

Law School  
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UNIVERSITY OF MICHIGAN  
LAW SCHOOL

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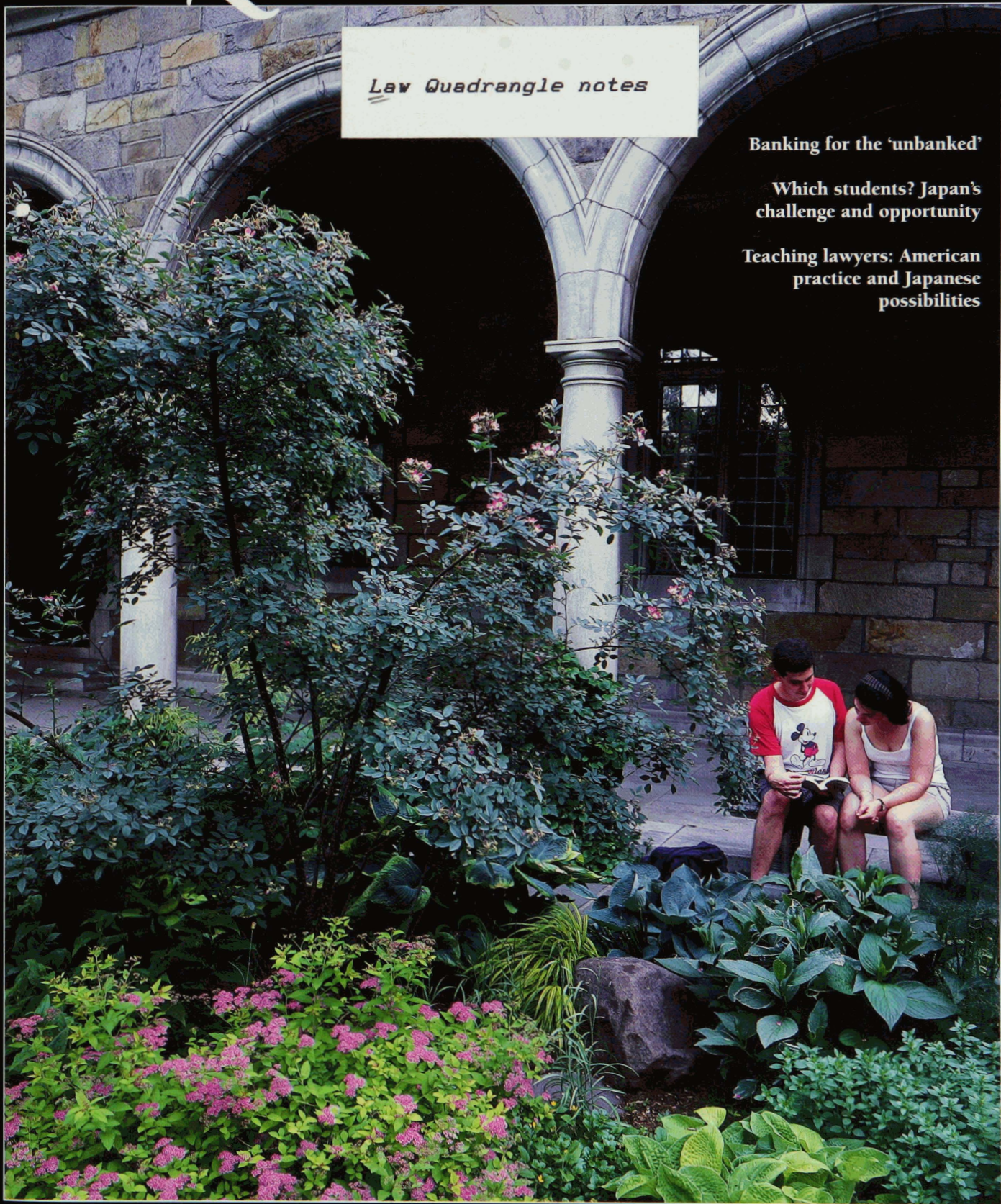
# LAW QUADRANGLE NOTES

*Law Quadrangle notes*

Banking for the 'unbanked'

Which students? Japan's  
challenge and opportunity

Teaching lawyers: American  
practice and Japanese  
possibilities



## U P C O M I N G   E V E N T S

- July 31                    National Bar Association Alumni Breakfast, San Francisco
- August 12                American Bar Association Reception, Washington, D.C.
- August 27                Law School Information Technology Fair
- September 12            Olin Lecture: Andrei Shleifer, Harvard University (Olin Center for Law and Economics)
- September 13            Missouri State Bar Luncheon, Kansas City
- September 20 – 22      Reunions of classes of 1942, '46/'47, '57, '62, '67, and '72
- September 25            Denver Alumni Reception, Denver
- September 26            State Bar of Michigan Reception, Grand Rapids
- October 17 – 18          Center for International and Comparative Law Advisory Board meeting
- October 18 – 19          Joint Law School-*European Journal of International Law* symposium — “A War against Terrorism: What role for International Law? U.S. and European Perspectives”
- October 25 – 27          Reunions of classes of 1976, '77, '81, '82, '86, '87, '91, '92, '96, and '97
- November 7-8            Cooley Lectures: Professor Randall Kennedy, Harvard Law School
- November 18-19          Law School visit by U.S. Supreme Court Justice Antonin Scalia
- December 19             Senior Day
- January 3-7, 2003        Association of American Law Schools Annual Meeting, Washington, D.C.
- January 20                Martin Luther King Day
- February 7 – 8            Symposium — “Judging Judicial Review: *Marbury* after 200 Years” (*Michigan Law Review*)
- March 1-2                 Jessup Moot Court Competition Regional Finals
- March 7 – 8                Symposium — “Life Sciences, Technology, and the Law” (*Michigan Telecommunications & Technology Law Review*)
- March 26                 Cook Lecture: The Hon. Kurt Schmoke
- March 28                 Symposium — “American Indians, the Environment, and the Law” (Native American Law Students Association)
- April 12                  Scholarship Dinner
- April 23 – 25              Conference: “Challenges for the High Court in Multi-Level Politics: A Trans-Atlantic Conversation” (tentative)
- May 3                      Senior Day

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**Cover: Summer's blooms, a bench, and a good book to share — the Law Quad works its magic.**

PHOTO BY PHILIP T. DATTILO

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- **Banking for the 'unbanked'**

An estimated 9.5 percent of U.S. households do not have a bank account, and the consequences can be severe: high costs for basic financial services; inability to create a financial cushion for emergencies and life events; and lack of access to mainstream sources of credit. — *Michael S. Barr*

Two essays from the conference "Inside the American Law School: Its Essence, Its Reality, and Its Potential in Japan," held in Tokyo last winter.

- **Which students? Japan's challenge and opportunity**

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- **Teaching lawyers: American practice and Japanese possibilities**

Prospective lawyers need to learn three things: legal doctrine, legal analysis, and legal practice. But how? — *Carl E. Schneider, '79*

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I traditionally use my messages in *Law Quadrangle Notes* to examine a quality that helps to define an outstanding attorney. In past years I have discussed how great lawyers pursue intellectual growth and renewal, maintain integrity, teach others about the law, serve as community citizens, bolster our profession's image, exhibit patience, sustain a form of optimism, and deploy their voice. In the coming year, I would like to explore the related qualities of empathy, sympathy, and compassion.

The historian Gertrude Himmelfarb has recently described the evolving discussions of sympathy and compassion over the course of the British Enlightenment. Earlier writers such as John Locke and Thomas Hobbes believed that sentiments such as compassion had to be inculcated through rigorous education. But later writers such as David Hume and Adam Smith insisted that such feelings were innate, an essential aspect of what it means to be human.

Of course, in modern times Adam Smith's name has become popularly associated with a rather callous and unfeeling vision of the free market economy. It is therefore interesting to see how much his economic program was grounded in a vision of moral philosophy which assumed that people identify with and care about one another. In the first chapter of *The Theory of Moral Sentiments*, he offers the following observations:

"How selfish soever man may be supposed, there are evidently some principles in his nature which interest him in the fortune of others, and render their happiness to him, though he derives nothing from it except the pleasure of seeing it. Of this kind is pity or compassion, the

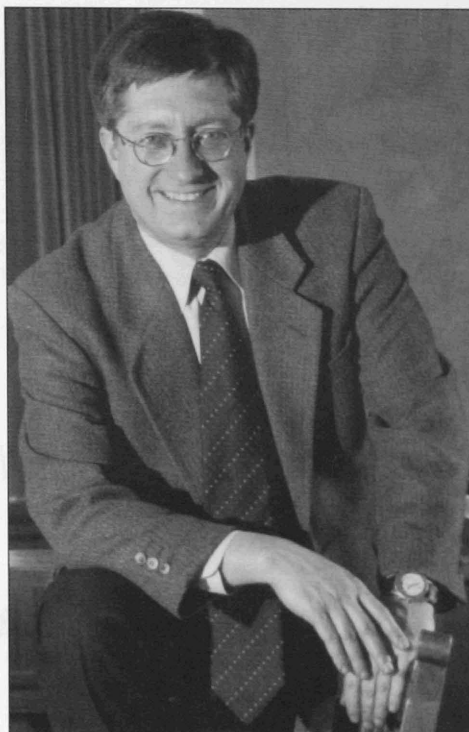


PHOTO BY THOMAS TREUTLER

emotion which we feel for the misery of others, when we either see it, or are made to conceive it in a very lively manner.

"[T]o feel much for others and little for ourselves, . . . to restrain our selfish and to indulge our benevolent affections, constitutes the perfection of human nature."

Passages such as these help to frame the assumptions about how people would behave in a free marketplace that Smith brought to his later work, *The Wealth of Nations*. They help to explain why that book passionately asserts that, "No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable." And they similarly help to explain why so much of the work's second volume is devoted to topics such as the need for public works, universal education, and fair and adequate taxes.

One way to understand some of the challenges that are presently posed to

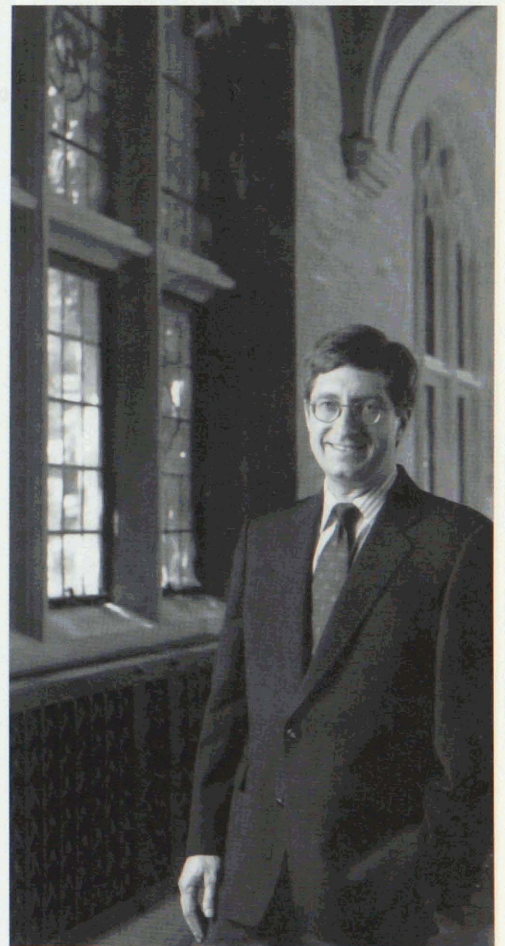
our economy and to our profession is to wonder whether Smith was too much the optimist. The marketplace frauds perpetrated in our boardrooms, and the daily incivilities practiced in our courtrooms, could all be seen to suggest that many of today's leaders lack even a minimum reserve of fellow-feeling.

Sadly, our own profession is held at least partly responsible for the rising self-interest and declining compassion within our society. And so I think it especially appropriate to consider a more hopeful possibility. In particular, I would like to explore whether strong capacities for sympathy are an essential attribute of the good lawyer, whether effective representation necessarily entails a highly refined capacity to feel for the happiness and misery of others. If so, then regardless of whether Smith was correct that such a capacity is innate in our students when they first enrolled in law schools, we owe it to them to do all we can to nurture and cultivate it so that they have it in abundance by the time they graduate.



# A Time To Build

The Law School and its famous Quadrangle are architectural landmarks in American legal education and anchors in the memories of Law School graduates throughout the world. They have served and adapted admirably for nearly seven decades — as legal education has changed and Law School needs have expanded geometrically. These continuous changes finally have exceeded the Law Quadrangle's capacity to adapt, and last summer world-renowned architect Renzo Piano was retained to draw up plans for an addition to the Law School. In the following pages, Dean Jeffrey S. Lehman, '81, discusses these moves and plans for the future.





**Q:** Current Law School facilities have served for 70 years. Generations of Law School students have attended classes in this unique Quadrangle provided by graduate William Cook. Why is a new building needed now?

**A:** The practice of law today is quite different from what it was in 1934, and legal education has been transformed as well. During that time period, we have made two significant additions to the Law Quad — an addition to the library stacks in 1955 and the Smith underground library addition in 1981. But except for that new library space, we have been forced to squeeze all our new activities into the original footprint.

**Q:** You mentioned that legal education has been transformed over the past several decades. What are some of these changes?

**A:** Law has become much more specialized; we offer three times as many courses as we did in 1935. Our upper-level curriculum features a host of new subjects, such as Complex Litigation, Corporate Criminality, International Trade Law, Mergers and Acquisitions, Real Estate Taxation, and The Role of In-House Counsel. Today's legal education is interdisciplinary; our faculty includes professors from departments that range from classics to psychology. It is international, with every student required to learn about legal regimes beyond the United States. And it is more skill-intensive; for example, our Legal Practice Program gives every student a year-long, faculty-taught introduction to legal research and the craft of persuasive writing, and half our students now participate in clinics, representing real clients under close faculty supervision.

**Q:** With so many more courses, are there more faculty, too?

**A:** We have 50 more members of the governing faculty than we did in 1934, and each year another 50 visitors and adjunct professors offer classes to our students.

**Q:** So there is much more going on here than the technological changes and computerization that we hear so much about?

**A:** The technology is important. It has changed the way students study, the way they do research, and the way they communicate with one another and their teachers. And it has enabled us to do things like teach "joint" classes for students at Michigan and Oxford via videoconference. But it is in some ways remarkable that the primary technology of teaching — intense dialogue between professor and student — has changed surprisingly little.

**Q:** Couldn't current facilities be renovated or expanded, instead of building an entirely new structure?

**A:** Unfortunately, we have reached (and some would say gone beyond) the limits of what can be done on the existing footprint. For example, we have leased space off campus for some of our clinics and for our admissions office. We have created offices out of the alcoves in the Reading Room and the "interview rooms" in Room 200. We have been quite creative in finding ways to squeeze in a stunning array of new activities that the Law School was not originally designed to hold. In addition to the new educational activities I mentioned earlier, we must provide our students with computer support, financial aid services, and career counseling. We also support six student-edited journals and nearly 50 student organizations that range from the Federalist Society to the Intellectual Property Students Association. Admitted students who are choosing among law schools have told us clearly that, as pretty as our buildings are, they are simply too small to accommodate the life of a great law school. And they appear to be right: Michigan currently has fewer square feet per student for non-library uses than any other top law school, and every one of our peers is in the process of adding more space.

**Q:** Education architecture, like all architecture, reflects a philosophical underpinning to the activities that take place within it. Do these changes that you describe have an aesthetic, architectural impact that you expect to be reflected in the new building?

**A:** It is right to note that modern legal education is much less authoritarian, even intimidating, than it once was. We have learned that rigor does not have to be frightening or isolating. It can be more open and collaborative. We hope that the additions to the Quad will have a warm and open feeling, and that the reinvigorated campus will make it easy for students and faculty to study and talk together outside the classroom.

**Q:** Like the law itself, current Law School buildings incorporate significant precedent and tradition that are part of the bond that graduates enjoy with this school. How will these elements be respected, retained, and replicated in the new building?

**A:** The original Law Quadrangle is an architectural masterpiece, an inspiration in granite, limestone, and glass. As new generations add to it, the challenge is to contribute to its development, to adapt it to new requirements, in ways that future generations will admire and respect. It does not mean copying the building style of a prior era, but it does require profound sensitivity and respect for the scale of the buildings, and the use of harmonious construction materials. The 1955 aluminum-clad stacks addition failed to meet that standard; I hope that we will do much better this time.

**Q:** So the architect and his vision are critical to this process of incorporating and embracing the past while building for the future?

**A:** We needed an architect who could recognize the brilliance of the Law Quad, could appreciate how important it is to our identity as a school, could understand how we teach and how we hope to teach in the future, and could integrate it all into a design that will stand the many tests of time.

**Q:** Is this why the Law School's building committee, with the assistance of Law School graduates, decided to retain world-renowned architect Renzo Piano and the Renzo Piano Building Workshop to do this project?

**A:** Piano has an extraordinary reputation for designing successful additions to great works of architecture. The Workshop takes on only a few new projects each year, and we knew that we would be extremely fortunate if we could interest him in taking on this project.

**Q:** What do you think attracted Piano to this project?

**A:** Renzo says that he believes there are elements of true genius in the original Law Quadrangle. He sees the project as an opportunity to restore and highlight those elements, while meeting the new functional needs of a world leader in legal education.

**Q:** What is the estimated cost for the new building?

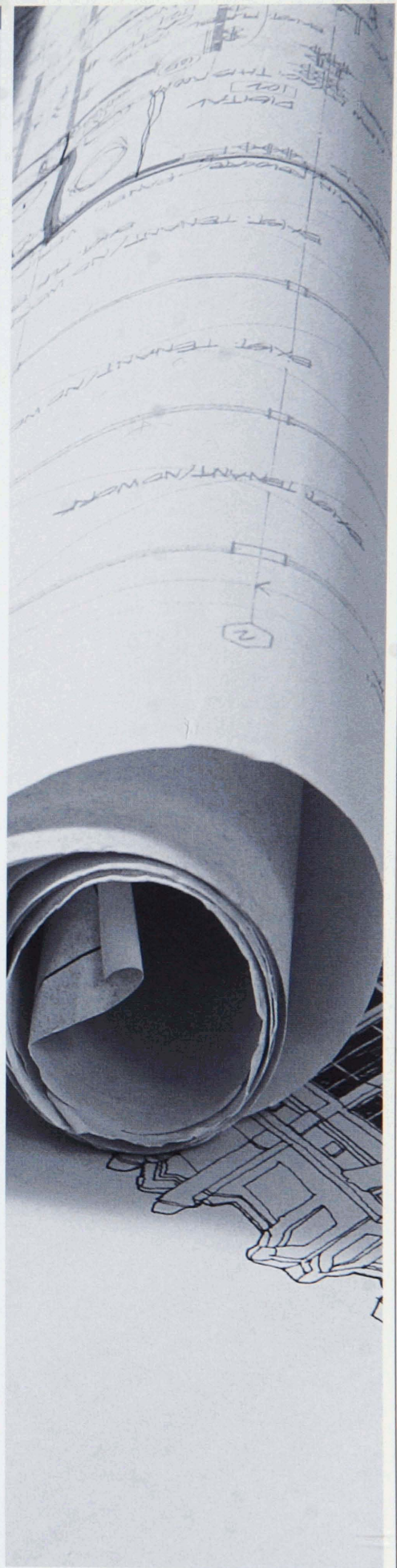
**A:** We are working with cost estimators right now. The final cost will depend on many judgments we make about how much we can do now, and how much we will have to postpone to a future day. But the final number could be anywhere from \$75 million to twice that.

**Q:** Why is it so expensive?

**A:** The plan is very ambitious, calling for the removal of the existing stacks addition, the construction of a new L-shaped building to match Hutchins Hall above the underground library, the creation of a central space between Hutchins Hall and the new building that goes underground three stories to connect with the underground library and the Hutchins basement, and a significant renovation of the ground and basement levels of Hutchins and the Legal Research Building, to allow all three buildings to function effectively together. And, as I have learned these past six months, so-called institutional construction is always much more expensive than standard commercial office construction because it is expected to last forever in the face of a very different kind of wear and tear. In the end, however, we must honor the architectural legacy of William Cook and make sure that those who are here at the beginning of the next century are as passionate about our addition as we are about the original Quad.

**Q:** What is the tentative timetable for planning and construction?

**A:** The coming year will be critical for pinning down the design and budget for the project. If everything goes well, we could break ground as early as 2004 and be ready to turn on all the lights in 2008.



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# Marriage: eternally changing?

Marriage. Is it personal or state business? Is it lasting and unchangeable? What does it mean in the emerging world of the 21st century? Is it "Father Knows Best," "The Odd Couple," or something else?

Experts from academic and public life gathered at the Law School in March to ponder these and other questions in the symposium "Marriage Law: Obsolete or Cutting Edge?" sponsored by the *Michigan Journal of Gender & Law*. From historical evolution to contemporary permutation, the concept and role of marriage underwent examination beneath the magnifying glass of legal, moral, practical, sociological, and other perspectives.

Speakers noted that women's political, social, and economic emancipation significantly has changed the traditional concepts of marriage that attached a woman to her husband's identity. Same-sex partnerships, child adoptions by single parents, single people choosing to become parents, and other changes also have altered the traditional "husband-wife-and-2.2-children" view of marriage.

Not so, argued Lynn Wardle, a law professor at Brigham Young University. "Must all relationships that are valued by partners be called marriages?" he asked. "Should we encourage these new models?"

"No," he answered both questions. The growth in "marriage-like arrangements" does not by itself alter the "concept of marriage," Wardle said. "This indicates not that marriage has been tried and found wanting, but that it is difficult and hasn't been tried."

But this is not the state's business, countered David L. Chambers, the Wade H. McCree Jr. Collegiate Professor of Law. "The most fundamental source of the disagreement between Lynn and me is in regard to the appropriate role of the state. One of the functions of public law is to help people live their private lives."

There are four types of family, Chambers said:

- The married couple, which will remain the American norm.
- The unmarried couple, a pairing that states are starting to recognize.
- The single person.
- A same-sex marriage.

"I believe in families. I believe families have a role to play in the structural makeup of our society," added Paula Ettelbrick, a visiting professor at the Law School and family policy director of the Policy Institute of the National Gay and Lesbian Task Force.

PHOTOS BY GREGORY FOX



Moderator Richard O. Lempert, '68, the Eric Stein Distinguished University Professor of Law and Sociology, takes a question from the audience for panelists discussing "The Social Implications of Expanding Marriage and Family Conventions." From left, panelists include: Martha Ertman of the University of Denver College of Law; William Doherty of the University of Minnesota; Jacqueline Payne, '95, of the NOW Legal Defense and Education Fund; and Norval Glenn, of the University of Texas at Austin.





Keynote speaker Beth Robinson, a lead attorney in the groundbreaking case *Baker v. Vermont*, in conversation with symposium panelist Paula Ettelbrick.

"What we haven't done is to adequately define what 'family' is — not what marriage is — but what family is," she noted.

Wardle, Ettelbrick, and Chambers were panelists for the day's final session, called "The Future of Legal Marriage: Is Marriage Law Obsolete? Or Will Law Adapt to Recognize Changing Forms of Marriage and Family?" The session was moderated by Clinical Assistant Professor of Law Melissa Breger, '88.

The day's other discussions and their panelists included:

- "Marriage in Historical and Cultural Perspective: Tradition as Embodied and Enforced Through Laws," with panelists Arila Dubler, an associate professor at Columbia Law School; Arland Thornton, a sociology professor and senior research scientist with the University of Michigan's Survey Research Center and Population Studies Center; and Marilyn Yalom, a senior scholar with the Institute for Research on Women and Gender at Stanford University. The moderator was Bruce Frier, the Henry King Ransom Professor of Law and interim chairman of the University of Michigan's Classics Department.
- "The Process of Recognizing Non-Marital Family Relationships," with panelists Ettelbrick; Steven Nock, a sociology professor at the University of Virginia; and panelist/moderator Lawrence Waggoner, the Lewis M. Simes Professor of Law.
- "The Social Implications of Expanding Marriage and Family Conventions," with panelists William Doherty, professor of family social science at the University of Minnesota; Martha Ertman, associate professor at the University of Denver College of Law; Norval Glenn, the Ashbel Smith Professor of Sociology at the University of Texas at Austin; and Jacqueline Payne, '95, policy attorney for the NOW Legal Defense and Education Fund. Richard O. Lempert, '68, Eric Stein Distinguished University Professor of Law and Sociology, was moderator for the panel.

Symposium keynote speaker Beth Robinson, a lead attorney in Vermont's groundbreaking freedom-to-marry case, *Baker v. Vermont*, noted that laws and policies that govern inheritance, health and other benefits, family care policies, and other aspects of modern life lag behind changes in the way that people become families in bonds different from traditional marriage.

Robinson told several stories of same-sex couples in Vermont who were unable to get family bereavement leave or next-of-kin medical decision-making because of their untraditional family structures. "What we're talking about here is something that goes well beyond just benefits," Robinson said. "There is an interaction between our law

and our social norms. I think our laws tell a story. It's a story of who we are. Same-sex unions don't exist, the law says. But that story is so out of sync with the reality that I know that it has become untenable."

In *Baker v. Vermont*, she said, the Vermont Supreme Court ruled that rights attaching to same-sex couples must be the same as for traditionally married couples, but the bond does not have to be called marriage. The court also gave the Vermont legislature time to craft the solution — Vermont's Civil Union Act.

"It was this weird fusion of *Brown v. Board of Education* and *Plessey v. Ferguson* in the same decision," Robinson said of the case.

## What does marriage mean?

It was billed as a debate — the program "Same Sex Marriage, Federalism, and the Constitution" — but Paula Ettelbrick of the Gay and Lesbian Task Force and Gerard Bradley of Notre Dame Law School found themselves sharing the humanism of their approaches to the question more than they divided over their differences.

They agreed that American ideas of marriage are shifting. The question is where they eventually will go, and what the role of civil law should be in relation to that shift. The two spoke at the Law School last fall in a program co-sponsored by the student chapter of the Federalist Society for Law and Public Policy and the Law School student group OutLaws. Ettelbrick at the time was a visiting professor at the Law School.

Bradley: "If intrinsic gender complementarity cannot be defended, then it ought not be the basis for law. . . . Religion ought not be the source of civil law on marriage."

Ettelbrick: "I think the reproductive centrality of marriage has been shifted to the side. People's roles have changed, and I think that the trend is to try to understand this for the benefit of both adults and children."

No longer, for example, do Americans see childbearing as the supreme goal of

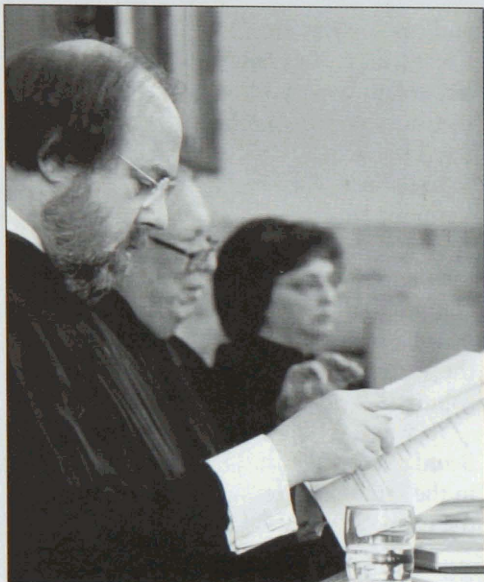
marriage, and single parents, whether married or not, are increasingly common. At the same time, is marriage a civil act that brings together a man and a woman, or is it, as Ettelbrick argued, a "civil right" that cannot be denied to someone because he is the same gender as his proposed spouse. "Is the state acting appropriately in denying certain people the right of marriage? . . . Marriage provides an ordering framework for our society," said Ettelbrick. "Access or denial sends a signal about citizenship. Wouldn't same-sex marriage provide the same ordering for society?"

"I find myself very largely in agreement with Professor Ettelbrick," confessed Bradley. "My analyses on marriage are on a deeper and wider basis than the question of single-sex marriage."

"We've had a great transformation of marriage without any general and serious discussion of what we want marriage to be," he explained. "I think the discussion of single sex marriage tends to divert that discussion from what it ought to be."

American society "faces a turning point in what it asks of marriage — in a world the straight folks made," concluded Bradley. "The big question is, what are the conditions in which people are to come to be [born]?"

# And the verdict is...



Judges for the competition listen intently as the case is argued. From left are: the Hon. Frank Easterbrook, U.S. Court of Appeals for the Seventh Circuit; the Hon. Stephen Reinhardt, U.S. Court of Appeals for the Ninth Circuit (see related story on page 19); and the Hon. Barbara Underwood, former acting solicitor general of the United States.



PHOTOS BY GREGORY FOX

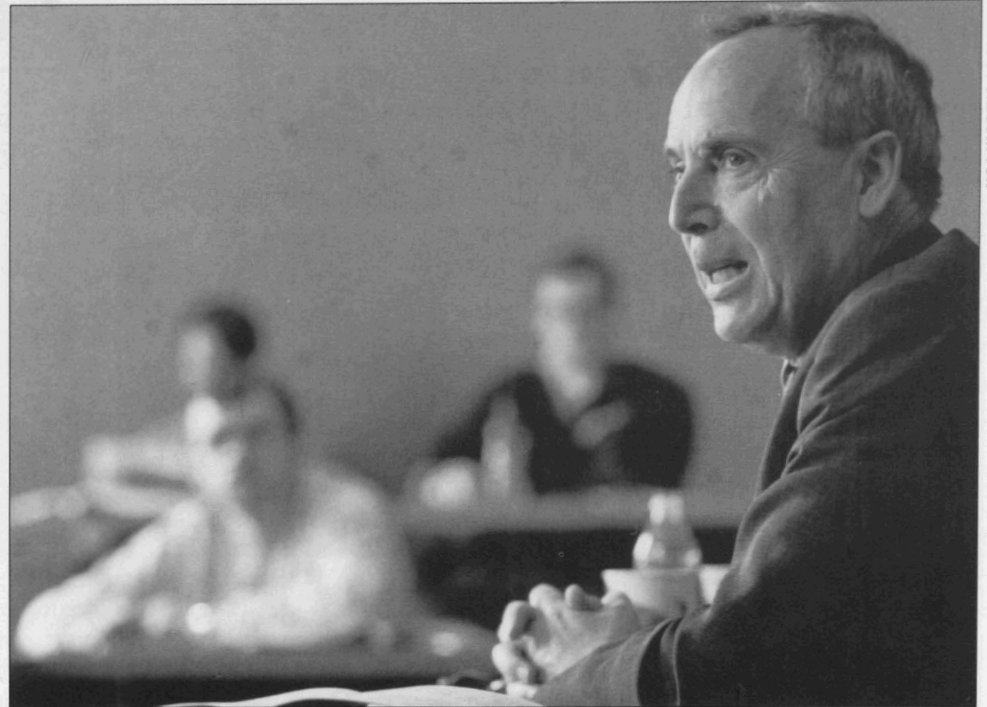
Respondents Catherine M. Carroll and John W. Ursu, shown above as they addressed the court, carried the day in the final arguments of the 78th annual Henry M. Campbell Moot Court Competition, presented by the Law School and Dickinson Wright PLLC in April.

The competition was the last stage in a process that took many weeks and involved nearly 30 law students in preliminary competitions leading up to the final arguments.

This year's final arguments centered on the hypothetical case of a Caucasian woman and African American man who were convicted of causing a disturbance at a public meeting; the woman also was convicted of violating the state's hate crimes act because her actions were determined to be racially motivated. Subsequently, the man was charged and convicted under the federal hate crimes act. The Campbell finals centered on the argument of his appeal, based on his First and Fourteenth Amendment rights.



Benjamin C. Mizer argues the petitioner's side in the hypothetical case, while his co-counsel, Coreen S. Duffy, listens.



PHOTOS BY GREGORY FOX

The Hon. Francis G. Jacobs, QC, advocate general at the Court of Justice of the European Communities, addresses students in the class *European Legal Order*, taught by Assistant Professor of Law Daniel Halberstam.

## From 'dynamo' to 'guardian' in the European Community

The Court of Justice of the European Communities eventually will become a "guardian" of the constitution-like legal system it now is creating through its jurisprudence, according to a member of the court who visited the Law School this spring.

As European Union (EU) law reaches more deeply into the legal systems of EU member states, the court will "shift from being a dynamo to a holding position similar to the constitutional courts in established democracies," predicted the Hon. Francis G. Jacobs, QC, the court's advocate general and second highest ranking member. Jacobs offered no timetable for the shift and noted that the EU "always has been and remains an evolving organism" and "may develop in the future in ways that are difficult to predict."

Indeed, Jacobs added, the entrance of eastern European states into the EU both will double the Community's size as well as incorporate legal systems quite different from those of earlier member states.

Jacobs visited at the Law School during the spring as a DeRoy Fellow and took part in a variety of activities sponsored by the University's European Union Center, which is directed by Assistant Professor of Law Daniel Halberstam. Jacobs previously had visited the Law School to deliver the William Bishop Lecture in 1989.

Although the EU is not a federal system like the United States, it has some characteristics of a federal system, noted Jacobs, who has been a member of the Court of Justice since 1988. So the court finds itself facing questions of paying health benefits over national boundaries, who makes air transport contracts with the United States, and other issues familiar to students of federal systems.

During the 1960s the court established the principles that Community law must prevail and that the treaty establishing the EU can be directly applied to member countries. But the treaty lacks Bill-of-Rights-style protections, so the court has drawn on individual countries' constitutions to establish doctrines of fundamental rights.

The Court of Justice "has the responsibility to ensure the rule of law and the uniformity of [European] Community law," Jacobs explained. "A unique and remarkably effective" part of the court's job is to render rulings in response to a request from a court in a member country; such a ruling is binding on the court that seeks it.

"Increasingly," he reported, "constitutional developments in the European Union are being achieved by treaty amendment rather than by the court, [and] this has the beginnings of a fundamental constitutionalism."

# Looking back, looking forward

PHOTOS BY GREGORY FOX



Catherine Koh and Joanne Kim share a quiet moment.

Lights, cameras, action. It was all there and then some. Proud families gathered in early May to recognize and celebrate the culmination of not just three years of work, but a lifetime of effort that had led to this moment. It was Spring Commencement 2002.

How do you create a sense of intimacy with such a large gathering? Much of it can be attributed to the “inside” humor shared by Dean Jeffrey S. Lehman, '81, in his welcome remarks. And then it would be surprising to hear more than one or two serious points from the president of the Law School Student Senate — this year's LSSS president and speaker V.P. Walling kept up the tradition of humor.

But it wasn't all laughter. This was the graduating class that experienced the infamous 9/11 at the beginning of their final year of legal studies. It was also the class that lost a classmate, Jenny Runkles, to a tragic automobile accident last summer. Classmates Jennifer Buckley, Ayelette Robinson, Wonkee Moon, Joanne Kim, Elizabeth Khalil, Catherine Koy, Jessica Dvorak, and Alexandra Grigoras led a tribute to Runkles during the ceremony.

Commencement speaker Robert B. Fiske Jr. is a member of the Law School class of 1955. Fiske has had a stellar legal career intertwining private practice with government service. His best-known government service came when he was appointed as the first independent counsel for the Whitewater investigation in 1994, but that was far from the first or only time he has served his country.

With words of fond remembrance and respect, he named renowned faculty members with whom he had studied, like Ralph Aigler, Paul Kauper, John Reed — who still teaches although he has had emeritus status for many years — and Allan Smith, who served as a dean from 1960-65. His last year was the best, Fiske said; it was the first year of his marriage to his wife, Janet, who was listening in the audience.

