Force as senior attorney-advisor to the Pentagon Air Staff on international and operational law matters. On August 29, 2001, he was awarded the department's highest civilian award for outstanding career service.

**David Lick** was invited as guest of the Irish government to address the Water Services National Training Group in Ireland last October. For the past 14 years Lick has provided advice on water, waste water, solid waste, and transportation projects in Michigan and other states. Lick is a member of the Lansing, Michigan-based law firm of Loomis Ewert Parsley Davis and Gotting PC.

## 1971

**Dawn Phillips Hertz**, communications and media law attorney, has joined the Ann Arbor office of the law firm of Butzel Long.

**Donald F. Tucker**, a senior shareholder at Howard & Howard Attorneys PC in Bloomfield Hills, Michigan, was re-elected for a second term as president and chairman of the Swedish American Chamber of Commerce-Detroit Chapter.

## 1972

### 30TH REUNION

The class of 1972 reunion  
will be September 20-22

Chair: Leonard J. Baxt, Saul Green,  
William J. Meeske

Committee: Stephen B. Hunter;

Robert E. Kass; Paul L. Lee;

Robert T. Pickett Jr.; Barbara Rom;

Kim L. Swanson

**Jeffrey J. Greenbaum**, a partner with Sills Cummis Radin Tischman Epstein & Gross PA in Newark, New Jersey, was appointed by the American Bar Association (ABA) president to the ABA Class Action Task Force.

**Richard M. Lavers** is executive vice president, secretary, and general counsel of Coachmen Industries Inc. in Elkhart, Indiana. He is a member of the Executive Management Committee and also served as interim chief financial officer for six months last year.

## 1973

**James D. Forsyth** has retired from his position as Chief Judge in Virginia's Twentieth Judicial District. He also resigned from his memberships on the Board of Governors of the Virginia State Bar, Criminal Law Section.

**Timothy T. Fryhoff**, a partner with the Bloomfield Hills, Michigan, law firm of Meyer Kirk Snyder & Lynch PLLC, has been elected president of the Michigan chapter of the American Academy of Matrimonial Lawyers.

**John M. Nannes** has rejoined the law firm of Skadden Arps Slate Meagher & Flom LLP after spending three and a half years in the Antitrust Division of the U.S. Department of Justice. While at the division, Nannes served first as deputy assistant attorney general and then as acting assistant attorney general in charge of the division during the first five months of the Bush Administration. Nannes will practice antitrust law in the firm's Washington, D.C., office.

1974

**John Marshall Rogers**, law professor at the University of Kentucky, has been nominated by President Bush to serve on the U.S. Sixth Circuit Court of Appeals. The court covers Michigan, Ohio, Kentucky, and Tennessee, and is based in Cincinnati, Ohio.

1975

**Connie Y. Harper** was a speaker at The National Conference on Responding to Mental Health Issues and Violence in the Workplace last November in Atlanta, Georgia. Her topic was "Special Issues Affecting Unionized Workplaces." Harper is an associate general counsel of the International Union, UAW.

**Virginia F. Metz**, an attorney with the Bingham Farms, Michigan, firm of Vercruyse Metz & Murray PC, has been selected to be included in Woodward/White's 2002-2003 edition of *The Best Lawyers in America* in the category of Labor and Employment Law Management.

**Michael Runyan**, a partner in the Seattle law firm Lane Powell Spears Lubersky LLP, has received the Jack P. Scholfield Outstanding Achievement Award from the Washington Defense Trial Lawyers. This prestigious award was presented to Runyan in recognition of his outstanding loyalty, leadership, commitment, and support for the goals and objectives of the civil defense trial bar.

1976

REUNION

The Class of 1976 reunion will be October 25-27

**Jonathan D. Lowe** has been promoted to director of the Jewish Community Endowment Fund of the Jewish Federation of Metropolitan Detroit.

25TH REUNION

The Class of 1977 reunion will be October 25-27

*Co-Chairs: Raymond R. Kepner; Michael A. Marrero*  
*Committee: Alexander R. Domanskis; Penny Friedman; Reginald D. Greene; Susan R. Gzesh; Bruce A. Hiller; Robert H. Jerry II; Bruce C. Johnson; Harold L. Kennedy III; William S. Leavitt; John C. Mezzanotte; Stewart O. Olson; William M. Paul; Jeffrey A. Sadowski; Charles G. Schott III; Sally Cohen Swift; George A. Vinyard; George E. Yund*

1979

**Maria Abrahamsen** has been named head of the Heath Care Practice Group of the Bloomfield Hills, Michigan, office of Dykema Gossett PLLC.

**Margaret McFarland** has been appointed general counsel to the District of Columbia Housing Authority after three years as executive director to the Housing Credit Group of the National Association of Home Builders.

**Joseph E. Tilson**, a partner in the Chicago law firm of Meckler Bulger & Tilson, was recently inducted into the College of Labor and Employment Lawyers. The College is a prestigious non-profit professional association that honors the nation's leading lawyers in the practice of labor and employment law.

1980

**G. A. Finch** has returned as co-managing partner to the Chicago-based law firm of Querrey & Harrow, a 90-attorney, 60-year-old law firm that also has offices in London and New York.

1981

REUNION

The Class of 1981 reunion will be October 25-27

**David B. Calzone**, a director of the Bingham Farms, Michigan, law firm of Vercruyse Metz & Murray PC, has been chosen for inclusion in Woodward/White's 2002-2003 edition of *The Best Lawyers in America* in the category of Labor and Employment Law Management.

**Bonnie L. Dixon** has joined the Tokyo office of the law firm Morgan Lewis as a partner in its Asia Practice. Dixon specializes in international business and finance law.

**Irvin Ness** is now of counsel to the Kansas City law firm of King Hershey. Ness practices in the fields of structured financing, secured and unsecured lending, bankruptcy, and business law.

1982

20TH REUNION

The Class of 1982 reunion will be October 25-27

*Co-Chairs: Douglas S. Ellmann; Catherine James Lacroix; Kevin I. LaCroix;*  
*Richard I. Werder; Sara E. Werder*  
*Committee: Patricia A. Carnese; Brian S. Dervishi; Mark E. Haynes; Timothy J. Hoy; Matthew J. Kiefer; Patrick J. Lamb; Peter Lieb; John M. Lummis; Kenneth McClain; Karol V. Mason; Jeffrey P. Minear; Richard J.J. Scarola; Charles M. Shumaker; George H. Vincent*



Donald F. Tucker, '71



John M. Nannes, '73



Michael Runyan, '75



Joseph E. Tilson, '79



Irvin Ness, '81

# CLASS notes



Carolyn Rosenberg, '82



Samuel Dimon, '85



Mark R. Soble, '88



Scott T. Stirling, '92



Paul A. Bondor, '93

**Daniel J. Bergeson** was named one of Silicon Valley's top attorneys for securities law and patent, copyright, and intellectual property law in the July 2001 edition of *San Jose Magazine*.

**Carolyn Rosenberg**, a partner at the Chicago law firm of Sachnoff & Weaver Ltd., was named the top Director & Officer Liability Insurance Attorney in the nation by *Corporate Board Member* magazine.

### 1983

**Frank J. Saibert** is a partner and chairman of the Labor and Employment Law Department with Ungaretti & Harris in Chicago. His position was reported incorrectly in the Summer 2001 issue. *Law Quadrangle Notes* regrets the error.

### 1984

**Janet C. Baxter** has joined the Grand Rapids, Michigan, law firm of Peter Kladder III, PLC. The firm specializes in the area of business and family law.

**Martine R. Dunn** recently joined the Cincinnati office of the law firm Baker & Hostetler LLP.

**Marc C. Hansen**, state aid expert at the law firm of Wilmer, Cutler & Pickering, led the team that won the largest state aid case ever to come before the courts in Luxembourg on behalf of German coal producer RAG AG.

**Jacob C. Reinbolt**, a partner with Procopio Cory Hargreaves & Savitch LLP in San Diego and head of the Intellectual Property Team, has been selected to serve as Special Legal Counsel for Intellectual Property, Information Technology, and

Telecommunications Transaction Support for the San Diego City Attorney's Office.

### 1985

**Samuel Dimon**, a partner in the New York law firm of Davis Polk & Wardwell, has been elected chair of the New York State Bar Association's Tax Section.

**Raymond Rundell** was named partner in the Cleveland office of the law firm Calfee Halter & Griswold LLP.

### 1986

#### REUNION

The Class of 1986 reunion will be October 25-27

**Mark Nussbaum** has been appointed chief operating officer of Signature Consultants, based in Woburn, Massachusetts.

### 1987

#### 15TH REUNION

The Class of 1987 reunion will be October 25-27

Committee: Kathryn Krecke Boundy; Reginald M. Turner

**Tina Van Dam** received a Distinguished Women's Award from Northwood University in Phoenix. Van Dam also was recently promoted to corporate secretary and managing counsel of the Dow Chemical Company in Michigan.

### 1988

**Mark R. Soble** has recently accepted a position as deputy attorney general in the False Claims Section of the California Attorney General's Office.

### 1989

**Mike Carroll** was listed as a California power lawyer who practices before the California Energy Commission in the October 2001 issue of *California Lawyer*.

**Barron F. Wallace** has joined Vinson & Elkins, Houston's largest law firm, as a partner. His principal areas of practice are public finance, urban development, and state legislative matters. He previously was with Wickliff & Hall in Houston.

### 1990

**Kip Wahlers** has been named partner in the Cleveland office of Calfee Halter & Griswold LLP.

**Kenneth Wittenberg** has opened a law practice in Portland, Oregon. The new firm Wittenberg Pitzer LLP specializes in complex commercial litigation and white collar criminal defense.

### 1991

#### REUNION

The Class of 1991 reunion will be October 25-27

**Kevin T. Conroy** has been appointed president of the human resource outsourcing firm of Onvoi Business Solutions based in Sacramento, California.

**Kristina Dalman** has been named partner with Gardner Carton & Douglas, a leading Chicago and Washington, D.C., law firm.

**Steven "Sonny" Ginsberg** is director of acquisitions and business development for the new Skyline Equities Realty LLC in Chicago.

**Sadhna Govindarajulu True** was selected to serve as deputy associate general counsel for the Civil Rights Division of the U.S. Department of Agriculture, Office of General Counsel. True previously served as a trial attorney with the U.S. Department of Justice, Civil Division.