Fiske spoke about working with one law firm — Davis Polk & Wardwell — since completing law school and noted that not a single partner has ever left to practice law

at another firm. He also recalled the firm's progress from being all-male and all-white to a firm that hires and elevates to partner both women and minority members.

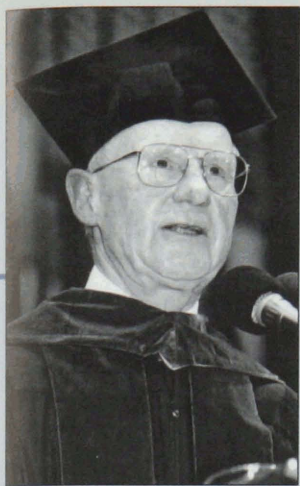
“There have been many changes in the legal profession since I started in 1955. At the same time I graduated from Michigan, William Rehnquist and Sandra Day O'Connor were graduating from Stanford. He was No. 1; she was No. 3 in the class. He went to clerk on the Supreme Court. She couldn't get a job in any of the large firms in California. The only offer she received was to become a secretary. The profession has come a long way,” Fiske said.

A credo he learned from Simon H. Rifkind Jr., one of the country's greatest lawyers and jurists, says: “The practice of law is a power in trust, not for the personal benefit of the lawyer, but for the benefit of the community.” Fiske pointed out that it is a credo that can be practiced every day, since much of what a lawyer does involves helping others. Fiske said helping others has been the most personally rewarding aspect of private practice.

Even so, as he looked back at a 47-year career, Fiske said he has enjoyed public service the most. His first experience was in the summer of 1954, between his second and third year of law school. He worked as a student assistant to J. Edward Lumbard, then U.S. Attorney for the Southern District of New York and later a famous judge of the U.S. Court of Appeals for the Second Circuit. Lumbard recruited the best young lawyers available and gave them responsibilities and experiences they wouldn't have had in private practice. At the same time, Lumbard instilled in them a commitment to public service. “I was infected,” Fiske noted.



Yoram Keinan and son, Ron-Chai Keinan, stride across the stage to receive congratulations from Dean Jeffrey S. Lehman, '81, for earning an S.J.D.



Commencement speaker Robert B. Fiske Jr., '55, shares memories and wisdom from the perspective of a 47-year-career that has combined law practice with public service.

In 1957, Fiske served as Assistant United States Attorney. Later, when he was appointed United States Attorney in 1976, he remembered Lumbard's example and tried to follow it by hiring, training, and mentoring an outstanding group of young lawyers. Watching members of that group build on their early government service to become leaders of the bar and prominent public servants has been extremely satisfying. Out of that single group, there are eight U.S. district judges, a United States Attorney, four state judges, and numerous high-ranking federal and state officials.

Drawing from the perspective of his long career, Fiske said he has found that the most respected and successful lawyers have blended periods of public service with private practice and he believes that the dual experience has had tangible benefits. "Representing clients in the 'real world' makes people in government more understanding and more realistic about the decisions they must make. And the experience in public service gives a



Eight classmates took turns paying tribute to Jenny Runkles. From left, Joanne Kim, Ayelette Robinson, Catherine Koh, Elizabeth Khalil, Jessica Dvorak, Jennifer Buckley, and Alexandra Grigoras listen while Wonkee Moon (not pictured) speaks the final words of remembrance.

broadened dimension to a private lawyer's perspective when representing private clients."

Fiske also recognized the value of public service early in a person's career. The reality is that when any area of government looks for people to fill high level, important positions, they first look to those with prior experience. That was one impetus for the Fiske Fellowships, which were first awarded this year. (See *Law Quadrangle Notes*, volume 45.1, page 33 [Spring 2002] for an article announcing the fellowships.) The fellowships provide three years of educational debt repayment to three outstanding Michigan Law graduates each

year that enter government service.

Fiske also stressed the importance of involvement in community affairs for lawyers who do not go into public service. Having a wide variety of interests and activities beyond the practice of law helps develop judgment, which is the quality more than any other, that clients look for in lawyers. Equally important is finding time for family responsibilities. "It is easy to get caught up in your law practice. There is always one more matter to take on, more hours to bill. It is hard to say no. But from the very beginning, from the first day you walk into your first job, set priorities for yourself — priorities that include outside interests and time for your family."

"Today, lawyers are criticized for being too interested in how a decision will affect the bottom line"; the law has become just another business. Fiske suggested that the cure for this is idealism. "You have an education from one of the great law schools in the country. Your whole life is ahead of you. You can do anything you want," he said. Take idealism with you. Make a commitment "to give back something meaningful to the community. Put that commitment into action and you will have a truly rewarding and gratifying career, and in the process, you will do your part to help restore the legal profession to the high standing it deserves.

"Congratulations to you all!"

Rebecca Strauss with daughter Julia and family commemorate the occasion with a photo in the *Law Quad*.



# Women's rights around the world

PHOTOS BY GREGORY FOX



Visiting Professor Karima Bennoune moderates the wrap-up "synopsis" portion of the conference, in which speakers joined together in discussion after their separate programs. Bennoune also was one of two plenary session speakers for the conference.

In the end, the individual and the group approaches self-consciously linked arms after speakers considered how best to protect women's rights globally. International treaties and conventions are good and are making progress in their application in individual countries, participants concluded, but even widespread beliefs — that human rights apply to women, for instance — undergo local transformations that disguise or ignore such principles.

The question was laid out in the title of the conference: "Dueling Fates: Should the International Legal Regime Accept a Collective or Individual Paradigm to Protect Women's Rights?" Held at the Law School in April under sponsorship of the *Michigan Journal of International Law* and other supporters, the program set out to "explore the controversial issues surrounding the protection of women's rights in the larger sphere of human rights," as Symposium Coordinator Hamid M. Khan explained in his letter to participants. "Are remedies more effective when they target an individual, or when they proactively seek to protect women as women, or as members of other collectives, i.e., as

mothers, wives, etc.?" Khan asked.

Plenary speaker Khaled Abou El Fadl answered this way: "The issue is often whether international law should care about manifestations of moral norms (cultural relativism), particularly in religion. . . . I will argue that both paradigms have no alternative but to be concerned, very much so, with what the other has to offer.

"Uniqueness is not only the right to dissent but also is the right to contribute to international imperatives, the right to help shape international regimes," said El Fadl, UCLA Law School's Omar and Azmeralda Alfi Distinguished Fellow in Islamic Law and Acting Professor of Law.

"International law is an amorphous and negotiable animal. While it is possible to pretend that international law can reduce itself to a positive set of commands, often what we see happening is the implementation of certain demands within a hierarchical set of inputs based on moral standards.

"International law needs legitimacy, and that legitimacy comes back to consent in one form or another."

The conference's other plenary speaker, Visiting Professor and former



Panelists consider "The Significance of Uniqueness" as they discuss how best to protect women's rights on an international scale. From left are: Rhoda E. Howard-Hassmann of McMaster University; third-year law student Christina Brandt-Young; and Elizabeth Jay Friedman of Columbia University.

# How best to protect them?



*Neither individual nor collective approaches by themselves can enhance women's rights — they must work together, plenary speaker Khaled Abou El Fadl, of the UCLA School of Law, explains in his address opening the conference "Dueling Fates: Should the International Legal Regime Accept a Collective or Individual Paradigm to Protect Women's Rights?"*

Amnesty International Counsel Karima Bennoune, answered like this: "I have become a universalist [but] I do share some concerns with the cultural relativists."

Selective application of human rights principles plagues international relations, according to Bennoune. Even after approval of the Universal Declaration of Human Rights, many signatories continued to practice holocaust-like measures like murder and systematic discrimination against the people of their colonies, she said. "None of these invalidate the universal, but we must be self-conscious" of what we are doing and apply pressure evenhandedly internationally as well as domestically.

Where was the U.S. outcry when 14 Saudi schoolgirls died in a fire because fireman refused to let them leave the blazing building without their veils? Bennoune asked. And why did Laura Bush take to the airwaves to denounce Taliban treatment of women only after the ultraconservative regime was toppled?

"It seemed to me she would have been really brave if she had given this talk six months earlier," Bennoune said of the First Lady's radio broadcast. And "Mrs. Bush also could have reminded us of the United States' complicity in making Afghanistan a haven of lunacy."

Said Bennoune: "Our criticism must be vehement and principled. . . . "We should mercilessly challenge anti-humanist, anti-human rights [activities]. We have no reason to be ashamed of our universals if they become universals."

The talks by Bennoune and El Fadl bracketed a day of panel discussions:

- "The Significance of Uniqueness," with Elizabeth Jay Friedman of the Department of Political Science, Barnard College, Columbia University; Rhoda E. Howard-Hassmann, of the Departments of Sociology and Political Science, McMaster University; and Law School J.D. candidate Christina Brandt-Young.

- "Permeating Fundamentals," with panelists Sherman Jackson, associate professor of medieval Arabic law and theology, University of Michigan; Symposium Coordinator Khan; and Adrien Katherine Wing, the Bessie Dutton Murray Distinguished Professor of Law, University of Iowa College of Law.
- "The Legal Effects Test," with Reem Bahdi, director of women's human rights resources, University of Toronto, Faculty of Law; Brad R. Roth, U-M associate professor of legal studies and political science; and A.W. Brian Simpson, the Charles F. and Edith J. Clyne Professor of Law at the Law School.

## Training to help children

The drawing showed a woman with a collar separating her head from her heart and large dead space in her midsection. It was a self portrait by a woman who had been abused as a child, and instructor James Henry was showing it as part of his training program on child sexual abuse and interviewing the abused child.

Any comments? asked Henry, an assistant professor at Western Michigan University (WMU) School of Social Work.

"There's no expression on her face," offered Johanna Hartwig as she gazed at the pained picture.

Anything else? asked Henry, who also runs a trauma clinic for abused children at WMU. There's also mutilation, added Hartwig.

This session was part of the Bergstrom Child Welfare Law Summer Fellowship training, held at the Law School each spring. Participants like Hartwig, from the Law School and other schools across the United States, spent three days — including the beginning of Memorial Day weekend — in intensive preparation before they headed out to summer placements in child advocacy work.



Hartwig, who will be a second-year student at the Law School in the fall, was one of 24 fellows this year, the largest group since the annual program began. Clinical Professor of Law Donald Duquette said that increased support from the Bergstrom Foundation, as well as diligent work on the part of fellowship director Melissa Breger, '94, made it possible to enlarge this year's class.

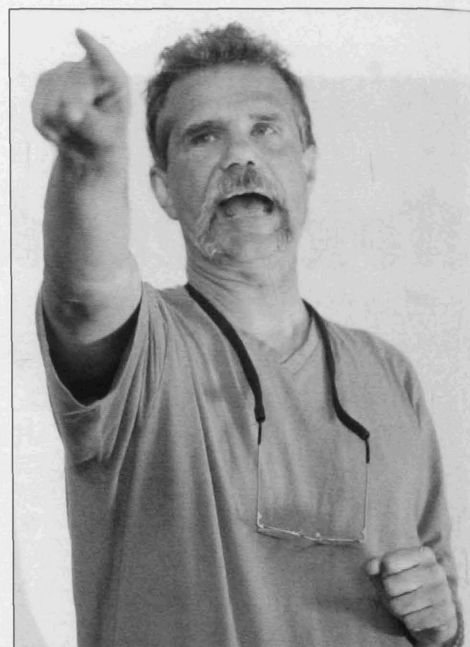
Other sessions provided an introduction to child protection and foster care legal processes, personal perspectives of the child welfare system, information on drug abuse and parenting, insights into child development/interviewing the child, and courtroom exercises. Participants took part in small group sessions, strategizing, demonstrations — plus homework assignments in preparation for the next day. A special dinner program featured the Hon. Nancy C. Francis, '73, of the Washtenaw County Family Court, discussing her experiences in dealing with children's cases.

Intense? Yes, agreed Hartwig. Worth the effort? You bet.

"This is another way to open my eyes to how kids thrive," said Hartwig, a Yale graduate who has taught 4th-6th grade English and science at a small private school in western India, elementary school in Manhattan, and high school history in the Bronx. Her "challenging (one might say, character-building)" experiences with youngsters in inner city New York through the Teach for America program "galvanized" her interest in educational reform and children's rights, according to Hartwig.

It would be helpful if it were a matter of course to acquaint teachers with the kinds of federal, state, local, and private services that child advocates can draw on, she said. "A teacher being the main safety net when there are so many issues to spot is very

*Johanna Hartwig listens to a speaker's question during the Bergstrom Child Welfare Law Summer Fellowship training. Hartwig, who will be a second-year student at the Law School this fall, was one of 24 fellows who underwent training prior to taking summer placements in the child advocacy field.*



*"Disclosure is a process," James Henry, of the School of Social Work at Western Michigan University, explains during his talk on "Child Sexual Abuse/Interviewing the Child." It takes a long time to get the complete story, he said.*

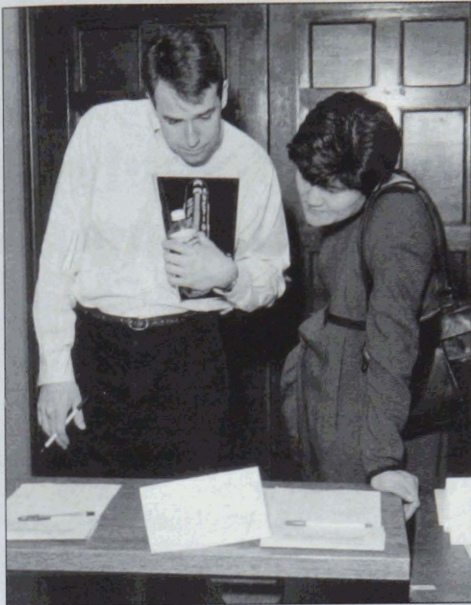
problematic," she explained. "Kids are losing, kids are getting hurt."

Hartwig, who worked with the Child Advocacy Law Clinic after her training, was one of six fellows from the Law School. The others were:

- **Jessica Eaton**, a third-year student this fall, who spent the summer at KidsVoice in Pittsburgh.
- **Jessica Falk**, a third-year student this fall, who also worked at KidsVoice.
- **Kimberly Isham**, who worked at the Child Advocacy Law Clinic.
- **Lance Rich**, who spent the summer with the Michigan Child Welfare Law Resource Center.
- **Sara Woodward**, a second-year law student this fall, who spent the summer with KidsVoice.

Other fellows came from: City University of New York School of Law; Columbia Law School; George Washington University Law School; Hamline University School of Law; Michigan State University-Detroit College of Law; Northwestern University School of Law; Ohio State University Moritz College of Law; Syracuse University College of Law; University of California at Berkeley Boalt Hall joint Masters of Public Policy/J.D. program; University of California at Davis Law School; University of Miami School of Law; University of Richmond School of Law; Temple Beasley School of Law; and Vanderbilt University Law School.





PHOTOS BY GREGORY FOX

### What Am I Bid? —

Potential bidders, among them law student Chuck Marchand and his wife Fran, peruse the lists of items available for auction in support of Student Funded Fellowships, which support and supplement salaries for students who wish to do summer time public service work with agencies that cannot offer large salaries. This year's auction in April earned more than \$63,000, a record. Tables covered with lists of auction items queued through two corridors of the first floor of Hutchins Hall.



PHOTO BY GREGORY FOX



**An African Marketplace** — Importers of made-in-Africa wares showed their items in Hutchins Hall as part of the Black Law Students Alliance's (BLSA) observance of Black History Month in February. BLSA member and first-year law student Felicia Andrews, who lived for five years in South Africa, organized the event.

### A new University of Michigan president

Mary Sue Coleman became the University of Michigan's 13th president August 1. She was approved in a unanimous vote of the U-M Board of Regents in late May to fill the post vacated by Lee C. Bollinger, who left the U-M presidency late last year to become president of Columbia University. Bollinger is a former dean of the Law School. Former Business School Dean B. Joseph White had served as interim president since January 1.



"The presidency of the University of Michigan is the pinnacle of public higher education," Coleman said. "I am looking forward to this opportunity to work with the faculty, staff, and students of this great university."

Coleman comes to the U-M from the presidency of the University of Iowa, where she also was a professor of biochemistry in the College of Medicine and professor of biological sciences in the College of Liberal Arts. She previously had held posts as provost and vice president for academic affairs at the University of New Mexico and vice chancellor for graduate studies and research and associate provost and dean of research at the University of North Carolina at Chapel Hill. She also served for 19 years as a member of the biochemistry faculty and Cancer Center administrator at the University of Kentucky in Lexington, where her research focused on the immune system and malignancies.

Coleman earned her bachelor's degree in chemistry from Grinnell College, her Ph.D. in biochemistry from the University of North Carolina, and did postdoctoral work at North Carolina and the University of Texas at Austin. Elected to the National Academy of Sciences' Institute of Medicine in 1997, Coleman is a Fellow of the American Association for the Advancement of Science and of the American Academy of Arts and Sciences. She co-chairs the Institute of Medicine's Committee on the Consequences of Uninsurance and has served on many federal, educational, professional, and NCAA boards, councils, and task forces.

**Appeals Court: Law School admissions policy constitutional**

The U.S. Court of Appeals for the Sixth Circuit ruled in May that the Law School admissions policy, which considers an applicant's race as one of many factors that go into the admissions decision, is constitutional. The court's ruling, which reversed a U.S. District Court decision, said that the Law School's interest in achieving a diverse student body is compelling and that its admissions policy is narrowly tailored to serve that interest.

"Today's decision is a tremendous victory for all of higher education," Law School Dean Jeffrey S. Lehman, '81, said in a statement responding to the decision. "Our U.S. constitution recognizes the educational benefit of having students study in a racially integrated environment, and universities may consider that benefit as one of many factors in a comprehensive admissions policy."

"The Law School is grateful for the broad base of endorsement that our admissions policy has received in the past few years from other law schools, from the legal profession, and from the business community. And we are proud to have played a part in this historic result."

The plaintiffs in the case, *Grutter v. Bollinger et al.*, have sought *certiorari* from the U.S. Supreme Court.

# Celebrating the generosity that helps the next generation of lawyers

Dean Jeffrey S. Lehman, '81, always enjoys the Law School's scholarship celebration. It's a time when scholarship donors and financial aid recipients gather for dinner and conversation on an occasion that spans the generations and links participants in the profession of law.

"This is one of my favorite occasions," Lehman noted in his opening remarks. "The point of the evening is in part for students to recognize that wonderful as [Assistant Dean for Financial Aid] Katherine Gottschauk is, the \$4.2 million we give away [in scholarships] is not from her." It's the result of generous gifts to provide scholarships. "Ultimately, it is about a very human activity — some people who want to help make possible a legal education."

Financial aid is important to many students. Non resident tuition to the Law School for the 2001-2002 year was \$29,385; resident tuition was \$23,385. The generosity of donors like those gathered at the Scholarship Banquet in April makes legal education possible and practical for many members of the future generation of lawyers.

With more than 150 named scholarships, the Law School is fortunate to be able to help needy students. This year four new scholarships were awarded for the first time: the Stephen M. Blackwell Scholarship (a gift of the estate of Menefee Blackwell, '39, in memory of Stephen M. Blackwell, '79), William Randolph Hearst Scholarship (from the Hearst Foundation), Edward M. Nagel Scholarship (from the Edward M. Nagel Foundation), and Dean C. Storkan Scholarship (named for Dean C. Storkan, '72).

Speaking on behalf of donors, David L. Haron, '69, of Frank & Stefani in Troy,



Scholarship donor David L. Haron, '69, outlines his concern for helping students "learn our craft and prepare for the practice of law."

Michigan, reflected on his fond memories of Law School: "Law School was especially memorable, not just because of the great faculty, not just because of the interesting classmates, not just because of the training I received, but because I met my wonderful wife Pam in my second year."

"As former chairman of the State Bar Professionalism Committee, I wanted to do all I could to help students to learn our craft and prepare for the practice of law," he continued. "Since September 11, it is even more important for the best and the brightest to stand up for what we believe. Often one hears that you should give till it hurts. I was told to give till it feels good."

Third-year law student Jeannine Harvey thanked Frank, '62, and Karen Reeder, "whose generosity has supported my study." A former assistant director of admissions at the University of Chicago and a one-time student in the Law School's Legal Assistance for Urban Communities Clinic, Harvey said she has learned "that access may not be everything, but it is often the opening to the pursuit of your goals."

"I am profoundly grateful" for financial help, she said. "I truly appreciate the access and when I am able I intend to support the Law School Alumni Scholarships."



Third-year law student and scholarship recipient Jeannine Harvey thanks scholarship donors and praises them for providing access to a legal education.

PHOTOS BY GREGORY FOX

## Precht named assistant dean of public service

Robert E. Precht, director of the Law School's Office of Public Service since it was formed in 1994, has been named assistant dean of public service. "In this position he will be responsible for administering the Law School's various programs supporting a public service ethic and providing public service employment, internships, and fellowship options," according to the description of his duties the U-M Board of Regents approved this spring.

Precht "has been an effective member of the Law School's administrative staff, expanding and rationalizing the public service program," according to Law School Dean Jeffrey S. Lehman, '81. Precht also "is an effective counselor of students and liaison to alumni and the profession," Lehman added.

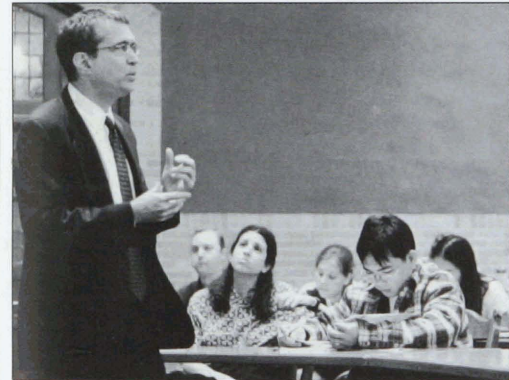
PHOTO BY GREGORY FOX

Under Precht's leadership, the Law School has increased students' awareness of opportunities in public service work, won many prestigious Skadden Fellowships for public service work, and earned the ABA Law Student Division's Judy M. Weightman Memorial Public Interest School of the Year Award for public service.

In other activities, Precht delivered the 19th annual I. Goodman Cohen Lecture in Trial Advocacy at Wayne State University Law School in April. He spoke on his experiences defending one of the suspects in the World Trade Center bombing case of the early 1990s.

Precht received his B.A. in history from Northwestern University and his J.D. from the University of Wisconsin Law School. He has worked for the Legal Aid Society in New York City and in the Federal Defender Division in New York, where he was a trial attorney working in the U.S. District Court for New York for the Southern District.

*Robert E. Precht, recently named assistant dean of public service, is shown here addressing a group at the Law School during a program on opportunities in public service. Seated at center foreground is Susan M. Guindi, '90, assistant dean of career services. Precht and Guindi often jointly sponsor career-oriented programs.*

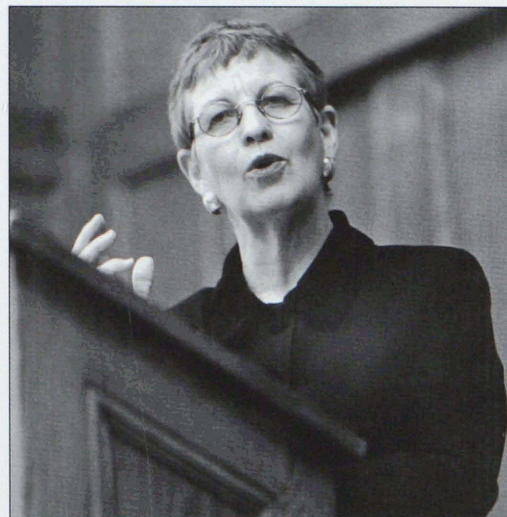


## 'We are the border patrol'

Federal appeals court judges are "the border patrol" and try "to make sure that 'We the People' continues to have resounding meaning," the Hon. Deanell Reece Tacha, '71, chief judge of the U.S. Court of Appeals for the Tenth Circuit, told a Law School audience this winter.

"The New Federalism" mirrors the federalism that has marked the U.S. system since its earliest days, said Tacha. "There is nothing particularly revolutionary about what has occurred" in U.S. Supreme Court decisions. The Court "hasn't rolled back anything. It has reaffirmed boundaries that always existed, but were sometimes forgotten."

Tacha's lecture was sponsored by the Federalist Society for Law and Public Policy Studies and the John M. Olin Foundation.



*The Hon. Deanell Reece Tacha, '71*

### Trading freely

Asking the World Trade Organization (WTO) to apply environmental standards to its activities is not reasonable, according to a Northwestern University School of Law professor who spoke at the Law School this spring under sponsorship of the Federalist Society and the John M. Olin Foundation.

WTO enforcement of environmental standards would pose "the danger that it would be used for protectionist purposes," John O. McGinnis said in a talk called "Why the World Trade Regime Should Not Include Environmental and Labor Standards."

"The WTO should focus on expanding its jurisdiction over trade (in agriculture and textiles, for instance)." Such a focus will enhance human rights, environmental, and other protections, he said. The WTO should do "more of the same until we have essentially no barriers" to trade, he urged. Earlier in his visit to the Law School, McGinnis spoke at the Law School's Legal Theory Workshop.

In a second program presented by the Federalist Society and the Olin Foundation, Elizabeth Anderson, U-M philosophy professor with adjunct appointments in the Law School and the Women's Studies Program, debated the issue of "Affirmative Action" with Roger Clegg, vice president and general counsel for the Center for Equal Opportunity in Washington, D.C.

Anderson supported affirmative action to guarantee racial diversity in higher education and to help equalize opportunity among racial groups. But she opposed residence hall sections for racial groups and student organizations that do not practice open membership policies. "Fear has to be overcome by producing contact, not by waiting around for it to happen," she said.

Said Clegg, who opposes affirmative action: "I think the end we all want, or should want, is good relations. I think where integration comes about it can help achieve that end, but if you can achieve integration only through discrimination . . . you have made it worse. Mutual respect is more important than integration."

PHOTO BY GREGORY FOX

## Examining capital cases

Since 1987 the U.S. Supreme Court's position has been that race discrimination in the exercise of the death penalty is not a constitutional problem, Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law explained during a winter term program sponsored by the Black Law Students Alliance (BLSA). But today African Americans still make up a disproportionate share of federal and state death row inmates — 80 percent of the 21 federal death row inmates and about half of those awaiting execution in state prisons.

Prosecutors' choices are critical in such cases, Gross said. "This sort of discrimination is driven by discretion, deciding if you should seek the death penalty or something else. There is a lot of room to be affected by your biases."

Gross shared the program with DePaul University Law School Professor Andrea Lyon, the nationally known capital defense expert who directs the Clarence Darrow Death Penalty Defense College at the Law School each spring. Gross and Lyon are working on a federal death penalty case involving discovery restrictions in federal capital cases.

"Whenever you are trying a capital case you are trying a political case," said Lyon. She outlined strategies to try to seat open-minded jurors and minimize the issue of race during the trial. If the issue of race is salient to the trial, she said, "you have to find a way to relate your client's story in a way that encompasses race but does not rely on it."

## Jury research: Guilt, penalty phases go hand in hand

Consider these findings from the continuing Capital Jury Project:

- Jurors in capital cases often do not believe that a sentence of life without parole (LWOP) means what it says and underestimate how many years a convicted killer will spend in prison.
- African American jurors are less likely to have lingering doubts about a suspect's guilt than their white counterparts, are less apt to consider a convicted killer to be dangerous in the future, and tend to expect a convicted killer to serve more prison time.
- More than 60 percent of jurors in capital cases discuss the death penalty for the suspect during the guilt phase of the trial.

And these:

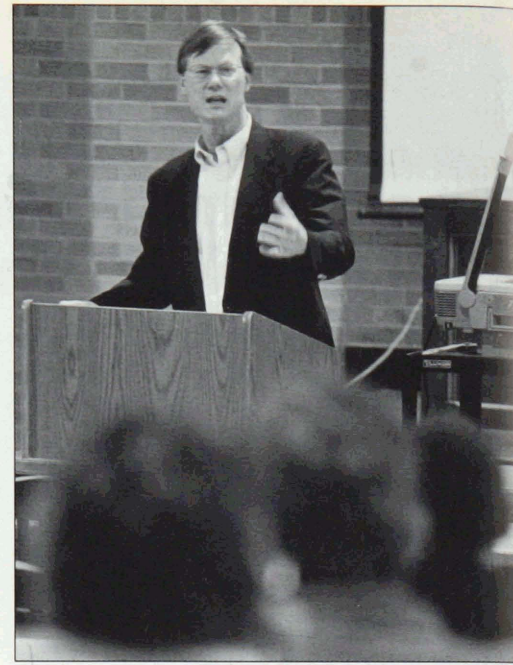
- Thirty percent of penalty phase jurors begin this phase of the trial believing that the convicted killer should be executed, but they are more likely to vote for a life sentence eventually than jurors who go into the penalty phase undecided.
- Some 60 percent of initially undecided jurors wind up voting for the death penalty.

Marla Sandys, associate professor of Criminal Justice at Indiana University, reported these and other findings of the 12-year-old Capital Jury Project during the Clarence Darrow Death Penalty Defense College held at the Law School in May.

The annual six-day college brings together capital defense specialists from throughout the United States to hear experts in the field and to meet in small group sessions to strategize their own cases. Attorneys have avoided the death penalty for their clients in every case that has been considered at the college since it began three years ago.

Sandys, who has worked with the Capital Jury Project since its start in 1990, explained that researchers have interviewed more than 1200 jurors in 14 states. Nearly 700 of the interviewees were on juries that voted the death penalty; some 518 were on juries that voted for life imprisonment.

"The message" from the findings "is that you have to, as forcefully as possible, frontload your mitigation" arguments into the guilt stage of the trial, Sandys reported. The guilt and



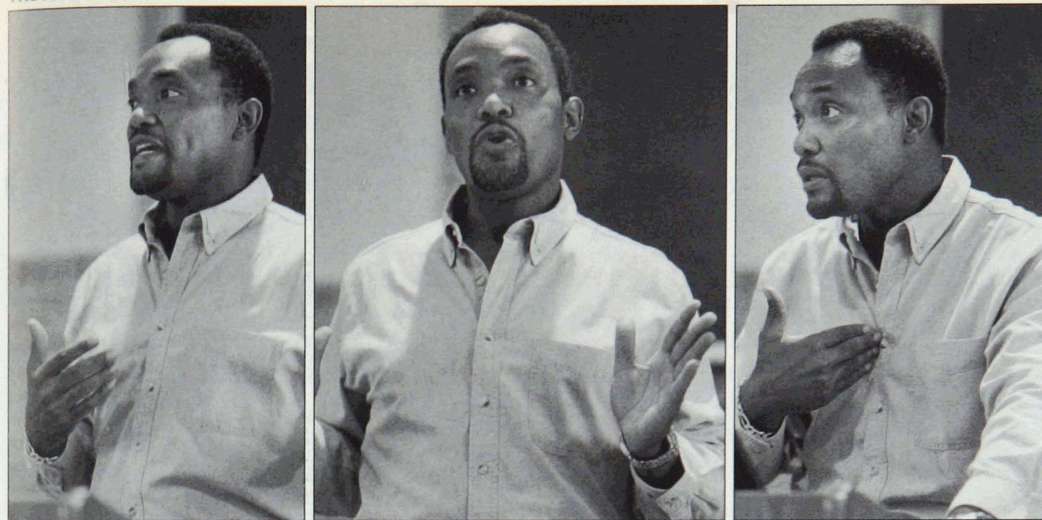
For Stephen Bright, director of the Southern Center for Human Rights in Atlanta, capital defense work is "an act of kindness. Whenever you do this, particularly to people who have harmed us most grievously, you've made the world a little less savage."

penalty phases "have to somehow mesh because this is what juries are looking for."

Jurors have rated the brutality of the crime and/or torture of the victim, having a child as victim, making the victim suffer before death, and maiming or mutilating the victim's body after death as their top aggravations toward voting for the death penalty, Sandys noted. Top mitigating factors included having a lingering doubt of guilt (seldom present but very strong when it is present), a defendant under age 18 at the time of the crime, a mentally ill or retarded client, or a defendant who was abused as a child.

In addition to Sandys, other Death Penalty College presenters included:

- **Jennifer Bishop**, national president of Murder Victims' Families for Reconciliation, who addressed participants on the second day of sessions.
- **Cessie Alfonso**, founder/president of Alfonso Associates and a nationally recognized expert in forensic social work, doing a session on investigating and presenting mitigating evidence.
- **Stephen Bright**, director of the Southern Center for Human Rights in Atlanta and teacher at Yale Law School, speaking on "One Case, One Client."
- **John Delgado**, of South Carolina, who spoke on "Introduction to Death Penalty Practice."
- **Jodie English**, a Richmond, Indiana, attorney, member of the Indiana Association of Criminal Defense Lawyers Board of



Tony Moss, a Miami-based capital defense specialist, pleads for the life of his convicted client in this demonstration of a capital case closing penalty phase argument for the Clarence Darrow Death Penalty Defense College.

Directors, and consultant for the Indiana Public Defender Council, who spoke on "Joining the Guilt and Penalty Phase."

- **Monica Foster**, a capital defense attorney from Indianapolis, Indiana, who spoke on "Mitigation Evidence: Expert Evidence" and "Representing the Difficult Client."
- **David Keefe**, a Tennessee practitioner, on attacking aggravating evidence.
- **Kelly Gleason**, deputy counsel in the Capital Division of the Tennessee District Public Defenders Conference.
- **John Lanahan**, San Diego-based attorney in private practice, who spoke on "Federalizing Issues."
- **Jameson Kunz**, Illinois assistant public defender, part of the teaching team devoted to jury selection.
- **Denise LeBoeuf**, director of the Capital Post-Conviction Project of Louisiana, speaking on "New Developments in Mitigation."
- **David L. Lewis** of Lewis & Fiore, New York City, presenting sessions on capital case negotiations and the penalty phase closing argument.
- **Kevin McNally**, a capital defense lawyer in private practice in Frankfort, Kentucky, who presented a session on penalty phase opening arguments.
- Miami-based attorney **Tony Moss**, who presented demonstrations of opening and closing statements for the penalty phase of a capital defense trial.
- **Andrea Lyon**, founder/director of the Clarence Darrow Death Penalty Defense College, associate clinical professor of law at DePaul College of Law in Chicago, and director of the DePaul Center for Justice in Capital Cases, who did a session on "Creative Motions Practice."

"It is the greatest challenge to a lawyer to represent someone in a capital case, and it is our mission to make you better prepared for that daunting task," Lyon told participants in her welcome letter. "We have gathered many distinguished faculty from around the country to teach you from their experience. I hope that you will learn from them and from your fellow participants."

The college is named for Clarence S. Darrow, who attended the University of Michigan Law School, and reflects Darrow's plea at the sentencing of Leopold and Loeb in 1924:

"I am pleading for a time when hatred and cruelty will not control the hearts of men, when we can learn by reason and judgment and understanding and faith that all life is worth saving and that mercy is the highest attribute of man."

The college will be presented again at the Law School in May 2003.



Clarence Darrow Death Penalty Defense College Director Andrea Lyon talks with attorney Rafael Anglada-Lopez of San Juan, Puerto Rico.

## BRIEFS

### Shifting views of law

The U.S. Supreme Court began to shed its role as supporter of the *status quo* as Franklin D. Roosevelt's New Deal took hold, a federal jurist said in his talk at the year-end celebration of the Law School chapter of the American Constitution Society this spring. At one time "we had a Court we all could be proud of" that "opened the system to people and helped provide constitutional rights and realize opportunities that were denied them in the past," said the Hon. Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit.

The Court of Warren and Brennan, observed Reinhardt, "had a vision of the Constitution that inspired people and gave them hope." But their philosophy of "a living, breathing Constitution" has given way to a view that the Constitution is "frozen in the late 1700s and if the rights were not there before we're not going to discern them now." According to Reinhardt, Chief Justice William Rehnquist was "The Lone Ranger" who was outvoted 8-1 when he first joined the Court, but stayed true to his principles and now finds himself in the majority.

"All judges have views," Reinhardt noted. "They're not political views, they're philosophical, juris-prudential views. But they lead to different results. We need a generation of people coming out of law schools today who believe that justice is the goal of law. The Constitution is not a Napoleonic Code. It's a lot of shorthand that gives justices room for interpretation." (Reinhardt was one of three judges for the Campbell Moot Court finals at the Law School. See story on page 8.)

Women's choices

The key to balancing the demands of your life lies in the choices you make, panelists discussing "Career? Children? Community?" told a Law School audience this spring in a program sponsored by the Women Law Students Association.

"You've come a long way," the Hon. Marianne O. Battani of the U.S. District Court for the Eastern District of Michigan told the audience of mostly women law students. There only were seven women in her law school class of 120, and only three of them graduated, Battani reported. "Whatever you do in life, you're juggling," Battani said. "It's everybody's role in life, particularly for women. You can do it. You can juggle whatever way you want. There are choices."

Panelist Mary Vanderweele, '86, assistant general counsel for Nike Inc., chronicled her moves from large firm to small firm to contract lawyer to her current part-time position. "This issue goes straight to your quality of life," Vanderweele explained. Added fellow panelist Rebecca Eisenberg, the Robert and Barbara Luciano Professor of Law: "You can do a lot, but you can't do everything." Academic life gives you more control over your allocation of time, but also brings with it demanding, unremitting class schedules and other duties, Eisenberg said. Jeannine Yoo Sano, a partner with Brobeck, Phleger & Harrison LLP in Palo Alto, California, said her managing partner works part-time. For herself, she reported, "I work a lot, but I like it."

## Speakers: Tribes must improve coordination

American Indian tribes must improve coordination of their courtroom efforts and insert themselves into legislative activities to protect their rights, speakers stressed at American Indian Law Day activities at the Law School this spring.

U.S. Supreme Court decisions since the *Oliphant* case in 1978, which declared that tribal law could not be applied to non-Indians, have weakened Indian nations' ability to conduct their own affairs and enforce their own laws, according to several of the day's speakers.

"Tribes have been inherently sovereign since the earliest days of the U.S. republic," explained Reid Chambers, of Sonosky, Chambers, Sachse, Enderson & Perry. "There have been tribal courts for more than 100 years.

"It generally has not been controversial for tribal courts to exercise jurisdiction over their own members. . . . The controversy has come in the area of tribal jurisdiction over non-members," as in the *Oliphant* case. Later decisions have said that:

- Tribes can regulate hunting and fishing on trust lands but only on fee lands if there is a

consensual commercial relationship of significant impact on the tribe.

- A state game warden cannot be held liable under tribal law for damage he caused during search of a home on the reservation.
- A tribe has no jurisdiction over a personal injury accident caused by a construction worker on a road through its reservation.

"The Supreme Court today I think is not behaving like a court," said Chambers. "It's behaving like a legislature, and I think the remedy is that tribes will have to go to Congress."

Riyaz Kanji voiced similar sentiments in his keynote address. Tribes have "a serious problem" before the U.S. Supreme Court and during the 1990s lost 23 of the 25 cases they took there, he reported.

"I think the problem at heart stems from the fundamental failure of the tribes and tribal attorneys to understand that the U.S. Supreme Court is specialized and unique, unlike any other court in our system," said Kanji, of Kanji & Katzen PLLC in Ann Arbor. "It is fundamentally different because of the fact that Supreme Court review is entirely discretionary.

PHOTO BY PAUL JARONSKI/UNIVERSITY OF MICHIGAN PHOTO SERVICES



Riyaz Kanji, of Kanji & Katzen PLLC in Ann Arbor, explains that "we need more effort to settle cases short of U.S. Supreme Court review" during his keynote address for American Indian Law Day in the spring. A specialist in cases involving Native Americans, Kanji has taught at the Law School. On the table in front of Kanji are the aromatics and other items used to open the symposium in the traditional way by burning a mix of cedar and grasses and wafting the smoke over participants to clear their minds and prepare them for open-minded discussion.

## National honors

Law student Kirsten Matoy Carlson won honors as 2L National NALSA (Native American Law Students Association) Member of the Year at the Federal Bar Association's Indian Law Conference in New Mexico last spring. Carlson also placed second in NALSA's national writing competition and was named Region 4 representative to the national NALSA body.

In addition, the Law School chapter of NALSA won its bid to host the national NALSA writing competition. The Law School chapter's bid was successful because of support from the Law School community, according to an e-mail

announcement distributed by NALSA chapter co-chair Beth Kronk. "First, I would like to thank the *Michigan Journal of Race & Law*. It was largely a result of their willingness to publish the winner of the competition that we were able to prevail."

Kronk also thanked Riyaz Kanji, of Kanji & Katzen in Ann Arbor, Frank G. Millard Professor of Law Peter K. Westen, Kanji & Katzen associate Wenona Singel, and Collette Routel, '01, of Faegre and Benson, for their commitment to act as judges for the competition. "We could not have been successful without these individual commitments," Kronk said.

In a given year the Court accepts only a very small percentage of the cases that parties seek to bring before it. Practice before the Supreme Court is very specialized and requires a more coherent, uniform approach by the tribes than has been shown in the past."

To increase such coordination, tribes are establishing a Supreme Court Project under auspices of the Native American Rights Fund, he reported. They also are launching a "fledgling legislative effort so the tribes are not sitting passively in the face of these Court decisions."

Other Indian Law Day speakers included:

- **Ron Douglas**, '83, a former judge of the Saginaw Chippewa Tribe;

- **Melissa Tatum**, '92, of the University of Tulsa College of Law and a director of the school's Native American Law Center;
- **James McClurken**, an ethno-historian who helps tribal groups research their histories and compile data needed for federal recognition;
- **James Keady**, director of Michigan Indian Legal Services; and
- **Judge Dan Bailey**, a tribal judge with the Little River Band of Ottawa.

The Indian Law Day program was presented by the Native American Law Students Association as a prelude to the annual Ann Arbor Pow Wow — Dance to Mother Earth.

## BRIEFS

### Taking aim at ECAs

Export credit agencies (ECAs) like the United States' Export-Import Bank and similar agencies in Germany, France, and other industrialized nations use public money to guarantee \$70-120 billion in private projects in developing countries that often have "potentially serious environmental and social impacts," Environmental Defense Senior Attorney Bruce Rich told a Law School audience this spring. The talk by Rich, who directs Environmental Defense's International Program, was sponsored by the Environmental Law Society and International Law Society.

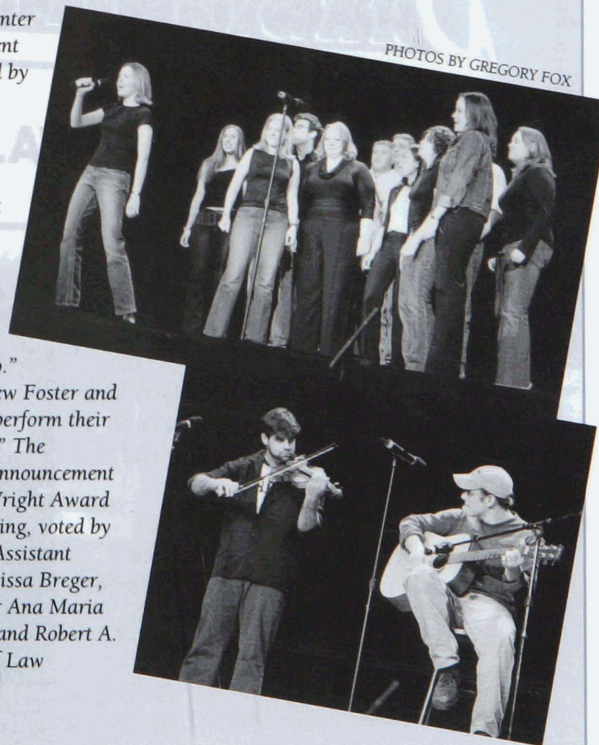
U.S., Canadian, and German ECAs have backed the construction of 25 coal-fired power plants in China over the last dozen years and the emissions from these plants can contribute to climate changes, Rich charged. In sub-Saharan Africa and the Middle East, 30 percent of the countries' debt is owed to ECAs, he claimed.

For the past two years the United States has supported the imposition of environmental standards on ECAs' activity, and over the past 18 months Japan, Australia, and Canada have responded to a campaign by nongovernmental organizations (NGOs) by instituting new environmental protection procedures and making their ECAs' activities more transparent, Rich reported. The international campaign by the NGOs is "very promising," he remarked.

## Talent on Parade

Hidden talents of law students and others took center stage during last spring's annual Law Revue Talent Show, held at the Michigan Theater and followed by a benefit concert to aid Student Sponsored Fellowships. The often tongue-in-cheek show featured acts like "The Cell Phone Hour," "My Favorite Dings," and "It's the Law School Talent Show, Charlie Brown!" Right, the Headnotes belt out their version of "Illegally Blonde," and below, Windi N. Robbins, of the Office of the Assistant Dean of Students, dances to the music of "Vivir Lo Nuestro."

At lower right, fiddler Drew Foster and guitarist Taylor Garrett perform their lyrics to "Wasted Times." The program also included announcement of the annual L. Hart Wright Award for Excellence in Teaching, voted by law students to go to: Assistant Clinical Professor Melissa Breger, '94; Visiting Professor Ana Maria Merico-Stevens, '95; and Robert A. Sullivan Professor of Law James J. White, '62.



Muslim and Arab civil rights

Governmental restrictions on the constitutional rights of people of Arab descent have continued, but acts of individual discrimination against Arabs and Arab Americans appear to have leveled off since the terrorist attacks of September 11, 2001, a civil rights attorney and a leader of the Council of American Islamic Relations (CAIR) reported to a Law School audience earlier this year.

Both Kary Moss, executive director of the American Civil Liberties Union (ACLU) of Michigan, and Haaris Ahmad, executive director of CAIR of Michigan, criticized federal authorities' questioning and confinement of thousands of people of Arab descent as well as many provisions of the Patriot Act that was passed in the wake of the September 11 attacks. Moss noted that the ACLU was the first to sue U.S. Attorney General John Ashcroft over his decision to close immigration hearings concerning Ann Arbor Muslim leader Rabih Haddad, whose Global Relief charitable organization is allegedly linked to terrorist organizations. Ahmad reported "lots of arson across the nation," cases of employment discrimination, and other acts against people of Arab descent.

However, both speakers reported that individual acts of discrimination have decreased and conditions always have been less troublesome in Michigan than in some other parts of the United States. "I've been somewhat heartened — a lot of people have shown the best sides of themselves," Moss said. The program was sponsored by the Muslim Law Students Association.



The Hon. Roger L. Gregory, '78, recalls his memories of study at the Law School and praises the progress such an education makes possible as he addresses the annual Alden J. "Butch" Carpenter Memorial Scholarship Banquet. Gregory is the first African American to sit on the U.S. Court of Appeals for the Fourth Circuit.

**Gregory:**  
*'Be what we think we may become'*

Judge Roger L. Gregory, '78, the first African American to sit on the U.S. Court of Appeals for the Fourth Circuit, takes the long view — both forward and backward.

Raised in Petersburg, Virginia, he was the first of his family to graduate from high school, Gregory explained in his keynote talk at the 24th annual Alden J. "Butch" Carpenter Memorial Scholarship Banquet during the spring. Today, Gregory holds degrees from Virginia State University and the University of Michigan Law School.

Citing another of those ironies of history that reflect social progress, Gregory noted that a street near his boyhood home was named for one of antebellum Virginia's major slaveholders. Today, a descendant of that slaveholder works in the same building that houses Gregory's court chambers. The building, in fact, once housed the offices of Confederate States of America President Jefferson Davis.

Gregory praised Law Quadrangle donor William W. Cook's belief that U.S. institutions are greater than U.S. wealth or power, and said that such a credo opens new opportunities for people. "What a belief, that our institutions are of more consequence than the wealth and power of our country. It's another chance to be what we think we may become."

You law students, he said, "You represent an opportunity, another chance to be what we think we may become. Your entry into the profession gives us that chance."

Sprinkling his talk with quotations from Judge Learned Hand, Justice Felix Frankfurter, and others, Gregory urged listeners to help their community and engage in what Frankfurter called Hand's "honest effort of reason to discover justice."

"Keep asking that question — Why not?" Gregory said. "Just because we never did something before should not be the sole reason not to do it."

In other banquet activities:

- Professor **Sallyanne Payton**, who joined the Law School faculty in 1976, received a special award for "contributions both inside and outside the classroom over the past 25 years."



Professor Sallyanne Payton receives a special award from the Black Law Students Alliance for her service to students since joining the Law School faculty in 1976.

- Visiting Professor **James Forman Jr.** also received an award for bringing his "unique and valuable perspective" to the Law School. Forman was unable to attend because of obligations connected with the Maya Angelou Public Charter School that he co-founded in Washington, D.C. Assistant Dean of Students Charlotte Johnson, '88, accepted the award for him.
- Three Butch Carpenter Scholarships totaling \$20,000 were presented to first-year law students: **McKenzie Phillips, Joseph Richford, and Brent Starks**. The scholarships are presented to students "who understand the need to give back to his or her community and who have made an effort to give back," Johnson explained of the awards.

The annual banquet and scholarship presentation memorialize the life of Law School student Alden J. "Butch" Carpenter, who was committed to bringing the leadership and skills of business people and lawyers to economically depressed communities but died before he could graduate. The Black Law Students Alliance established the Alden J. "Butch" Carpenter Memorial Fund in 1978 "to promote the attributes exemplified by his life and to motivate the social commitment demonstrated by his professional objectives."



"Butch" Carpenter Scholarship winners Brent Starks, Joseph Richford, and McKenzie Phillips, all first-year law students, share the excitement of their honor.

PHOTOS BY GREGORY FOX



## Under the magnifying glass

Seldom, it seems, do we get the opportunity to step aside from our daily duties and focus on the issues that shape our times rather than just propel them.

Fortunately, the Law School is a place where such opportunities abound — in the form of conferences, symposia, colloquia, and other gatherings where discussion and the airing of views is the rule of the day. In the coming academic year the Law School will be the site of conferences on post-September 11 efforts to combat terrorism worldwide, issues facing countries' highest courts, and the kinship of life sciences, technology, and the law.

At other times, the Law School's special programs illuminate areas that otherwise might remain obscure to most of us, such as Native Americans' relationships with the law and their environment. Or there can be opportunity to step back and reflect on a fact of our life that we take for granted with little examination — like our 200-year history of judicial review of legislative acts.

All five of these subjects will come under the microscope at the Law School during the fall and winter terms. Here is a preview:

- On October 18-19, scholars from Europe and the United States will gather to discuss anti-terrorism efforts that have been mounted since the attacks in the United States on September 11, 2001. The conference, "A War against Terrorism: What Role for International Law? U.S. and European Perspectives," is sponsored by the Law School and the *European Journal of International Law*. The two sponsors alternate between Europe and the United States as sites for their joint programs. Each panel discussion features a spokesman for the European viewpoint and another for the American perspective.
- In April 2003 (tentative at deadline time), representatives of the highest courts will discuss "Challenges for the High Court in Multi-Level Politics: A Transatlantic Conversation."

Three conferences organized and run by student organizations also are in the year's lineup:

- A symposium marking the 200th anniversary of the U.S. Supreme Court's *Marbury v. Madison* decision that "will examine the continued vitality of judicial review in the United States and consider the role of judicial review in other societies." Organized by the *Michigan Law Review*. Tentative dates are February 7-8, 2003.
- "Life Sciences, Technology, and the Law," sponsored by the *Michigan Telecommunications & Technology Law Review*, "to discuss and debate recent developments in life science technology." Organizers note: "Few technological advances of recent years have challenged legal thinking as pervasively as those emerging from the life sciences. From the human genome project to cloning technology, biological technology is exploding at an alarming rate. As new life science technology reaches fruition and its practical applications emerge, we as a society must begin the process of developing law and policy to answer previously unimaginable questions." Tentatively scheduled for March 7-8, 2003.
- "American Indians, the Environment, and the Law," sponsored by the Native American Law Students Association to "explore the relationships among Indian tribes, the environment, and the law through a series of panels addressing the legal implications of environmental concerns currently facing Indian tribes." The conference opens with an Ojibwa elder conducting a traditional smudge ceremony to clear the room of ill will and condition participants to take part with open minds. Tentatively scheduled for March 28, 2003, as a precursor to the annual Ann Arbor Pow Wow.

### Why a clerkship?

Judicial clerkships offer a number of benefits as stepping stones to practice or as careers in themselves, a panel of experts explained during a program at the Law School in the spring. "I think there is no better position for a young lawyer than a clerkship experience, provided there is a good fit with the [people of the judge's] chamber. A very close relationship develops in that chamber," explained the Hon. Victoria Roberts of the U.S. District Court for the Eastern District of Michigan.

Mark Pomerantz, '75, a partner in Paul, Weiss, Rifkind, Wharton and Garrison of New York City, said a clerkship provides a young lawyer with credentials, practical experience, and "an appreciation of the human impact of the rule of law." The judge you clerk for also may be a mentor and inspiration to you, said Pomerantz, who clerked for Justice Potter Stewart of the U.S. Supreme Court and the Hon. Edward Weinfeld of the U.S. District Court for the Southern District of New York. Amy Harwell, '01, a clerk for the Hon. Arthur J. Tarnow of the U.S. District Court for the Eastern District of Michigan, also was on the panel.

The discussion was moderated by Assistant Professor of Law Susanna L. Blumenthal, the Law School's faculty coordinator for clerkship applications. In a second program later in the spring, Blumenthal outlined the agreement among U.S. appellate judges to limit clerkship applicants to third-year law students and law school graduates. The move ends the practice of letting students apply at the beginning of their second year of study. Implementation requires a moratorium on hiring clerks for appellate courts except for those judges who still must hire clerks for the 2003-2004 term. The Law School and its peer law schools have endorsed the change, Blumenthal said. Federal district and state courts were not part of the agreement at the time of the program.

An hour a week

"Can we take one hour a week out of our schedule for people who are dependent for help?" Yes, answered Douglas L. Toering of Grassi & Toering PLC in Troy, Michigan, as he discussed "Pro bono? Billable Hours? Or Both? What's an Associate to Do? And Why?" in a program sponsored by the Christian Law Students.

Whether from religious, professional, or other convictions, "recognize the benefits of serving others," said Toering, a founder of the new southeast-Michigan-based Christian Legal Aid Program. To Toering, *pro bono* "is work that you do on your own time."

"Recognize that you can't do it all, but that you can do something," said Toering, who worked for 12 years as a General Motors corporate attorney. "Find what you can do and serve, and you will get tremendous satisfaction from it."

## Enron and questions for the future

"How could so many beans have been miscounted," wondered Lawrence A. Hamermesh as he opened discussion of the Enron financial debacle during a program at the Law School during the winter term.

A visiting professor at the Law School and associate professor at Widener Law School's Delaware campus, Hamermesh focused on one of the so-called "Raptor" cases to illustrate Enron's practice of creating special purpose entities (SPEs) that provided income to some high Enron officials when stock prices rose and hid Enron's losses as stock prices fell. You can't sell stock and count those assets as income, he said.

Had stock prices continued to rise, the energy trading company probably would not have encountered difficulties, Hamermesh agreed with his co-panelists, Visiting Professor Cyril Moscow, '57, and Alene and Allan F. Smith Professor of Law Merritt B. Fox. The three experts appeared in a program sponsored by the Business Law Society.

Although individuals may have suffered greatly and the probe of Enron has expanded to include Arthur Andersen LLP, some law firms, and even the U.S. government, the overall impact of the Enron difficulties will not have a major impact on the U.S. economy, Fox predicted. "The real worry is, 'Are there lots of

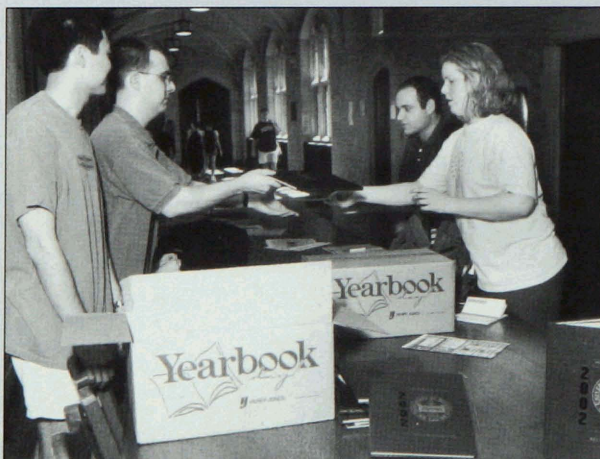
other Enrons out there?' If there are many more, there is the question of whether securities prices are reflecting what we think, and questions of securities law," he said.

"It's not clear if they had followed all of these [laws] that this wouldn't have happened anyway, and that perhaps is the scariest of all and points to the need for reform." For example, Enron's board of directors was "extraordinarily complacent" with information fed to it and analysts seemed pleased with Enron. "There are a variety of questions of how they got things so wrong."

Moscow, too, questioned the significance of the Enron debacle by itself. "I wonder why Enron is so celebrated," he explained. "It was a bankruptcy of a company, and we have these often."

As to criticisms of lawyers and law firms that had Enron as a client, Moscow noted the difficulty of going beyond the legal specifics that a lawyer may be hired to do. "It's very difficult sitting here to determine what the lawyers should have done," he said. The lawyers would argue they were "mechanics" hired to set up the SPEs (special purpose entities)."

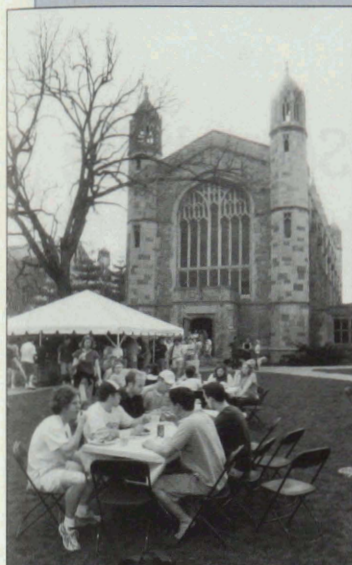
**The yearbook is back** — After an absence of nearly a decade, the Law School Yearbook returned this year through efforts led by second-year law student Nicholas Janiga, shown here handing out a yearbook to a buyer from the distribution point inside Hutchins Hall. Right, law students Michelle Schott and Erin Johnson admire the new publication after picking up a copy from the display at the Law School Student Senate-sponsored barbecue at the end of classes. Later in the year, families and visitors peruse the publication on display at the reception after commencement.



PHOTOS BY GREGORY FOX



PHOTOS BY GREGORY FOX



**A time to unwind** — The end of the term of classes brings the traditional outdoor barbecue sponsored by the Law School Student Senate, when tables get set up outdoors and diners move into the Law Quadrangle. The weather cooperated, and as you can see from the expressions of law students Lauren Mardo, Andrea Aragon, and Meredith Zielke, a good time was the order of the day.

## BRIEFS

### Variety in labor and employment law

Panelists representing public and private practice described labor and employment law as a practice area that offers variety and the opportunity to make a difference for individuals and groups. They were speakers in a program at the Law School in the spring sponsored by the Business Law Society.

"I'm acting in the public interest and I really enjoy that," explained Adele Rapport, '80, regional attorney with the U.S. Equal Employment Opportunity Commission (EEOC) in Detroit. Rapport organized the program as part of her educational work with the American Bar Association (ABA) and encouraged students to join ABA and participate in its activities.

Panelist David B. Calzone, '81, of Vercruyse Metz & Murray in Bingham Farms, Michigan, noted that about a third of his practice focuses on alternative dispute resolution and another 30-40 percent centers on human resources counseling. For Bart Feinbaum, assistant general counsel for Blue Cross Blue Shield of Michigan, being in-house counsel means "you are the first-line attorney in terms of dealing with a problem." For Cary S. McGehee, of Pitt, Dowty, McGehee & Mirer PC in Royal Oak, Michigan, her plaintiff-centered work is "document-intensive and labor intensive," but also "exhilarating" and offers "lots of control over what cases we take." Panelist I. Mark Steckloff, '76, of Sachs, Waldman PC in Detroit, explained that his union-side labor practice includes appellate work, contact with administrative agencies like the National Labor Relations Board and the Equal Employment Opportunity Commission, and provides "a very socially useful way to practice law and help people."

## Olin Center for Law and Economics awards summer research support

Two law students are among winners of the five John M. Olin Center for Law and Economics summer fellowships that have supported their research over the past few months. Each of the winners conducts research during the summer and submits a scholarly paper based on that research by the beginning of the fall semester.

The center awards its summer fellowships "through a competitive process that weighs the academic record, experience of applicants, and the merits of the proposed research," according to the fellowship notification. The Center director is Omri Ben-Shahar, professor of law and assistant professor of economics.

Fellowship winner Sarah G. Warbelow, who begins her third year of legal studies this fall, has been spending this summer examining "to what extent the legal system represents a reflection of and contribution to racism in the United States, leading to economic disparities between whites and people of color," as she explained in her fellowship application.

"By focusing on wrongful death lawsuits seeking damages for the loss of a child's life, it is possible to examine lives that theoretically should be perfectly equal in value. Because there are fewer tangible factors (i.e. earning potential, lost income), discrepancies in awards can be used to infer racial bias."

Warbelow earned her bachelors degree in social relations and women's studies at James Madison College at Michigan State University. At the Law School, she is a member of the

*Michigan Journal of Race and Law*. Professor of Law Steven P. Croley is advisor to Warbelow for her research and paper.

Daniel P. Wendt, also a third-year law student this fall, explained in his successful application that his research examines "current U.S. programs that allocate enormous amounts of resources to provide subsidies for American farmers." He noted in his application that his paper "would necessarily focus on the somewhat recent 'Freedom to Farm' movement and the current agricultural negotiations at the World Trade Organization."

Wendt earned his undergraduate degree in history at Cornell University. At the Law School, he is a member of the *Michigan Journal of International Law*. Adviser for his project is Donald H. Regan, the William H. Bishop Jr. Collegiate Professor of Law.

The other summer fellowship winners, all doctoral candidates in economics, are:

- **H. Katherine Guthrie and Jan Sokolowsky**, for a joint investigation of the time-dependent valuation of assets. Professor of Law Kyle D. Logue and Economics Professor James Hines are their advisers.
- **Chris Kurz**, who is investigating the impacts of trade law administration on U.S. productivity.
- **Yo Nagai**, who is investigating the interplay of optimal standards under discretionary enforcement of environmental regulations.

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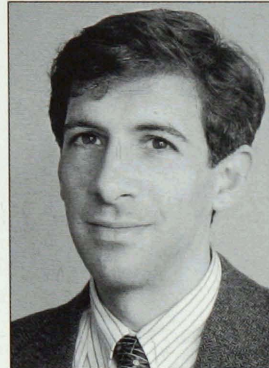
## New faculty enrich Law School life

**Five new faculty members are joining the Law School community, three as assistant professors and two as clinical assistant professors to teach in the Legal Practice Program.**

**The new assistant professors bring added depth to the Law School's research and teaching in the fields of federal income taxation, jurisprudence and political theory, administrative law, torts, constitutional law, bankruptcy and commercial law, as well as Internet law, intellectual property, jurisdiction, privacy, property, and civil procedure.**

**In the Legal Practice area, the new clinical assistant professors provide both solid practical experience as well as classroom expertise.**

**The new faculty members include:**



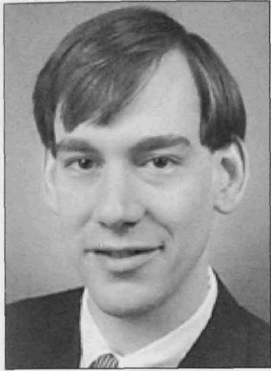
**Assistant Professor David M. Hasen, J.D. Yale Law School; Ph.D. Harvard University; B.A. Reed College**

At Yale Law School, David M. Hasen served as notes editor and editor of the *Yale Law Journal*. At Harvard University, Hasen's doctoral dissertation in government, *The Politics of Kantian Moral Philosophy*, was nominated for several prizes. He received the German Academic Exchange Service Summer Language Fellowship and was a finalist in the National Science Foundation Graduate Fellowship Competition.

At Reed College, where he earned his B.A. in history, Hasen was elected to Phi Beta Kappa and won awards for academic excellence.

Hasen comes to the Law School from Wilson Sonsini Goodrich & Rosati in San Francisco, where his practice concentrated on the taxation of mergers and acquisitions, including cross-border transactions. He also has practiced as an associate at Orrick, Herrington & Sutcliffe LLP, in San Francisco, where he specialized in corporate income taxation, the taxation of financial instruments, and tax-exempt organizations.

Following law school Hasen served as law clerk to the Hon. Maxine M. Chesney of the U.S. District Court for the Northern District of California. In addition, he has been a lecturer at the University of California-Santa Cruz and was a teaching fellow at Harvard University. Hasen's research and teaching interests include federal income taxation, jurisprudence and political theory, and administrative law. He has published in the *Yale Journal on Regulation and Constellations* and is working on an article on the taxation of financial instruments.



**Assistant Professor  
John A. E. Pottow,  
J.D. Harvard Law  
School; A.B. Harvard  
College**

John A. E. Pottow was a National Scholar at Harvard Law School, where he earned his J.D. *magna cum laude* and graduated approximately in the top 1 percent of his class. While in law school, he also served as treasurer and as a member of the board of trustees of the *Harvard Law Review*.

During the summer between his first and second years of law school he worked with Professor Arthur R. Miller, a former University of Michigan Law School faculty member, on the supplement to Wright, Miller and U-M Law School Professor Edward Cooper's monumental *Federal Practice & Procedure* and helped to revise a volume of the treatise.

As a Harvard College undergraduate working toward his *summa cum laude* bachelor's degree in psychology, Pottow also compiled an impressive record: Phi Beta Kappa; winner of the National Entrance Scholarship; winner of the John Harvard Annual Scholarship four consecutive years; awarded the Thomas Hoopes Prize for Undergraduate Research; and winner of the Gordon Allport Prize in Psychology.

In addition, he was president and jazz program host on WHRB-FM, student conductor of the Harvard University Band, and a member of the Hasty Pudding Theatricals group and the crew team.

Pottow has clerked for judges in two countries — the Rt. Hon. Beverley McLachlin of the Supreme Court of Canada and the Hon. Guido Calabresi of the U.S. Court of Appeals for the Second Circuit. He has practiced with Hill & Barlow in Boston as an associate in the litigation department, focusing on both appellate and trial work. In addition to drafting the successful principal brief in a 67-party, first-impression leveraged buyout bankruptcy appeal before the First Circuit, Pottow won asylum for an Afghan national seeking gender-

based relief from the Taliban regime.

Currently, Pottow is project director of the National Consumer Bankruptcy Project, which is studying some 2,000 bankruptcy filings and developing a database to analyze court records.

Pottow will begin teaching at the Law School in fall 2003.



**Assistant Professor  
Molly Shaffer Van  
Houweling, J.D.  
Harvard Law School;  
B.A. University of  
Michigan**

While at Harvard Law School, where she earned her law degree *cum laude*, Molly Shaffer Van Houweling served as articles editor for the *Harvard Journal of Law & Technology* and as a teaching and research fellow at the Berkman Center for Internet & Society, where she

designed and coordinated an online course on Internet privacy, developed the curriculum for a seminar on "Internet and Society," and researched Internet domain name, free expression, and intellectual property issues. Van Houweling was also a research assistant to professors Arthur R. Miller and Lawrence Lessig, and a teaching fellow in the Harvard College Government Department (where she received the Derek Bok Award for Excellence in Undergraduate Education).

At the University of Michigan, where she earned her bachelor's degree in political science with Highest Distinction, Van Houweling was inducted into the Phi Beta Kappa Honorary Society and named the William Jennings Bryan Outstanding Political Science Graduate. She received high honors for her undergraduate thesis, *The Politics of Presidential Position-Taking*.

Van Houweling comes to the Law School from Stanford Law School, where she has been a fellow at the Center for Internet and Society and executive director of Creative Commons, a nonprofit corporation that facilitates sharing of intellectual property. She previously served as law clerk to Justice David H. Souter of the U.S. Supreme Court and to the Hon. Michael Boudin of the U.S. Court of Appeals for the First Circuit, and as one of the initial staff members of the Internet Corporation for Assigned Names and Numbers, the organization that oversees the Internet domain name system.

Van Houweling has published in the *University of Colorado Journal of Telecommunications & High Technology Law* (forthcoming) and the *Harvard Journal on Legislation*. She currently is working on an article about the state action doctrine in the context of conflicts between property law and Internet-based speech.

# FACULTY



**Clinical Assistant  
Professor Laurence  
D. Connor, J.D.  
University of  
Michigan Law  
School, B.A. Miami  
University**

Laurence D. Connor, '65, already is well known to many members of the Law School community because he frequently has taught here as an adjunct professor. Now he is joining the faculty fulltime to teach in the Legal Practice Program, a year-long course of writing, moot court enactments, and other skills that is required for all first-year students.

A specialist in mediation and arbitration, Connor practiced with Dykema Gossett from his graduation until last year. He was a senior litigation member who concentrated in complex business and tort litigation, trials, appeals, and alternative dispute resolution. He is listed in *Best Lawyers in America* and is a member of the Detroit, Michigan State, and American Bar Associations and a fellow of the Michigan Bar Foundation and the American College of Civil Trial Mediators. He earned his J.D. With Distinction and his bachelor's degree *cum laude*.

Connor has published articles in the *Michigan Bar Journal*, *Alternatives*, *Corporate Detroit*, and other publications. He has done alternative dispute resolution training for the State Bar of Michigan, American Arbitration Association, and other organizations.

An approved mediator with the American Arbitration Association, Connor has mediated commercial and tort cases for the Michigan Court of Appeals and private parties, is a member and past chair of the State Bar of Michigan's Section on Alternative Dispute Resolution, is a member of the Michigan Supreme Court Task Force on Alternative Dispute Resolution, editor of the ADR Section newsletter, and frequently has taught alternative dispute resolution and mediation at the Law School.

While a student at Michigan, Connor was a member of the Order of the Coif and was note and comment editor for the *Michigan Law Review*.



**Clinical Assistant  
Professor Rachel E.  
Croskery-Roberts,  
J.D. University of  
Michigan Law  
School; B.A.  
University of  
Oklahoma**

Rachel E. Croskery-Roberts, '00, graduated *magna cum laude* in the top five percent of her Law School class. She was a note editor for the *Michigan Journal of International Law* and a member of the *Michigan Journal of Gender and Law*.

She also served as a senior judge for two years. She is a member of the Order of the Coif.

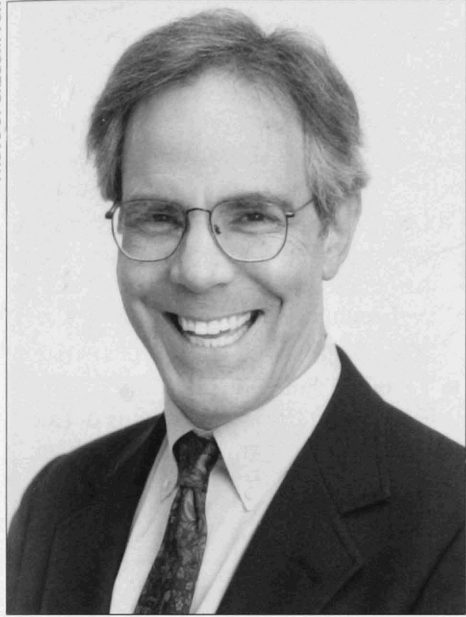
At the University of Oklahoma, where she earned her Bachelor of Arts in Letters *summa cum laude* and also did graduate coursework, she was a member of Phi Beta Kappa, an Oklahoma Regents Scholar, on the President's Honor Roll and the Dean's Honor

Roll, a member of *Eta Sigma Phi* Classics Honor Society, and worked on fundraising projects for various charitable organizations.