1992

10TH REUNION

The Class of 1992 reunion will be October 25-27

Co-Chairs: Pamela L. Peters; Amy T. Wintersheimer

Committee: Corinne A. Beckwith; Noelle Swanson Berg; Nancy A. Brigner; Henry R. Chalmers; Myles R. Hansen; Kenneth R. Hillier; Jeffrey P. Hinebaugh; Jennifer L. Isenberg; Amy B. Judge-Prein; Amy L. Rosenberg; Joel S. Schreier; Sylvia A. Stein; Mark J. Stubington; Sarah C. Zearfoss

**Scott T. Stirling** has joined the law firm Thompson Hine LLP as an associate in the Labor and Employment practice group.

**Melissa L. Tatum** has been awarded tenure at the University of Tulsa College of Law. Tatum also serves as a co-director of the Native American Law Center and she is a part-time judge for the Southwest Intertribal Court of Appeals.

**Michael David Warren Jr.** has become vice president of strategic planning and development for Cornerstone Schools.

1993

**Paul A. Bondor** was named partner at the law firm of Kenyon & Kenyon, a leading intellectual property law firm with offices in New York, Washington, D.C., and Silicon Valley.

**William Dani** has been named chair of the Intellectual Property Law Section of the State Bar of Michigan. Dani is a partner in the Grand Rapids, Michigan, office of the law firm Warner Norcross & Judd LLP.

**Joseph R. Furton** has started a new practice, Joseph R. Furton PLLC in Dearborn, Michigan.

**David Morrison** has been promoted to principal at the commercial law firm of Goldberg Kohn Bell Black Rosenbaum & Moritz Ltd., located in Chicago.

**David L. Schenberg** has been elected a member of Husch & Eppenberg LLC. Schenberg practices labor and employment law from the firm's St. Louis office.

**Philip Stamatakos**, a partner in Naker & McKenzie's Chicago office, was named one of "40 Illinois Attorneys under 40 Years Old to Watch" by the publishers of *Chicago Lawyer* and *Chicago Daily Law Bulletin* (July 2001 editions) for his outstanding client service and contributions to the legal profession and his firm.

**Tracy Silverman Weissman** has joined the law firm of Wachler & Associates PC in Royal Oak, Michigan. Weissman concentrates her practice in health care, corporate, and computer law.

1994

**Jeannette Albo** has been named partner at Shutts & Bowen LLP, based in Miami. Albo practices in the firm's litigation department and specializes in labor and employment law.

GRADUATES HELP MAP NEGOTIATING PATHS IN BRUSSELS

Two Law School graduates, **Jean-Francois Bellis**, LL.M. '74, of Van Vael & Bellis, and **Wolfgang Knapp**, M.C.L. '71, a partner in the Brussels office of Cleary, Gottlieb, Steen & Hamilton, were quoted in the Winter 2002 issue of *Focus Europe* magazine in an article on the complexities of legal negotiation in the fast-maturing European Union. The article discussed the growing need for experienced attorneys to be on the scene.

*Focus* is a media supplement of *The American Lawyer*.

Written by Michael D. Goldhaber, *Focus*' chief European correspondent, the article is titled "Navigating Brussels: How Merger Regulation Works In the EU Capital." Goldhaber notes that "the European Union came of age for lawyers last year on the third of July. That was the day the EU killed the merger planned between the General Electric Company and Honeywell International Inc. That decision dramatized the emergence of the EU as a confident, independent player on the world economic stage."

The EU's competition regulators proved their mettle in the GE-Honeywell case, according to the article. "It took 200 years for America to put so much power on the federal level," the article quotes Knapp. "Here, competition is the weapon at the federal level. Competition law is the motor of European integration."

Bellis is quoted expressing the view that EU courts should not be expected to weaken the precedents now being set: "The courts will virtually never side against the Commission on basic philosophy or policy."

Knapp also was featured prominently in an article last June in the influential German daily *Frankfurter Allgemeine Zeitung*. As the lawyer many consider the "dean" of German lawyers in Brussels, Knapp led efforts to loosen German Bar rules to allow German attorneys to establish practices abroad.

In Brussels, he told the newspaper, "We are the ears and the mouth of our multinational clients in relation to the European institutions, and we are trying to exercise influence on the European legislative process in the interest of our clients."

**Jeffrey A. Kopy** has become a partner in the Litigation Practice, the Products Liability and Mass Tort Defense Practice, and the Telecommunications Practice sections at Jenner & Block's Chicago office.

**Marc L. Newman** has been named partner of the law firm Mantese Miller and Shea PLLC., located in Troy, Michigan.

1995

**Christian Tietje** has recently been appointed professor of law for public law, European law, and international economic law (tenure) at the Martin-Luther University Halle-Wittenberg in Germany. Tietje is one of the youngest full law professors with tenure in Germany.

# CLASS notes



Anna M. Shih, '96



Alexander T. Allen, '98



Jesse Goldstein, '99



David L. Young, '00



Christina Thacker, '01

1996

## REUNION

The Class of 1996 reunion will be October 25-27

**Merrick Hatcher** has been elected a member of the Chicago office of the law firm Bell Boyd & Lloyd.

**Travis Richardson** has entered solo practice with the law offices of Travis Richardson based in Chicago.

**Anna M. Shih** has been elected equity member of the Bloomfield, Michigan, office of Radar Fishman & Grauer PLLC, a national intellectual property law firm.

**Michael J. Thomas** is an associate at Kelly Rammelkamp & Muelhlenweg PA in Albuquerque, New Mexico, practicing business and commercial law and litigation. Thomas' article, "Surveying Unexplored Territory: New Mexico Trespass Law," appeared in the winter 2001 issue of the *New Mexico Bar Journal*.

**Robert C. Varnell** has become counselor to the deputy secretary at the U.S. Department of Labor in Washington, D.C.

## 5TH REUNION

The Class of 1997 reunion will be October 25-27

Co-Chairs: Kelli S. Turner;  
Hardy Vieux

Committee: Monica Aguilar;  
Jonathan Brennan; Angie Chen;  
Dara J. Diomande; Rebekah Eubanks;  
Peter Hafner; Peter J. Henry;  
Hilary E. Hoover;  
Angele I. Onwuachi-Willig;  
Jacqueline K. Payne; Alex Romain;  
Jennifer Beyersdorf Salvatore;  
Kashif Z. Sheikh

1998

**Alexander T. Allen** has joined the Princeton office of the law firm Drinker Biddle & Shanley LLP as an associate. Allen focuses on emerging companies and venture capital.

1999

**Deborah L. Benedict** has joined the Detroit office of Miller Canfield Paddock and Stone PLC as an associate in the Litigation and Dispute Resolution Practice Group.

**Jesse Goldstein** has joined the Bingham Farms, Michigan-based law firm of Vercruysee Metz & Murray PC as an associate.

**Carolyn C. Russell** has joined the Cleveland, Ohio-based law firm of Arter & Hadden as an associate.

2000

**Kenneth Kalousek** has joined the Detroit office of the law firm Dykema Gossett PLLC as an associate.

**Laura Sagolla** has joined the Ann Arbor office of the law firm Dykema Gossett PLLC as an associate. Sagolla's practice focuses on general litigation matters.

**David L. Young** has joined the law firm of Lane Powell Spears Lubersky LLP in Seattle as an associate. As a litigation attorney, Young concentrates his practice on complex commercial litigation.

2001

**Kristen Beutler** has become an associate of the law firm Varnum Riddering Schmidt Howlett LLP in Grand Rapids.

**Scott P. Brown** has joined the Detroit office of Miller Canfield Paddock and Stone PLC as an associate in the Bankruptcy and Workout Practice Group.

**Jerry N. Evans** has joined the Seattle law firm of Hillis Clark Martin & Peterson PS as an associate. Evans' practice emphasizes commercial litigation.

**Brandon M. Mack** has joined the firm Warner Norcross & Judd LLP as an associate in its Grand Rapids office.

**Sean T. Peppard** has become an associate at the law firm Squire Sanders & Dempsey LLP in the firm's Cleveland office.

**David Porter** has joined the Varnum Riddering Schmidt Howlett LLP law firm's Grand Rapids office as an associate.

**Sarah K. Rathke** has become an associate at the law firm Squire Sanders & Dempsey LLP in the firm's Cleveland office.

**Eric E. Reed** has joined the law firm of Clark Hill PLC in Detroit. Reed is an associate of Clark Hill's Litigation Practice Group.

**Christina Thacker** has joined the litigation department of the Portland, Oregon, office of Miller Nash LLP as an associate.



## NEW DIRECTORY OF GRADUATES UNDERWAY

The Law School's Development and Alumni Relations Office is compiling a new alumni directory that is scheduled for release in December this year. The new directory will provide up-to-date information on the Law School's more than 18,500 graduates worldwide.

To be published by the Bernard C. Harris Publishing Company of White Plains, New York, the directory will include:

- The current name of each graduate plus the person's name while a student if that is different from the current name.
- The class year(s) and degree(s) earned from the Law School.
- Biographical listings that include home address and telephone number, names of spouse and children, professional information, and e-mail address.

The new directory will list alumni alphabetically, by class year, geographic location, and area of practice.

Compilation of the directory is a multi-step, year-long process that began last December. Last month Harris Publishing sent questionnaires to graduates via e-mail and/or regular mail. Please complete and return the questionnaire as quickly as possible. If you prefer to update your information online, go to [www.law.umich.edu/alumnianddevelopment/directory.htm](http://www.law.umich.edu/alumnianddevelopment/directory.htm). You will need the Login ID on your questionnaire form to access your information. Data collection is to be completed in August and the directory will be published in December.

Guest Speaker — Larry Thompson, '74, U.S. Deputy Attorney General, left, receives a Michigan Law School Club of Washington, D.C., sweatshirt from Club President Gary A. MacDonald, '88, after Thompson spoke at the new Skadden, Arps, Slate, Meagher & Flom LLP Conference Center in Washington



PHOTO COURTESY OF GARY A. MACDONALD, '88

last fall. Thompson reported that in response to the terrorist incidents of September 11, federal law enforcement bodies have been ordered "to share any and all information we get with any and all officials." He continued: "The federal government doesn't have enough legs, feet, and hands to do what must be done. We need to work closely with state and local officials to prevent terrorism and to save lives." More recently, Thompson has been selected to head the government investigation of Enron.