Croskery-Roberts comes to the Law School after serving as a law clerk to the Hon. Janis Graham Jack of the Southern District of Texas. Prior to clerking, Croskery-Roberts practiced as an associate in the Labor and Employment Department of Baker Botts LLP in Dallas, and did legal internships with Baker Botts and Gibson, Dunn & Crutcher in Dallas, and Squire, Sanders & Dempsey LLP in Cleveland.

While at Baker Botts, Croskery-Roberts both prepared a paper on recent developments in labor and employment law and gave a workshop presentation on employee recommendations at the firm's Dallas Labor and Employment Law Conference. She is licensed to practice law in Texas, and she is a member of the State Bar of Texas and the American Bar Association.

## Ellsworth, Gross join cast for capital punishment examination



Samuel R. Gross

With music and lyrics still ringing in their ears, experts on the death penalty — pro and con — turned to spoken words to ponder the dilemma unfolding as opera before and after their discussion.

Opera? Discussion? Trading spotlights on the same program?

Certainly, when the opera is Jake Heggie's *Dead Man Walking* and the topic is capital punishment.

This was the case in April when Law School Professors Phoebe C. Ellsworth and Samuel R. Gross joined other panelists and performers of the Opera Pacific Company of Orange County for the day-long program "Performance, Policy, and Culture: *Dead Man Walking* and the Death Penalty in America" at the University of California at Irvine (UCI). The opera and the earlier movie of the same name recount a Catholic nun's experience as spiritual counselor to a condemned murderer and witness at his execution.

Ellsworth, the Kirkland and Ellis Professor of Law, noted that fewer than half of Americans favored the death penalty in the 1960s, but during the 1980s and first half of the 1990s support for it grew to about 70 percent. With the drop in violent crimes that came in the mid-1990s — and even more the dramatic reversals of capital convictions because of previously unavailable DNA evidence and other information — support for the death penalty now has dropped to about 65 percent.

Gross, the Thomas and Mabel Long Professor of Law, reported that since 1996 more than 100 death row inmates have been proven innocent through DNA testing. He also noted that when executions are carried out, they conclude a long and costly appeals process that averages 10 to 15 years.

Co-sponsored by UCI's Bren Fellows Program and the Opera Pacific Company, the program fused panel discussions and opera excerpts into the kind of swirl of thought and feeling that characterizes debate over the death penalty. As Peggy Goetz of the *Irvine World News* reported, "intelligent logical arguments" alternated with "the emotional punch" of Opera Pacific's performances, which "hit the emotions, where, according to some, many people make decisions about being for or against capital punishment."

Discussion sessions featured panelists ranging from a United States circuit court judge and professors from universities throughout the country, to the opera's composer, director, and lead performer. Discussions like "Is the Death Penalty Just?" and "Is the Process Fair?" took turns with performances of opera selections like "What time is it?" "How much longer? How much more time?" and "Have you any last words, DeRocher?"



Phoebe C. Ellsworth

*Dead Man Walking*, with libretto by playwright Terrence McNally, premiered in 2000 in San Francisco and also has been performed by the Cincinnati and New York City operas.

Like the 1966 movie that won Susan Sarandon a Best Actress Oscar and nominations for co-star Sean Penn and director Tim Robbins, the opera is based on the 1993 book by Roman Catholic Sister Helen Prejean. *Dead Man Walking: An Eyewitness Account of the Death Penalty in the United States* was on the *New York Times* Best Seller List for 31 weeks and was nominated for the Pulitzer Prize. Prejean's book grew out of her experience as spiritual adviser to a convicted killer sentenced to death by electrocution in Louisiana's Angola State Prison. (In the opera and film, execution is by lethal injection.)

# Chambers: 'This place has been my home'

PHOTO BY GREGORY FOX



**Class is Over** — Law School colleagues applaud David L. Chambers as he leaves his final class. Chambers, the Wade H. McCree Jr. Collegiate Professor of Law, is retiring from teaching. He joined the faculty in 1969.

Praise for Professor David L. Chambers' generosity and commitment to using scholarship to better people's conditions were the order of the evening as colleagues and friends celebrated Chambers' more than 30 years of teaching at the University of Michigan Law School.

Chambers, the Wade H. McCree Jr. Collegiate Professor of Law, is retiring from teaching and was honored at a Law School banquet during the spring.

A member of the Law School faculty since 1969, Chambers is widely known for his book on child support enforcement, *Making Fathers Pay*, as well as his cutting-edge work on how lawyers experience their profession, AIDS, child custody, same-sex marriage, and other issues in family law.

He also serves as co-chair of the Task Force on Diversity in Law Schools for the Association of American Law Schools and is a past president of the Society of American Law Teachers. At the Law School, he developed the South African Externship Program that places about a dozen law students with human rights organizations in South Africa each year. (See feature on page 37.)

Friends and colleagues took turns at the podium to celebrate Chambers' career during the gala dinner held for him at the Lawyers Club in April. Dean Jeffrey S. Lehman, '81, thanked Chambers for his many years of work on the continuing survey of Law School graduates and for "serving in so many ways" at the Law School and elsewhere "to help promote a healthier and more just legal profession."

The McCree professorship was the first to be named for an African American at any major law school, and it was appropriate that Chambers receive it, noted McCree's widow Does. Wade H. McCree Jr. joined the faculty after serving as U.S. solicitor general and judge of the U.S. Court of Appeals of the Sixth Circuit. He co-taught *Lawyers and Clients* with Chambers for six years. Does McCree told Chambers that Wade McCree felt he and Chambers "shared a very strong feeling for public service and felt that you and he had worked very closely together in this endeavor."

Other speakers included:

- **Joseph Vining**, the Harry Burns Hutchins Collegiate Professor of Law, who joined the faculty with Chambers and often consulted with him as they began their teaching careers together.

Citing Chambers' groundbreaking book *Making Fathers Pay*, Vining noted "David has intellectual courage and also was a pioneer in bringing empirical work to bear on legal questions."

- **Terrance Sandalow**, Edson R. Sunderland Professor Emeritus of Law and Dean Emeritus of the Law School: "People have always come first" for Chambers and "his deepest concerns are with how people experience legal institutions. He's especially concerned with groups whose needs often have been overlooked."

- Associate Dean for Clinical Affairs **Suelyn Scarnecchia**, '81, recalled being a student of Chambers and thanked him "for being a teacher's teacher. We have carried your lessons into the world for the benefit of ourselves and the thousands of people we collectively serve."

- **Richard O. Lempert**, '68, the Eric Stein Distinguished University Professor of Law and Sociology, characterized Chambers as "a model of a teacher and ethical person" and thanked him for helping to spread understanding of the actions and rights of gay and lesbian people. Lempert, who has collaborated with Chambers on a study of minority Law School graduates, added that Chambers "was always a popular teacher, but David's teaching is much more than pleasing to his students. He was transformative to many of them."

For himself, Chambers recalled his service under a succession of five deans and the friendships with students and colleagues he has developed here. "This place has been my home," he said. "I cannot imagine a better place to have a career."



# FACULTY

PHOTOS BY GREGORY FOX



Professor David L. Chambers addresses well-wishers at his retirement banquet: "This place has been my home. I cannot imagine a better place to have a career."



No one enjoyed the evening more than David L. Chambers himself.



Dean Jeffrey S. Lehman, '81, brings on laughter with his comments during the retirement dinner for Professor David L. Chambers. Chambers is seated in the left foreground.



Dores McCree congratulates David L. Chambers, the Wade H. McCree Jr. Collegiate Professor of Law. The McCree professorship, named for Dores McCree's late husband, a Law School faculty member and former U.S. Solicitor General, was the first endowed professorship at a major U.S. law school to be named for an African American.



David L. Chambers raises a gift — a framed photo of the Law Quadrangle — for all to see.



Suellyn Scarnecchia, '81, associate dean for clinical affairs and a former student of Chambers, congratulates him and thanks him for being "a teacher's teacher."

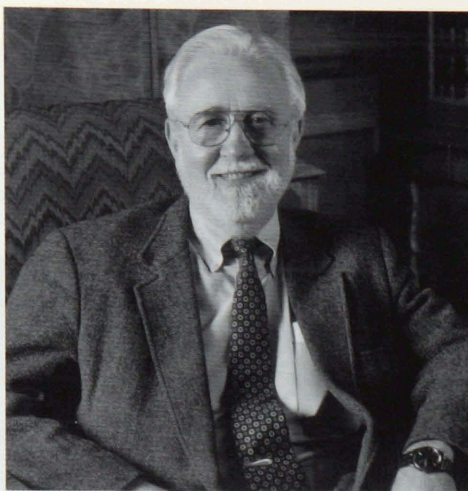
# FACULTY

The following story appeared this spring in Michigan Today and appears here with permission.

The goal is to arrive at the number 6. There are exactly 12 solutions; 12 different ways to equal, express, or arrive at 6 using the specific numbers and operations (resources) allowed. For this puzzle, you are allowed to use the numerals 1, 2, 3, and 4, and you are allowed one  $\times$  (multiplication) operation, two  $-$  (subtraction) operations and two  $//$  (division) operations. You can only use each resource once per solution (for example, you can use two minus signs, but only one 3, or one multiplication operation). Parentheses can be used as often as you like. You may use a resource-operation only once; that is,  $2 \times 3 = 6$  and  $3 \times 2 = 6$ , do not count as different solutions. What are the 12 ways to equal 6?

If you find this problem difficult, don't be discouraged. That's the idea. Get out pencil and paper and keep plugging away at it and you'll sharpen your wits. That's what [Professor of Law] Layman Allen discovered in the early 1960s when he was a young law professor at Yale, trying to motivate his 12-year-old Sunday school students. He made up a logic game for them to play after they had completed their regular lessons and was surprised at how quickly they became adept at tackling his puzzles. Their skill surpassed the reigning psychological theories regarding the reasoning capabilities of young minds.

Allen, seeing how powerful a motivator gaming was in the acquisition of difficult reasoning skills, began exploring its use in the classroom. Working with his brother Bob, he developed several nationally marketed instructional games, including *Wff 'n Proof*, a game of symbolic logic, and *Equations*, a creative math game. By the mid-60s, instructional gaming had caught on in the education field, and a Florida school district brought in Allen, who was still teaching law at Yale, as an instructional game consultant. Soon, educators launched the Academic League of Games, and students began competing in local, state, and national academic contests.



Layman E. Allen

## Layman Allen's mind games

By Rachel Ehrenberg

Today, in addition to his recognition as a research scientist and law professor, Allen is regarded as a pioneer in the mathematics sub-field of instructional games.

Many studies have shown that mind games like those Allen developed can increase the problem-solving abilities of the players, raise their math scores, and boost their scores on IQ tests. A 1972 study compared the Stanford Achievement Test in Mathematics scores of two groups of urban junior high school students. For a nine-week period, two classes received instructions using the *Equations* game, with team learning and tournaments each week. The other two classes received regular math instruction. All of the classes had comparable scores on the pre-test. However, students in the experimental class that used *Equations* gained more than double the gains of the conventional class on the post-test scores.

A fundamental component of the puzzles is that they are too hard to do in one's head, Allen notes. If the player views the puzzle as difficult, yet is able to solve most or all of it, success provides immediate reinforcement and increases the player's confidence, encouraging further attempts to master new ideas.

"No one has come up with anything that fully explains the extraordinary results," Allen says. "I think the kids just become more confident. They are willing to tackle things they don't know and tinker with them."

In addition to a confidence boost, players show another attitude improvement — reduced absenteeism. A study of nine junior high math classes in Detroit compared absenteeism of students as a measure of their attitudes about the learning environment. The classes that used the instructional games had three times less absenteeism than classes that used conventional instruction. Gloria Jackson, a Detroit teacher in the early 1970s, commented on the effects of games in an issue of *Education USA*, a weekly newspaper put out by the National School Public Relations Association. "Using *Equations* allows students to discover ideas for themselves" Jackson commented. "And it leaves the teacher free to be a consultant, explaining concepts like negative numbers as they come up."

Last fall, Allen introduced the Math-Science Quest for Solutions, a program that integrates mathematics and science and is available on the Internet for teachers to use in the classroom. Math-Science Quest encourages students to use experimental science to solve problems, using sets of puzzles derived from the game *Equations*. Designed to take no more than five minutes out of class time, one problem is posed each week and then the proposed solutions and experiments by team members are uploaded. The puzzles can supplement a math or science class, and at whatever level the teacher finds appropriate.

"If I were to label the principle thing we've discovered over 40 years, it is just how difficult it is to apply ideas to practical situations; it is enormously more difficult than people are aware of," says Allen, who regards the games and puzzles as "resource-allocation endeavors."

"Often people have a goal they are trying to achieve," he explains, "and there are limitations, even active opposition, putting constraints on the resources available to try and achieve that goal. In effect, the games are designed to have students deal with that kind of application, like practical problems in the world."

So the next time you are in a quandary, don't be daunted — refine your problem-solving skills. Tackle a logic puzzle, if you feel your brain is rusty. You just might achieve more than reaching a goal of 6.

For help with puzzle 1E (described at start of article), or to enter solutions visit:  
[cgi.wff-n-proof.com/MSQ-Ind/I-1E.htm](http://cgi.wff-n-proof.com/MSQ-Ind/I-1E.htm)

or,

send a Self-Addressed-Stamped-Envelope to:  
 Accelerated Learning Foundation  
 2114 Vinewood Blvd.  
 Ann Arbor, MI 48104

To obtain a list of 12 solutions to 1E or (much better) go to the Internet site:  
[thinkersleague.law.umich.edu/files/alf/msq-ind/msq-inta.htm](http://thinkersleague.law.umich.edu/files/alf/msq-ind/msq-inta.htm) to see how to engage in a program of experimental research to find for themselves the solutions to 1E and eight other similar puzzles.

Homepage of Math-Science Quest:  
[cgi.wff-n-proof.com/MSQ-Ind/MSQ-Ind.htm](http://cgi.wff-n-proof.com/MSQ-Ind/MSQ-Ind.htm)

Freelancer Rachel Ehrenberg received her M.A. in biology from Michigan in 2001. She is also a communications intern at the School of Natural Resources and Environment.

## Professor Emeritus Russell A. Smith, '34

Longtime Law School faculty member and nationally known arbitrator Russell A. Smith, '34, died in January. He had been living in Florida.

A specialist in labor relations law, Smith joined the faculty in 1937 and took emeritus status in 1972. He served as secretary of the Law School from 1946-56, performing a variety of tasks that since then have become increasingly complex and have been assigned to separate assistant deans. He served as associate dean of the Law School from 1956-62. Smith was the author of *Cases and Materials on Labor Law*.

"It was an honor to have known such a 24-karat person," Theodore J. Antoine, '54, recalled of Smith for members of the National Academy of Arbitrators (NAA).

St. Antoine, the James E. and Sarah A. Degan Professor Emeritus of Law, former dean of the Law School, and former president of the NAA, described Smith as a teacher who "took interdisciplinary and empirical work seriously, before it became all that fashionable among legal scholars. He regularly brought the insights of labor economics into the classroom."

"Russ' standing with the labor-management community in this area was in a class by itself," St. Antoine added. "He had a major hand in organizing the Labor Relations Law Section of our [Michigan] State Bar. He chaired the first tripartite panel under our new police and firefighters' interest arbitration law and got a unanimous decision out of the union and management delegates. He was also involved in some national boards in the railroad industry.



Russell A. Smith, '34

"Characteristically, he had a special fondness for the Railway Labor Act because it was built on consensus."

Born in 1906, Smith received his A.B. degree in 1929 from Grinnell College and his J.D. from the Law School in 1934. He was a mathematics instructor at Doane College in 1929-30 and taught mathematics at Grinnell College from 1930-31. He was admitted to practice in New York in 1936, practiced in New York City during the 1930s, and was admitted to practice in Michigan in 1946.

Smith took a leave from the Law School during World War II to serve in the Legal Department of the Pan American Petroleum & Transport Company in New York City, where he dealt with general labor issues. He also was a member of the Atomic Energy Labor-Management Relations Panel.

In the national arena, Smith was widely praised and respected for his skills as an arbitrator. During a threatened strike by railroad workers, he and a small group of arbitrators appointed by the President of the United States averted and eventually settled the threatened strike. He continued to do arbitration work until he was well into his 90s.

## Lempert delivers Distinguished University Professorship Lecture

PHOTO BY PAUL JARONSKI/UNIVERSITY OF MICHIGAN PHOTO SERVICES



*Richard O. Lempert, '68, the Eric Stein Distinguished University Professor of Law and Sociology, delivers his inaugural Distinguished University Professorship Lecture.*

Last fall, when he was named the Eric Stein Distinguished University Professor of Law and Sociology, Richard O. Lempert, '68, knew that the honor brought with it the opportunity to deliver a Distinguished University Professorship Lecture later in the academic year.

He picked a topic that "I care passionately about," he told his audience when he delivered his lecture on "Defending Affirmative Action" in April. "One has to recognize there is substantial white resentment of affirmative action" and "I think proponents of affirmative action have not done a very good job" of justifying it, Lempert explained. Diversity, whose contribution to education is significant, "is not a common cultural value in our society," he said.

But student diversity enhances student education, Lempert continued. The mix of races in his Evidence class during the trial of O.J. Simpson contributed mightily to the richness of the discussion, he recounted. Most white students voted "guilty" and a few African American classmates shared their verdict. "They may have had the same views, but the color of their skins gave their statements different meaning," Lempert noted.

There are historical, economic, educational, social, and other reasons to use affirmative action to increase African Americans' opportunities, said Lempert, the founding director of the University's Life Sciences, Values, and Society Program and a former chairman of the U-M Sociology Department. Integration, he explained, "in my view is what affirmative action is truly about."

## Activities

Assistant Professor **Michael S. Barr** spoke on "Banking the Unbanked" in testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs in May. (An excerpt of his testimony begins on page 60.) In April he spoke on "Expanding Access to Financial Services" at the International Development Association Learning Conference in Windsor, Ontario, and in March he discussed "Expanding Access to Financial Services as an Anti-Poverty Strategy" at Notre Dame Law School's symposium on poverty and the law.

Professor **Omri Ben-Shahar**, who also is director of the Olin Center for Law and Economics, founded the Israeli Law and Economics Association and organized its first annual meeting in Herzliya in June. He presented two papers at the annual meeting of the American Law and Economics Association at Harvard University in May and chairs the Association of American Law Schools' Section on Law and Economics.

In April, Associate Dean for Academic Affairs and Professor of Law **Evan Caminker** presented a legal theory workshop on "Playing with Voting Protocols on the Supreme Court" at the University of Texas School of Law and another on "Tempering Judicial Review Through a Supermajority Voting Protocol" at the University of North Carolina School of Law.

Clinical Assistant Professor **Kenneth Chestek** spoke on "Reality Programming Meets LRW: Creative Ways to Bring Real-World Cases into the

Classroom” as part of the 10th biennial conference of the Legal Writing Institute this spring at the University of Tennessee College of Law; his talk described the “moot case” method he has developed for teaching the first-year legal research and writing course.

Affiliated Overseas Faculty member **Hanoch Dagan** in May discussed “Governments, Citizens, and Injurious Industries: A Case Study of the Tobacco Litigation” in a lecture to the Detroit Chapter of the International Association of Jewish Lawyers and Jurists; in April he presented his paper “On Marital Property” (co-authored with Carolyn J. Frantz, '00, currently a clerk for U.S. Supreme Court Justice Sandra Day O'Connor) at a faculty colloquium at the University of San Diego School of Law. Earlier, he spoke on “How Jewish Tradition Can Inform Contemporary Jewish Law: The Case of Unjust Enrichment Law” in a program in Toronto co-sponsored by the Canadian Friends of Tel-Aviv University and the Beth Tzedec Congregation.

Professor **James C. Hathaway** discussed “Human Rights of Refugees and a Single, Fair, and Efficient Asylum Procedure” as the opening speaker at a conference in June in Potsdam, Germany, organized by the universities of Konstanz and Potsdam. During April he was a visiting professor at the University of Tokyo Faculty of Law, where he taught an introductory course in refugee law and led a special faculty seminar on the viability of refugee burden and responsibility sharing proposals in the East Asian setting; he also delivered a guest lecture at the University of Kyoto in Japan.

**Richard O. Lempert**, '68, earlier this year discussed “Defending Affirmative Action” in his inaugural lecture accompanying designation as the Eric Stein Distinguished University Professor of Law and Sociology. (See story on page 34.) Lempert also has begun duties as division director for Social and Economic Sciences for the National Science Foundation, where he had served as consultant until beginning his director's duties in June. In other activities during the spring and summer, he: was part of a three-person team doing an external review of the Northwestern University Department of Sociology; was discussant at a St. Louis Law School symposium sponsored by the *St. Louis Public Law Review*; participated in a forum on bioethics presented to the Wolverine Caucus in East Lansing; served on the Genetics Advisory Board for the Michigan Department of Public Health; presented a paper at a Wake Forest Law School conference on social science research in medical malpractice litigation; and served as commentator for the Clifford Symposium on export and import of foreign law at DePaul College of Law.

Clinical Professor of Law **Rochelle Lento**, director of the Law School's Legal Assistance for Urban Communities Clinic in Detroit, spoke on the “Role of Nonprofit Developers in Affordable Housing in the City of Detroit” in a program to the Federal Reserve Advisory Board at its quarterly meeting earlier this year. During the

past academic year she also received: the Recognition Award from the *ABA Journal of Affordable Housing & Community Development Law* for two years of service as editor-in-chief and service as associate editor for the two preceding years; the Recognition Award from the Detroit Alliance for Fair Banking for service as vice president of the board of directors; recognition from the Michigan Housing Trust Fund as a “Warrior for Affordable Housing”; a Citation of Excellence from the Presbyterian Villages of Michigan for “significant professional contributions and deep personal commitment” in the successful development of Brush Park Manor Paradise Valley; and the Certificate of Appreciation from the Michigan Neighborhood Partnership for participation in a training series for faith-based housing development organizations.

**Ronald J. Mann**, the Roy F. and Jean Humphrey Proffitt Research Professor of Law, spoke at the annual meeting of the American Law Institute in May as reporter for proposed amendments to Articles 3 and 4 of the Uniform Commercial Code; in April he spoke at Cornell Law School on his studies of comparative credit card and debit card use in different countries.

Assistant Professor **Adam C. Pritchard**, a visiting fellow in capital market studies at the Cato Institute from March-June, presented his paper “Do the Merits Matter More? Determinants of Securities Fraud Lawsuits under the Private Securities Litigation Reform Act” at the annual meeting of the American Law and Economics Association in

May; in March he served as commentator for the Institute for Law and Economic Policy's F. Hodge O'Neal Corporate and Securities Law Symposium.

Professor **Mathias W. Reimann**, LL.M. '83, recently discussed the Law School's new Transnational Law course in a program at Loyola Law School in Los Angeles.

**Theodore J. St. Antoine**, '54, the James E. and Sarah H. Degan Professor Emeritus of Law, spoke on “Internationalization of Labor Disputes: Can ADR Mechanisms Help?” at a conference in The Hague sponsored by the Permanent Court of Arbitration. In April, he presented a short course on “Alternative Labor Dispute Resolution” to faculty members and government officials at the School of Labor Economics, Capital University of Economics and Business, Beijing, China.

Clinical Assistant Professor **David A. Santacroce** spoke on forging alliances with employers around dislocated worker protections at the National Summit on Dislocated Workers in Burlington, Vermont, in June and at the California State Department of Labor Rapid Response Roundtable in San Francisco in May; in June he also spoke on federal protections for dislocated workers at the National Employment Law Association's annual convention in Orlando, Florida.

*Continued on page 36*

# Activities

Continued from page 35

**Suellyn Scarnecchia**, '81, associate dean for clinical affairs, has been named Distinguished Member of the Year by the Women Lawyers Association of Michigan. In January 2003, she will become dean of the University of New Mexico School of Law.

Clinical Professor **Grace Tonner**, director of the Legal Practice Program, conducted a session on "Mentoring Your New Legal Research and Writing Faculty: Walking the Tightrope" as part of the Workshop on Teaching Legal Research Analytically at the 10th biennial conference of The Legal Writing Institute this spring at the University of Tennessee College of Law.

Assistant Professor **Mark D. West** discussed "Lost Property in Japan and the University" in his Japanese American Society for Legal Studies Special Lecture in Tokyo in June. In May, he presented "Institutional Change and M&A in Japan: Diversity through Deals" at the Bank of Japan Institute for Monetary and Economic Studies in Tokyo; he also presented versions of the paper earlier at the Global Markets, Domestic Institutions Public Conference at Columbia Law School, the American Law and Economics Association Annual Meeting, and the Asian Institute for Corporate Governance Conference in Seoul.

**James Boyd White**, the L. Hart Wright Collegiate Professor of Law, this spring was speaker for a conference

on law and the liberal arts at Amherst College; a forum on legal scholarship at Harvard Law School; and a symposium on law and theology at Mercer Law School.

**James J. White**, '62, the Robert A. Sullivan Professor of Law, has received the American College of Commercial Finance Lawyers' Homer Kripke Achievement Award for his "lifetime achievement and contribution to the field of commercial finance law." Kripke graduated from the University of Michigan Law School in 1933.

## Visiting and Adjunct Faculty

**Howard F. Chang** presented his paper on "Risk Regulation, Public Concerns, and the Hormones Dispute" at the symposium on "Preferences and Rational Choice" at the University of Pennsylvania Law School in March, in April at the University of Michigan Law School's International Law Workshop, and at the Boalt Hall School of Law at the University of California at Berkeley in May. In March he also presented his paper "Liberal Ideals and Political Feasibility: Guest-Worker Programs as Second-Best Policies" at a symposium on immigration law at DePaul College of Law.

**Laurence D. Connor**, '65, moderated the first annual Advanced Negotiation and Dispute Resolution Institute in March in Ann Arbor. The program was sponsored by the Institute for Continuing Legal Education, the Alternative Dispute Resolution Section of

the State Bar of Michigan, and the Michigan Judicial Institute. (Conner joins the faculty fulltime this fall. See story on page 28.)

**Sheldon Danziger** and **Rebecca Scott** have been elected to the American Academy of Arts and Sciences. The prestigious academy, founded in 1780, focuses on "advancing intellectual thought and constructive action in American society."

**Marvin Krislov**, vice president and general counsel for the University of Michigan, spoke on affirmative action at the National School Board Attorney Association meeting in April and earlier in the year at the U-M Law Club of the District of Columbia.

**Roberta J. Morris** spoke early this year at the Practicing Law Institute conference on "Patenting the New Business Model" and in April was keynote speaker for the U-M Department of Civil and Environmental Engineering's Chi Epsilon banquet.

## Michigan Law Review editors-in-chief

Two current faculty members and a professor emeritus also should have been included among the list of active Law School teachers who served as editors-in-chief of the *Michigan Law Review* in the story about the centennial celebration of the journal in the Spring 2002 edition of *Law Quadrangle Notes* (pages 6-7).

The article named Dean Jeffrey S. Lehman, '81, and Carl E. Schneider, '79, who holds the Chauncey Stillman Professorship for Ethics, Morality, and the Practice of Law, as former editors-in-chief of the journal. Other former editors-in-chief among the faculty include: Thomas E. Kauper, '60, the Henry M. Butzel Professor of Law; Christina B. Whitman, '74, the Francis A. Allen Collegiate Professor of Law; and Theodore J. St. Antoine, '54, the James E. and Sarah A. Degan Professor Emeritus of Law.

# SOUTH AFRICAN REFLECTIONS

Each year since 1996, about a dozen University of Michigan law students have spent the fall semester working as intern attorneys for public interest groups and government agencies in South Africa. By the end of fall 2002, nearly 80 Michigan students will have participated. They receive a full semester's credit for their work.

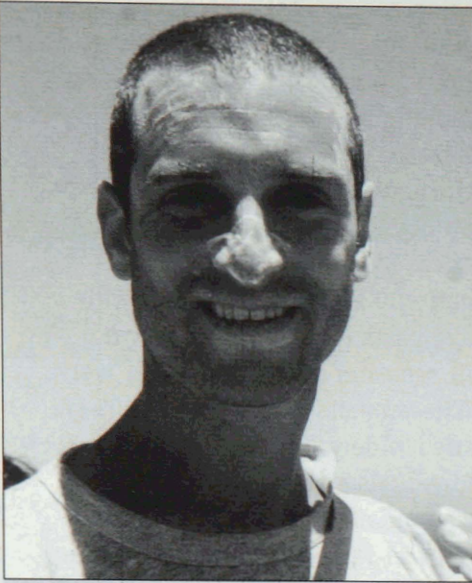
The projects of the students have varied widely. Some have served individuals complaining of discrimination, seeking refugee status or facing the loss of housing, pensions, or employment. Others have worked with groups on efforts to secure the return of land to black communities evicted during the apartheid era and on efforts to change the laws regarding matters such as discrimination against persons with HIV, domestic violence, and abortion.

The program was started by Wade H. McCree Jr. Collegiate Professor of Law David L. Chambers, who has traveled to South Africa each fall to meet with the students at their work sites and to hold a workshop with them over a long weekend. For the past two years, Assistant Dean of Students Charlotte Johnson, '88, has accompanied Chambers to South Africa. She will continue the program after his retirement.

As a part of the requirements of their semester, the students must either maintain a long and reflective journal of their experiences and observations or write a long research paper. The excerpts that follow are culled from the final journal entries of the seven students who chose to write the extended journals during the fall of 2001. The students wrote these concluding observations after they returned to the United States in January 2002. Unlike their earlier journal entries, which dealt largely with their day-to-day experiences at work, their final entries reflected on their semester as a whole.



South African externs and Law School representatives pose for the camera during their fall workshop in Kiva Zulu Natal in South Africa. From left are: Celia Devlin, Ben Faulkner, John Crane, Fortune Glasse, Spencer Forhart, Devin O'Neill, Professor David L. Chambers (founder and director of the program), Veronica Vale, Markeisha Miner, Kevin Scott, Chandra Davis, Noah Leavitt, Assistant Dean of Students Charlotte Johnson, '88 (who will direct the program upon Chambers' retirement), Ernest Hahn, and Bruce Johnson. Seven of these externs — Devlin, Faulkner, Glasse, O'Neill, Vela, Miner, and Leavitt, all third-year students at the time — chose to write extended journals recounting their experiences. Excerpts from their journals make up this section. — Photo courtesy Professor David L. Chambers



Ah, sunshine — and sunscreen for Noah Leavitt.

Noah Leavitt began his semester in South Africa at the UN World Conference on Racism as a delegate for a U.S. anti-death penalty organization. He then spent his externship at the University of Cape Town Legal Aid Clinic, where he quickly found himself “standing in for a fully-qualified South African refugee lawyer and a clinical faculty member as well.” He worked on dozens of immigration, asylum, and refugee claims.

“Many of last semester’s lessons had to do with always keeping at least one eye on the long view,” he wrote after the externship had ended and he was back in the United States. “It is impossible not to be moved by the nearly century-long struggle of the ANC [African National Congress] to create a more just society while, day-by-day, party members were faced with exile, torture, banning, assassination, disappearance, and other ills at the hands of the white government. Yet, people like Sisulu, Mandela, Tutu, and others never lost the vision of a more equitable society for their African brothers and sisters. . . .”

“If I’ve learned nothing else during the past four months, I’ve come to appreciate that South Africa ‘means’ taking the hard way: promoting reconciliation via painful and hate-filled interactions, building a society based on idealistic notions of universal human rights, trying to do all this without massive bloodshed and further disintegration — the clear message is that creating a desirable democratic society is a multi-faceted, messy and sometimes dangerous process.”

## AMBIVALENCE, AMBIGUITY, AND SOUTH AFRICA’S RULE OF LAW

By Noah Leavitt

My latest trip to Durban brought me to a meeting of the Global Alliance for Justice Education. (Another World Conference, it turned out.) I was one of maybe half a dozen students amidst several hundred clinical law professors from around the world who are committed to creating and expanding the influence of human rights law on their teaching and practice.

I was inspired being a part of this group, if only for a few days, to hear and feel the energy and the commitment to using legal systems to make the world more just, to work to reduce discrimination and violence and hatred. In some ways, it was an excellent counterpart to the UN Racism Conference (which, although claiming to develop a “Plan of Action,” was primarily about cataloguing the world’s many forms of discrimination).

Indeed, even South Africa needs this reminder. Throughout the semester, I learned that public interest law in South Africa is in something of a crisis. For example, at a UCT [University of Cape Town] faculty lunch discussion in November, a woman who directs the largest legal aid center in Australia (she is a South African as well as a UCT alumna) facilitated a conversation about what the country might need in the way of public interest lawyers. Her questions were general: Should legal activists retain the same advocacy organizations that had existed for the past two decades? Keep the same social and political issues for legal scrutiny? Should they scrap the whole system? Create more coordination among offices? Develop more NGOs [non-governmental organizations]? Fewer?

Although her open-ended questions were not particularly complicated, no one had any good ideas for her. I winced when someone suggested conducting a study to find out what public interest law organizations exist around the country. It certainly didn’t sound from *this* group as if South Africa’s continued social transformation is going to be led by lawyers, at least not those in the academy.

Part of the reason why lawyers may play such a limited role, I think, is because of the ambiguous role of the rule of law in South Africa. As we had learned about and discussed over and over last term, the power and authority of law is complicated in a country that used sophisticated legal structures to create and implement the inequalities. Now, some attorneys and activists are trying to use the law to undo those limitations to shape a new society, but so far only a surprisingly small number are engaged in this new endeavor in an adventurous way. Is everyone burnt out?

For me, as a budding lawyer, I understand that I must make choices about how and when to use the law to promote positive change. Simply “using the law” does not in itself promote any particular kind of outcome (unless it is to promote a general “rule of law,” something that in countries I visited such as Kenya seems to be lacking). What type of engagement is most effective? What kind of results can I expect? How long will it take?”

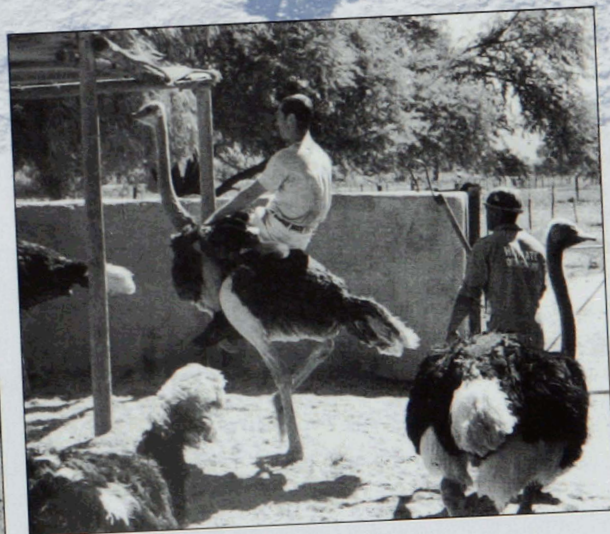
When we were working in Johannesburg in November, Lee Anne [de la Hunt, my supervisor at the legal clinic] and I went to dinner with one of her mentors and close friends, Shanaaz, who used to be the director of the national office of the Legal Resources Centre and who is now a judge in the land claims adjudication system. Shanaaz asked me why I had come to South Africa. I answered that it was in part because of numerous conversations I had with John Dugard [a South African] when I was working at the International Law Commission of the UN in Geneva during my post-1L summer. She smiled: Dugard has attained the status of demi-god in some South African legal circles as one of the early and outspoken white scholars opposing the apartheid police state.