## IN memoriam

'23	John E. M. Merrill	12/20/2001	'50	Clinton R. Ashford	12/20/2001
'27	Mary Leah Harding	12/21/2001		William A. Coughlin Jr.	9/27/2001
'28	Thomas R. Boyle	12/11/2001		Garrett Grant	9/19/2001
	Frederic W. Ziv	10/16/2001		Col. William M. Myers	11/5/2001
'30	James Lewis Dolman	1/11/2002		Stanley R. Pappas	12/6/2001
'31	Allen C. Lomont	1/16/2002		Harold H. Pennock Jr.	1/15/2002
	John MacKenzie	10/18/2001		Jarvis J. Schmidt	11/27/2001
'32	Theron D. Childs Jr.	1/30/2002	'51	The Honorable Chester J. Byrns	11/27/2001
'33	John H. Boman Jr.	10/8/2001		Richard A. Watson	9/19/2001
	Stuart G. Walz	10/18/2001	'52	Edwin G. Morhous	1/24/2002
'34	Robert Moore Zehring	10/2/2001	'53	Vincent J. Rauner	12/5/2001
'35	G. Warren Daane	10/24/2001	'54	James Moore Drake	10/8/2001
	Bernard W. Freund	12/19/2001		James B. McQuillan	12/19/2001
	John William Swisher	2/5/2002		John Louis Vanker Jr.	1/9/2002
'36	The Honorable Hyman T. Maas	9/24/2001	'55	Fred H. Keidan	10/12/2001
'37	The Honorable William K. Richardson	1/23/2002		Alan William Mewett (LL.M), S.J.D. '59	9/20/2001
'38	Irving Achtenberg	2/5/2002		John J. Peters	1/3/2002
	Julian Caplan	11/29/2001	'56	George G. Abel III	12/6/2001
'39	James L. Worrall	1/7/2002		William F. Dannemiller	1/17/2002
'40	George E. Sperling Jr.	12/19/2001		Howard M. Downs	10/30/2001
'41	Eugene B. Calder Jr.	10/22/2001		Arthur E. Higgs	12/5/2001
	Vernon R. Keiser	10/24/2001	'57	Arthur T. Iverson Jr.	9/25/2001
	John F. Townsend	12/6/2001	'58	Richard B. Weinberg	10/4/2001
	George A. Worcester	1/11/2002	'60	C. Robert Wartell	9/27/2001
'42	The Honorable William L. Taft	1/4/2002		Bruce O. Wilson	11/15/2001
'44	T.J. Jarvinen	12/11/2001	'61	William C. Barnard	10/15/2001
'46	Edmund James Thomas	1/9/2002	'62	Robert T. McBride	1/15/2002
'47	Wilbur S. Davidson	11/6/2001		Pauline R. Rothmeyer	2/11/2002
	Edwin M. Deal	12/17/2001	'64	James S. Ainsworth	12/19/2001
	Richard S. Wagner	12/5/2001		Carl Conrad	9/24/2001
'48	Leo A. Anderson	1/7/2002	'65	Albert E. Fowerbaugh	10/3/2001
	Robert T. Bartlow	10/10/2001		Joel L. Tonkin	1/2/2002
	Orvas E. Beers	12/10/2001	'66	John B. Griffith	1/31/2002
	Ralph James Rodgers	10/1/2001		J. Michael Kapp	12/11/2001
	Edward C. Sievers Jr.	10/5/2001		Kenneth E. Scherer	11/27/2001
	Bennett A. Webster	2/14/2002	'73	Thomas E. Ritter	11/15/2001
	John A. Whitney	2/11/2002	'86	Yuichi Kusama (LL.M)	1/7/2002
	Wayne G. Wolfe	1/29/2002	'87	Deborah L. Rosoff	1/7/2002
'49	Vincent T. Early	10/16/2001	'90	Kevin M. Wolf	10/15/2001
	Jay Raymond Gaiser	10/24/2001	'95	Kathleen M. Deegan	2/1/2002
			'96	Adale M. Walters, M.D., M.P.H.	1/16/2002



# Who should watch over refugee law?

By James C. Hathaway

The following essay is based on a talk delivered at the Global Consultation on International Protection convened by the International Council of Voluntary Agencies (ICVA) in Geneva on Dec. 11, 2001, on the occasion of celebrating the 50th anniversary of the Refugee Convention and the Ministerial Meeting of States Parties to the 1951 Refugee Convention and/or its 1967 Protocol, held Dec. 12-13, 2001. Under the author's supervision, students in the University of Michigan Law School's Program in Asylum Law produced research-based working papers to assist the ICVA and the UN High Commissioner for Refugees in discussing implementation of the Refugee Convention. (See related story on page 11.) A complete version of this talk is to appear in issue 13 of *Forced Migration Review* in May 2002. (See [w.w.w.fmreview.org](http://w.w.w.fmreview.org) for back issues and subscription information; the journal is published in English, Spanish, and Arabic.) This excerpt appears with permission of *Forced Migration Review*.



The fact that states have now committed themselves "... to consider ways that may be required to strengthen the implementation of the 1951 Convention and/or 1967 Protocol" is a wonderful thing. We should celebrate the fact that after a half-century, we may finally be on the verge of taking oversight of the treaty seriously.

I am concerned, however, that having watched this matter languish for half a century, activists may now feel the need immediately to build on this new commitment by endorsing some kind of a mechanism — even if only a minimally effective one — for overseeing the Refugee Convention. I worry that we may allow ourselves to be rushed into embracing a particular model for oversight of refugee rights in order to lock-in at least some progress on this issue, only to find that we have committed ourselves to an approach that, in the long run, really is inadequate. While there is of course the possibility that a minimalist project may provide the experience and confidence needed to move in a more ambitious direction in the future, there is also the possibility that states will take the view that, having established a minimalist mechanism, they have "dealt with the supervision question." Thus, they might argue, there is no need to revisit the issue, at least not any time soon.

We simply cannot afford to sell out the future of refugee protection in a hasty bid to establish something that looks, more or less, like an oversight mechanism for the Refugee Convention.

To be clear, this debate is not about how to stay on top of UNHCR [United Nations High Commissioner for Refugees] as an agency. UNHCR has a mandate that is much broader than supervising the Refugee Convention. In recent years, its work as a humanitarian relief agency has, in fact, come to overshadow its core protection functions. Its work on behalf of the internally displaced has in many

instances eclipsed its primary duty to protect refugees. It has often taken on roles that put it into the realm of the political, notwithstanding its explicitly non-political mandate. While there can and should be initiatives more effectively to supervise UNCHR as an agency, these are matters which, to my mind, are logically entrusted to UNHCR's executive committee (EXCOM), or indeed to the ECOSOC [UN Economic and Social Council] itself. We should not allow the question of how best to oversee the Refugee Convention to be redirected toward difficult but distinct questions of supervising UNHCR's compliance with its broader statutory mandate, much less of how to monitor the various jobs it has taken on outside of its mandate.

On the other hand, it is equally wrong for UNHCR to attempt artificially to cut off debate on the appropriate range of potential mechanisms to oversee the Refugee Convention by reliance on its institutional authority under Article 35 of the Refugee Convention. As we all know, UNHCR has a special responsibility under Article 35 to "supervise the implementation" of the Refugee Convention. But this provision does not create a monopoly on treaty oversight in favor of UNHCR. To the contrary, the Convention, as an international pact, is the responsibility of the states that signed it. As the mechanisms for enforcement of the Convention itself make clear, it is states that have the fundamental right and duty to ensure that other states actually live up to their obligations under the Refugee Convention. There is nothing in Article 35 which precludes the states that are both the objects and the trustees of the refugee protection system from deciding to establish an arms-length mechanism to provide general guidance on, and oversight of, the Refugee Convention. Indeed, a move in this direction is precisely what I believe is required now.

In considering this task, a first question must surely be: Why is it that the Refugee Convention, virtually alone among major human rights treaties, still has no freestanding mechanism to promote interstate accountability?

In part, it is a question of history. The Refugee Convention was the second major human rights treaty adopted by the United Nations, having been preceded only by the Genocide Convention. It is noteworthy that the Genocide Convention, like the Refugee Convention, is not externally supervised. In part, then, the absence of an external supervisory mechanism for the Refugee Convention is simply a reflection of the historical reality that, in the late 1940s and early 1950s, the entire idea of interstate supervision of human rights was new, potentially threatening, and not truly accepted by states. Yet with the adoption of the human rights covenants and more specialized treaties beginning in the mid-1960s, the establishment of an independent mechanism for interstate oversight of the human rights treaties has become routine. Unless there is some good, principled reason why refugee law should be immune from this general commitment, it is high time to reverse the historical aberration by bringing the commitment to oversight of refugee law into line with the practice in human rights law more generally.

It might be suggested, however, that it was — and is — the existence of a United Nations High Commissioner for Refugees that distinguishes refugee law from every other UN human rights project. Only in refugee law is there an international organization assigned exclusively to supervise implementation of the treaty. At best, other UN human rights treaties can rely on the recently established, generic authority of a (grossly under-funded) UN High Commissioner for Human Rights. Because refugee law has its own institutional guardian in the person of the High Commissioner, it might be thought that any additional mechanism for oversight would be superfluous.

I believe that this would be a tragic error of judgement. UNHCR clearly makes some essential contributions to oversight of the Convention via its supervisory



authority codified in Article 35. In particular, the Department of International Protection (DIP) has real expertise in assisting governments to draft policy and legislation; in engaging directly and indirectly in defensive case interventions; and in organizing and conducting refugee law outreach and training. DIP's role is complemented by the critical function of UNHCR's Executive Committee, which symbolically reaffirms the commitment of states to refugee law, and provides democratic legitimacy to the agency's work. There is therefore no need for a mechanism of international oversight to take on any of these roles.

But there are also some things that are usually understood to be central to a meaningful project of international oversight that UNHCR does less well, and is perhaps not ideally positioned to take on. In practice, neither DIP nor EXCOM has done enough to provide systematic, non-crisis policy guidance on the substance of refugee law, carefully anchored in the real context of protection challenges. There has been a lack of leadership in the design of mechanisms to implement burden and responsibility sharing, so as to enable the imperatives of refugee law duties to be reconciled to the political and social realities of asylum states. There has not really been a genuinely inclusive range of voices, including those of refugees themselves, brought into the supervisory process. And not enough efforts have been made to empower local institutions to make enforcement of refugee rights meaningful in a way that no international institution can ever aspire to do. These are all examples of the kinds of work which, in most other contexts, are entrusted to an autonomous supervisory body.

Beyond the importance of setting reasonable expectations for the sorts of supervisory tasks that UNHCR should itself be expected to take on, there are two more fundamental reasons why vesting UNHCR with sole responsibility to oversee the Refugee Convention is not a credible proposition.