Despite the fact that he comes across as soft-spoken, almost timid, many regard Dugard as one of the “grandfathers” of

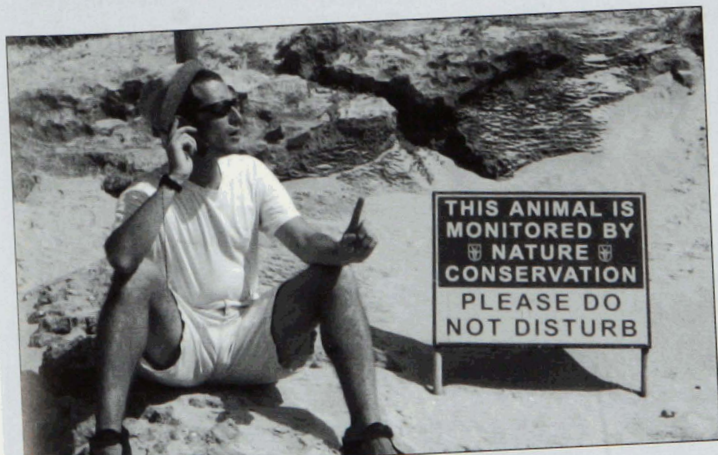


human rights law in South Africa. During apartheid, Dugard's role was not like that of George Bizos (or Lee Anne or Shanaaz) defending individual clients. Rather, Dugard concentrated on elucidating the differences between conditions under apartheid and the international standards that South Africa flouted proudly. He founded the *South African Journal of Human Rights* and directed the Centre for Applied Legal Studies at the University of the Witwatersrand in Johannesburg.

Like Bruno Simma [a human rights scholar and one of the Law School's affiliated Overseas Faculty members], Dugard was (and remains) highly effective at identifying the links between internationally accepted legal norms and aberrant local practices. After the change in government that he had worked for decades to bring about, Dugard left South Africa to take a position at Cambridge, and is now teaching at Leiden. When he was about to leave Wits, a huge banquet given in his honor emphasized how long he had worked for this revolution, about his long-range view of time, and his tenacity. For me, Dugard is another inspiring example that when all is said and done, South Africa is "about" what happens when a society — any society — is given the opportunity to create a new vision of itself, and about the long-term energy, contradictions, and challenges inherent in that process.



Extern Noah Leavitt samples ostrich riding.



Thinking like a lawyer, Noah Leavitt finds a safe spot to make a telephone call.

PHOTOS COURTESY NOAH LEAVITT



# SHIFTING IDENTITY

By Veronica Vela

**Veronica Vela spent her externship working at the Legal Resource Center (LRC) in Durban. She also visited Soweto and traveled to Tanzania.**

South Africa is a country where almost everything is defined by what you look like — even more so than in the United States. From the neighborhoods you live in and the jobs you have, to the prices you pay in the stores, everything is fluid and based on who you are. Things in South Africa are becoming more integrated, but the transition is slow. So, an unfortunate consequence of this knowledge, once you feel it, is to question the role your appearance just had on the interaction. You think a lot about your identity and how it differs from the person you were in the United States. You wonder how accurate people's assumptions are, based as they are solely on the way you look.

I have spoken in my journals about how odd it was to suddenly be “white.” You suddenly realize how fluid these categorizations are. When I am in Texas, I am undeniably Mexican. During my three years in New York, I was suddenly Jewish. I am not entirely sure what I was to the average South African. But I was not Indian and I was not black, these were obvious. Occasionally, I would be assumed to be a foreigner of some Latin extraction, but those cases were rare. I believe I was generally perceived as white; perceived as part of the majority, in a country where I was not the majority. The discomfort of being perceived as the oppressor was one thing, being unfamiliar with either side of the discourse was another. I feel like knowing that I was immediately placed in that particular different role made me try to be as nice and as patient as I could possibly be because I did not want to be the typical condescending “white” person.

The South African emphasis on looks runs much deeper than black and white. I had people commenting on my weight and my appearance on a regular basis. People I did not know, people on the street would

comment on my body. So in addition to how you are perceived by others, you spend a lot of time being reminded of your appearance. It is uncomfortable, especially since I've never been entirely comfortable in my skin in the first place. It undermines your confidence. But because everyone is always commenting on the external, you are unable to forget the way you are being perceived. It makes you realize how aware South Africans are of appearances. It is not a subtle racism experienced here; it is blatant. In some ways, it is easier to deal with. But I remember thinking I preferred the United States, where people judge you silently.

Once people found out I was a foreigner, things didn't change much for the better. Then you were from that country that did not attend the race conference, the country that was killing innocent Afghan children. One of the most overarching things I learned during my time abroad, as self-centered as it may be, is that while it is hard being a foreigner in general, it is a unique challenge being American, specifically, and an American during this time of crisis especially.

Okay, so they thought I was white . . . . So what? I couldn't exactly cry “poor me” in a country where I was to some degree reaping the benefits of this privilege. I couldn't deny that I lived in a white area, went out to white restaurants, socialized in general in places that are very segregated. When I returned to Ann Arbor, a place I had ignorantly dubbed the “whitest place on earth” my first year of law school, I was so happy to see integration in social places like clubs and restaurants. In South Africa I wasn't just white. South Africans are used to dealing with white people. I was a foreigner. When you are a foreigner, you are different. You dress different, you look different, you talk funny, and people cannot understand you. You take longer to pay for things because you have to make currency conversions in your head and/or you have a foreign card. You don't always know the language. You expect things that are not usual in the country you are in. You feel bad expecting these things. You get angry at others for not understanding

you or becoming frustrated with you. You berate yourself for getting angry. I spent a week wondering why people were always running into me on the street. I thought they were just rude. Then I realized that perhaps because they drive on the other side of the road, they also walk on the other side of the sidewalk. It was I who wasn't getting out of their way, and not the other way around. I was frustrated because waiters never knew what I was asking for when I wanted water. Pushpa [Vela's supervising attorney] says that every intern she has known has had the same problem. But you never know why people are reacting to you the way they are. (Did she just not hear me order the water? Was I rude?) It took me a few weeks to realize that my landlady was frustrated with me because of things I had always deemed normal back home. Primary among these was having a somewhat diverse group of friends. I may be jumping to conclusions, but her many comments to me led me to believe she was uncomfortable with my tendency to leave windows open (despite the stone wall and razor wire around the house — not to mention the bars on the windows) and my “untrustworthy” group of black, Indian, and motorbike-riding friends.

Occasionally, your visitor status works to your advantage. Most often it does not. You are asked for opinions on issues and situations, but if your ideas differ from what they wanted to hear, it is easy to dismiss you because you aren't from there. You don't understand. You couldn't possibly understand the many intricacies and ramifications of the things you propose or the things you say. At the same time you realize that things you have taken for granted, perspectives you assume that others share, are contextual. This tension was especially apparent because they are asking things of an American and America is a country everyone wants to pretend they do not need.



# LISTENING TO WOMEN AND LEARNING FROM OTHERS

By Markeisha J. Miner

Markeisha J. Miner did her externship with the Commission on Gender Equality in Durban, where she worked with, among others, Beatrice Ncgobo, a veteran South African women's rights activist affectionately known in the office as Sis. B. In her first journal entry, Miner reported, "the majority of the Commission's work involves investigating the complaints of women who feel that they are the victims of gender discrimination. Many cases are referred to other non-government organizations because they do not fall within the Commission's mandate — to promote gender equality. The complaints the Commission receives generally fall into four categories: maintenance (the U.S. equivalent is child support), domestic violence, sexual harassment, and gender discrimination generally (i.e., hiring a male applicant instead of a better qualified female applicant)."

The differences in the treatment of gender issues in the American and South African constitutions can be explained, in part, by the fact that South Africa's constitution was drafted over two centuries later. South Africa had the benefit of choosing which lessons to take from American equality jurisprudence as well as that of other countries. One major difference in the two constitutions' handling of gender-related concerns is that South African women demanded to play a role in the constitutional drafting sessions. In contrast, American women's role in public affairs, let alone constitution drafting, in the 18th century was extremely limited.

I am intrigued by the differences between the influence of South African women, across racial lines, at the end of the apartheid era, and thus, their amount of influence in the constitutional process, and the influence of American women, across racial lines, at the end of legalized segregation during the mid-1960s. While American women succeeded in breaking the barriers to previously male-dominated professional fields and exclusive male higher education institutions, for example, American women were not as successful in

securing the ratification of the Equal Rights Amendment. I view ratifying the Equal Rights Amendment as American women's rough equivalent to South African women's battle to participate in drafting the [ir] constitution. In South Africa, women not only participated in the constitutional drafting process, but they also were successful in creating a national gender machinery framework, agencies to monitor the achievement of gender equality goals in the executive and legislative branches of government as well as an independent body, the Commission on Gender Equality, which monitors government, private institutions, and private individuals. On the face of things, it seems that South African women were better able to convert the momentum of apartheid's downfall into tangible, legal gains, than American women were able to convert the momentum of Jim Crow segregation's abolishment into similarly tangible, legal gains at the constitutional level.

I cannot pretend to explain the differences in the women's legal gains after similar periods of legalized segregation in South Africa and America. While I was in South Africa, though it was acknowledged as a major feat, that women demanded to be part of the constitutional process was an accepted, rarely questioned fact. Several times when I attended workshops with Commissioner Ncgobo (Sis. B), she would test the participants' knowledge of when and where women entered the constitutional negotiation process. Even



PHOTO COURTESY MARKEISHA J. MINER

Markeisha J. Miner (in white shirt) is shown with Commission on Gender Equality staff with whom she worked during her externship in South Africa.

women who knew that information, however, did not explain the details of how women organized themselves in an effective manner such that their voices in the negotiations would be heard.

Hindsight is 20/20. Now I wish I had spent more time asking Sis. B about the details of women's roles in the constitution negotiations. She was there and she played a key role in motivating other women to participate. The benefit of this externship was that we worked with and for very influential and well-known persons. We developed such a personal rapport with these individuals, however, that we sometimes forgot who they are and the magnitude of their accomplishments. Unfortunately, the externship was over before I realized that I failed to take full advantage of the opportunity to learn as much of Sis. B's story as possible. In any event, I am grateful to have worked with Sis. B and other vocal, politically active women who contributed to making South Africa's constitution a very progressive one in terms of gender equality.





# LEAVING - TO RETURN

By Devin O'Neill

Devin O'Neill worked in Johannesburg with the AIDS Law Project, which she describes as made up of "a small but committed group of individuals."

O'Neill focused on three cases:

- A case involving a woman who was forbidden to work as a nurse with the South African Army because her pre-employment blood test showed her to be HIV-positive.
- A case involving a non-government organization (NGO) that was evicted from a hospital by the South African minister of health. The NGO had been assisting physicians in giving pharmaceuticals to rape victims to help prevent possible HIV infection.
- A case involving the drug Nevirapine, which the South African government opposed giving to pregnant women and their newborns to reduce Mother to Child Transmission (MTCT) of HIV.

Crime and poverty are realities of life here that I constantly face and are issues with which I am always grappling. When I am stopped at a light and children come begging at my window, I am always conflicted about what to do. Do I give or do I not? How can I turn away knowing that these children are to some extent needing monetary help, food, and shelter? I cannot give to everyone, but does that mean that I should not give to anyone? Is it fair to give to the child that best pulls on my heartstrings or seems to be the most needy? Should this rationalization process even come into play when I am talking about children who live on the street? These are the questions that are constantly running through my head when I stop at a light or just stop to think.

Usually I do not give to the children begging in the streets. I think that it might make it more likely that they will continue to live and beg on the streets. I think there are better ways to help these children needing my help. When I do not give money, I rationalize that I give money to people who render a service to me. This way I am encouraging work. For instance, I pay the men who watch my car (or at least pretend to), I tip the men filling my gas tank, and the man who sells me the morning paper. I figure that if in my daily life I am working to provide services that will help these children to have better health or a greater chance at an education I am doing them a greater service than placing money in their hand. But then I wonder if I am just rationalizing the fact that I just turned down a needy child.

Sometimes the faces I see make me so sad and take so much out of me. Often I come home exhausted, not knowing why until I realize it is from the poverty and the inequalities that I see and the violence that I fear. When possible, I like to sit outside to eat and catch the last rays of my endless summer. But each time I do I am struck by the contrasts and am ashamed. I am never the wealthiest nor the best dressed, but I always become uncomfortable with my ability to sit on the sidewalk eating my haute cuisine while women walk by with

their heavy loads and children tied around their waists. I wonder how we diners must look to the passersby, what feelings we evoke in them, or have they become immune and walk on by without even noticing our presence? Have the people passing by on the sidewalk become so accustomed to the *status quo* that they accept the differences and are not bothered by them? Personally, the disparities staring me in the face always make it difficult to finish my lunch (though I usually manage).

One of my friends here says how happy she will be to return to the UK [United Kingdom]. She is too drained and bothered by the differences to remain any longer. I asked her whether she felt any guilt about going away when it all became too much to take, knowing that others do not have that ability. She told me that she must go away so that she can return again. She must look away so that she can look again. And I understand that and see the truth in it. If the poverty and despair only bring you down then perhaps you can work more effectively at these problems by going away to regain your strength. I suppose that as long as you remain committed to the fight, it does not matter where you fight the battle. Perhaps I should take advantage of my ability to come and go away. But I remain unconvinced and am still conflicted. If I were to remain, would I become immune to the problems in order to survive? If I return, will I forget what I have seen and be less motivated to act? I recognize the power in my ability to choose what to do, the ability that was given to me by nothing more than chance. I think that this power to choose imparts a duty not to forget. Ultimately, I must not look away, but I can choose the way in which I look and face the disparities that I see. As my friend argues, there is no harm in my turning away if it is only to have the strength to turn again, to look more boldly, and return with the passion to help remedy the inequalities and inequities that I see.



# CRIME AND OPTIMISM

By Ben Faulkner

**Ben Faulkner worked during the fall in the Cape Town office of the Legal Resources Center, the largest public interest legal organization in South Africa. As he began his externship, he reported: "I'm excited because I'm going to be able to work on many of the land and housing issues that really attracted me to the Legal Resources Center in the first place. . . . I have come to South Africa somewhat skeptical of the ability of governments to provide quality housing to those who cannot afford it, yet completely convinced that the provision of housing for the poor is an essential element of any just society."**

In the opening paragraph to this final journal entry I stated that I was not very optimistic about the future of South Africa. Part of the reason comes from experiences since my last journal entry. For the last two weeks of my stay in the country, I house-sat for Henk Smith [the author's attorney-supervisor at the Legal Resources Center]. Henk and his children went on vacation but needed someone to stay at the house

and feed the ducks (no joke), run the sprinklers, and scare off any potential burglars. The house has been broken into before but Henk actually still takes security much less seriously than many other South Africans. There is an alarm system, as well as bars over a few of the windows that open (but not the majority of the windows), and emergency call buttons in two of the rooms. But his house, unlike most in white neighborhoods, has no walls around it and no guard dog, and most of the windows have no bars at all. The neighborhood is a very good one but that often does not mean much in terms of protection from crime.

On the first weekend I moved into Henk's house, I went to a party at Noah's [fellow law student/extern Noah Leavitt] supervisor's apartment. While there I met a woman who had been attacked and sexually assaulted in the garden of her house. Just to hear from someone who had actually been brutally attacked in the yard of her own home was very sobering and disturbing. At the same party, an attorney from my office warned me about crime in Henk's neighborhood. Afterwards, knowing that the house had been broken into previously and seeing the relatively

few security measures at the house, I became for the first time somewhat nervous about crime. The next night I was out getting some drinks with some people from work when Henk called and said that the security company had called him because the alarm had gone off. I raced back to the house, but luckily it was a false alarm and everything was fine. Still, for the rest of my time in the house I was almost paranoid about crime. It was a very upsetting feeling and completely new for me. It was certainly nothing I ever experienced living in New York or Washington. At the same time, the newspapers were full of stories about the murder of [former South Africa President] F.W. de Klerk's wife in her Cape Town apartment. She had returned home and surprised a burglar in her house and he murdered her for her cell phone and a few pieces of jewelry. This type of killing happens all the time in South Africa but because of the high profile nature of the victim it dominated the news for almost a week.

Initially, I had been skeptical of the claims that it is the high crime rate that has had such an impact on many South Africans' desire to remain in the country. However, the two weeks spent living at Henk's house really changed my mind. It is very tiring and upsetting to worry constantly about crime. I have had a wonderful semester, but worries about crime changed my outlook on the people around me and lurked in the back of my mind at all times. I can also understand why a high crime rate really affects business and the economy. I would be very reluctant to open a new business or expand in South Africa with the uncertainty that a high crime rate brings. In addition, the incredibly high murder rate, of blacks as well as whites, means that thousands of people who could have made a real difference to society are dead and will never be able to contribute.



PHOTO COURTESY NOAH LEAVITT

Veronica Vela, Celia Devlin, Noah Leavitt, and Ben Faulkner backed by the "Tablecloth" of cloud cover that descends from Table Mountain outside of Cape Town.



# LAW AND CHANGE

By Celia Devlin

Celia Devlin spent the fall term at the Community Law Center in Cape Town, South Africa. "Let me start with the natural beauty," the third-year law student began her journal of the experience. "It is gorgeous here, more so than I expected. Table Mountain and its steep cliffs continue to inspire me each day. During the first few days in Cape Town, I tried to come to some sort of understanding of the city. Having studied South African history, I knew about the apartheid system and what the apartheid government sought to create when it confined the blacks and coloreds to certain sections of the city. Knowing the history did not, however, prepare me for the reality of the townships."

Below, Devlin reflects on a case that she had worked on during the term; the case challenged the government's refusal to provide antiviral medication to pregnant women with HIV, even though the scientific evidence was very strong that a few doses would significantly reduce the likelihood of transmission of the HIV from mother to newborn. President Mbeki of South Africa had expressed the view that the antiviral medications were useless or harmful.

Looking back over the semester, I realized that the successes and failures of the mother-to-child-transmission case (MTCT) exemplified the two main lessons I learned while in South Africa. In an important way, the case stands as an affirmation of the South African constitution and how the Bill of Rights can be used as a tool for reform in the lives of average South Africans. The MTCT case also stands, however, as a symbol of South Africa's next step in reform. Now that the monolithic infrastructure of apartheid has been dismantled, the new government must act to overcome the social legacy of apartheid. As Pius Langa [a justice of South Africa's new Constitutional Court] has written, "What the constitution proclaims is one thing. What really matters to the women, men, and children of our country is the change and the reality of change and how the constitutional prescripts manifest themselves in their lives." Langa is right. The transition to democracy and the principles detailed in the constitution mean little if they do not provide real change in the lives of South Africans.

It seemed a wonderful ending that on my last day of work, the trial court issued a decision in favor of the plaintiffs in the MTCT case. On the simplest level, Judge Botha's decision stated that the government is obliged to make Nevirapine available to pregnant women with HIV who give birth in the public sector. Twenty-four percent



of pregnant women in South Africa are HIV positive, and 70,000 children are infected each year. Based on facts alone, the case will save lives.

Judge Botha's decision is important on another level, too. South Africa's constitution promised a new life for the country. After years of inequality and oppression, the constitution guaranteed equality. It affirmatively demands that society itself become more equal. Looking in the face of seemingly insurmountable problems and armed with limited governmental resources, the South African constitution nonetheless proclaims that socio-economic rights are justiciable, and that all citizens can demand a better life.

The recent, important decision of the Constitutional Court in the *Grootboom* case involving the right to housing had suggested that courts would rarely force the government to do more than it was doing. The constitution does contain a right to access to housing (and to medical care) but merely requires the government to work towards the "progressive realization" of the right "within its available resources." Critics argued that "progressive realization" was not really justiciable and enforceable, and that the courts are ill equipped to monitor the government's progress in meeting constitutional guarantees.

Indeed, I heard many of these arguments made during the MTCT case. Many seemed to think that the government's explanation — that the resources were too scarce and that they were doing the best that they could — would pass constitutional muster. After all, South Africa faces enormous burdens, how can the court tell the government where to spend money? Judge Botha's decision, however, gives content to the meaning of the term "progressive realization." In his decision, he wrote:

"Section 27(2) clearly presupposes a situation where there is not yet a full realization of the right to health care. No doubt that is in recognition of a host of historical and socio-economic realities. It equally imposes the duty to achieve a progressive realization of the right to health care as an ongoing obligation. It obviously does not impose the duty to achieve the realization of access to health care overnight. The pace is dictated by available resources. Yet, in my view, the inexorable goal is a realization of the right, even though it may be achieved progressively."

Importantly, Botha argued that the government programs and policies that leave everything for the future cannot be said to be coherent, progressive, or purposeful. He stated that the availability of resources can only influence the pace of a program, but cannot override the government's duty to implement a program. Here, where the dollar cost to the government was negligible because the manufacturer was offering to provide the drug for five years free of charge, the government had no excuses.

The decision is important because it gives citizens a constitutional foothold for forcing the government to implement necessary social programs. In the MTCT context it is doubtful that the Ministers of Health would have put in place a comprehensive prevention program at public hospitals had the petitioners not taken them to court. At the Community Law Center (CLC), the board of directors constantly urge the staff to get involved in "impact litigation." The board views cases like the MTCT case as being the crucial forum in which South Africa's principles will become realities. The MTCT case demonstrates that "impact litigation" can, in fact, be a useful tool. . . .

Of course, I realize that no litigation or constitutional doctrine can rid South Africa of HIV. Despite the court victory, the mass of problems complicating the effective treatment and prevention of HIV remain. Reform must take a broader approach. As was painfully clear throughout the MTCT court papers and as all participants acknowledged, a government program providing Nevirapine to a mother and child at birth is not sufficient. The virus can be transmitted to the child through breast milk long after the effectiveness of Nevirapine has disappeared. For a woman living in a poor rural community with no access to clean drinking water there may be no safe alternative to breastfeeding. Such women are forced into a position where they can either breastfeed the infant, or mix formula milk with unsanitary water. In either case, the infant is exposed to potentially fatal infections. The excruciating choices that these mothers face highlight the urgent need for more infrastructure. The MTCT litigation could only address one small part of the HIV "vortex."

*[Note: In the months since the decision of Judge Botha, the government has relented and agreed to provide Nevirapine immediately to all indigent pregnant women with HIV.]*



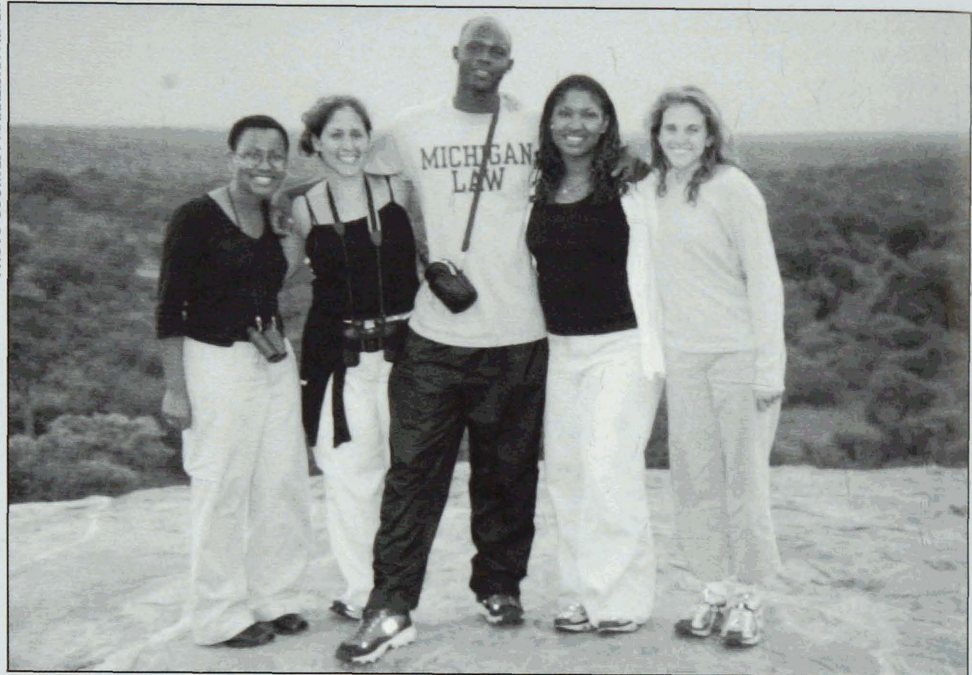
# HELPING IN MANY WAYS By Fortune Glasse

Fortune Glasse spent her externship working with the South African Human Rights Commission (SAHRC or HRC). The Commission was created by the new South African constitution and charged with responding to violations of civil rights, monitoring the government's progress in meeting the constitutional obligation to provide access to medical care, housing and education, and educating the public about the new constitution. Karthigasen Govender, a 1988 LL.M. graduate of the Law School and a professor of law at the University of Natal in Durban, is one of the 11 members of the Commission. For the last several years, Professor Govender has co-taught with Professor Chambers a course on Constitutionalism in South Africa that the students who work in South Africa take before they go.

Glasse worked at the Commission's branch office in Cape Town under Victor Southwell, another LL.M. graduate of the Law School (1994). Glasse's initial impressions of the Commission were "conflicting," she wrote in her first journal entry. "While I definitely see the need for an organization to police both the government and government organizations [to] be sure they are at least attempting to both comply with the constitution and basic human needs, there seems to be so much going on within the HRC that it is hard to address all complaints or monitor issues that have been referred to other organizations. My initial reaction is to believe the HRC should simply be one powerful referral board that has the resources and strength to pass cases on to specific organizations while monitoring those organizations' performance and ability to perform."

In her concluding journal entry, she wrote:

PHOTO COURTESY MARKEISHA MINER



At Kruger National Park: Markeisha Miner, Veronica Vela, Kevin Scott, Fortune Glasse, and Devin O'Neill.

Before leaving for my semester in Cape Town, I knew that I was about to have a unique opportunity to see, and to actually be involved with, a different legal environment than what I had previously known. I was aware that there were social issues that I would encounter and needed to be aware of. I was, after all, an American visiting a foreign country for such a short time and yet was about to be very involved in a sensitive and important aspect of South Africa's legal, political, and social development: the protection of the relatively new bill of rights.

It seems that in my first couple of days spent sorting out computer problems and shadowing the other legal interns, I could not have known just how involved I was about to become in the lives of regular people, some with real concerns over human rights violations, and some just looking for recompense for any wrong they felt was done to them. On my first day of work, I was introduced to the office and received a desk and a copy of the South African constitution.

One function of the SAHRC is to circulate copies of the constitution to anyone who requests one. Each of these pocket constitutions comes with an illustrated pamphlet titled *You and the Constitution*. This pamphlet introduces the constitution by answering questions such as "What is the constitution?" and "What is democracy?" before explaining why South Africa needed a new constitution. Then, it gives a quick look at the constitution before breaking down the more detailed aspects into sections called "Protecting Democracy and Your Rights with the Constitution" and "What Else the Constitution Covers." The SAHRC is introduced in the subsection "State Institutions Supporting Constitutional Democracy." The introduction here describes the basic relationship of such organizations to the government. They are described as follows:

"The institutions to protect people from abuse by the government and to make sure that government does its work properly are set out in Chapter 9 of the constitution. These institutions are independent. This means they are not controlled by the government at all, even though they are created by the constitution."



**F E A T U R E**



The blurb on the SAHRC reads:

“This commission protects human rights. It will educate people about human rights. It will investigate complaints about human rights abuses and will help you take these to court.”

After spending four months working for the South African Human Rights Commission, I find myself asking if the SAHRC is actually doing the job that it was set up to do.

I believe that in many ways, the answer to this question is a resounding “yes.” Just the presence of the SAHRC gives people a feeling that they are full citizens of the country and that someone will fight for them if they have been mistreated. I believe that this is one of the main instigations behind the policies and procedures of the office, and of the complaint process. The office is open every day (with very few exceptions) so that when people manage to get the time, money, and transportation that it takes to come into the office, someone is there to receive them and to take their complaint. It is important for it not to be a hardship to bring a complaint to the SAHRC. Unfortunately, this system is repeatedly abused by some; yet, for many, it is a necessary and appreciated aspect of our office.

Besides expecting availability, people have come to believe that the SAHRC can take up their individual cause or concern and follow it through to the remedy that they would most like to see. Just as often, however, people cannot even conceive of a remedy; they just want someone to hear their story, to sympathize with them and tell them what the next step would be towards redeeming their dignity or towards getting the appropriate people to take notice of them and their complaint. Thus, sometimes, taking a complaint meant just listening to someone’s story and making a phone call or two. Other times, listening to

even the beginning of their story is enough to let you know that there is nothing that the SAHRC can do for that person. So, while you do not want to cut a person short or make them feel as if their problems are insignificant, you do need to move on to the next complainant whom you actually may be able to help. Still, with the referring relationship of the organizations in South Africa, it can be almost too easy to simply pass a complainant on to another organization without listening to the complainant and seeing what you could do for them instead of, or in addition to, the referral. It is a bit of a catch-22, especially when you know it is likely that the referral organization will do little to nothing to help.

Towards the end of my stay in South Africa, we began to notice a new pattern in some cases. People were coming in with human rights issues that were linked to some employment dispute. Our first course of action in such a case had been to refer the person to the Commission for Conciliation, Mediation, and Arbitration [CCMA] (barring any heinous human rights violations), because the Commission

is set up to resolve employment issues. What we learned was that some of our new complainants had already been to the CCMA, which had referred them to the SAHRC instead of taking on the case. Here, you get complainants going back and forth between offices, and because there are no detailed and specific guidelines, and little cooperation between the various offices, no one can actually assign responsibility for a case to one organization or the other and all are busy with their already heavy caseloads. . . .

I believe that people have a romanticized notion of the new South Africa primarily because of the nature of the country’s history. I think that people want to believe that the worst is over, and such a notion embraces the effective presence of the SAHRC, but this does not mesh well with the reality of crippling poverty and violent xenophobia. I believe that the SAHRC could much more effectively do what it was created to do if it were less hindered by budget constraints and bureaucracy. People do need to believe that there is something out there that can help them if they feel that their rights, as delineated in the constitution, have been violated. Thus, perhaps, the best approach would be to streamline the process so that those who have pressing problems can actually get the help they need from the appropriate organization. While the SAHRC helps a lot of individuals, many others get caught in the cycle of referrals, a problem that must be solved before the SAHRC and similar organizations can become truly efficient and more productive.

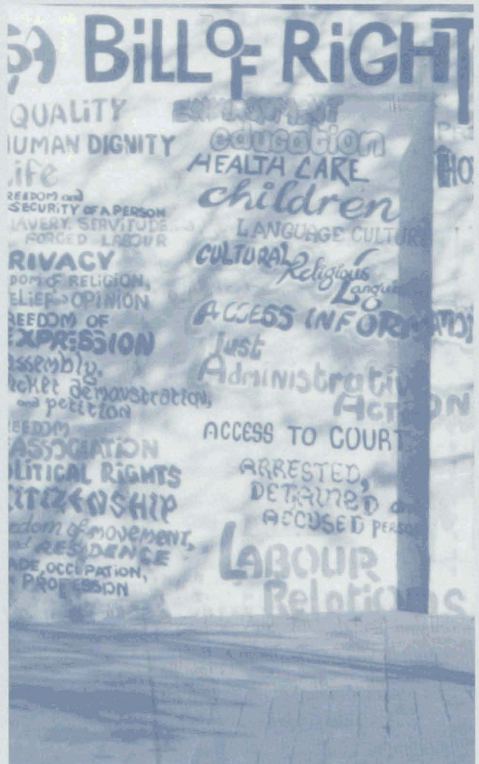


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## HEATHER MARTINEZ ZONA, '94,

### HEADS NEW YORK WOMEN'S BAR ASSOCIATION



PHOTO COURTESY OF HEATHER MARTINEZ ZONA, '94

Heather Martinez Zona, '94

Heather Martinez Zona, '94, a litigation associate in the New York office of Heller Ehrman White & McAuliffe LLP, has been elected president of the New York Women's Bar Association (NYWBA). The youngest woman and first Latina to head NYWBA, Zona formally was installed at the association's annual banquet in May.

Zona previously served as vice president, recording secretary, and a director with NYWBA, which was formed in 1935 for purposes of "improving the status of women in society, educating women lawyers and assisting them in professional development and advancement, and promoting the fair and equal administration of justice."

Each year Zona works with the Association of the Bar of the City of New York to organize NYWBA's summer program called "What It's (Really) Like to Practice Law in NYC as a Woman." The program attracts more than 300 law students each year.

This year, Zona worked with other chapters of the Women's Bar Association of the State of New York to organize "Take Our Daughters to Work Day" programs in federal courthouses throughout the Empire State. The programs were co-sponsored by the Second Circuit.

An advocate of providing legal assistance to those who may be unable to pay for it, Zona has done *pro bono* work in political asylum, matrimonial, insurance, and constitutional fields. She now is working in Westchester to develop a program to provide *pro bono* legal assistance to people suffering chronic illnesses like cancer, HIV/AIDS, multiple sclerosis, diabetes, and muscular dystrophy. In her home area, she also is a member of the Pound Ridge Volunteer Ambulance Corps and serves as vice president of the Pound Ridge Newcomers' Club.

Zona was appointed to the New York Democratic Committee's Independent Judicial Screening Committee in 2000. She is a member of the American Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York, the Puerto Rican Bar Association, and the Hispanic National Bar Association.

At Heller Ehrman White & McAuliffe, Zona focuses on commercial litigation with an emphasis on insurance coverage. She often represents policyholders in disputes with their insurance companies and has published several articles on insurance coverage.

At the Law School, she participated in the Legal Assistance for Urban Communities Clinic and won the Jane L. Mixer Award for Social Justice.

## BORIS KOZOLCHYK, S.J.D. '60, WINS PRAISE FOR DEDICATION, SKILL, AND VISION



Boris Kozolchik, S.J.D. '60

Boris Kozolchik, S.J.D. '60, founder and director of the National Law Center for Inter-American Free Trade (NLCIFT), earned high praise for his pivotal role in forging the Model Inter-American Law on Secured Transactions that won approval earlier this year.

The model law, approved at the Organization of American States' Sixth Inter-American Specialized Conference on Private International Law in Washington, D.C., in February, grew out of several

years of discussion, drafting, and re-drafting. Kozolchik co-chaired the sessions on secured transactions with José Luis Siqueiros of Mexico. Diplomats at the conference encouraged OAS member states to pass legislation consistent with the model law.

A "landmark," is how Arizona State University Law Professor Dale B. Furnish characterized the approval. "Nothing would have been possible without the NLCIFT, which over the years prior to the actual meeting date consistently supplied leadership and substantive input, put together hemispheric experts' meetings, and generally provided the energy that kept the project moving forward."

"The new model law is a reality in great measure because of Boris' leadership and persistence. . .," reported attorney José Astigarraga, a

conference participant. "At three in the morning, on the last day, Boris was there leading the discussion and driving the drafting committee toward a successful end. He demonstrated the open-mindedness necessary to lead a group of lawyers who each had firm views on what the draft law should look like, while adhering to the fundamental principles necessary to make the law work. He did a great job."

Investment and trade in Latin America are expected to accelerate if countries pass laws in accordance with the model law. "The proposed reforms aim to create the legal certainty and flexibility necessary for lending to take place and for interest rates to be reduced," according to NLCIFT. "This work will assist companies wishing to invest in Latin America or to extend credit to their customers there,

and, thus, significantly enhance their potential as trading partners not only for the United States, but also globally."