First, UNHCR has been fundamentally transformed during the 1990s from an agency whose job was, in large measure, to serve as trustee or guardian of refugee rights as implemented by states, to an agency that is now primarily focused on direct service delivery. Simply put, UNHCR is no longer at arms-length from the implementation of refugee protection. In most big refugee crises around the world today, UNHCR is — in law or in fact — the means by which refugee protection is delivered on the ground. UNHCR therefore faces a dilemma, in my view. Either it must return to concentrating on the implementation of its core supervisory responsibilities, and leave what has become the majority of its operational mandate to others; or it must concede that it cannot ethically supervise itself, and endorse the establishment of a genuinely arms-length body to ensure the oversight of the Refugee Convention.

Second, the difficulty with relying solely on UNHCR to oversee the Refugee Convention is that it encourages states to avoid the meaningful accountability between and among themselves that is at the root of the entire international human rights project. Because states presently take little if any direct responsibility for ensuring that their fellow states live up to international refugee law obligations, the dynamic of persuading, cajoling, and indeed shaming of partner states — so critical to the success of the international human rights project in general — is largely absent in refugee law. It is simply too easy to leave the task to UNHCR.

Yet, as we all know, UNHCR is not really positioned to apply meaningful forms of pressure on states. UNHCR is, after all, an entity with a tiny core budget, and which is effectively dependent on the annual voluntary contributions of a very small number of powerful states, virtually none of which has been predisposed to empower UNHCR to act autonomously to advance a strong regime of international refugee protection. Yes, these states have been generous in providing funds for refugee relief and for humanitarian assistance. But too often they have either avoided or, on occasion, evaded UNHCR's

insistence on the importance of protection principles. Recent tragic events off the coast of Australia, and the legally indefensible domestic reaction to the attempt to bring international law to bear on Australia, are more than adequate testimony to this problem.

Moreover, because UNHCR is, and will remain, politically and fiscally constrained by design, it cannot reasonably be expected to provide the sort of strong voice in favor of unflinching attention to refugee protection that is now required. There may also be no good reason to compromise UNHCR's on-the-ground efforts to promote implementation of the Refugee Convention — which do frequently require compromise and even expediency in the interest of saving lives — by forcing that same organization to be the source of critique and broad guidance on acceptable international practice under the Refugee Convention. Nor may it be reasonable to expect UNHCR, as an interstate organization, to devise the sorts of complex political mechanisms — involving international burden and responsibility sharing — that are critical to the continued effectiveness of refugee law in the modern world.

In short, my point is that those of us concerned to advance refugee protection would be ill-advised to limit the scope of our thinking to models that are housed within, or functionally intertwined with, the work of UNHCR as an international organization. By the same token, UNHCR as an organization would be ill-advised to insist that any mechanism to reinforce oversight of the Refugee Convention be situated within its walls. To do so may simply constrain its operational effectiveness in protection and other fields, and reinforce the current sense of despair among many UNHCR staff brought on by expectations not matched by either political independence or fiscal autonomy.



In light of these realities, we should not rush from celebration of the critical commitment to enhanced oversight of the Refugee Convention secured at the meeting of state parties in December to embrace any particular model for oversight of the treaty. It is critical that we take the time to learn the lessons of treaty oversight in other parts of the UN system. In particular, the successes and failures of the six major United Nations treaty bodies provide a wealth of information, both for and against particular modes of oversight, which we ignore at our peril. At a time when the chairpersons of all of the UN human rights treaty bodies insist on regular coordination and mutual learning, it would be sadly ironic for those of us in the refugee protection community to rush forward to embrace any model not predicated on an intimate knowledge of the range of potential protection options.

In conclusion, we must not be intimidated by institutional insistence that oversight of the Refugee Convention be a function exclusively of the UNHCR. The High Commissioner's duty to supervise implementation of the Convention and the more general obligation of state parties to take collective responsibility to oversee their treaty obligations are, in fact, compatible — not mutually exclusive — responsibilities.

Because no precise model of oversight for the Refugee Convention will be adopted imminently, there is no need to rush to embrace any particular approach. Having waited 50 years, it is better to take the time to engage in a solid, broadly based initiative to build a mechanism of oversight that will withstand the test of time. We must commit ourselves to a process of learning the lessons of human rights history, and of thinking hard and creatively about the context-specific goals of overseeing refugee law. Only on the basis of such a process will we be able to put forward a model for serious, genuinely responsive oversight of the Refugee Convention.



**James C. Hathaway** is professor of law and director of the Program in Refugee and Asylum Law at the University of Michigan Law School. He is also senior visiting research associate at Oxford University's Refugee Studies Programme.

Professor Hathaway is a leading authority on international refugee law, whose work is regularly cited by the most senior courts of the common law world. He is the author of a leading treatise on the refugee definition, *The Law of Refugee Status* (Butterworths, 1991) and, most recently, editor of *Reconceiving International Refugee Law* (Kluwer, 1997). He has also provided training on refugee law to academic, non-governmental, and official

audiences in Europe, North America, Oceania, Asia, and Africa, and is a regular lecturer at both the International Secretariat of Amnesty International and the European Council on Refugees and Exiles.

Immediately prior to joining the University of Michigan faculty in 1998, Hathaway was professor of law at the Osgoode Hall Law School of York University, in Toronto (1984-1998), where he served as associate dean and founding director of the Refugee Law Research Unit. He was previously a professor at the École de droit de l'Université de Moncton (1980-1983); consultant on Special Legal Assistance for the Disadvantaged to the Canadian Department of Justice (1983-1984); Fulbright Senior Visiting Scholar at the University of California at Berkeley (1991-1992); and held the Fromm Chair in International and Comparative Law at the University of California's Hastings College of the Law (1996-1997).

Professor Hathaway presently teaches International Law, International Refugee Law, Comparative Asylum Law, and an interdisciplinary research seminar on Emerging Responses to Forced Migration.

# Does & INFORMATION & AGREEMENT equal informed consent?

By Carl E. Schneider, '79,  
and Michael H. Farrell

*The human understanding is not a dry light, but is infused by desire and emotion, which give rise to 'wishful science.' For man prefers to believe what he wants to be true. He therefore rejects difficulties, being impatient of inquiry; sober things, because they restrict his hope; deeper parts of nature, because of his superstition; the light of experience, because of his arrogance and pride, lest his mind should seem to concern itself with things mean and transitory; things that are strange and contrary to all expectation, because of common opinion.*

— Francis Bacon  
Novum Organum

*The following essay is based on a talk delivered last summer in England and on the chapter "Information, Decisions, and the Limits of Informed Consent," in (Michael Freeman and Andrew D. E. Lewis, eds.) Law and Medicine: Current Legal Issues 2000, Volume 3 (Oxford University Press, 2000). This version appears with permission of the publisher.*

For many years, a principal labor of bioethics has been to find a way of confiding medical decisions to patients and not to doctors. The foremost mechanism for doing so has been the doctrine of informed consent. The theory of and hopes for that doctrine are well captured in the influential case of *Canterbury v. Spence* (464 F.2d 772, 780 [DC Cir 1972]): "True consent to what happens to one's self is the informed exercise of a choice, and that entails an opportunity to evaluate knowledgeably the options available and the risks attendant upon each."

Anxious as bioethicists and courts have been to promulgate this doctrine, they have been less anxious to discover how well it works. The bioethical tradition has been far more interested in articulating principle than testing practice. But as Law School Professor Don Herzog drolly warns, "theory had better not be what you get when you leave out the facts." So in this chapter we will reflect on the empirical literature on informed consent and present some findings of a study on the way men decide whether to use PSA (prostate specific antigen) screening to detect prostate cancer. This will lead us to reflect on the limits of informed consent.

The success of informed consent depends on two things. First, patients must be able to understand and remember the information doctors give them. Second, patients must be able to analyze that information and use it to make a decision. The first of these requirements has been studied extensively. Despite prolonged struggle to improve informed consent, success remains elusive. As Cassileth *et al.* wrote some years ago, "It is well known that many patients, despite all efforts to the contrary, remember or understand little of what they agree to during the consent process." And as Cassileth *et al.* said, studies of informed consent "have shown that patients remain inadequately informed, even when extraordinary efforts are made to provide complete information and to ensure their understanding. This appears to be true regardless of the amount of information delivered, the manner in which it is presented, or the type of medical procedure involved." What is worse, the sicker patients become, the less they understand and retain.

The second requirement for the success of informed consent — that patients be able to analyze the information they are given — has, in contrast, been virtually

unstudied. We have been interested in what patients hear, but not in how they consider what they hear. Yet what evidence we have is deeply unsettling. As Irving Janis says, “[T]he stresses of making major decisions and the various ways people deal with those stresses . . . frequently result in defective forms of problem solving that fail to meet the standards of rational decision making.”

In *The Practice of Autonomy: Patients, Doctors, and Medical Decisions* (Oxford University Press, 1998), Schneider suggests that most people regard making decisions of all kinds as forbidding work and that medical decisions are exceptionally challenging. Doctors themselves must often try to draw sound conclusions from dynamic and unreliable data and problematic theories. Thus, the information patients receive is often frustratingly uncertain. Worse, doctors most comfortably speak to patients in the language of medicine, a tongue that dismays even the brightest and best-educated patients. And while information cannot be put in completely objective terms, often neither doctor nor patient recognizes the assumptions and preferences recommendations silently embody.

*The Practice of Autonomy* further suggests that medical decisions are made yet harder because of their social and moral context. Medicine is becoming bureaucratized. This means that an astonishing number of people may have information and opinions to contribute to a medical decision, that the players change rapidly, and that responsibility is diffused. In addition, while some medical decisions present a single issue at a single moment, more often patients face a series of decisions over days or even months whose individual importance is often not apparent at the time. Even the non-medical aspects of medical decisions may boggle patients. For instance, people’s “values” are often more obscure than the theory of informed consent assumes, and (reasonably enough) they change over time and with experience. Nor will it always be clear what conclusions are to be drawn even from well-established and stable preferences.

Furthermore, most medical decisions are made by sick people, and sickness impairs thought. When you are ill you are weary. When you are ill you are diverted by a regiment of unfamiliar problems, not least reconciling yourself to your disease, reconstructing your future, and coping

with the quotidian. You may want to avoid facing the dismal facts of your illness. You may even want to “deny” your condition (which may be quite a wise deception). You may not find your medical condition absorbingly interesting. (We even have a pejorative term — valetudinarian — for people too fascinated by their illness.) And you may be so frightened that you cannot think lucidly and dispassionately.

All this may help us understand why Janis speaks so discouragingly about how patients address decisions. It also helps explain the emerging evidence about how patients go about making decisions.

One of the plainest elements of that evidence suggests that patients often make decisions with a rapidity that forecloses the systematic deliberation many students of decisions prescribe and the doctrine of informed consent presupposes. This has been most extensively studied among people asked to donate a kidney, who tend to decide instantly whether to donate or to decline. As one study put it, “Not one of the donors weighed alternatives and rationally decided. Fourteen of the donors and 9 of the 10 donors waiting for surgery stated that they had made their decision immediately when the subject of the kidney transplant was first mentioned over the telephone, ‘in a split-second,’ ‘instantaneously,’ and ‘right away.’” In short, “all the donors and potential donors interviewed . . . reported a decision-making process that was immediate and ‘irrational’ and could not meet the requirements adopted by the American Medical Association to be accepted as an ‘informed consent.’”

The most detailed, circumstantial, and vivid descriptions of how patients make medical choices appear in the memoirs so many of them have written about the experience of illness. Many of these memoirs, like the studies of kidney donors, report truncated decisions. For one lymphoma patient, for example, “[n]ot even a split second was needed to opt for chemotherapy despite all I had heard about it.”

Such instantaneous decisions are possible partly because many patients seem to fix on one factor, make it the basis of decision, and then close their minds to new data. (This psychological conservatism is often called the “anchoring heuristic.”) Penny Pierce, one of the closest students of how patients make medical decisions, reports such thinking among many of the breast cancer patients she studied. Schneider frequently observed it among

people asked to choose a dialysis modality. Such patients

“Often seem to listen until they hear some arresting fact and then make it the basis of their decision. For instance, as soon as some patients hear that hemodialysis requires someone to insert two large needles into their arm three times a week, they opt for whatever the alternative is. When some other patients hear peritoneal dialysis means having a tube protruding from their abdomen, they choose “the other kind of dialysis.”

Not only do many patients decide quickly and consult only a few criteria — or even a single criterion — but even patients well educated and reflective enough to write memoirs regularly describe no decisional process at all. Instead, they invoke intuition, instinct, and impulse. An AIDS patient, for example, wrote, “I’ve learned to listen to my inner voice for guidance when choosing treatments. If I get what Louise refers to as a ‘ding’ (a strong instinct) about a vitamin, herb, drug, or other treatment, I try it.” A multiple sclerosis patient “got a flash,” found that a “little light flashed inside my head,” came to “trust my instincts and intuition,” and asked why she should not “play my hunches.” Even the patients most committed to making their own decisions on rational bases often cannot, even in retrospect, explain their choices. For instance, a Rice sociologist with prostate cancer who was virtually a poster-boy for patient autonomy, wrote, “Without knowing precisely why or being able to provide a clear rationale, I decided I would ask Peter Scardino to perform my surgery.”

### **A case study: screening for Prostate Specific Antigen (PSA)**

Our survey of the evidence about the two requirements for successful informed consent suggests two things. First, we have a great deal of evidence about how much patients understand and retain of what they are told by their doctors about their medical choices: In brief, troublingly little. Second, we have little evidence about how patients analyze what they hear and remember. But that evidence gives us good reason to doubt that their analyses meet the expectations of the bioethicists who advocate informed consent or the judges who demand it.

To gain further insight into the way patients think about their medical choices, let us examine a case study. The most common cancer among men attacks the

prostate. Traditionally, physicians tried to detect prostate cancer before its symptoms became acute by “digital rectal examination,” that is by trying to feel the cancer in the prostate. However, this method is roughly as effective as it is pleasant, at least where the cancer is in its early stages. This made it seem desirable to find another way of identifying men with this common and potentially fatal disease. The best current way to do so arises from the fact that distressed prostates emit abnormally high levels of prostate-specific antigen (PSA). A number of physicians thus favor screening men by testing their blood for elevated PSA levels and then, where the PSA is elevated, performing ultrasound examinations and, usually, biopsies.

Other physicians, however, disagree. These PSA skeptics make several points. First, they observe that many things besides prostate cancer can distress a prostate and that therefore the PSA test provokes numerous biopsies that reveal no cancer. Indeed, at least 70 percent of the men with elevated PSA levels do not have cancer. The 30 percent who do from the 70 percent who don’t are generally distinguished through a biopsy of the prostate. While the PSA test is relatively inexpensive and only trivially burdensome (it is a blood test often performed on men who are already having blood drawn for some other purpose), few men find the biopsy agreeable. Furthermore, it is both expensive and fallible.

Second, opponents of PSA screening say that most prostate cancer grows so slowly that most men who have the disease do not die from it. Autopsies of men who did not die of prostate cancer found evidence of the disease in a quarter of the 65-year-olds and 40 percent of the 85-year-olds. One estimate is that 10 percent of all men contract prostate cancer but only two to three percent of these actually die or suffer seriously from it. This suggests that for most men, inaction may be the best reaction to a diagnosis of prostate cancer.

Third, opponents of PSA screening note that the treatments for prostate cancer — surgery and radiation — can be painful and that they are likely to cause quite trying complications. Seventy percent of the men treated suffer temporary impotence or incontinence, and 30 percent of those treated suffer from one of these conditions permanently. Others have persistent infections. Since the treatment

will be unnecessary for many men, this means that these complications would — for those men — have been pointless. For a number of other men, treatment will not work. For these men, the unpleasantness and complications of treatment may well outweigh its benefits.

The studies necessary to determine whether PSA screening is on balance worthwhile are under way but are years from completion. Meanwhile, opponents of screening say there are hints that screening — on the average — increases life expectancy by only a few days and that screening even *reduces* one’s “quality adjusted” life expectancy lead by a few days. In short, the PSA skeptics fear that, on average, screening does not improve health and longevity and thus is not worth the cost.

A number of attempts have been made to resolve this controversy among physicians by bringing them together to issue guidelines. These attempts, however, have failed. Instead, these groups have recommended that each patient be given the evidence and decide for himself. In short, the medical dispute among doctors has been deferred to their patients under the aegis of informed consent.

How well will this work? How will men confronted with these conflicting arguments analyze them? To find out, we interviewed 40 men who were 40 to 65 years old. They varied widely in income and occupation. The men were on average better educated than the American population. Only nine of them had no college experience, and three of these did not finish high school.

The interviews were generally held in the interviewee’s home and lasted from one to two hours. A central feature of the interview was an attempt to give the men the kind of information about whether to be screened for PSA that an exceptionally conscientious physician who was struggling to be as neutral as possible would offer. In other parts of the interview, the men were also asked about their health, their experience with prostate problems and tests, their relationships with physicians, their views about participating in medical decisions, and their skill in handling simple arithmetic.

Strikingly, the interviewees generally seemed committed to making the kind of formally correct cost-benefit decision that has traditionally characterized the medical literature on medical decisions. A number of men not only aspired to make sound decisions, but felt obliged to do so. They disparaged friends or even spouses who

had avoided the responsibility of making medical decisions. They often spoke contemptuously of such people and their dangerous course.

The interviews were structured to promote the kind of rational decisions to which the participants seemed to aspire. The interviewer presented the relevant medical data in much the way a careful physician might (although at much greater length than most physicians would have time for) and tried to come as close as possible to the idea envisioned by the medical groups that have called for doctors to give patients the information they need to decide for themselves whether to be screened.

The thinking of 40 men over a prolonged discussion is not easily summarized. When humans speak, their ideas are fluid, incomplete, and even contradictory. These men were no different. Nevertheless, two central and significant generalizations are inescapable: First, only two of the 40 seemed to change their minds about PSA screening despite all the information they were given. This may be partly because three-quarters of them had already had a PSA test and because prostate cancer and screening for it have by now entered into public discourse.

Second, despite the professed desire of a number of these men to make their own rational decisions, and despite the exceptionally favorable circumstances for doing so, almost every participant repeatedly reasoned in ways that seemed at odds with his own aspirations. More specifically, participants frequently seemed swayed by unexamined assumptions, which led them to ignore or misunderstand the information they were given. More specifically still, the interviewees relied crucially on what might be called principles of folk wisdom. An examination of some of these principles will reveal much about the way these men thought about the problem they confronted.

**Prevention is good.** Public health and cancer education seemed to have done their job almost too well. Participants had fully imbibed the principle that “prevention” is better than treatment, that nothing is more crucial to combating cancer than catching it early, and that screening is the first step in early detection. Thus one respondent said,

My mother is a retired registered nurse. I've got a lot of health professionals in my family. I've been aware of health and healthcare all my life. . . . I've been blessed with good health, for the most part, and I just did not want to run the risk. I didn't want to do something stupid. . . . [I]f there's a test, or an exam, or something, I'm going to take it. . . . I just want to be preventive, instead of [regretting] after the fact.

And another:

[My body's] like a machine. . . . [I]f there's a flat tire, I'll go ahead and change it. If the oil's low, I'll go ahead and change it. . . . It's by taking preventive measures like this [test] I've been able to maintain a reasonable amount of good health. . . .

And in like vein:

*Respondent:* I honestly believe that knowing, and having the option of prevention, outweighs all the other risks [of PSA screening]. . . . [I]f you do the proper things, it's just like starting a car. You can have the key, and if you don't unlock the door and stick it in the ignition, you're not going anywhere. But if you do the proper things: stick the key in the door, unlock the door, stick it in the ignition, put the seatbelt on for safety, . . . you're going to go somewhere. . . . This is good sense, this is good medicine.

*Interviewer:* So you've said that 'prevention' really overrides this uncertainty about PSA?

*Respondent:* The availability of prevention has to be part of the system, part of the schedule of benefits [for an HMO]. . . . I mean, I think of prevention. I'm not always that way, but prevention — you're always in control of prevention.

Of course, the interviewees were commonly doing more than applying the general lesson of prevention and screening. The advocates of PSA screening have had much the better of the controversy in the media, and the blessings of PSA screening seem to have been well preached by celebrities like Robert Dole and Arnold Palmer. As one of the participants remarked, prostate cancer "is all over the TV now." That has had its effects.

It is of course entirely reasonable to believe that PSA screening is wise because it makes it possible to detect disease early and thus to treat it more effectively. The controversy over screening exists precisely because many estimable authorities accept that view. But such a position is reasonable only after one has grappled with the proposition that, in the particular case of PSA screening, the general argument in favor of screening does not work. Many of

these men seemed so powerfully driven by an idealized version of "prevention" that they had difficulty hearing, understanding, and analyzing a reason PSA screening might be desirable.