This year is the 10th anniversary of NLCIFT, which Kozolchik, then a University of Arizona law professor, launched shortly after the North American Free Trade Agreement (NAFTA) went into effect in January 1992.

"Kozolchik is an expert on free trade and on the frequently arcane mechanisms that promote it, such as commercial letters of credit," the *Arizona Daily Star* noted in an editorial celebrating the center's anniversary.

The newspaper also praised NLCIFT for the masters' degree program in international trade law that it co-conducts with the University of Arizona College of Law. NLCIFT is located in Tucson.

## THEODORE SOURIS, '49

Theodore Souris, '49, who at age 33 became the youngest person named to the Michigan Supreme Court, died June 21 at age 76. He was an avid supporter of the Law School and a longtime member of its Committee of Visitors.

Michigan Gov. G. Mennen Williams named Souris to the Supreme Court in 1959. He served until 1968, issuing 192 opinions and sometimes criticizing the court's actions. "When we started substituting our own notions for what the legislature intended, then we were overstepping our bounds," he said in a talk to the Michigan Supreme Court Historical Society in 1990. "I was frequently critical of the court for doing that."

Charles L. Levin, '47, who served for more than 20 years on the Supreme Court, said that Souris was viewed as a principled judge and, after leaving the bench, was admired for his work in the private sector. Souris' private practice included representing a number of high profile clients, among them Union Carbide Corporation, the Automobile Club of Michigan, and the Motor Vehicle Manufacturers Association. He was associated with the

sales of Huron Milling Company and Avis Rent-A-Car Systems Incorporated, among others.

Souris was a Detroit native who entered the University of Michigan at age 16 but left to serve in the Army Air Force during World War II. He returned after the war, graduated from Law School in 1949, then served as counsel to Philip A. Hart, then district director of the U.S. Office of Price Stabilization and later a U.S. Senator from Michigan. Souris also practiced law in Detroit and served on the Wayne County Circuit Court before he was named to the Michigan Supreme Court.

"[Ted] was very meticulous. There was no fat on anything he did," U.S. District Judge Avern Cohn, '49, a classmate and lifelong friend of Souris, told *The Detroit News*.

"When he went into a courtroom, the judge knew he was dealing with the very essence of a case."

Continued Cohn: "Ted was a man of very humble beginnings who was self-made, by his own ability, his own drive, and his own intellect. He was very strong, very definitive."

## WILLIAM McCLAIN, '37, RECEIVES U-M HONORARY DEGREE

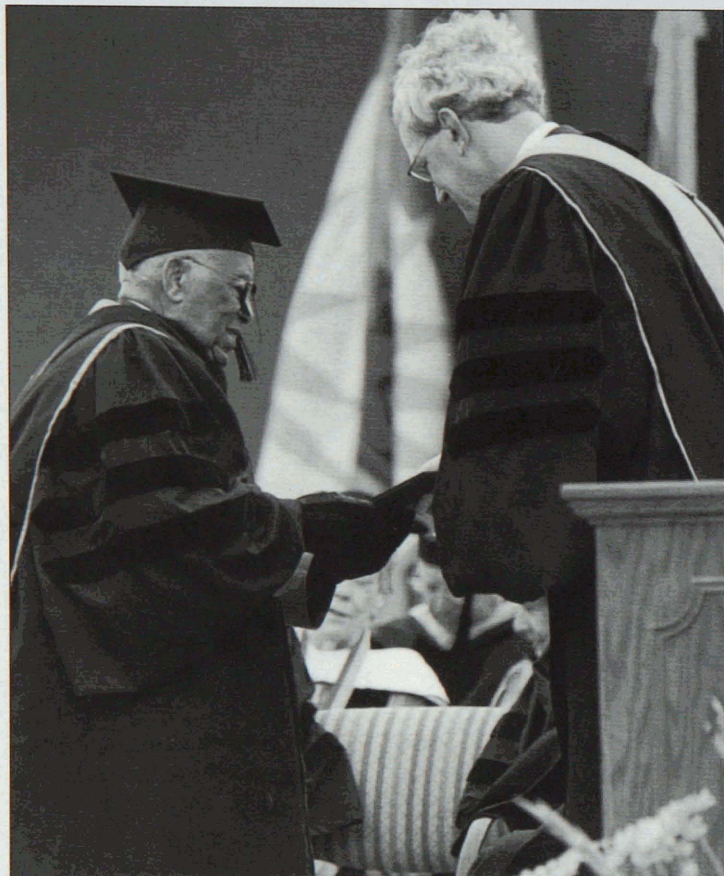


PHOTO BY PAUL JARONSKI/UNIVERSITY OF MICHIGAN PHOTO SERVICES

*The Hon. William McClain, '37, at 89 the Law School's oldest living African American graduate, receives his honorary doctor of laws degree from Interim President B. Joseph White at U-M commencement ceremonies in May. McClain's life provides "a message of excellence," according to Dean Jeffrey S. Lehman, '81.*

The Hon. William McClain, '37, received an honorary doctor of laws at the University of Michigan commencement in May.

"It is a richly deserved honor for U-M's oldest living African American graduate, who has been breaking barriers all his life," *Detroit Free Press* columnist Trevor Coleman reported prior to the ceremony.

"Since graduating from Michigan in 1937, Judge McClain's career has been marked by a number of firsts," notes the University's written citation for the honorary

degree. "He was the first black member of the Cincinnati Bar Association and the first black lawyer to serve as city attorney of a major American city. Judge McClain also was the first black partner in a major Cincinnati law firm and, in 1977, he became the first African American judge in the Common Pleas Court in Hamilton County, Ohio."

The only black student in his undergraduate class at Wittenberg College and also in his Law School class, McClain nonetheless racked up awards at both schools. At the Law School, he won the Henry M. Campbell Case Club and Student Judgeship awards.

McClain has served on the Law School's Committee of Visitors for more than three decades and has taught at the University of Cincinnati Law School, Salmon P. Chase Law School, and the University of Toledo's Ohio Legal Center Institute.

When McClain entered practice, the Cincinnati Bar Association rejected him three times. He re-applied until he won admission. Such steadfastness sends an inspiring message to students today, according to Dean Jeffrey S. Lehman, '81.

"It is a message of excellence, a message of persistence in the face of unfairness and adversity, and a message of courage," Lehman said.

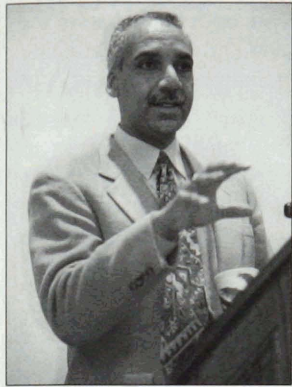
In a commentary that appeared in the *Free Press* in April in support of affirmative action in admissions policies, McClain recalled some of his experiences at the Law School 65 years ago:

"As a black law student, I was deprived of the social, professional, and fraternal advantages of living with members of my law school class. I was isolated and unable to become a member of the study groups of my classmates who lived in the Lawyers Club.

"During my freshman year, the Moot Court Committee assigned a white southern law student as my partner for the Moot Court competition. He refused to serve with me because I was black. Luckily, Jacob I. Weissman [a 1936 graduate who went on to teach at Hofstra University], a brilliant white student, volunteered to be my partner. As a result of this friendly favor, Jacob and I became good friends.

"The next year, Jacob and I won second prize in the Henry M. Campbell Case Club competition. The four finalists automatically became student Moot Court judges, but there was a place for a fifth student judge to be chosen by the four finalists. At my insistence, we chose the Law School student who refused to be my partner during my freshman year. By this act of forgiveness on my part, we subsequently became friends until his death last year."

## SAUL GREEN, '72, RECEIVES FBA'S McCREE AWARD



Saul Green, '72

Saul Green, '72, a tireless worker on behalf of the Law School, the University of Michigan, and his community, has received the Federal Bar Association's (FBA) McCree Award for courage, humanity, achievement, and leadership.

The award, named for the former U.S. solicitor general and late Law School professor, was presented earlier this year at FBA's annual Wade Hampton McCree Jr. Memorial Luncheon. McCree's widow Dores retired from the Law

School a few years ago but continues to attend Law School programs.

Green, a former United States Attorney for the Eastern District of Michigan, has practiced with Miller Canfield, Paddock and Stone PLC in Detroit since September 2001. He directs the firm's new minority business group, which focuses on the automotive industry, and coordinates Miller Canfield's anti-racial profiling education and training programs for public law enforcement agencies and private sector retailers.

Green's experience has given him "tremendous insight into the judicial system" and he "enhances Miller Canfield's business litigation, labor, and appellate practice, as well as the firm's growing alternative dispute resolution practice," according to the firm's CEO, Thomas W. Linn.

Green was the Law School speaker for Martin Luther King Day a few years ago and was keynote speaker for the 10th anniversary celebration of the Law School's Legal Assistance for Urban Communities clinic last summer. Currently president of the Alumni Association of the University of Michigan, he received the association's Leonard F. Sain Esteemed Alumni Award in 1994 and its Distinguished Service Award in 1989.

He is a past president of the Wolverine Bar Association and is a recipient of its Trailblazer Award. He received the Michigan State Bar's Champion of Justice Award in 1999 and was appointed by the Michigan Supreme Court to the Attorney Grievance Commission. For many years he chaired the State Bar's Committee on the Expansion of Underrepresented Groups in the Law and is a fellow of the State Bar Foundation and the American Bar Association Foundation.

Green's community service also is extensive. A lifelong resident of Detroit, he received the Damon J. Keith Community Spirit Award in 1998. He established four "Weed and Seed" sites, a Drug Education for Youth camp, and sponsored an Explorer Scouts troop.

## JOHN CRUZ, '79, BRINGS SETTLEMENT BACKGROUND TO FEDERAL PANEL



John Cruz, '79, left, of Daehnke & Cruz in Irvine, California, is sworn in as a member of the Federal Service Impasses Panel by Presiding Judge David G. Sills of the U.S. Fourth District Court of Appeals.

President Bush has appointed Irvine, California, attorney John Cruz, '79, to the seven-member Federal Service Impasses Panel, which resolves stalemated issues between federal agencies and federal employee unions. Cruz, a partner in Daehnke & Cruz, will serve until January 2004.

"I hope to bring to the table not only my expertise as a transactional lawyer, which relies on mediation skills daily, but a Hispanic cultural perspective, reflecting today's diversity," Cruz said. Cruz and Kevin J. Daehnke co-founded Daehnke & Cruz in 1992. The nine-member firm specializes in issues of contaminated property, policyholder insurance disputes, and wrongful termination litigation.

Cruz serves on the board of directors of The Latino Coalition, the Santa Ana Education Foundation, and the Lincoln Club of Orange County. He works with the Hispanic Education Endowment Fund of Orange County and has lectured at the Instituto Tecnológico de Monterrey in Guadalajara, Mexico.

He also is a member of the National Hispanic Bar Association and was formerly trustee and treasurer of the Hispanic Bar Association of Orange County. In addition, he is a technical reservist with the Orange County Sheriff's Department and participates in the Orange County Bar Association.



William J. Giovan, '61



Richard M. Leslie, '61

## 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.*

## 1940

**Edmond F. DeVine** has been selected as the 2002 recipient of the Washtenaw County Bar Association's Patriot Award. The Patriot Award was established in 1987 to recognize an attorney for outstanding services for, among other things, fostering a better understanding and application of the rule of the law. DeVine's varied career includes service as an FBI Special Agent and a tour of combat on an aircraft carrier in the Pacific in World War II as a U.S. Naval Air Combat Intelligence Officer before returning to law. DeVine is a long-time resident of Ann Arbor and counsel in the Ann Arbor office of Miller Canfield Paddock and Stone PLLC.

## 60TH REUNION

**The Class of 1942 reunion will be September 20-22**

## 55TH REUNION

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

## 45TH REUNION

**The Class of 1957 reunion will be September 20-22**

*Co-Chairs: Jules M. Perlberg and Robert S. Rosenfeld  
Committee: Robert L. Knauss, Frederick Mahan; James E. Pohlman; and Gerard C. Smetana*

## 1961

**William J. Giovan** has been appointed presiding judge of the Civil Division of the Wayne County Circuit Court.

**Richard M. Leslie**, a senior partner with the Miami law firm Shutts & Bowen LLP, has been elected to the 12-member Board of Directors of the Maritime Law Association of the United States for a three-year term.

## 40TH REUNION

**The Class of 1962 reunion will be September 20-22**

*Co-Chairs: Thomas P. Scholler; Peter D. Byrnes; Robert B. Wessling  
Committee: W. Philip Gray; Roger B. Harris; Richard A. Hyde; Paul W. Jones; William King; Warren M. Laddon; A. David Mikesell; C. Barry Montgomery; Francis J. Newton Jr.; John M. Niehuss; Garo A. Partoyan; L. William Schmidt Jr.; S. Ronald Stone; and John A. Wise Jr.*

## 1964

**Bruce C. Conybeare** was named president of the Michigan chapter of the American Board of Trial Advocates (ABOTA). "Bruce has an outstanding record as a trial lawyer and repeatedly demonstrated his ability to help clients through times of great need," said ABOTA Executive Director Tony A. Scott. Conybeare's law office is located in St. Joseph, Michigan.

**Alan D. Kantor**, a principal in the Ann Arbor office of Miller Canfield Paddock and Stone PLC, has been appointed to the Board of Directors of the Ann Arbor Symphony Orchestra.

**Arthur M. Sherwood** was presented with the New York State Bar Association Trusts & Estates Law Section's Russell A. Taylor Award "for exceptional contributions to the Section and to the Bar." In particular, Sherwood was recognized for his work with a New York State Legislature Advisory Committee that resulted in the passage of the prudent investor rule and a modernized principal and income act governing trust investment in New York. Sherwood is of counsel in the Buffalo law firm Phillips Lytle Hitchcock Blaine & Huber LLP.

## 1965

**Louis A. Smith** has begun serving a five-year term on the State Board of Law Examiners, upon nomination by the Michigan Supreme Court and by gubernatorial appointment. He currently serves on the Board of Directors for Blue Cross Blue Shield of Michigan.

## 1967

## 35TH REUNION

**The Class of 1967 reunion will be September 20-22**

*Co-Chairs: James M. Amend; Christopher B. Cohen; and James B. Fadim  
Committee: James A. Boucher; Roger M. Golden; Samuel J. Goodman; Sally Katzen; James P. Kleinberg; Michael J. Levin; J. Thomas Mullen; William C. Pelster; John A. Sebert Jr.; and Gerald D. Skoning*

**ELIZABETH RINDSKOPF PARKER, '68, HEADS McGEORGE SCHOOL OF LAW**

Former CIA general counsel Elizabeth Rindskopf Parker, '68, has become dean of the McGeorge School of Law in Sacramento. McGeorge administrators say they are extremely happy to have as their first woman dean a leader of Parker's experience and stature as an expert in anti-terrorism law.

Parker was a civil rights lawyer in Georgia for a decade after her graduation from the Law School, then moved to the National Security Agency and the CIA in Washington, D.C., from 1990-95. After leaving her CIA post she practiced with the law firm Bryan Cave in Washington, where she specialized in international trade, advanced technology, U.S.-China relations, and nuclear nonproliferation. In 1999 she became general counsel at the University of Wisconsin.

Parker served a three-year term as chair of the ABA's Committee on National Security and currently is a member of the ABA's Task Force on Laws against Terrorism.



Elizabeth Rindskopf Parker, '68

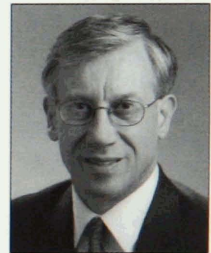
PHOTO COURTESY McGEORGE SCHOOL OF LAW

elected chairman of the Team Selection Committee, which will select the teams from the Big Ten and Southeastern Conference that will meet in the New Year's Day 2003 Outback Bowl football game. Schember is senior litigation attorney with the Tampa, Florida, office of Shumaker Loop & Kendrick.

**George J. Siedel**, the Williamson Family Professor of Business Administration at the University of Michigan, was named by the Fulbright Commission as a Distinguished Professor in the Humanities and Social Sciences. His latest book is *Using the Law for Competitive Advantage* (Jossey-Bass, 2002).



Louis A. Smith, '65



Thomas F. Sweeney, '68

1972

30TH REUNION

The class of 1972 reunion will be September 20-22

*Co-Chairs: Leonard J. Baxt; Saul A. Green; and William J. Meeske*  
*Committee: Jeffrey J. Greenbaum; Jane Waterson Griswold; Michael L. Hardy; Stephen B. Hunter; Robert E. Kass; Linda B. Kersker; Kenneth A. Kraus; Paul L. Lee; M. David Minnick; Robert T. Pickett Jr.; Barbara Rom; Kim L. Swanson; and J. Bryan Williams*

**Ken Krause** has been appointed law director of the city of Strongsville, Ohio.

**Jay M. Starr** is chief executive officer of Mercantile Capital LP, based in Wynnewood, Pennsylvania. He is a member of the Board of Directors of the Commercial Finance Association and serves as vice-chairman of Gratz College, in Philadelphia, the oldest independent college of Jewish studies in the United States.

**A. Vincent Buzard**, a Rochester-based partner in the statewide law firm of Harris Beach LLP, was elected secretary of the 70,000-member New York State Bar Association (NYSBA) during its 125th annual meeting in Manhattan. Buzard is a resident of Pittsford, New York.

1968

**David L. Callies** and his co-author Tsuyoshi Kotaka, were honored on the occasion of publication of their book *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries* (University of Hawaii press, 2002) earlier this year with a reception at the Pacific Club in Honolulu. Callies is Benjamin A. Kudo Professor of Law at the University of Hawaii's William S. Richardson School of Law and Kotaka is professor of law at Meijo University, Nagoya, Japan. Their book examines land

use control in the Asia-Pacific region. Callies is the U.S. member of a multi-nation study team led by Kotaka that is examining land policy in the Asia Pacific region.

Magistrate Judge **Steven D. Pepe** of the U.S. District Court for the Eastern District of Michigan has received the Professionalism and Civility in the Practice of Law Award from the Washtenaw County Bar Association.

**Thomas F. Sweeney** has been elected president of Baldwin Public Library in Birmingham, Michigan. Sweeney is a member of the Birmingham office of the law firm Clark Hill PLC.

1970

**Steven G. Schember** was re-elected secretary of the Outback Bowl at the bowl's annual meeting. Schember also was

## 1973

**Paul E. Fisher** has joined the Chicago office of McGuire Woods as a partner in the Real Estate and Environmental Department and the leader of this department in the Chicago office.

## 1975

**John R. Cook**, a principal in the Kalamazoo office of Miller Canfield Paddock and Stone PLC, has been re-elected a managing director of the firm. Cook also serves as resident director of the Kalamazoo office.

## 1976

### REUNION

The Class of 1976 reunion will be October 25-27

**Stephen G. Palms**, a principal in the Troy, Michigan, office of Miller Canfield Paddock and Stone PLC, has been re-elected a managing director of the firm. Palms also directs the firm's Real Estate Group.

## 1977

### 25TH REUNION

The Class of 1977 reunion will be October 25-27

*Co-Chairs: Raymond R. Kepner and Michael A. Marrero*  
*Committee: Alexander R. Domanskis; Penny Friedman; Reginald D. Greene; Susan R. Gzesh; Bruce A. Hilier; 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; and George E. Yund*

## PROBING INTELLIGENCE AND IMPROVING SECURITY



Jeffrey H. Smith, '71

and a concern that "no changes should be made that will unnecessarily impair our civil liberties," according to former CIA General Counsel Jeffrey H. Smith, '71.

Writing in the *Washington Post* early this year, Smith noted "the process may be painful, and neither Congress nor the administration may like the answers. But if the inquiry is done right and the right changes are made, all Americans will be better off."

Smith, currently a partner in the law firm Arnold & Porter in Washington, D.C., noted in his op-ed page essay that intelligence officials have the difficult duty to sometimes say "Mr. President, your policy is failing.' That takes guts. It also will take guts to say: 'Here's why we failed.'"

Smith advised: "In recommending changes, Congress should seek efficiency but maintain checks and balances; consider greater collection powers, but not overreaching ones; explore giving the director of Central Intelligence much greater authority, particularly over the defense agencies that are part of the intelligence community; and preserve the independence and integrity of the intelligence

The joint House-Senate investigation of the U.S. intelligence community's failure to detect the terrorist attacks of September 11 comes at an "opportune time" but should be conducted with an eye toward objectivity, non-interference with the war against terrorism,

agencies so they will continue to be able to seek 'ground truth' and report it honestly.

"Without that, nothing else matters."

In a second *Washington Post* essay, in June, Smith praised President Bush's "stunning proposal" to establish a federal Department of Homeland Security and said the move "deserves high marks as a bold effort to ensure our domestic security in the face of very real threats from terrorists and potentially hostile states."

Smith raised four questions that should be considered as the department is established:

- Does the move propose "the right configuration of agencies?"
  - "Can the reorganization be accomplished without creating even greater problems of coordination during the middle of a war?"
  - "How should Congress oversee the new agency?"
  - "What can be done to improve the collection, analysis, and dissemination of intelligence on homeland security?"
- "One thing is clear now. The new homeland security department must have an intelligence function," Smith added. He recommended that Congress consider three possible models:
- That the new department be a "customer" of the CIA and FBI and "take the lead in producing intelligence analysis for the president on domestic threats."
  - "To beef up and perhaps combine the current counterterrorist centers at the CIA and FBI."
  - Create a new domestic security service, like MI-5.
- "All of this is a very tall order," Smith concluded. "It cannot be done quickly or casually. Congress must act only after it is certain that it is solving the right problems and not creating new ones."

**John N. Cooper**, an attorney with Cooper Martin & Chojnowski PC, has been appointed a trustee of the Portage Education Foundation, which supports the Portage (Michigan) Public Schools.

## 1979

**Beverly Hall Burns**, of the Detroit office of Miller Canfield Paddock and Stone PLC, has been elected to a two-year term as vice-president of the Board of Directors of the College of Arts and Letters Alumni Association of Michigan State University, to be followed by a two-year term as president.

**Linda O. Goldberg**, of the Ann Arbor office of Miller Canfield Paddock and Stone PLC, has been elected principal. She practices labor and employment law, representing individuals and companies in the defense of race and employment discrimination cases, employee benefits, "reverse" discrimination, and school matters.



Louis B. Reinwasser, of the Lansing office of Miller Canfield Paddock and Stone PLC, has been elected principal. He practices regulatory law, with an emphasis on Indian Law.

1981

REUNION

The Class of 1981 reunion will be October 25-27

Thomas E. Maier has been elected to partnership in Clark Hill PLC. Maier practices in Clark Hill's Lansing office and focuses on administrative law and regulatory practice, representing utilities and other entities before state agencies and courts.

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 Jr.; and Sara E. Brown Werder  
Fundraising Coordinator: Richard J. J. Scarola  
Committee: Patricia A. Carnese; Michael P. Coakley; Brian S. Dervishi; John E. Fagan; Mark E. Haynes; Timothy C. Hester; Timothy J. Hoy; Matthew J. Kiefer; Patrick J. Lamb; Peter M. Lieb; John M. Lummis; Karol V. Mason; Kenneth B. McClain; Jeffrey P. Minear; and George H. Vincent

Robert M. Gurs is a new partner in the Washington, D.C., office of the law firm of Shook Hardy & Bacon LLP. Gurs is a member of the firm's Communication Section. He currently focuses his practice on the representation of trade and professional associations, state and local governments, and corporations on wireless telecommunications issues.

**BARBARA ROM, '72  
AMONG 'DETROIT'S MOST  
INFLUENTIAL WOMEN'**



Barbara Rom, '72

Attorney Barbara Rom, '72, a partner with Pepper Hamilton LLP in Detroit, has been selected by *Crain's Detroit Business* as one of "Detroit's Most Influential Women" — for the second time.

More than 300 women were nominated for the 100-member list, which first was issued in 1997.

Rom is recognized throughout the United States for her knowledge and experience in bankruptcy and reorganization practice. She specializes in workouts, bankruptcy,

insolvency matters, and commercial litigation.

A former president of the Detroit Metropolitan Bar Association, Rom is one of the few Michigan fellows of the American College of Bankruptcy. She has served as a trustee of the Detroit Bar Association Foundation, a fellow of the State Bar of Michigan Foundation, and president of the Women's Economic Club.

Rom also is a member of several legal, business, and community committees, and is designated a Life Delegate by the Federal Court of Appeals for the Sixth Circuit. She has been appointed by the chief judge to the Sixth Circuit Merit Selection Panel for Bankruptcy Judges and Advisory Committee on Rules.

In 1989 Rom became the first woman in Michigan to be selected for inclusion in *The Best Lawyers in America*. She has received the designation in every issue since.

1984

Janet C. Baxtor has become a member of the Michigan-based law firm Peter Cladder III PLC, and the name of the firm has been changed to Baxtor & Cladder PLC.

Michael R. Shpiece, a principal of the Soutfield-based law firm of Miller Shpiece & Tischler, has been appointed as liaison member of the Joint Committee on Employee Benefits of the American Bar Association.

Jane Phillipson Wilson has become a Republican candidate for Common Pleas Judge in Lake County, Ohio. Wilson has practiced in Lake County since 1996, after founding Jane P. Wilson & Associates, in Eastlake, Ohio.

1985

Charles M. Greenberg was elected to the Executive Committee, the governing body of the national law firm Pepper Hamilton LLP. Greenberg is a general business lawyer who practices out of the firm's Pittsburgh office.



Thomas E. Maier, '81



Jane P. Wilson, '84



Charles M. Greenberg, '85

# CLASS notes



Michael A. Lisi, '86



Alfredo A. Bismonte, '88



Andrew J. McGuinness, '88



Michael A. Primrose, '89



Ronald G. DeWaard, '90

1986

## REUNION

The Class of 1986 reunion will be October 25-27

**Michael A. Lisi** has been elected an equity member of Rader Fishman & Grauer PLLC, a national intellectual property law firm. Lisi practices from the firm's Bloomfield, Michigan, office.

**Richard A. Walawender**, a principal in the Detroit office of Miller Canfield Paddock and Stone PLC, has been elected a managing director of the firm. Walawender serves as director of the International Business Group as well as director of the firm's Automotive Industry Group. He also has been elected to the Board of Trustees of Madonna University, a Franciscan school.

1987

## 15TH REUNION

The Class of 1987 reunion will be October 25-27

*Chair: Reginald M. Turner  
Committee: Michael L. Caldwell;  
Edward J. Strong; and  
Carol Shuman Portman*

**Douglas A. Mielock** has been elected a fellow of the American College of Trust and Estate Counsel (ACTEC). ACTEC is a national association of more than 2,700 lawyers who have made outstanding contributions to the field of trust and estate law in their communities. Mielock is a shareholder with the Michigan law firm of Foster Swift Collins & Smith PC.

1988

**Alfredo A. Bismonte** has been elevated to partner with Mount & Stoekler in San Jose, California. He specializes in intellectual property and business litigation and insurance coverage.

**Oscar Gonzalez** served as master of ceremonies at a political rally in Austin, Texas, hosted by the Ralph Nader organization Democracy Rising. Musical guests included Patti Smith and Jackson Browne. Speakers included Jim Hightower, Molly Ivins, and Nader.

**Anne E. Larson**, an attorney with the Chicago law firm Connelly Sheehan Moran, has been selected by the Law Bulletin Publishing Company as one of the "40 Illinois Attorneys under 40 to Watch." Selections are based on nominations made by practicing attorneys, clients, and judges. Larson was nominated by her clients, peers, and a federal district court judge for whom she clerked early in her career.

**Andrew J. McGuinness**, a member of the Litigation Practice Group with Dykema Gossett PLLC's Ann Arbor office, has been appointed co-editor of *Securities News*. This publication is the newsletter of the American Bar Association, Litigation Section, and Securities Litigation Subcommittee.

**Michael A. Newdow** in July won a 2-1 decision from a panel of the Ninth U.S. Circuit Court of Appeals that it is unconstitutional to recite the Pledge of Allegiance in public schools because its use of the phrase "under God" violates the Establishment Clause of the First Amendment. Shortly afterward, the court put the decision on hold.

1989

**Michael A. Primrose** has been named partner in the Cleveland, Ohio, firm of Benesch Friedlander Coplan & Aronoff LLP. Primrose is a member of the firm's Corporate and Securities Practice Group and a member of the firm's Middle Market Practice Group.

**Catherine R. Reese** has joined Sommer & Barnard PC in Indianapolis as of counsel. She practices with the Business and Tax Practice Group and the Estate Planning Practice Group, focusing on employee benefits, ERISA issues, retirement, pension and profit sharing plans, and executive compensation plans. She previously was in private practice in Indianapolis.

1990

**Mark J. Burzych** has been appointed to a four-year term with the Michigan Public Education Facilities Authority, which is authorized to partner Michigan with other states to acquire capital for construction, rehabilitation, refurbishing, or equipping of qualified public education facilities. He is a shareholder with Foster, Swift, Collins & Smith PC and a member of the firm's Government and Commerce Department.

**Ronald G. DeWaard** joins the Michigan law firm of Varnum Riddering Schmidt & Howlett LLP as partner.

**Brian West Easley** has been admitted to partnership at the Chicago office of Jones Day Reavis & Pogue. He and **Dana Wilson Easley** also welcomed a son, Michael Austin, into the family in 2001.

**Sue Ellen Eisenberg** and **Kathleen L. Bogas** are pleased to announce the formation of their new firm, Eisenberg & Bogas, based in Bloomfield, Michigan. **Lisa M. Panourgias** is associated with the firm.

**Eric Jon Taylor** recently became partner in the Atlanta office of Hunton & Williams. Taylor is a member of the firm's Labor and Employment Team in Atlanta.

1991

## REUNION

The Class of 1991 reunion will be October 25-27

**Susan Hartmus Hiser** has become a shareholder of the Michigan law firm Vercruyse Metz & Murray PC.

**David A. Whitcomb**, associated with Baker & Hostetler's Columbus, Ohio, office has been elected to partnership in the firm.

1992

## 10TH REUNION

The Class of 1992 reunion will be October 25-27

*Co-Chairs: Pamela L. Peters and Amy T. Wintersheimer*  
*Committee: Corinne A. Beckwith; Noelle Swanson Berg; Randy A. Bridgeman;*

*Nancy A. Brigner; Henry R. Chalmers; Kristina M. Dalman; Myles R. Hansen; Kenneth R. Hillier; Jeffrey P. Hinebaugh; Jennifer L. Isenberg; Daniel C. Kolb; Kelly Browe Olson; Amy L. Rosenberg; Joel S. Schreier; Sylvia A. Stein; Mark J. Stubington; Mary K. Warren; and Sarah Zearfoss*

**Melissa Tatum** was awarded tenure at the University of Tulsa College of Law. In addition to teaching, Tatum is a co-director of the Native American Law Center and serves as part-time judge for the Southwest Intertribal Court of Appeals.

1993

**Bethany A. Breetz**, based in the Louisville office of Stites & Harbison, was elected of counsel to the firm.

**Mark G. Malven** and the Malven Group LLC have combined practices with the Red Line Law Group LLC to form the new Chicago-based law firm Malven Powers & Pascucci LLC.

1994

**Melissa Breger** has become an assistant professor and director of the Domestic Violence Clinic-Family Violence Unit at Albany Law School, a private, independent law school in New York State. Breger also has been appointed to the membership committee of the Clinical Legal Education Association. She formerly was a clinical assistant professor working with the University of Michigan Law School's Child Advocacy Clinic and director of its Bergstrom Summer Fellowship program for child advocacy workers.

**Brendan J. Cahill** was named a member of the corporate finance practice group with the Michigan firm Dykema Gossett PLLC.

**Lauren C. Felts** has been elected to partner status with the international law firm of Thompson & Knight LLP, which has offices in Texas and Mexico.

**Kyle R. Hauberg** was named a member of the Real Estate Practice Group of the Michigan law firm Dykema Gossett PLLC.

**Melissa A. Leonard**, a member of the Business Group of Baker & Hostetler LLP, has been elected partner.

## BARRY, '88, HAGE, '86, AND SHARPHORN, '74 TAKE NEW POSTS AT U-M

Three Law School graduates have taken new positions within the University of Michigan.

**Elizabeth M. Barry, '88**, former associate vice president and deputy general counsel, has become managing director of the University's Life Sciences Initiative.

Following Barry's departure, **Gloria Hage, '86**, and **Daniel H. Sharporn, '74**, have been appointed by the Board of Regents to the role of associate vice president and deputy general counsel. In her new post, Barry works with the scientific leadership of the Life Sciences Institute to handle daily responsibility for building, staffing, and operating the Life Science Initiative's new 250,000 square foot research institute, to open in fall 2003. Barry formerly was second-in-command of the University's legal office and the U-M's primary in-house lawyer and spokesperson on the lawsuits over admissions policies against the University and the Law School. Hage previously served as assistant general counsel with primary responsibility for labor and employment matters. She chairs the University's Policy Review Committee, has been appointed to the Prescription Drug Oversight Committee, and is a member of the Faculty Compensation Committee. Sharporn previously worked on faculty and student legal matters and issues associated with research and scientific misconduct. He also has served as a policy adviser in the University's Office of the President, as assistant professor and legal counsel in the U.S. Military Academy Law Department, and as a patent attorney in the U.S. Army.

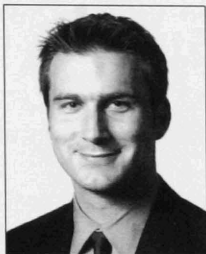
**Karen R. Pifer** has been elected partner to the Detroit-based law firm Honigman Miller Schwartz and Cohn LLP, where she concentrates her practice in the Real Estate Department.

The Michigan-based law firm of Vercruyse Metz & Murray PC has announced that **James E. Roach** has become a shareholder of the firm. Roach primarily practices in the areas of employment law, contracts, business torts, and trade secret litigation in Wayne, Oakland, Washtenaw, and Livingston counties.

**Larry R. Seegull** has become a partner in the law firm of Piper Marbury Rudnick & Wolfe. He practices in Baltimore with the firm's Labor and Employment Group.

It's a girl! **Greg Teufel** and his wife Laura Teufel report the arrival of their first child, Elizabeth Jane, born March 2, 2002. Elizabeth weighed 8 lbs. 4 oz. Mother and daughter are doing fine.

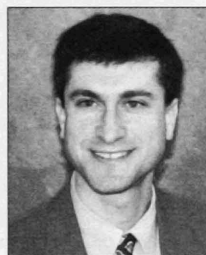
# CLASS notes



Matthew J. Hayek, '97



Daniel L. Stanley, '97



Christopher M. Taylor, '97



Moheeb H. Murray, '01

## 1995

**Kristina D. Maritzak** has joined the Detroit office of Miller Canfield Paddock and Stone PLC as an associate in the Labor and Employment Law Group.

**John P. Ulrich** has joined the Detroit office of Miller Canfield Paddock and Stone PLC as an associate in the Financial Institutions and Transactions Group.

## 1996

### REUNION

The Class of 1996 reunion will be October 25-27

**William F. Kolakowski III** was named member of the Michigan law firm Dykema Gossett PLLC and practices with the firm's Intellectual Property Group.

## 1997

### 5TH REUNION

The Class of 1997 reunion will be October 25-27

*Co-chairs: Kelli S. Turner and Hardy Vieux  
Committee: Monica Aguilar; Jonathan Brennan; Angie Chen; Dara J. Diomande; Rebekah Eubanks; Peter Hafner; Peter J. Henry; Hilary E. Hoover; Jason Levien; Liesl A. Maloney; Angela I. Onwuachi-Willig; Jacqueline K. Payne; Alex Romain; Jennifer Beyersdorf Salvatore; Kashif Z. Sheikh; and Kathryn E. Ross*

**Matthew J. Hayek** has returned to Iowa City, Iowa, to join Hayek, Hayek, Brown & Moreland LLP as an associate. Founded in 1926 by his grandfather, the firm has a general practice and specializes in litigation and trial work, real estate, and estate planning. He formerly was with Grippio & Elden in Chicago.