To put the point a bit differently, screening often works just as it is supposed to. It works for easily apprehended reasons. The virtues of screening have been drummed into the public over many years of virtuous advertising. As the passages quoted a moment ago suggest, screening is easily analogized to familiar and desirable practices, like routine maintenance of one's car. All one's educated intuitions, in short, make PSA screening seem like common sense and the arguments against screening seem foolish. Taking those arguments seriously requires an uncomfortable and burdensome re-examination of what seem like settled questions. Personal experience suggests to most people that such re-examinations are rarely worth the effort, and they are thus resisted.

Many of these men were also diverted from thinking clearly about their choices by their tendency to call PSA screening "prevention." But PSA screening does not prevent disease, it reveals it. Effective prevention relieves people of any of the consequences of disease and treatment, and prevention is often virtually free of risk. On average, then, prevention is much more effective than screening, and conflating the two makes screening more attractive than it will often deserve.

**Control is Good.** Some years ago, "control freak" was a term of disparagement. Today, Americans feel with increasing conviction that people need to take and maintain control over their circumstances. Control even takes on a moral dimension, for taking responsibility often means taking control. PSA testing appealed to a number of these men because it was a way of taking control and responsibility for their health: "[T]here are a limited number of things that you can control in your life. . . . I like to keep as many of those as possible." PSA screening looked attractive because it was seen as a form of "prevention" and prevention was seen as a way of having control: "[P]revention — you're always in control of prevention." More than half our participants used negative stories about other people who had failed to assume responsibility for their health by using PSA screening.

Now, if they don't get a PSA, and then they get [cancer], I have no sympathy for 'em. That's just stupid on their part, they

could have prevented it, but didn't. They could all die for all I care. . . . [W]hy should we pay for their unnecessary medical care? No doubt it's their doctor's fault, too; a doctor is supposed to prevent things, not ignore them.

The association of PSA screening with "control" suggests another reason men may be reluctant to grapple with the argument against screening. That argument disturbingly suggests that, in the present state of knowledge, medicine fights prostate cancer ineptly. Taking that argument seriously means confronting medicine's limits with disquieting directness. In addition, that confrontation challenges another idea of psychological importance — that if you live right, you will live long, that you can avoid all harm if you are just careful enough. As one interviewee said, "If you avoid all these things that are bad they got these days, you'll be rewarded with life. You have to take care of yourself, get the proper checkups and tests." In short, the desire for control provides another reason to accept PSA screening with little thought and to resist examining the argument against it.

**Information is Good.** The survey literature now insistently suggests that most patients believe they want a good deal of information about their illnesses. The participants in this study shared a nearly axiomatic belief that information is always good to have. Some of these men had quite plausible reasons. One common reason for wanting information is wanting good news. Some men see PSA testing not as a way of detecting cancer but as a way of hearing comforting news: "[I]f you have a negative test, then you say, hey, you're really reassured that nothing is going to happen."

Another common reason for wanting information is a belief that forewarned is forearmed.

Everything affects our life, but that [prostate cancer] affects the end of your life, so you need to know. . . . Nobody anticipates when they're gonna die. . . . If it happens, it happens, but if you know it's going to happen, you put yourself into an advantage situation of being able to accomplish things that you've put off, things that you've wanted to do, or . . . maybe experimental medication. . . .

Or, as another man put it,

I would rather know what information's available, and which way to go, so I've got all the information to make some kind of a sensible decision of what I'm gonna do with myself. . . .

Other men seemed committed to “more information” even if its usefulness might be obscure. These men might acknowledge the possible disadvantages of PSA testing but then suggest that even a misleading PSA is better than no test. One man said that a PSA test is —

Not a gamble. I mean, do it. It's silly not to. . . . [L]ogic would dictate the tests are there, they're available, and they're reasonably accurate, even if they're not 100 percent.

As another interviewee said,

You're attempting to try and find out what's going on [with the prostate]. . . . [T]he PSA may not be exact, but at least it is some measure, and as time goes on it will become more precise, but nonetheless, it's something.

These men are recruiting a standard aphorism from common sense — that half a loaf is better than none, that some information is always better than none. The aphorism is inappropriate, however, since the uncertainty lies not just in the accuracy of the test, but also in what to do if cancer is diagnosed. Few things seemed more counter-intuitive to many of these men than the suggestions that a lack of knowledge could be better than knowledge.

Even participants who seemed to acknowledge some of the arguments against PSA screening emphasized how important “knowing” is.

I didn't understand [PSA statistics before], to be honest with you. I didn't realize about all these numbers, and it may sound silly, but I still like the idea of doing the blood test, only because I'm always curious about these things, I just like to see.

The same man said,

But if I get a positive result, I'm not sure I'll do anything. The potential [adverse effects of treatment] here, would make life very unpleasant, [and] outweigh the small possibility of dying.

He saw PSA screening, then, as a way of putting off a decision about how to respond to prostate cancer until the evil moment of knowledge actually arrived.

But if I start to get a positive result, then that's something I should find additional information about, look into, you know, really make a decision about.

Other participants put their preference for information in yet starker terms. As one frankly said, “I can't explain why [I want screening]. I just like to see tests.” And

another participant felt so intensely that information is good and ignorance bad that he saw the argument against PSA screening as part of a conspiracy to keep him in ignorance.

You can't put the genie back in the bottle. The awareness is there. People like myself are spreading the word, of advantages of PSA. I don't care [if the cancer] is latent or active. . . . [W]ho do you think shows up at those meetings [on cancer screening nights]? Opinion leaders, people that want the information. Now, you [showed] your statistical work [to me], but it's the opinion leaders that tell 10 others. You unleashed the dragon. [The speaker at the screening night] said, pure and simple, just like that — . . . he knows how many other groups are talking about [PSA].

There is, or course, much to be said for having information about one's health. However, here as with the other two axioms we have explored, the danger is that the simple principle “information is good” operates so powerfully and is accepted so uncritically that men do not hear and consider the arguments that suggest that the information provided by PSA tests may be bought at a high price (because the PSA test itself produces so many false positives) and is unexpectedly uninformative (because there is — in the mind of PSA skeptics — no satisfactory evidence about what men with prostate cancer should do and thus reason to think they should do nothing).

**Technology is Good.** Another common element of folk wisdom in American culture is the steady progress of technology and medical science. Some of the interviewees saw PSA screening as the “state of the art” and believed they should take advantage of the best medical science had to offer.

We already know about heart disease. We already know about certain forms of cancer that are caused by smoking. We know about emphysema, that's usually a byproduct of smoking. Right now, prostate cancer is a treatable problem. You know, [PSA] is a good. Right now there isn't anything else.

Some saw being screened as a necessary best step toward the next technology:

If I were presented with a positive PSA test, I guess the most logical thing is to get a second confirming PSA test. But there will be another test that the medical community will come up with in the future, and that will work better than the PSA. . . . If I don't get the PSA, then I won't know to get that [other] test, I won't be able to benefit from the advance.

. . . There was a time when the PSA didn't exist, after all, and men were subject to cancer without warning. Now, the PSA is here, and something else will be discovered soon.

**Statistics are Lies.** A number of the participants scorned the arguments against PSA screening because they shared the common American skepticism of, and even contempt for, statistics. That skepticism is summarized by one man's use of the cliché “you can prove anything you want with statistics.” Similar doubts led other men to such conclusions as a belief that all statistical uncertainty was automatically a “50-50 chance,” so that either choice was appropriate, or a “toss-up.”

*Respondent:* The numbers [don't matter] . . . I don't want to take chances with all that stuff. I might die, I might not. I might get those [side effects of impotence and incontinence], I might not. Either way, I got a 50-50 chance, you know, I might as well guess.

*Interviewer:* Hmm. Remember those numbers here aren't exactly 50-50, your chances could be worse, maybe of getting a side effect, or maybe a lot better, like living for years without problems [from the cancer].

*Respondent:* Yeah, I hear you. But I figure it's a gamble, an even chance either way, you know, 50-50. Since you don't know, you know you're saying 30 percent here, you might as well guess either way. You got an even chance of good or bad.

This skepticism of statistics could shade into an acid distrust of those who purported to use them:

Now the person [who is] saying the PSA tests aren't that valid. . . . What would happen if their mother went in and got a pap smear, and it was positive, or their father went in and got a PSA that was a 5? . . . Right then and there they'd want to do everything possible to see what was going on. Yet it's very easy for them to say, “Joe Blow down there, he may not have it 'cause he's got a PSA of 5.” When you start throwing statistics around, I think it's a cop-out, in a way, for these people. I always say, “[I]f I was your mother or father, or your son or your daughter, what would you do?” And if they're telling the truth, they're gonna say, “[W]ell I'd do everything possible.”

“I knew someone once who . . .” One of the best-studied defects in human reasoning is the tendency to prefer a few vivid examples to systematic but dry statistical data. The participants in this study were as prone to this failing as

anyone else. The interviews were strewn with stories of friends and relatives who had been saved by testing.

I think my impression initially was that [my physician] didn't want to do the test, and I insisted that we do it. You know, I'll make the decision about what I'm going to do. . . . I think about Bo Schembechler [one-time University of Michigan football coach and a sainted name in Ann Arbor], he had a prostate operation, and [a friend of mine], and somebody else, a pretty renowned citizen — oh! Schwarzkopf, General Schwarzkopf.

Often these stories did not involve PSA screening, but rather involved quite different kinds of cases, from other blood tests such as cholesterol to decisions about children with congenital heart disease.

You know, a one in 1,000 chance may not sound like much, but I had an aunt that was told she had a one in 1,000 chance of having a blood clot go to her brain through a procedure she was going to have, and it happened. . . . [I]t's all risky, but I still think it provides a framework for decision making even if it's not totally accurate, because you can't have complete accuracy.

"If it weren't for bad luck, I'd have no luck at all." Finally, some men implicitly relied on old beliefs about a purposive fortune. At least six complained quite seriously about their bad luck. From this they concluded that PSA testing might be bad for the general population but necessary for themselves.

*Respondent:* Oh, I understand you all right, and I don't think most people should have a PSA. . . . I still want it because bad things happen to me. I'm the guy with bad luck, the one percent.

*Interviewer:* You told me you don't have a family history of cancer, right?

*Respondent:* Yeah, but I'm just like [the men with a family history]. . . . I'll get cancer because I get everything else.

This PSA study does not, of course, prove that people make medical decisions badly. It does, however, suggest a hypothesis that may help explain how patients so often seem to be able to make medical decisions with more rapidity than the complexity of their choices might seem to justify. Often, the participants seem to have short-circuited their consideration or fallen back on axiomatic principles current in American culture. These principles are not necessarily problematic in themselves although some of them were (like the facile

dismissal of all statistics). The problem, rather, is that these principles seem so right (and may in the proper circumstances be so unexceptionable) that they make it seductively easy for the participants confronted with an unappealing and counter-intuitive proposition (PSA screening is not a good bet) to dismiss the information without reflecting on it and instead to leap to a conclusion.

### The cure for the ills of informed consent

The problems patients have in understanding and retaining what they are told are well known. And evidence is beginning to accumulate about the difficulty patients have in analyzing the information they are given and making a sound decision about it. The hypothesis we investigated in the preceding section helps substantiate the suggestions that patients often seem to resolve medical questions with a speed that would inhibit thoughtful consideration of the information presented to them. Added to the other doubts we have already reviewed about how patients receive and process information, the hypothesis raises questions about what can be hoped for from informed consent.

The conventional response to concerns of this kind has most typically been: "The only cure for the ills of informed consent is more informed consent." Many of these suggestions have to do with ways of conveying information more effectively, as by improving the way forms are worded, or by having people other than doctors explain choices to patients, or by making videos part of informed consent. As it has become clear that such changes do less than had been hoped, doctors have been urged to expand the range of information they impart and the range of situations in which they offer informed consent. (The movement away from guidelines and toward patient choice in PSA screening exemplifies the latter tendency.) A sense of the ambition — one might almost say desperation — of these proposals is to be found by examining a recent article by Geller *et al.* (Gail Geller, *et al.*, "Decoding' Informed Consent: Insights from Women Regarding Breast Cancer Susceptibility Testing," 27 *Hastings Center Report* 28, March/April 1997). Among its recommendations:

There should be an "in-depth exploration by providers of patients' affective and cognitive processes," since "[p]roviders who rely on a discrete or short-term approach to informed

consent are unlikely to succeed at understanding fundamental patient beliefs and preferences and thereby have little hope of obtaining truly informed consent."

"It is particularly important in the area of genetics and genetic testing for provider-patient interactions to explore uncertainties and limitations both in the provider's own knowledge and in the state of the science."

"[I]f they are to facilitate truly informed decision making on the part of their patients, providers must understand and disclose their own motivations, beliefs, and values to patients."

"Concerns about autonomy should be broadened from a sole focus on the voluntariness of the decision itself to include a focus on the voluntariness of the decision making process. . . . providers ought to explore what kind of role expectations the patient has for herself and her provider."

Finally, "informed consent ought to be individualized . . . and take place in the context of an ongoing relationship with a trusted healthcare provider."

People are driven to such effulgent visions of informed consent in part by the strength of the autonomist ideal in American life, law, and medicine. More particularly, they are not insubstantially motivated by the rise of the view among some bioethicists and even some doctors and patients that, as a matter of good medical practice and even as a matter of moral duty, patients ought to make their own medical decisions even if they would rather delegate them to someone else. Those who espouse this "mandatory autonomism" must hope to perfect informed consent for want of a better way of achieving their goals.

### The limits of informed consent

One interpretation of the PSA study this paper describes is that informed consent was a success, that the men took the information they were given and applied their own "values" to it, with the results we have seen. This is true at least in the narrow (but not trivial) sense that people formulate and evince their values by making decisions. It is also true in the sense that these men genuinely subscribe to the culturally axiomatic ideas on which they relied.

But there is an important sense in which this interpretation of the study seems false. It is unlikely that the men wanted to make decisions in the way they seem to have done. Indeed, when asked about how they wanted to make decisions, the men in the study tended to espouse quite conventional views of how decisions ought to be made. Most people want to make decisions as well as they can. Most people believe that making good decisions requires listening to the arguments on both sides carefully enough to understand them. One might even wonder whether these men were aware of how they were making decisions. Possibly, but probably not, since the psychological mechanism at work is one which ordinarily does not reveal itself to its user.

Nor is the way the men often seemed to be reasoning consonant with the principles of informed consent as they have ordinarily been understood. Those principles assume that patients will grapple as directly with the advantages and disadvantages of their medical choices as possible. Why proffer substantial amounts of difficult information about difficult choices if consideration of them is thus to be short-circuited? Furthermore, there is a public interest in having them reach sound decisions, both because the cost of medical care is generally shared and because the lives of patients are valuable to the people around them and even society at large.

This paper has expressed doubts about how well patients hear and remember what they are told and about how well they are able to reflect on the choices presented to them. But what is to be concluded from these doubts? Should informed consent be abandoned? Of course not. This is not the place for a full-scale reconsideration of informed consent; this paper will have done its job if it directs attention to the grotesquely understudied issue of how patients make medical decisions. But a few words of clarification are no doubt needed.

The doubts this paper has expressed about informed consent do not require anything like abandoning informed consent. There are many reasons for this but space for only a few. First, sometimes informed consent works in something like the way bioethicists and courts envision. Some people are well situated to make medical decisions. Some "medical" decisions can be well made by many patients. Second, most people want at least

some of the information the doctrine of informed consent intends for them to have. Third, some of the information given in informed consent helps patients care for their illness better even if it does not help them make medical decisions. Fourth, informed consent may have value even if it is only a ritual, for it reminds doctors of their duties of concern and deference to their patients, duties it is easy for them to forget and neglect in the press of the other duties that surround them.

The question, then, is not whether to discard informed consent, but what to expect of it. The material surveyed in this paper raises the possibility that there are real limits to our ability to solve the two problems of informed consent and thus to what it is reasonable to hope for from it. The PSA study illustrates a number of those limits. Not the least of these is time. In the artificial setting of this study, time could be lavished on a single medical question in a way that would be flatly impossible in almost any ordinary medical situation. Yet interviewees still came away from this educational extravagance without having fully understood and confronted the arguments presented to them.

But why is this surprising? Teaching and learning are both humbly difficult, as any student and any teacher knows. Yet teachers and students teach and learn in virtually ideal settings compared to those in which doctor and patient must labor. And when the subject of the teaching and learning is as fraught with disturbing ideas and with unrecognized and unreliable assumptions as medical decisions, it is hardly surprising that people should almost struggle to avoid the task of learning.

Indeed, a substantial number of patients expressly say, when asked, that they do not want to make their own medical decisions. And the sicker patients are, the less likely they are to want to make their own medical decisions. The task of education is always daunting. How much more daunting must it be when the learners do not wish to use what is being taught?

The PSA study suggests another practical limit on the scope of informed consent. The participants in that study seemed often to be relying on powerful cultural axioms that allowed them to dismiss much of what they were being told. They may not fully have realized what they were doing, and it seems likely that physicians trying to inform them would often not realize all that was going on in their minds. Furthermore, there is good reason to think that patients will often be

influenced by misapprehensions of whose existence or strength their physicians are unaware. For example, it seems not to be generally thought that patients who have agreed to become research subjects considerably over-estimate their chances of benefiting from the experimental treatment even when they have been told what those chances actually are. These research subjects "systematically misinterpret the risk/benefit ratio of participation in research because they fail to understand the underlying scientific methodology" (Paul S. Appelbaum *et al.*, "False Hopes and Best Data: Consent to Research and the Therapeutic Misconception," 17 *Hastings Center Report* 20, 21, April 1987). And like the participants in the PSA study, they are saved from difficult choices by misplaced reliance on a cultural truth: "Most people have been socialized to believe that physicians (at least ethical ones) always provide personal care. It may therefore be very difficult, perhaps nearly impossible, to persuade subjects that this encounter is different. . . ."

What is more, it appears that even willing physicians have had trouble in overcoming this kind of misapprehension:

**The investigator in one of the projects we studied offered his subjects detailed and extensive information in a process that often extended over several days and included one session in which the entire project was reviewed. Despite this, half the subjects failed to grasp that treatment would be assigned on a random basis, four of 20 misunderstood how placebos would be used, five of 20 were not aware of the use of a double-blind, and eight of 20 believed that medications would be adjusted according to their individual needs.**

Doctors should surely do their best to give patients the information they want. But it is time to consider the possibility that doctors will never be able to communicate to patients all the information they need in a way that they can use effectively. It is the rare physician who has the skill and the time to probe deep enough into the patient's mind to discover the misapprehensions of fact and the inapt reliance on truths that distort what patients hear and think about the problems they face. It may therefore be time to acknowledge the limits of informed consent and to search elsewhere for ways of helping patients secure what they want from medicine.



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Professor Schneider has written extensively in several fields, including bioethics, professional ethics, professional education, family law, and constitutional law. He recently published *The Practice of Autonomy: Patients, Doctors, and Medical Decisions* (Oxford University Press, 1998). It is an examination of how power to make medical decisions is and should be divided between doctors and patients and, more largely, of the role of autonomy in American culture. As one reviewer said of the book, it uncovers a "great hole . . . for all to see: the failure of autonomy not only as reality but even as ideal."

Professor Schneider continues his study of the interaction between American law and American culture in an influential series of articles on moral discourse and family law. In those articles, he contends that family law has increasingly abandoned moral language in analyzing the issues it confronts and has increasingly sought to transfer responsibility for moral decisions to the people the law seeks to regulate.

Professional education is another of Professor Schneider's interests. He has lectured and written about legal education in several countries. He is the author (with Margaret F. Brinig) of an innovative family law casebook – *An Invitation to Family Law* (West, 1996) – a second edition of which is about to appear. And he is currently preparing a law and bioethics casebook (with Marsha Garrison).

Professor Schneider is currently working on two large-scale projects. The first is a study of how Americans think about moral problems and how that thinking shapes American law. The second is an investigation about how people make decisions about entering a profession and building professional careers. For that investigation (to be published as *At the Threshold: The Professional Choices of Young Lawyers*) he is currently interviewing a sample of 1998 graduates of the University of Michigan Law School.

The courses Professor Schneider teaches include *Law and Medicine*, *The Sociology and Ethics of the Legal Profession*, *Family Law*, and *Property*. He has been a visiting professor at Cambridge University, the University of Tokyo, and Kyoto University and has taught for many years in Germany.

**Michael H. Farrell** is a clinical instructor at Yale University School of Law. He undertook research for this study as a Robert Wood Johnson Clinical Scholar at the University of Michigan.