Rader Fishman & Grauer, which specializes in intellectual property law, has elected **Matthew J. Russo** as patent lawyer member of the firm's Englewood, Colorado, office.

**Daniel L. Stanley** has been elected partner in the Detroit-based law firm of Honigman Miller Schwartz and Cohn LLP, where he concentrates his practice in the Regulatory Law and Tax Departments.

**Christopher M. Taylor** has joined Butzel Long as an associate attorney. He practices in the firm's Ann Arbor office as a member of the Higher Education Law Practice specializing in media law, intellectual property, technology, and e-commerce.

## 2000

**Catherine M. Collins**, an attorney in the Detroit office of Miller Canfield Paddock and Stone PLC, has been appointed to the 2002 Board of Directors of the French-American Chamber of Commerce, Michigan Chapter. She is active in the Japan Business Society of Detroit, the Japan American Society, and Women in International Trade.

**Allyson Broderick Russo** joins the restructuring and insolvency practice at Wildman Harrold's Chicago office. Russo was previously with the law firm Bingham Dana in Boston.

## 2001

The law firm of Barris Sott Denn & Dricker PLLC in Detroit announces that **Erica Fitzgerald** has become an associate whose practice covers business and commercial litigation.

**Giji M. John** has joined the Houston office of Fulbright & Jaworski LLP as an associate with the Energy and Real Property Department.

**Moheeb H. Murray** has joined Detroit-based Clark Hill PLC as an associate with the Litigation Practice Group.

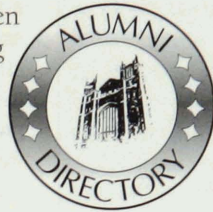
**Angelica Ochoa** has joined the Denver office of Holland & Hart LLP as a member of the Litigation Department.

## 2002

**Hamid M. Khan** has joined the Litigation Department of Holland & Hart LLP in the firm's Denver office.

## ALUMNI DIRECTORY DEADLINE

Compilation of information for the Law School's new Alumni Directory has been proceeding smoothly since early spring and concludes this month. Monday, August 19, was the deadline for providing information for inclusion in the directory and/or ordering your copy or copies of the new listing.



The new directory will feature an elegant, dark cover with the University of Michigan seal embossed in gold. You may choose the hardcover edition for \$59.99 or the softcover edition for \$49.99, plus shipping and handling charges of \$9.95. The Bernard C. Harris Publishing Company of White Plains, New York, is publishing the new directory. The press run of the new directory will correspond to the number of directory orders that are placed. The Law School will not have additional copies to sell.

To update your directory information or to order a copy or copies of the directory, telephone (toll-free) 1.800.414.4603. If you have questions about the directory project, contact the Office of Development and Alumni Relations at 734.615.4511.

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

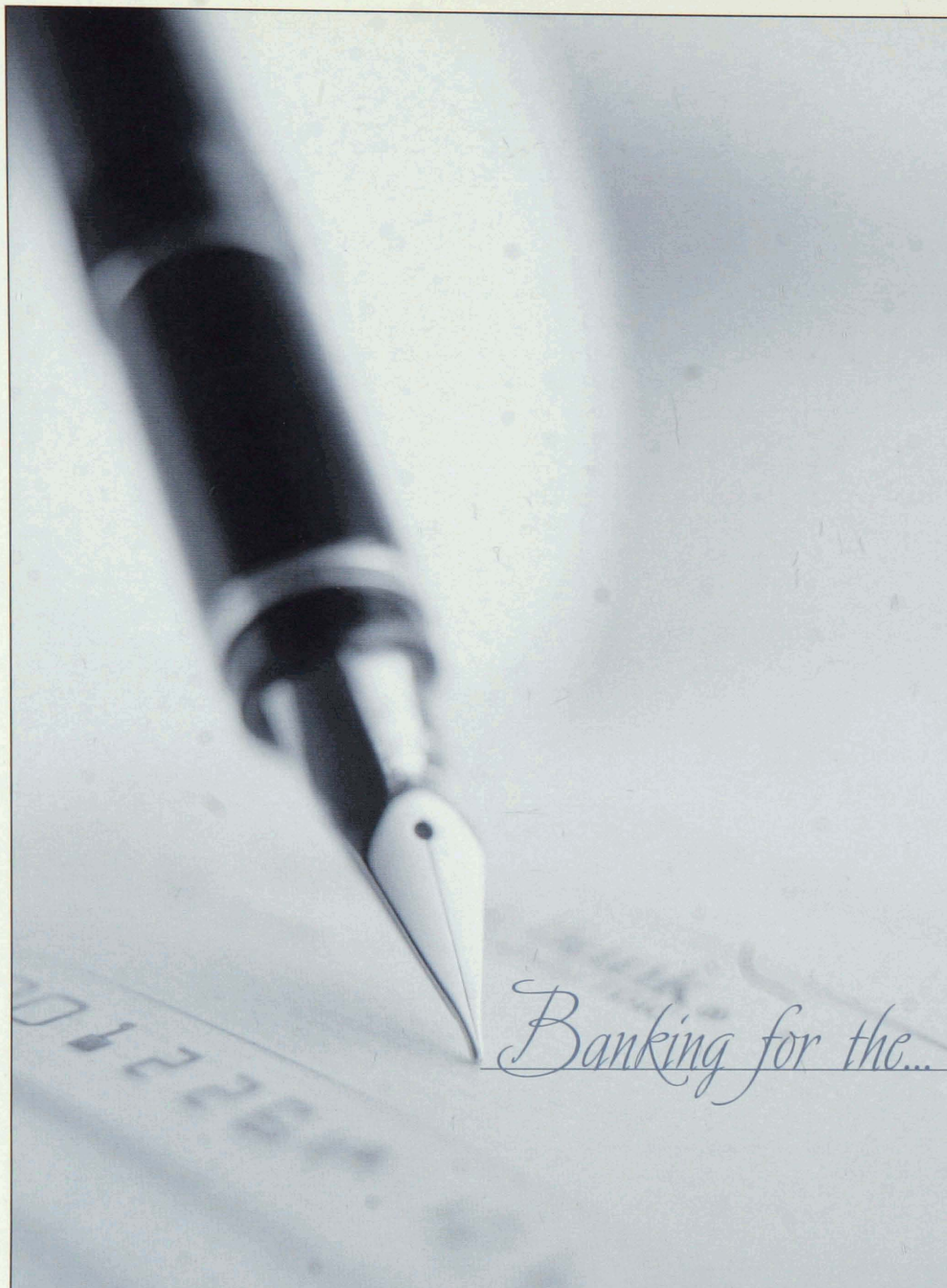
- Each graduate's current name plus the person's name while a student if that is different from the current name.
- Each graduate's class year(s) and degree(s) earned from the Law School.
- Other information like home address and telephone number, names of spouse and children, professional information,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

Information will be printed in the directory except for alumni who have contacted Harris Publishing at the number above to request exclusion.

Compilation of the directory is a project of the Office of Development and Alumni Relations to provide up-to-date information on the Law School's more than 18,500 graduates around the world.

## IN memoriam

'34	Fred W. Campbell	12/31/2001
'35	Charles M. Nisen	3/1/2002
	Harold O. Olson	3/21/2002
'37	Elijah Poxson	1/28/2002
'39	Charles R. Brown	3/2/1998
'40	Charles F. Dugan	3/25/2002
	Benjamin W. Franklin	5/19/2002
	Nathan H. Garvin	5/10/2002
'41	William Robert Lee Craft Jr.	4/16/2002
	Gerald M. Lively	2/11/2002
	Professor Paul Oberst (LL.M.)	2/27/2002
	Stanley Carl Soderland (LL.M.)	11/28/2001
'43	Dickson M. Saunders	10/7/2001
	Elizabeth Thorne	4/28/2002
'46	Richard H. Peters	2/14/2002
'48	Judge LeRoy J. Contie Jr.	5/11/2001
	J. Donald Ezell	3/11/2002
	Richard E. Robinson	5/8/2002
	Jack Schneider	1/30/2002
	John Moore Veale	4/26/2002
'49	Lyston G. Jaco Jr.	1/15/1998
	Jefferson L. Jordan	2/22/2002
	Robert E. Nichols	4/30/2002
	Elmer L. R. Radka	5/17/2002
	The Hon. Edward L. Sprague	3/5/2002
	Melvin Clark Poland (LL.M. 1950)	3/13/2002
'51	Edwin Haruo Honda	1/8/2002
	Walter J. Phillips	11/14/2001
'52	Murray B. DeGroot	11/5/2001
	Prof. Hugh W. Divine (S.J.D., 1959)	3/12/2002
	The Hon. Kenneth B. Glaser Jr.	3/10/2002
	The Hon. Walter H. Maloney Jr. (LL.M. 1954)	10/28/2001
	James H. Tigges	12/20/2000
'53	Isao Ito	9/1/2001
'54	Raymond R. Trombadore	5/8/2002
'56	Neil Flanagan	5/15/2002
'59	R. Adm. William A. Cockell Jr.	6/6/2000
	Jerome S. Traum	9/23/2001
	David M. Tyler	4/9/2002
'62	Ronald J. Brewer	2/2/2002
	Robert W. Paisley	3/18/2002
'63	Fred D. Fagg III	4/19/2002
'64	Nancy M. Clarkson	5/24/2001
'65	Robert C. Miene	7/7/2001
'69	Joseph Krieger	3/9/2002
	Yuji Sugawara (LL.M. 1976)	3/3/2001
'79	Brantley J. Chauncey	3/5/2002



*Banking for the...*

# UNBANKED

The following essay is based on testimony delivered before the Senate Committee on Banking, Housing, and Urban Affairs in May. Footnotes have been omitted.

“Nearly 10 million households — 9.5 percent of U.S. households — lack the most basic financial tool, a bank account,” according to the author. “Twenty-two percent of low-income families — over 8.4 million families earning under \$25,000 per year — do not have either a checking or savings account.”

— BY MICHAEL S. BARR

The consequences of not having access to mainstream financial services can be severe.

First, the “unbanked” face high costs for basic financial services. For example, a 2000 Treasury [U.S. Treasury Department] study found that a worker earning \$12,000 a year would pay approximately \$250 annually just to cash payroll checks at a check cashing outlet, in addition to fees for money orders, wire transfers, bill payments, and other common transactions. Regular payments with low credit risk that could be directly deposited into bank accounts, with significantly lower payment systems costs, form the bulk of checks cashed at these check cashing outlets: nearly 80 percent of checks cashed at check cashing outlets are regular payroll checks, and another 16 percent are government benefit checks.

The costs of these basic financial transactions can undermine public initiatives to move families from welfare to work, as former welfare recipients often lack access to the banking system, and pay high fees to cash their checks. High cost financial services can also diminish the effectiveness of the Earned Income Tax Credit (EITC), a tax incentive that rewards work and helps bring families out of poverty. One survey found that 44 percent of a sample of EITC recipients in inner-city Chicago used a check cashing service to cash their government refund check. EITC recipients, lacking savings or access to other forms of short-term credit, are also likely to use high-cost refund anticipation loans.

Second, low-income families need to save to cushion themselves against personal economic crises, such as injury or loss of a job, and to save for key life events, such as buying a home, sending their children to college, or entering old age. Yet low-income families, particularly those without bank accounts, often lack any regular means to save. Bill Gale of the Brookings Institution has shown that, after controlling for key factors, low-income households with bank accounts were 43 percent more likely to have financial assets than households without bank accounts. Moreover, the tax system, through which the bulk of government savings benefits are provided, largely subsidizes savings for higher-income households. The Treasury Department estimates that more than two-

thirds of tax expenditures for pensions go to households in the top 20 percent of the income distribution, while the bottom 40 percent get only 2 percent of the tax benefit. Most low-income workers work for firms without savings plans or are themselves not covered by such plans. Bank accounts can be important entry points for the provision of regular savings plans for low-income workers, for example, through payroll deduction.

Third, the unbanked are also largely cut off from mainstream sources of credit necessary to leverage their hard work into financial stability. Without a bank account, it is more difficult and more costly to establish credit or qualify for a loan. A Federal Reserve study found that a bank account was a significant factor — more so than household net worth, income, or education level — in predicting whether an individual holds mortgage loans, automobile loans, and certificates of deposit. Account ownership in and of itself is no panacea, however; even low-income individuals with bank accounts often lack savings, and turn repeatedly during the year to payday lenders, who charge on average 474 percent APR. Thus, strategies to bring the unbanked into the financial services mainstream need to include initiatives designed to increase savings for short-term financial stability and improve access to less expensive forms of credit where appropriate, as, for example, with overdraft protection or account-secured loans.

### **Barriers to banking**

While the financial system works extraordinarily well for most Americans, many low- and moderate-income individuals face a number of barriers to account ownership.

First, regular checking accounts may not make economic sense for many lower-income families. Consumers who cannot meet account balance minimums for a checking account at a bank pay high monthly fees, and most banks also levy high charges for bounced checks that low-income families with little or no savings face a high risk of paying and can ill-afford. Financial institutions may also charge high fees for money orders or other products that their typical customers do not often use.

Studies have confirmed that many of the unbanked would become “banked” if they found a product that worked for them. In fact, the unbanked have responded to account products tailored to their needs. For example, Banco Popular of Puerto Rico introduced Acceso 24, an electronic account, with no minimum monthly balance, free direct deposit, unlimited ATM access, and a low monthly fee. The bank has enrolled tens of thousands of customers in the product since 1995.

Cultural issues and reluctance to use banks may matter, but many of the unbanked already use, or have used, the banking system. Nearly half the unbanked, according to one study, use banks, thrifts, or credit unions to cash checks, although the figure may be significantly lower in some inner-city communities. Between 48 and 70 percent of the unbanked have had an account at a financial institution at some time in the past.

Second, many unbanked persons may not qualify for conventional bank accounts because of past problems that these persons have had with the banking system. Nearly seven million individuals are currently recorded as having had their accounts closed for prior problems, such as writing checks with insufficient funds or failing to pay overdraft charges, in the ChexSystem, a private clearinghouse used by most banks to decide whether to open bank accounts for potential customers. Records of prior problems are kept in the system for five years, during which time these individuals will be unable to open a conventional bank account at most banks, thrifts, and credit unions. While some individuals undoubtedly pose undue risk for account ownership, many potential customers could readily and responsibly use bank accounts. Banks could obviate this concern by working with the private clearinghouses to better distinguish among types of past problems; by offering accounts contingent on completion of financial counseling; and by offering electronically based accounts with on-line bill payment or automatic money orders, and without check-writing privileges, that pose little risk of overdraft.

Third, while many urban communities contain adequate numbers of both banking institutions and alternative financial services providers, in some low-income urban and rural communities, banks,

thrifts, and credit unions are not as readily accessible to potential customers as such institutions are in higher-income areas. A 1997 Federal Reserve Board study found that low-income central city neighborhoods have fewer bank offices *per capita* than higher-income areas and those outside the central city. Similar patterns may persist in the distribution of ATMs: In New York and Los Angeles, there are nearly twice as many ATMs per resident in middle-income zip codes as there are in low-income zip codes, according to 2000 Treasury Department research.

Fourth, financial institutions may be reluctant to expend the resources for research, product development, training, marketing, and education, necessary to expand financial services to lower-income clientele. Financial institutions may need incentives to pursue research and product development with respect to accounts for low-income customers. Further market research would help to define the product needs of low-income families and existing products will likely need to be modified to serve this clientele.

Marketing of new products to low-income persons, and training of local banking personnel, are both critical to the success of any new product development, yet given the expense and the expected low returns, are often not fully pursued even when financial institutions decide to become involved with offering financial services to low-income customers. If the unbanked do not know about the availability of new products and services, they are not likely to seek out financial services at banking institutions. If local banking personnel are not informed about new offerings, the unbanked will find it difficult to open accounts even where local branches are convenient and accessible.

Moreover, at least for a segment of the low-income population, lack of financial education with respect to account ownership, budgeting, saving, and credit management is a significant barrier to personal financial stability. The benefits of financial education are not likely to be fully captured by the financial institution, so such education at any scale will likely need to be funded from sources in addition to the financial institution.

*Continued on page 62*

## Expanding access to the financial services mainstream

While important challenges are still largely in front of us, some progress has been made in recent years in expanding access to financial services. The period 1995 to 1998 marked a decline in the percentage of low-income families who are unbanked from 25 to 22 percent. This decline in the percentage of unbanked may reflect in part strong economic growth in the late 1990s that improved the incomes of households at the bottom of the income distribution for the first time in decades.

The Treasury Department's efforts to increase electronic payment of federal benefits, pursuant to the Debt Collection Improvement Act of 1996, has also helped to spur innovation in this area. Under Treasury's electronic funds transfer (EFT '99) program, direct deposit into bank accounts has increased as a portion of all federal benefit payments from 58 percent in 1996 to 76 percent in 2001. This increase in benefit payments reflects in part an increase in direct deposit to existing accounts, and in part an increase in the percentage of benefit recipients who have obtained bank accounts.

Moreover, Treasury launched the Electronic Transfer Account (ETA), a low-cost electronically based bank account for federal benefit recipients. Under the program, Treasury provides financial institutions offering ETAs with a one-time payment of \$12.60 per account to offset the costs of opening the accounts. As of spring 2002, nearly 600 banks, thrifts, and credit unions were offering ETAs at over 18,000 locations nationwide. Over 28,000 benefit recipients have opened these ETAs thus far, and new ETA account holders are being signed up at a rate of over 1,000 per month. The ETA could make faster progress were additional funds made available for marketing and training. Anecdotally, banks are reporting that they are also signing up more than three direct deposit relationships into regular banking accounts for every ETA opened.

More recently, a number of banks, thrifts, and credit unions have begun to experiment with a variety of products designed to serve the needs of low-income individuals. As I mentioned, Banco Popular has made great strides in reaching the unbanked of Puerto Rico. In the states,

Bank One is experimenting with using a broader range of credit criteria for opening accounts. Shorebank has focused on bringing EITC recipients into the banking system. Fleet is working with a nonprofit organization, Doorways to Dreams, to create an Internet platform for low-income savers.

A number of banking institutions, including Wells Fargo, have recently begun to work with the Mexican government to accept Mexican consular identification documents for Mexican immigrants in the United States seeking to open bank accounts. Similarly, recent efforts to reduce the costs of sending remittances abroad, such as Bank of America's dual-ATM card, hold promise for bringing immigrant communities into the banking system. President Bush and Mexican President Vicente Fox have made progress on reducing the costs and increasing the benefits of the nearly \$10 billion in annual U.S.-initiated remittances to Mexico issue an important part of their mutual agenda.

## First accounts

In this regard, Treasury's First Accounts initiative could play an important role in fostering innovation by the financial services sector. With the government helping to serve as a catalyst, banks can harness technology to reduce costs, lower risk, and democratize access to financial services for low-income families. Transaction accounts with debit cards but no checks can reduce risk to banks and account holders by preventing accounts from being overdrawn; lower the cost of processing each transaction and increase the efficiency of the payments system by reducing paper checks; expand availability much more cheaply than branches; and decrease the safety risk to low-income customers who cash their regular payroll or benefit checks and carry large sums of cash.

The First Accounts initiative grew out of Treasury's research on the financial services needs of the unbanked for EFT 99. Treasury estimated that at least half of the 10 million unbanked households do not receive federal benefit payments and thus would be ineligible to open ETAs. In addition, banks participating in the ETA program reported that significant numbers of unbanked persons who were not federal benefit recipients had sought to open

ETAs; these persons are part of the likely target market for First Accounts. Treasury research suggests that unbanked persons who do not receive federal benefit payments are, on average, younger, more urban, more likely to be from a minority community, have larger families, and are more likely to be receptive to signing up for electronically based accounts than the unbanked federal-benefit-recipient population.

As initially conceived, the First Accounts initiative had four main components:

**First Accounts.** Treasury would help to offset the costs financial institutions incurred in offering low-cost, electronic banking accounts to low-income individuals.

**Access.** Treasury would help to defray the costs of expanding access to ATMs, POS, Internet, or other distribution points in low-income neighborhoods with low access.

**Financial Education.** Treasury would support financial institution and nonprofit initiatives to provide financial education and counseling to low-income households.

**Research.** Treasury would fund research into the financial services needs of low-income individuals and development of financial products designed to meet these needs.

The First Account initiative properly focuses on the need for incentives to get financial institutions started in serving low-income households. As discussed above, the costs of research and development, new account opening, expanded distribution, and financial education are serious barriers today to expansion of account ownership. The First Account initiative can help to accelerate improvements in this market.

Treasury issued a request for proposals under the First Account program in December 2001. The Department received 231 responses from a wide variety of organizations: banks, thrifts, and credit unions; employers and labor and employer organizations; community based organizations; state and local governments; and others. As reported by the Department, the results of the first round of funding are impressive. The challenge going forward is to continue funding the First Accounts initiative at sufficient levels and for a sufficient time to help transform the market for low-income financial



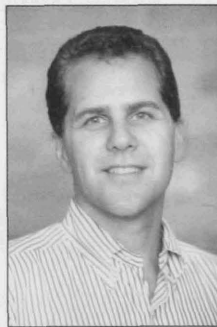
services. Only a sustained commitment to the First Accounts initiative will provide financial institutions with sufficient incentive to make the necessary investments in research, technology platform changes, training, marketing, and education necessary to serve low-income unbanked and underbanked households. Over time, as financial institutions become expert at serving the low-income customer segment, the need for governmental incentives may become less important.

Banks, thrifts, and credit unions could, under the First Accounts initiative, experiment with a wide variety of techniques to expand access to the unbanked, and to provide an increasing range of services to the underbanked. Low-cost electronic transaction accounts can be attractive to the unbanked and can be offered at reasonable cost. Banks may wish to experiment with accounts with savings features, including payment of interest or separate savings "buckets" within accounts; these features are also likely to be attractive to the unbanked and low-cost. Similarly, low-income individuals need a convenient and low-cost means to pay bills; automated money orders, online bill payment, alternative means of foreign country remittance, and other low-cost payment methods can help to reduce the cost of basic transactional services for the poor.

In addition, the First Accounts initiative has the potential to help spur "leapfrogging" in technology for low-income financial services, in analogous ways to how the Internet and cellular telephone technology have permitted developing countries to leapfrog in telecommunications infrastructure. To offer a few examples that could be subjected to the test of market feasibility: With sufficient incentives, providers of the network infrastructure for debit and credit cards, or providers of back-office data and information processing functions for banks and mutual funds, may be induced to explore ways that low-income customers could be served by financial institutions on shared technological platforms. As access to the Internet expands in low-income communities, e-finance can increasingly be made available to the poor at Internet kiosks. Or companies that are exploring ways to expand the use of cellular phones to transact financial services for high-income clientele could be encouraged also

to focus attention on expanding banking account access for the low-income market that currently utilizes pre-paid cellular phones.

The First Accounts initiative can also help to spur employer-driven (or union-driven) strategies to expand access to banking services. Large employers can reap significant benefits from moving more of their workers to direct deposit of payroll, driving down their payroll processing costs, increasing the effective take home pay for their workers, and reducing problems from theft or fraud associated with checks. Employers can help to reduce costs for reaching their unbanked employees with financial education and marketing of new products. Moreover, many employers have already become active in educating their workers about advanced payments under the EITC. At the same time, financial institutions already provide important payroll and other banking services for employers, and some have been experimenting with employer-focused, debit-card based payroll systems



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Scholar, and his J.D. from Yale Law School. Barr was an articles editor for the *Yale Law & Policy Review*, and was active in the homelessness clinic and in the Lowenstein Human Rights Clinic, where he co-directed *Haitian Centers Council v. McNary*, challenging U.S. policy of repatriating Haitian refugees. He was co-recipient of the 1992 Human Rights Award of the American Immigration Law Association, and co-recipient of the Charles G. Albom Prize for appellate advocacy. Barr served as a judicial clerk for Justice David H. Souter of the Supreme Court of the United States, and for Judge Pierre N. Leval of the Southern District of New York. His wide experience includes serving as: special adviser and counselor on the Policy Planning Staff of the U.S. State Department, focusing on human rights and international organizations;

for their clients' employees. These employment relationships may provide a solid foundation for encouraging direct deposit into low-cost electronic banking accounts and systematic savings programs for low-income workers.

## Conclusion

Financial and technological innovation has been a hallmark of U.S. financial markets. Financial institutions can harness that innovation to meet the needs of low-income Americans. The First Accounts initiative is an important part of catalyzing private sector efforts to use financial and technological progress to expand access to financial services for low- and moderate-income families. By helping these families to enter the financial services mainstream, First Accounts and related initiatives can help to transform financial services for low-income persons. Such a transformation is a key to promoting greater economic opportunities for low-income communities in the twenty-first century.

*Treasury Secretary Robert E. Rubin's special assistant, advising the secretary on national policy issues; and deputy assistant secretary of the Treasury for community development policy. He helped to negotiate final passage of the financial modernization law, and to enact over \$25 billion in initiatives for low-income communities. From 1999 to 2001, Barr also served concurrently as special adviser to the President, responsible for the federal government's policies with respect to the District of Columbia. In the spring of 2001, Barr was a visiting fellow at the Brookings Institution, where he remains a nonresident senior fellow. In addition, he has served on the board of the Telecommunications Development Fund, a publicly-chartered investment fund focused on early stage technology firms, and on the advisory boards of D.C. Agenda and of George Washington University's Center for Excellence in Municipal Management. He is a term member of the Council on Foreign Relations, and a member of the bars of New York and the District of Columbia. Professor Barr's research and teaching interests include financial institutions, community development, and international law. He has written on access to capital, international labor and environmental rights in trade agreements, refugee law, and health policy.*

# Which Students?

The following essays, by Professors Richard O. Lempert, '68, and Carl E. Schneider, '79, are based on talks they delivered in Tokyo last February as part of the symposium "Inside the American Law School: Its Essence, Its Reality, and Its Potential in Japan."

Organized by Assistant Professor Mark D. West, who directs the Law School's Japanese Legal Studies Program, in cooperation with Japanese alumni of the Law School and Japanese bar leaders, the symposium was the first of its kind. It was occasioned by Japan's reorganization of its legal education system to establish graduate law schools based on the United States model by April 2004.

As West explained for *Law Quadrangle Notes* (Spring 2002, page 4), the conference came at an important time for Japanese legal education: "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."



# Japan's challenge and opportunity

BY RICHARD O. LEMPert

I have been asked to speak about how a law school should approach the task of deciding which students to admit. In addressing this topic, it is important to recognize that there is no magic formula for admissions decisions and not necessarily a single solution. It depends on a school's goals. Thus, the first task of a new law school in thinking about how to admit students is to identify its educational goals and its goals for the lawyers it will produce. This in turn entails reflection about the school's vision for itself. A school that wants to establish itself as a center of international legal studies might, for example, weigh the mastery of a foreign language heavily in its admissions process, while a school that wanted to establish itself as a center for scholarship on intellectual property might give special weight to students with degrees in engineering, the biological sciences, or creative writing.

One can, of course, identify a set of broad goals that all law schools are likely to share. Every law school is likely to prefer applicants with a high aptitude for legal studies and a willingness to work hard in their studies. Schools will also want to admit students who will be enjoyable to teach, who will aid the education of their peers, who will pass the bar exam, who will be competent, ethical attorneys, and who, as alumni, will treasure their law school experience and support the school in various ways.

These general goals interact with decisions about the nature of the school, especially its educational methods and goals. If hard work means studying 30 hours a week, a school might admit students whom it would not admit if it

expected students to spend 60 hours a week studying. Similarly, if a school's classes will consist mainly of large lecture courses and if students are not encouraged to work together outside of class, a student's willingness to speak in class or his/her social skills will be less important than they would be if classes were taught using the Socratic method or students were encouraged to work together in moot courts, study circles, and on other group projects.

In choosing among applicants, it is important to bear in mind the difference between admitting individual students and admitting an entire class. Although students with certain qualifications might be more desirable admittees for a school than students with other skills, a class composed entirely of students who are best qualified by one criteria might be less desirable than a class composed of students of mixed types. For example, a Japanese law school that prided itself on its international law curriculum might think fluency in English was more desirable than fluency in any other foreign language. So in choosing between two otherwise identical students, one of whom had excellent English language skills and adequate Chinese language skills, the school would prefer the student with excellent English. But if the school had admitted 10 students with excellent English and adequate Chinese, in admitting an 11th student, the school might reasonably prefer a student with excellent Chinese and merely adequate English to a student whose language skills were like those of the applicants already admitted. Diversity, in other words, is itself a value, and its virtues must be kept in mind when shaping a law school class. The more a school expects its students to

learn from each other, the more valuable diversity is likely to be, since interacting with people unlike oneself offers special opportunities for learning.

Law schools do not keep what they are looking for secret. Hence, law school applicants strive to be, or at least to appear to be, the kinds of students law schools seek. Hence, a school's admissions standards shape the pool of law school applicants. For example, if a school wants students who are analytically brilliant and relies largely on an admissions test designed to measure analytic ability to choose among its applicants, students who particularly want to attend that law school may neglect their undergraduate studies and spend much of their time in cram schools that train them to do well on the law school admissions test. The class a school with such a narrow focus admits will contain numbers of students who are not as good analytically as their test scores indicate because part of what they will have learned will not be analytic skills but test-taking skills, and the analytic skills they have honed may be very narrow and context dependent. Admitted students are also likely to lack other characteristics the law school values because of the time spent at cram school rather than on other studies. These dangers exist in the United States in LSAT [Law School Admission Test] preparation courses, but they are far greater in Japan because cram schools there are already regarded as the ordinary and most effective way to prepare for the bar exam, and many students wanting to become lawyers neglect their undergraduate studies in favor of cram school work.

Once a school has identified the attributes it seeks in its students, the next

issue is how to assess them. U.S. law schools use or have tried various ways. One thing these ways have in common is that they are all imperfect. None precisely captures for all cases, or even a large proportion of cases, the characteristics a law school seeks. For this reason, it is best that they be used together, and that a school choose applicants who have a strong profile across measures.

There are two principle reasons why admissions criteria imperfectly distinguish better from worse law students. One is the inherent difficulty of linking desirable underlying traits with surface manifestations that can be reliably measured. The second is that most measures of academic promise are open to manipulation ranging from low visibility special training, as by attending cram school courses, to deceit and other forms of cheating. Consider some measures that U.S. law schools use in choosing whom to admit. Perhaps the most ubiquitous is test scores. Virtually all law schools in the United States require applicants to take a standardized test, the LSAT. The LSAT's virtues begin with its predictive validity. The ability to score well on this test has a high correlation (about .6 at Michigan) with the ability to do well on the examinations given at the end of the first year of law school. Presumably, how one does on law school examinations bears some relationship to what one has learned. Also, all law school applicants are measured with respect to their performance on the same test. (There are different versions but scores are statistically equated.) Other measures of academic achievement designed to predict law school performance, like college grades, reflect different grading standards and differentially challenging material, which means that students who are compared on the basis of grades have had their capacities measured on different metrics. Perhaps most importantly, reliance on the LSAT helps a school resist compromising its commitment to admit academically excellent students in the face of pressure that powerful people may

place on it, and it provides disappointed applicants and their supporters with an apparently fair and easy to understand reason why they were not admitted. Finally, tests like the LSAT are easy for a school to use. Applicants can be precisely ranked on a single metric; there is no need to agonize about who is better among two applicants or whether they are the same.

But these virtues come with significant costs. While the LSAT has predictive validity, it is far from perfect. The LSAT does not explain about two-thirds of the variance in first-year grades and may leave unexplained significantly more of the variance in second- and third-year grades. Moreover, some of the test's ability to explain graded performance has little or no relationship to traits that matter in law practice. For example, the LSAT tests, in part, the ability to answer questions quickly in a stressful testing situation. First-year exam grades also reflect, in part, the same ability. So one reason LSAT scores do as well as they do in predicting first-year grades may be because they predict which people can sit down, read a question quickly, and immediately come up with likely answers. More reflective people who may see and resolve correctly complexities that don't affect their answers will suffer by comparison, yet they may make better lawyers than those more skilled at quick analysis. Moreover, the LSAT does not attempt to measure many skills important to success in legal practice. For example, the LSAC [Law School Admission Council], which administers the LSAT, has for years been trying to come up with a reliable, effective, and easy-to-use way to measure the quality of an applicant's writing, but it has never succeeded in doing so. Oral skills and researching skills are similarly not measured by the LSAT.

Perhaps for these reasons, the LSAT score has never been shown to correlate with success in legal practice. At Michigan, David Chambers [Wade H. McCree Jr. Collegiate Professor of Law], Terry Adams, '72 [a social science

research associate], and I found that when we looked at graduates who had been out between one and twenty-seven years there was no relationship at all between how they had done on the LSAT and their income, self-evaluations of career success, or the amount of service work they did.

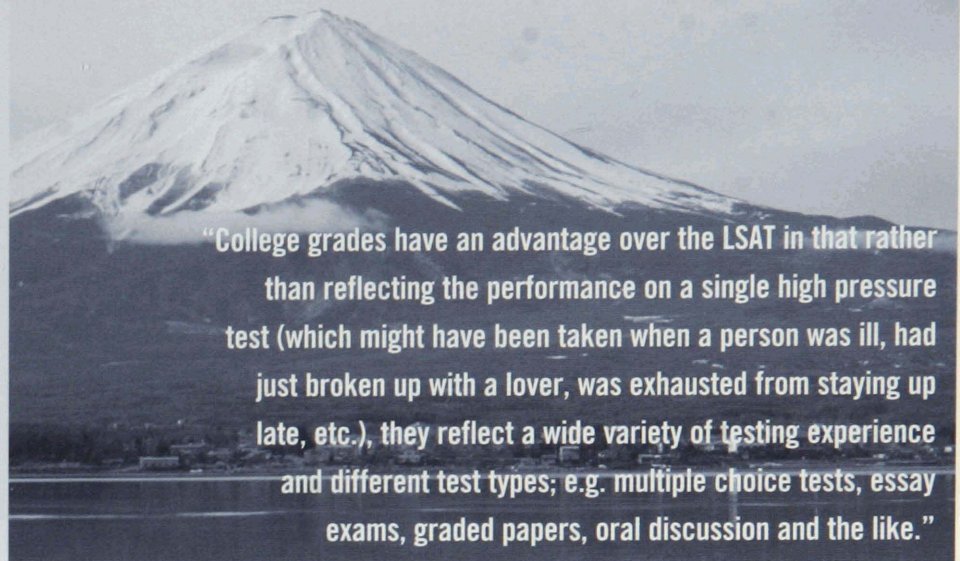
Another flaw of the LSAT is that although it controls for some biases in the admissions process, it can add others. The American version of cram schools can help students achieve better LSAT scores than they would have received had they not attended a cram school course. But some students cannot afford to attend LSAT preparation schools, other students may not wish to take time away from their college course work to attend an LSAT cram course, and students from certain backgrounds may, for social or other reasons, be less likely than other students to take an LSAT cram course. Moreover, although every effort is made to avoid question bias, the LSAT may still subtly favor students from some backgrounds over students from others.

The apparent unambiguity of LSAT scores and their ease of use — major advantages of the test — also have a darker side, for these positive features may lead admissions officers to give LSAT scores more weight than they deserve. They can easily come to dominate the admissions process when they should be at most one factor, and not the most important factor, to be considered. Another drawback to their apparent precision is that this allows them to serve as a metric for ranking law schools, which can lead schools to admit applicants with high LSAT scores not because they add to the strength of the class but because being able to report a high average LSAT score enhances a school's reputation. In the United States, the *U.S. News* ranking helps create this deleterious effect.