*What happens to democracy when the system of an international intergovernmental organization (IGO) is superimposed onto the legal orders of its member states — democratic or otherwise, unitary or federal? In the complete article on which this excerpt is based (“International Integration and Democracy: No Love at First Sight,” American Journal of International Law, pp. 489-534, July 2001), Hessel E. Yntema Professor Emeritus Eric Stein, ’42, explores this question as applied to four IGOs: the World Health Organization (WHO), World Trade Organization (WTO), North American Free Trade Agreement (NAFTA), and the European Union (EU). He focuses on the level of integration of each of the four IGOs, and the nature and intensity of the debate on the “democratic deficit” surrounding it. What follows is a modified excerpt of his conclusions, which appears here with permission of the American Journal of International Law.*

# What happens to democracy?

By Eric Stein, ’42

The review of the four intergovernmental organizations, or IGOs (European Union [EU], World Trade Organization [WTO], World Health Organization [WHO], and North American Free Trade Agreement [NAFTA]) confirms the correlation between the level of integration, on the one hand, and the intensity of the discourse on the democracy-legitimacy deficit, on the other. In an organization where the rule of consensus prevails and the area of activity is essentially technical and relies on “independent” experts, the debate about the WHO, confined generally to elites of experts and bureaucrats, is an appropriate example. At the point, however, where the member states become subject to majority vote and the organization’s competence is broad enough to require the setting of priorities and mediation between conflicting

interests and values, the level of discourse in democratic societies rises, and becomes linked to a more general debate on reforming the organization. This is what has happened in the evolving EU. In the WTO, the discourse originated in the use of the adjudicatory power of the institution.

Propelled by the search for assured reciprocity, adjudication procedures have formed the vanguard in the path toward closer integration, offering legitimacy as an aspect of the rule of law. In the WTO, the NAFTA, and the European Union, however, the transfer of judicial power to international institutions raises questions of conformity with the national constitutions of the member states. Moreover, the scope of review of national legislation by the adjudicatory organs creates a potential conflict between the acts of the organization and the national

law of a member state that reflects competing values. The potential for such conflict is enhanced markedly if the issue may be raised directly by a concerned individual or firm. Where, as illustrated by the European Community, some law of the international organization becomes directly applicable and enforceable in the domestic law of a member state, the rule of law (and legitimacy) is enhanced, but this system standing alone cannot cure the democracy gap without incorporating political institutions that fit the idea of democracy. More generally, where norm-making facilities are not keeping pace, disproportionate reliance on non-elected adjudicatory bodies fans the democracy-legitimacy discourse. This proved to be a problem in the early decades of the European Community and some see it as an emerging challenge in the WTO.

In searching for remedies to the democracy-legitimacy deficit, one would logically look to the practice within the modern democratic states, as varied as this may be. Yet any such model of governance is obviously not transferable to the international level and idiosyncratic solutions are therefore required to fit a discrete organization. It has been suggested that the very idea of democracy needs to be redefined for this purpose, but to my knowledge no general theory has emerged so far.

One controversial idea would eschew representative democracy in international institutions such as the WTO and instead pursue the civic republican ("participatory") approach based on institutional balance, broad deliberation, and consensus, bolstered by open access to policymaking for interest groups and individual standing to litigate claims before tribunals. The question is — as the varied interests become increasingly affected — whether ultimately this system could perform the essential mediatory function of a representative democracy.

In pursuing the principles of representative democracy, two remedies are sought: in the national procedures of the member states and/or at the international level in the structure and functioning of the particular organization. As demonstrated by the EU experience, those who see the member states not just as privileged actors but as "masters" of the organization would seek to improve representation and accountability through national parliaments. This solution is likely to be the inclination of

the "neo-realists," "neo-functionalists," and "intergovernmentalists" of diverse hues. On the other hand, those who view the organization as a multilevel governance regime, in which the member states wield significant influence in a complex process with a wide range of participants, would advocate more power for the elected European Parliament of the EU. Thus, a dialectic tension exists, although both alternatives may be usefully pursued.

At the national level, experience has shown that the legitimacy of a state's adherence to an IGO, grounded in the act of approval by an elected legislature, dissipates quickly as the national delegation, appointed and instructed by the national executive, often acts within the organization in alliance with other delegations and IGO staff, and finds itself with little actual supervision by, or accountability to, the national legislature. Several suggestions to reduce this deficiency have been advanced in the discourse:

- Members of the legislature and representatives of the private sector should participate in the negotiations for the constituent treaty and any major amendments, allowing space for confidential bargaining by the executive alone. Similar representation should be assured in the process of domestic implementation of the constituent treaty and acts of the organization. National referenda on appropriate major issues before an international institution may be useful in democratic states.
- An ample flow of information from the national delegation to the legislature is a prerequisite to effective supervision. A special legislative committee should be charged with this task. Contacts between national legislatures and the all-membership organs of the organization should be encouraged, including common sessions ("assizes" in the European Union).
- Even in those national orders that do not confer direct effect on treaties, the domestic courts of the member state should interpret national law in accordance with the state's obligations under the constituent treaty and the rules adopted by the international organization.

All of these ideas deserve serious consideration. Some have been adopted, such as the procedure for the

implementation of the NAFTA in the United States and the special legislative committees in some member states of the European Union. The referendum route may not be practicable if complex texts are to be put before poorly informed voters or deeply fractured constituencies.

Care must be taken as well that intervention by national legislatures is not carried so far as to impair the working of the international institution.

Despite their usefulness, national procedures alone can hardly be expected to meet the democracy-legitimacy requirement appropriate to the integration level of an IGO. Measures must also be sought at the level of the organization:

- Most sessions of the institutions, particularly rule-making sessions, should be open to the public and documents, including draft proposals, should be placed on the Internet.
- In organizations at higher levels of integration, a standing consultative body composed of members of national parliaments might be established to assure greater accountability.
- Actual decision-making should not be confined to major powers acting in a club-like setting; the broad membership should have an opportunity for genuine participation.
- Nongovernmental organizations and interest groups should be given adequate and fair access to the institutions for exchange of data and consultation. A normative framework should be devised for such participation.
- An inspection panel (such as that created by the World Bank) and an ombudsman should be appointed to receive citizen complaints of mal-administration.
- At low integration levels such as that of the WHO, remedial measures should focus on transparency, openness to the outside world, accountable and effective management, and policy results that gain the constituency's acceptance.
- Some of the discrete features of the European Union may be transferable to international institutions, such as phased development, the vigorous use of institutional powers, the ombudsman mentioned above, the procedures and precedent building of

the EU judiciary, the consultation system and advisory organs, measures to improve transparency, cooperation with national parliaments, and — depending on the level of integration — the efforts to advance the sense of common good and expectations. In principle, however, the transfer of any feature of one organization to another succeeds only if the basic contexts of both are roughly comparable.

- Particularly at a higher level of integration, dispersion of the organization's central power should be sought through reliance on regional and local authorities, and the principle of subsidiarity should be honored. Both regionalism and subsidiarity should be kept in mind in connection with all international institutions since only those powers that are necessary to deal with international problems should be centralized in IGOs.
- In the interest of legitimacy, if for no other reasons, IGOs and regimes should explore the ways of protecting the core of fundamental human rights within the confines of their competence.

Several observations regarding this list are in order. The new information technology, including the Internet, has already contributed to greater transparency and to enhancing the role of NGOs. A major problem has been finding a way to open up the preparatory proceeding that precedes final action, while protecting genuinely confidential information and allowing space for confidential bargaining. The protesters against the WTO "club system" of decision making included not only NGOs but also government delegates from less developed countries — a signal to the WTO establishment. Generally, NGOs play a useful role, provided that they shun violence and are themselves democratic in their organization and transparent in respect of their constituency, internal proceedings, and sources of funding.

Some participants in the discourse see the currently feasible measures as palliatives. They believe that nothing short of a radical restructuring of the international and regional systems can cure the democracy-legitimacy gap. Thus, in the WTO, private individuals and firms are to replace the member governments as the principal actors. In the European Union, voices in the judiciary and high political circles call for

a federation (often not meaningfully defined) based on a European constitution as the only effective remedy.

All of these "radical" measures are designed to inject the voice of individual citizens into the exclusively state-based structures. This could be accomplished in two major ways. First, individuals could be recognized as stakeholders with individual rights derived from the constituent treaty and broadly enforceable by the domestic or supranational judiciary. A less intrusive alternative would be to enable a private party to pursue a specific claim in an arbitration proceeding, as in the NAFTA chapter on investment. In this context, I have noted the vital differences between the European Union and the WTO, which at this stage of integration make transfers of the basic features of the European Union difficult to envision.

A second avenue toward broadening citizen participation would enlarge the structure by adding an assembly, elected directly by the people in the member states, with powers to recommend norms and policy; such an assembly would eventually replace the organs of general membership represented by states and obtain lawmaking powers. As globalization progresses and democracy spreads worldwide, a "cosmopolitan" democracy could make possible — so goes the argument — the direct election by universal suffrage of a Global Peoples Assembly, with general competence to legislate where worldwide action is called

for and to coordinate the work of international institutions.

History has taught us not to underestimate the power of utopia. Too often in the past it has proved difficult to foresee a systemic change that would turn a utopian vision into what Richard Falk has called a "political project." But some of the ideas adumbrated in this section, especially the world legislature, postulate a radical transformation of the present international system. As international integration advances, new actors — intergovernmental, sub-governmental, and nongovernmental — have appeared on the international scene; their number and influences on the behavior of states have grown over the last few decades and hold "the potential [for] spillover of democratic practices." However, in view of the enormous differences in the size, population, and powers of states (which are not about to fade away), as well as the persistent, deep-rooted differences in the peoples — cultural-ethnic, economic, and political — there is little evidence that the democracy-legitimacy gap can be filled by "Great and Desperate Cures," at the global level at any rate. On the other hand, there is ample evidence that creative, idiosyncratic arrangements commensurate with the respective level of integration are called for in both the national and the international institutions to address the deficit problem.

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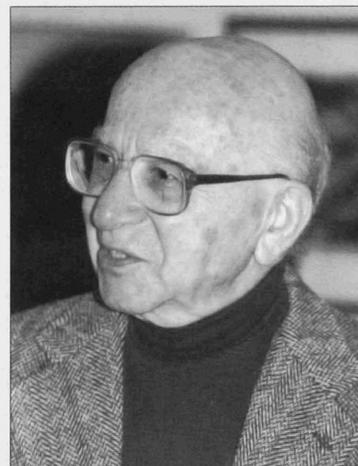


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