A second major influence on law school decisions to admit students is college grades. College grades have an advantage

over the LSAT in that rather than reflecting the performance on a single high pressure test (which might have been taken when a person was ill, had just broken up with a lover, was exhausted from staying up late, etc.), they reflect a wide variety of testing experience and different test types; e.g. multiple choice tests, essay exams, graded papers, oral discussion, and the like. Moreover, by looking closely at the courses in which grades are achieved, an admissions officer can learn a lot about a student; e.g. where the student's academic interests lie, what kinds of specialized knowledge the student has, areas of academic strength and weakness, and whether a student's academic performance has gotten better or worse over time. Finally, students who know that their ability to get into law school will turn on the grades they achieve have an incentive to work hard in their undergraduate courses. This might be particularly important in Japan, where college students are famous for slacking off following a rigorous high school education.

College grades and transcripts have their weaknesses, however. A grade in one course does not reflect the same degree of ability or accomplishment as the same grade in another course, and a grade point average in one school will not reflect the same degree of ability or accomplishment as the same average achieved at another school. Also, when access to graduate education turns in large measure on undergraduate grades, perverse incentive structures for students can arise. Students may take courses not because they are interested in them, but because A grades are easy to attain. Students may shun more challenging and valuable majors because they expect to do better gradewise in areas that are less interesting to them or will provide them with a less rigorous undergraduate education. Also, the higher the stakes associated with undergraduate grades the greater the incentive to cheat to get good grades, so



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selecting on the basis of undergraduate grades may enhance somewhat the chance for admission of students who are willing to bend or break rules of ethics for personal advantage.

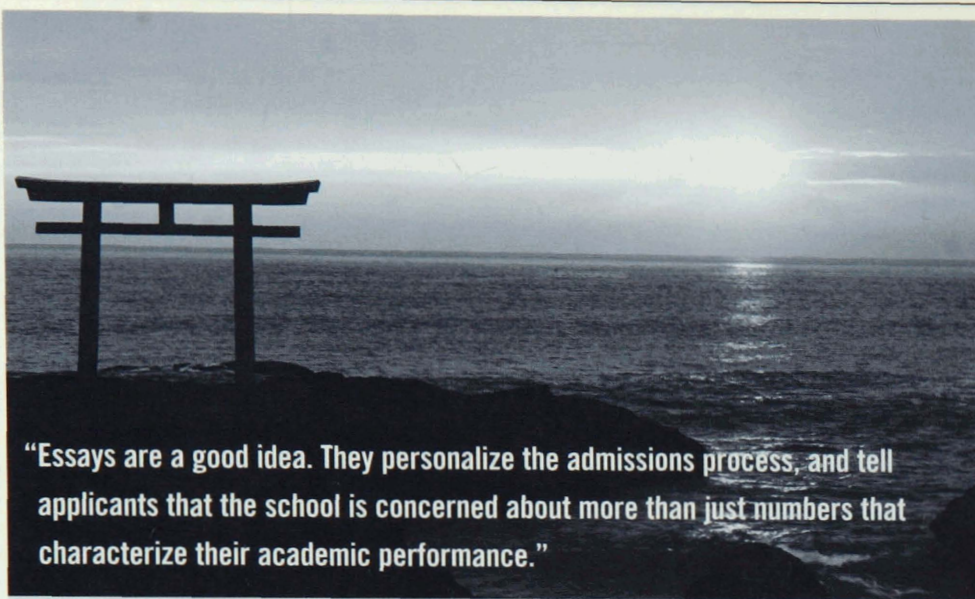
Similarly perverse incentive structures may arise for the colleges themselves. Not wanting their students to be at a competitive disadvantage in applying to law and other graduate and professional schools, colleges may inflate their grade curves so that most of their students graduate with high averages. The perverse incentives on both students and undergraduate institutions can cause undergraduate grades to lose much of their predictive power. This is because the grade variation among admittees is severely restricted, and there is considerable error within course grades as measures of likely law school ability. In fact, at Michigan among white students in the classes of 1990 through 1996, there is no relationship between a student's grades as an undergraduate and the student's grades in law school.

Although a transcript provides more nuanced information than the LSAT score, it can be difficult to make sense of transcripts and to compare graded performance across students. A music appreciation course in one school, for example, may test a student's ability to assimilate historical and musical knowledge while at another school it might largely reflect a student's ability to recognize the music of different composers. Physics 101 can be a rigorous

introduction to physics for likely majors, a rigorous non-mathematical introduction for non-majors, or a simplified introduction to help a physics department boost its undergraduate enrollments while enabling students to meet a science requirement. An admissions officer may have some information about the content of a few courses at some schools, but even experienced admissions officers are unlikely to have much helpful knowledge of this sort.

Finally, because a grade point average is a convenient number which allows for precise ranking and is easier to assimilate than detailed consideration of a transcript, the overall grade point average may dominate the assessment of undergraduate graded performance despite the many reasons it can be misleading.

A third source of information important in choosing among law school applicants is the letter of recommendation. Most American law schools require applicants to submit two or three letters of recommendation. Most letters come from people who have taught the applicant as an undergraduate, but they may also be written by graduate school teachers, employers, friends, parents' friends, alumni, politicians, and others. These letters are helpful because they provide information from someone who has observed the applicant over a period of time and may be in a good position to



**“Essays are a good idea. They personalize the admissions process, and tell applicants that the school is concerned about more than just numbers that characterize their academic performance.”**

form a judgment about the applicant's abilities and character. Recommenders are in a position to capture information which may not be revealed in test scores or grades. They can speak to such things as the challenges an applicant was willing to take, conditions like illnesses which might explain low grades during one term, and the applicant's creativity, or leadership skills. Moreover, a school can tell its recommenders what it is most interested in learning about applicants, thus securing information about those aspects of the applicant's history which it thinks most important in the admissions decision. Finally, an applicant's choice of recommenders can say something about how the applicant has fared in various aspects of his/her career. For example, if an applicant has no recommendations from former teachers, it suggests that the applicant did little to especially impress those who taught him/her.

Despite these virtues, it is dangerous to rely too much on letters. People choose their recommenders. Even honest letters provide a biased sample of what people who know the applicant think about him/her. If, for example, most of an applicant's teachers think he is bright but lazy, the applicant will seek a letter from the one teacher for whom he worked hard. And not all letter writers are honest. Some people will write letters that make it appear they know the applicant far better than they do, and others will say nice things whether they believe them or not. Also, people, especially academics, have

very different standards when it comes to writing letters of recommendation. Some will write effusively about almost everyone, and others will be restrained in almost all their letters. Unless an admissions officer knows the standards recommenders apply, it is easy to misread the strength of recommendations.

Opportunities to acquire strong letters are another variable. College students who are outgoing and interact well with their teachers have an advantage over students who are as skilled academically but were shy about approaching professors. People in small schools may have had the opportunity to get to know many of their professors well, while people in large research universities may have had little opportunity to get well acquainted with teachers other than graduate assistants.

Law school application forms also ask students to describe themselves by listing important activities they have been involved in, summer and other jobs, leadership roles, criminal convictions, and other information. Students are not asked to elaborate (except to explain criminal convictions) on the activities they list but just to indicate involvements. These lists provide information about a student's non-academic achievements, and can help put grades in context. High grades from a student who has participated in no extracurricular activities will be less impressive than the same grades received by a student involved in numerous extracurricular activities. One would, for example, interpret a grade point average which reveals low fall term class performance and high spring term

performance differently if one knew the applicant had been a four-year starter on the varsity football team.

Activity lists can also help schools identify students who are truly special. For example, the University of Michigan has had applicants with such achievements as an Olympic gold medal, a U.S. Junior Chess Championship, and the chairship of a medical school cardiology department.

Students, however, have incentives to be involved in many different activities just so they can list them on their law school applications. A mere listing says little about involvement. Even leadership roles have different meanings. On one campus a class representative to the student council may be an active leader in student life who beat out 10 other candidates for the position; on another campus student government may be moribund and the only students willing to seek student government office may have been those interested in padding their resumes. Apart from a few students with truly special accomplishments, it is difficult to identify especially promising students based on the activities they have been involved in since the array of activities applicants present are often similarly impressive. There is also a danger that some activities may influence admissions decisions, because they appeal to or offend the political sensibilities of those charged with deciding.

Most American law schools require or invite applicants to write one or more essays, most often about their experiences or their reasons for wanting to study law. Essays are a good idea. They personalize the admissions process, and tell applicants that the school is concerned about more than just numbers that characterize their academic performance. They also allow schools to identify students with interesting traits or backgrounds that will add to the diversity of the class, and by telling admissions officers what students

regard as important in their lives, essays can provide insight into character unavailable from other sources. Essays can also reveal how well a student writes, and can provide information about how a student thinks about problems. In addition, an essay says something about the level of care a student takes with her work. An essay full of spelling errors (not infrequent before the advent of spell checkers) is, for example, a turn-off for many readers.

Essays may not, however, be entirely a student's own work. Help can range from a friend's reading an essay to check for spelling to a professional writing an essay that an applicant submits as his own. Also as with activity lists and letters of recommendation, some applicants try to game the system. They may write what they think an admissions officer would like to hear rather than what they feel, or may choose as a topic a unique life experience that says little about who they really are. A different sort of problem with essays is that they can impose a considerable burden on applicants, especially if they are applying to a number of schools that want essays on different topics. Reading essays can be similarly burdensome for admissions officers, so strict word limits may be imposed, which limits what the essays reveal. Often these burdens are not worth it, for in the end, many essays count for little. Although some essays stand out for an admissions officer and affect the admissions decision, many provide little basis for distinguishing applicants.

The final admissions tool I shall discuss is the interview. At one time admissions interviews were frequent, either desired by the law school or available at an applicant's request. Today most law schools do not mandate admissions interviews. The strengths of interviews are obvious. The admissions officer sees the applicant and can judge him or her in ways that a paper record does not allow. The interviewer can judge how well an

applicant is likely to do as an oral advocate and how well the applicant thinks on her feet. It is also possible to get a feel for how well an applicant will interact with her peers, and weird, dysfunctional applicants often stand out. Interviews are also useful for exploring issues that are raised by applicant files. If, for example, a student's gradepoint average plummeted one term but later rose, the interviewer can ask the applicant why this happened. Similarly, an interviewer can learn how deeply an applicant was involved in listed extracurricular activities and what she feels she gained from her involvement. Finally, interviews can help law schools recruit students. Not only is the interview an occasion for an admissions officer to evaluate an applicant, it is also an occasion for an admissions officer to sell the school to an applicant. Thus, ironically, interviews may have their highest pay-off with students whose paper record makes them almost certain admits.

Interviewing all applicants or even the subset of applicants who are plausible candidates for admission is, however, impractical for a school that gets as many strong applicants as Michigan. Interviews are time consuming, both for the applicant and the interviewer. Also, the expense of traveling to interviews may be prohibitive for many students. Hence, the only feasible way of securing interviews with most applicants is to spread the burden, both geographically and among persons. One law school, Northwestern [Northwestern University Law School], which has decided to interview applicants, has done just that by entrusting the task to its alumni. But this means that an applicant's chance for admission will be affected by the personality and experience of the alumnus assigned to interview her. Judgments across different interviewers will not be comparable, and some applicants may suffer while others will benefit as a result.

Even if interviewing all applicants were feasible, interviews would have their weaknesses. It is easy to be overimpressed

by the direct experience of talking to an applicant. Research in a number of contexts indicates that when it comes to predicting future behavior in some sphere (e.g. mental health, future crime), statistical models based on objectively measured variables do a better job than clinical judgments based on interviews. One reason for this is that it is easy for the biases of the interviewer to color judgments of the candidate. Variables like height or good looks may affect interviewer judgments without the interviewer realizing this, and other more invidious biases may also enter in.

I hope it is clear from this review that no one tool for selecting students is perfect, nor will a perfect measure of whom is best suited to law school ever be constructed. A school must thus use multiple sources of information in judging whom to admit, and be careful not to overweight some sources *vis-a-vis* others. In particular, it is too easy to privilege apparently objective quantitative measures of ability like LSAT scores and undergraduate gradepoint averages and grant them too much relative weight in reaching admissions decisions. It is also easy to establish a pattern for weighting various admissions criteria and continue to use it despite changes in the applicant mix and other variables over time. Better practice is to continually monitor the validity of the measures used to admit students. Continual self study should be built into law school admissions processes.

Law schools should also attend to the reactivity of the measures they use to admit students. Admissions measures can lead students who want to be lawyers to make decisions that are counter-productive in terms of the kinds of students a law school seeks. Privileging admissions test scores may, for example, lead students to spend excessive time and money in cram schools rather than focusing on their education. Favoring

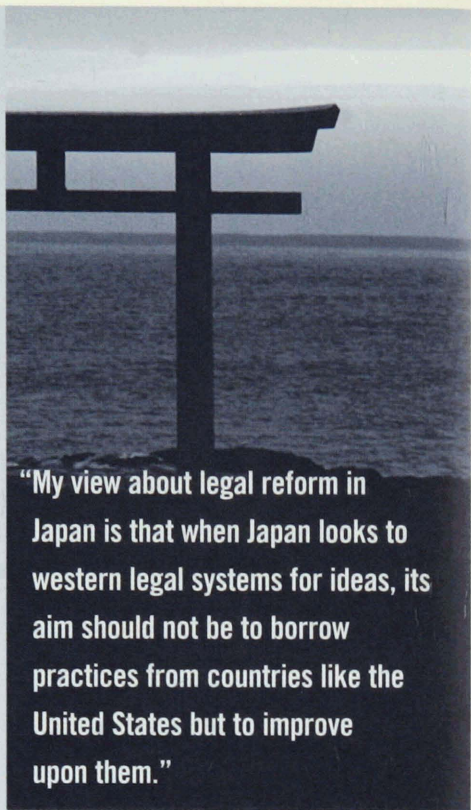
certain undergraduate majors will direct students who want to be lawyers toward those majors. The reactivity of admissions standards is not entirely a negative thing. A school can promote desirable behavior by making it clear that it will favor such behavior in its admissions process. A school, for example, can encourage students to master a foreign language or become good writers or take science or mathematics courses by saying that it thinks such training is valuable for those who seek to become lawyers.

I have thus far focused on the most common tools that United States law schools use in deciding which law school applicants to admit. With apologies reflecting my acute awareness that as a U.S. law professor, it is not for me to tell the Japanese law schools what to do, I would nonetheless like to conclude with a modest proposal for admitting students into Japan's new graduate professional law schools. My proposal is rooted in the observation that the importance of a measure of skill or talent in predicting law school or practice success turns not just on how well the skill or talent correlates with law school or post law school performance, but also depends on the variance of applicants on that measure. For example, if LSAT scores correlate well with law school grades and post-law school performance overall, but a given school's applicant pool includes only applicants with very high scores, the LSAT will not help this school distinguish among its applicants. I also see overreliance on test scores as the most likely weakness in the admissions processes Japanese law schools will develop. Moreover, given the current Japanese bar exam culture, it is likely that if test scores are emphasized, students wanting to get into law school will, like students who now want to pass the bar, spend so much time on cram courses that it interferes with their undergraduate educations.

I also fear that Japanese law schools will treat their student body's average LSAT scores as a measure of their school's status, and that this will further and inappropriately accent the weight given such scores in the admissions process. But despite these dangers, I do not advocate abolishing law school admissions tests. I think they are valuable tools in separating students likely to do well in legal studies from those likely to have great difficulty. The tests fall down when they are used to make finer distinctions.

My view about legal reform in Japan is that when Japan looks to western legal systems for ideas, its aim should not be to borrow practices from countries like the United States but to improve upon them. Japan has an opportunity to do this in dealing with the problems posed by overreliance on tests like the LSAT. Even with the expansion of the bar, there are likely to be so many applicants to the new Japanese law schools and so few places that large numbers of applicants, probably more than the new schools can accommodate, will have test scores predicting a strong likelihood of law school success. If this judgment is correct, I think Japan should work to develop a valid law school aptitude test administered by a central testing agency. However, the agency should report only three scores: Highly predictive of law school success; moderately predictive of law school success; and predictive of serious difficulty in law school. If I do not overestimate the abilities of Japanese students, the top score would be achieved by more students than there are available places in law schools, and most other applicants would have scores that fall in the middle category.

My proposal is that in admitting students, schools could choose whomever they wished, provided that no more than 85 percent of those accepted had scores in the first category. This would identify students predicted to do very well in law school and let schools fill their classes mainly with these students. But it would not distinguish among closely ranked



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students and would accordingly not overweight a measure likely to correlate only weakly if at all with career success. Moreover, because test score differences would not separate most applicants, the new law schools would be impelled to think seriously about the characteristics they wanted to have in their students and their student bodies as a whole. They would also have to think creatively about other measures of law school success, and the importance of college grades would no doubt be elevated. This would draw students away from cram schools and lead them to work harder as undergraduates. Finally, the reservation of at least 15 percent of the places for students not scoring in the top group would guarantee that students who did not test well would have some opportunity to enter even the best law schools.

After some experience with this system, it could be validated by looking at the more fine-grained scores that the testing agency had collected but not reported to the schools. If within the group of admitted law students, finer distinctions were substantially better predictors of law school and post law school success, the system could be revised to change the



number of scores reported and to refine the identification those predicted to have different levels of success.

I do not expect Japan to adopt this proposal, just as I would not expect anything like it to be adopted in the United States. But Japan has an opportunity to invent a new culture of law school selection that we in the United States do not, and it will be a shame if the opportunity is wasted. My ideas are just an example of what might be done. Creative Japanese thinkers may come up with new and better ways to select students for law school without replicating the overreliance on test scores that in my view flaws the American system of law student selection.



I am not, however, sanguine about the chances that Japan will achieve this goal; indeed, I would be surprised if this were a goal. The Japanese legal establishment seems even more enamored than we are with the apparent objectivity of high stakes testing and seem even more convinced that high test scores measure merit. Not only does Japan's bar examination system take sorting by test scores to an extreme, but the only admissions requirement imposed by the plan for transforming Japanese professional legal education is the development of a Japanese LSAT. Also, it is predictable that the highest test scorers on a Japanese LSAT would gravitate to the nation's most prestigious law schools,

beginning with *Todai*. These schools will not want to lose a marker that will validate their prestige. Thus, despite Japan's marvelous opportunity to establish a new and better model for selecting law students, I don't think a new model will emerge there. Rather I think that if we in the United States want to improve our selection of law students and give the LSAT a less decisive role, we must look to ourselves for reform. I hope I am wrong. A good measure of the success of the Japanese effort to reform legal education on an American professional school model would be if the system they created had elements that American law schools, in turn, wanted to borrow. Admissions is the place to begin.

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In addition to his socio-legal teaching, Lempert teaches evidence and is co-author of *A Modern Approach to Evidence*. He has also written a number of articles in the field of evidence law, including a series of articles on statistical and other issues posed by DNA evidence and an early piece which called the field's attention to the possibility of using Bayes' Theorem as a model for thinking about issues of relevance and proof. Recently he has been interested in the role of legal fictions in evidence law.

Lempert has served on the University's Presidential Advisory Committee on the Life Sciences and is the founding director of the University's Life Sciences, Values, and Society Program.

# Teaching lawyers:



## American practice and Japanese possibilities

BY CARL E. SCHNEIDER

Prospective lawyers, I suppose, need to learn three things: First, legal doctrine, or what the law says; second, legal analysis, or how to reason about a legal issue; and third, legal practice, or how to apply legal doctrine and legal reasoning to the lawyers' tasks of advising clients, drafting legal documents, representing clients before tribunals and governmental agencies, negotiating for clients, and so on. In no country I am familiar with do law schools genuinely attempt to teach the last of these — the practice of law. Rather, that task is primarily left — expressly or tacitly — to some other institution: In England, to apprenticeship combined with instruction from the two parts of the profession (barristers and solicitors). In Germany, to the *Referendariat*, a series of

apprenticeships in different practice settings. In Japan, to classes at the Legal Training and Research Institute and to the apprenticeships that follow.

The American system is perhaps the least formalized. American schools do generally have “clinical” courses in which students under supervision represent clients (usually people who cannot afford a lawyer). Essentially, however, American law schools expect preparation for legal practice to come from *de facto* apprenticeships in law firms. In fact, I would argue that, no matter what system of schools and apprenticeships a country has, the *real* work of teaching young lawyers how to practice law is most crucially done in their first job, when particular employers teach them how to practice particular kinds of law in particular jurisdictions in particular ways.

The training of sophisticated lawyers today is increasingly on the medical model: you go to law or medical school for the intellectual equipment you need, then you go for three or six years to a law firm or hospital for a “residency” in which you learn the specifics of your specific craft.

Legal education around the world agrees, then, in leaving practical training to practical people in practical settings. This worldwide division of labor seems to me entirely sensible. Much about the practice of law is best learned while working with experienced lawyers and is only inefficiently taught in classes. Thus no law school should hope to turn out finished lawyers.

But recall our second requirement of legal education: Shouldn't law schools at least hope to turn out lawyers who know the law? My answer, which may surprise you, is: up to a point. Of course there are legal doctrines every lawyer should know, that are building blocks of law of all kinds. But certainly in America and, I would argue, even in a code country, it is both (1) increasingly impossible to learn all the law you will need and (2) increasingly unnecessary to learn all the law you can. In America, of course, we have so many jurisdictions that no human being could read, much less learn, all the law that floods our country. But even in Japan, your Diet, your courts, and your very imposing bureaucracy churn out new law at accelerating rates. And the practice of law in Japan is ever more international, so that knowledge of foreign legal systems, which is already impressive, must become even more thorough.

At the same time, as I just suggested, lawyers find themselves using an increasingly narrow range of law as practice inexorably becomes more specialized. Specialization is already far advanced in the United States and is proceeding with laser-like speed in Europe. As Japan expands its bar, that process must seize Japan. Not only is law specializing rapidly and relentlessly, it will change in ways we cannot imagine during the 40 years of a lawyer's professional life.

But of course the fact that it is increasingly impossible and increasingly unnecessary to teach students every legal doctrine does not mean we should teach them no doctrine at all. The question is, how to teach doctrine effectively. Here I must be frank about two things. First, at base, professors don't teach law — students learn it. They learn it by sitting alone in a room struggling to make sense of involuted and exfoliating doctrines, by rereading primary materials, by scrutinizing secondary sources, by searching for explanatory principles, by outlining sprawling topics, by memorizing crucial ideas. No amount of professorial explanation can make this labor unnecessary; no professorial instruction

can prove more rewarding than this lonely labor. I am even perverse enough to believe that students often understand more deeply and permanently law they have puzzled out than law professors have lucidly explained. In sum, professors can be helpful, but they cannot learn things for other people.

Second, I must be frank about lectures. Normally, they are useless. They are a poor way to help people learn doctrine. At least where a field is not changing rapidly, lectures are open to one crushing question — if you have something to tell us, why not write it down and let us study it efficiently, carefully, and conveniently? True, a brilliant lecture is a thing of beauty and a joy forever. But the brutal truth is that few people can write brilliant lectures even occasionally, much less three times a week for 15 weeks. I attended a distinguished university where professors in large courses lectured. I remember clearly only two courses, and in most courses I discovered a dreadful truth we all know but are too polite to speak — lectures are often boring, and the student who listens is constantly tempted to slip into sleep. Worse, the professor who lectures is constantly tempted to slip into indolence. Once you write lecture notes, it's easy to re-use them eternally. Whatever vitality your lectures may have had, they lose, and whatever interest in teaching you may have had, you lose.

Let me say a final frank word about teaching substance. If that's all you want to do, you don't need a law school. In every system I know well, a commercial enterprise has arisen for teaching students enough substance to allow them to pass a bar exam. American students grind through a few weeks after law school at a commercial school that crams enough information into them that they can pass their state's bar exam. German students skip professors' lectures and pay someone they literally call a "repeater" to stuff enough law into them to get them through the *Staatsexamen*. And as you know better than I, Japanese students also seek commercial help in learning the law. Indeed, some of your *bengoshi* never even studied law in the university.

Well, where does this leave us? To answer that question, let me remind you of the third thing students need to learn if they are to become lawyers — legal analysis, or how to read a legal document, to reason about a legal issue, and to formulate a legal argument. I said the substance of law cannot be taught efficiently through lectures. But these skills cannot be taught at all by lecturing. To understand why, we must begin with the fascinating studies of how professionals reason that suggest that we do not do our work in the purely logical way one might expect.

Professionals apply abstract learning to novel problems not governed by straightforward rules. But they do not start at first principles and work their way logically through to a solution. Rather, they use something like intuition. They look at a novel problem, and typically a solution comes into their minds. It appears because professionals, having seen thousands of problems, have developed a file cabinet of typical patterns associated with typical solutions. They scan these patterns so fast that they do not know what they are doing. The best example comes from studies of chess masters. They look at a board and a plausible move presents itself in their minds. They then examine logically what their file of patterns suggests are likely to be weak aspects of the move. But 85 percent of the time, the first move that occurs to the expert is the move the expert makes.

So our problem is to teach students how to reason in a way that relies crucially on a kind of intuition. Lectures won't work. First, professionals do not know how they reason, so they cannot describe the process well enough to allow the novice to learn it. Second, the only way to build up a file of patterns is through experience. This means that the only way to learn to think like a lawyer is to practice.

The old way to get practice was to apprentice yourself and grasp whatever experience your master would permit you. This, however, is clumsy and expensive, and today American law

schools give students practice in understanding, criticizing, and formulating legal arguments and documents through what we modestly call the Socratic method. In the classic version of the form, the Socratic professor assigns students a text — a statute, a case, a contract, or what have you. The professor asks students a series of questions. These are the questions an experienced lawyer implicitly asks in formally analyzing the problem. Through these questions, students gradually acquire a sense of the kinds of questions they should learn to ask (at first deliberately, eventually by second nature). The professor asks students another kind of question as well. These are questions about students' responses to the first set of questions. These latter questions are designed to help students criticize their initial responses, to teach them the difference between a good and a bad argument, to help them probe ever deeper into an issue. Each class thus becomes an hour of practice in analyzing legal problems. By the time students graduate, they have practiced legal analysis under expert guidance so often that they should be able to do it adroitly on their own.

To make this generalization more concrete, let me briefly describe my first encounter with the Socratic method — an encounter still lively in my mind after a quarter century. At 9 a.m. on an early day of September 1975, I took a seat in Hutchins Hall Room 150 for my first law school class — Professor Francis Allen's course in criminal law. At 9:05, Professor Allen marched to the podium, arranged his notes, looked gravely out at the class, and asked, "Mr. Smith, what are the facts in *Regina v. Dudley & Stephens*?" Mr. Smith seemed to have only a pretty superficial sense of those facts. I discovered (as I tried to answer silently while poor Mr. Smith struggled aloud), that I had hardly a better one. The night before, the facts had seemed quite simple and wholly unforgettable. Dudley and Stephens had been crewmen on a yacht which had sunk. With another crewman and the cabin boy, they had escaped in a small boat. They soon ran out of things to eat.

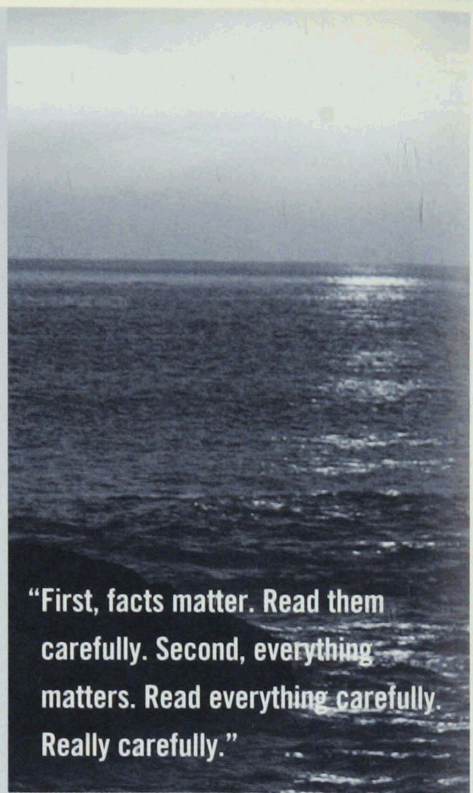
Eventually, they began lunching on the cabin boy. Soon afterward, they were rescued, brought home, and (to their surprise) charged with murder.

It seemed, however, that there was more to the facts than this and that something more was, somehow, important. Professor Allen seemed unsurprised we had not grasped this, but he was remorseless. He eventually wrenched every significant fact out of the class. Even on that first day, then, he taught by example two momentous lessons. First, facts matter. Read them carefully. Second, everything matters. Read everything carefully. Really carefully.

After Professor Allen had finally gotten us to tell him just how many cans of turnips had been on board the lifeboat (two), he plowed on with question after question about the procedural history of the case. It had not occurred to us to care about the legal procedures that had brought the case into the court, but we began to see that they might matter. And we were reminded by these questions that everything matters and that everything must be read carefully.

Professor Allen then asked someone to describe the issue the court sought to resolve in its opinion. In panic, I scrabbled through the opinion for a sentence beginning, "The issue before us is whether . . ." There wasn't one. I'd have to figure it out by myself. The student called on flailed away. His answer sounded OK to me, but a battery of questions soon convinced me otherwise. But if that was wrong, what was right? As I wrestled limply with that question, another student tried another answer, and so on until Professor Allen had refined the class's answer into something which did not dissatisfy him too painfully.

Having defined the issue, Professor Allen asked us what the court's answer was. That we figured out without too much difficulty. He then asked whether the answer was right. Well, I supposed that if this court had said it was right, and if the case was assigned to read, its answer certainly ought to be correct. Somebody tried to say as much. Bad mistake. What made us think courts never erred? But Professor Allen proffered help. What



**"First, facts matter. Read them carefully. Second, everything matters. Read everything carefully. Really carefully."**

authority, he inquired, had the court consulted? We scoured the opinion for statutes and precedents, but Professor Allen wearied not until we had uncovered every one. Then, well, then he wanted to know whether the court had used its authorities persuasively. Did they really say what the court said they said? Was the court's rebuttal of contrary authority really convincing?

Then Professor Allen asked whether the court's reasoning was sound. We scrutinized every step of the court's reasoning, searching, under the prod of remorseless questions, for ways to pry apart each link in the chain and for ways to reinforce each link. And as if this were not enough, we then had to construct a dissent in the case. By this point — a number of days into the semester — I thought we'd pretty much established the answer to Professor Allen's question about whether the court's resolution of the issue in the case was correct. But no, for then he asked whether the result was consonant with justice.

Then Professor Allen suddenly shifted ground and asked a series of questions about hypothetical cases in which the facts of *Dudley & Stephens* were altered in cruelly imaginative and cleverly revealing ways. Each time, he asked whether the principle of *Dudley & Stephens* led to a tolerable result.

Where, you ask, was Schneider during all this? I sometimes summoned up the nerve to raise my hand, and I occasionally produced an apparently not intolerable answer to a question, but there was always another and yet another. I began to try to anticipate what questions Professor Allen would ask. I kept re-reading *Dudley & Stephens*, scouring it for the unexpected things he kept seeing in it. Each evening as I prepared for class, each night in my tormented dreams, and each morning as I walked to school, I rehearsed my answers to the questions I expected. In short, without realizing it, I had been seduced into beginning to think like a lawyer. I had begun to read more carefully and critically. I had begun to ask the questions lawyers ask. I had begun to suppress some kinds of answers and pursue others.

As I think you can see from this account, the Socratic method does what lectures cannot — it demands that students do what they most need to do — practice some aspects of the lawyer's craft. This alone justifies the Socratic method, particularly when the only practical alternative is the lecture. But that method has other, agreeably practical, advantages. Let me again be frank. Learning is hard. It hurts. People postpone it as long as they dare. They skim reading, they skip class. But students who know they might be asked questions in class have an incentive to prepare regularly. Even off its peak, then, the Socratic method stimulates students in the way Dr. Samuel Johnson wryly described: "Depend upon it, Sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." Catholic doctrine speaks of occasions for sin; the Socratic method imposes regular occasions for learning.

The Socratic method not only gives students regular incentives to work, it rewards them for it. Because the method asks students to learn by doing, because it corrects errors and rewards insights, because it challenges students to react and reflect, because it more deeply engages students' minds, and because it draws them into the work of learning and thus induces them to learn more richly and

deeply, it commonly repays — and thus invites — the labor of learning better than lectures.

This leads me to a question I am often and urgently asked when I discuss the Socratic method with Japanese audiences — doesn't it scant the teaching of doctrine? No. In fact it induces students to learn substance exactly because it gives them an incentive for learning it — the desire to use it in preparing for and participating in classes. And it gives the professor a sense of how well the class is progressing.

Another question I am frequently asked always puzzles me — how can the Socratic method be used to teach students who do not know the law? This is not a problem, and, to be honest, I am not sure why it should be. You don't have to know everything to discuss something. Most legal issues require knowing a set of texts, and these texts can be presented for the student's reading before the discussion. The Socratic method helps students ask the right questions about what they are reading. The less experienced and learned students are, the less sophisticated the discussion. But students must start somewhere whatever method professors use, and their understanding is always superficial at first. The Socratic method moves novices toward expertise faster than any alternative, yet it can challenge even the most advanced students to confront the most advanced problems.

Japanese audiences also suggest to me that Socratic teaching is so difficult that professors will resist using it and use it badly. Good Socratic teaching is arduous. Every moment poses fresh pedagogical problems, problems that vary from student to student and day to day and year to year. The professor is like a sheepdog: He must walk into class the master of all the relevant material, knowing his goal and his road to it, flexible enough to snap up any pedagogical opportunities that present themselves. He must pose searching questions that nudge students toward productive responses, listen aggressively to students' answers, quickly sense when the class has succumbed to some misapprehension, inject the class with

energy and — please — humor, and, snipping and snapping at its heels, herd it toward enlightenment.

I admit it: to do all this superbly requires rare gifts. But to lecture superbly requires gifts at least as rare. *The real question is which method, as used by the average professor, is likeliest to help students learn.* Anyone bright enough to be a professor is bright enough to ask questions students will benefit by pondering. Simply by asking enough rigorous questions, the professor goes far toward teaching students to think, and to think like a lawyer. Yet perhaps I should make one more admission: Socratic teaching demands harder work than lecturing: You can't just rely on last year's lecture notes. On the other hand, Socratic teaching repays the investment. It presents rich and rewarding pedagogical opportunities. It invites professors to engage profitably with the class on issues of moment. Of course the professor can anticipate the available analytic approaches. But I have not infrequently been surprised by which of the possible avenues the students prefer and by their arguments for them. In fact, students' reactions to the ideas in my courses have so much interested me that many of the articles I have written grew out of my attempts to explain those reactions to my students and myself.

Finally, I often hear that while Socratic teaching may work in America, it must fail in Japan. This argument partly rests on the belief that Socratic teaching is easiest in a system prolific of cases and hardest in a code system. There is something in this. Cases can be wonderful vehicles for discussion, and students find cases more agreeable to analyze than statutes, which can be repellently complex and impersonal. But any legal document can successfully be taught Socratically. What is more, judicial opinions are increasingly prominent in Japanese law, and stimulating hypothetical cases can readily be devised as a basis for analyzing

code provisions. Much will depend on professors' willingness to write casebooks. But I can testify from having worked on two casebooks that writing them is stimulating and satisfying.

A practical barrier to teaching Socratically in Japan is that classes can be large (although not as large as many German classes). However, you can teach Socratically in classes of even 200 students in a room with good acoustics. It is, of course, preferable to have classes small enough that each student speaks frequently. But even a student who is not speaking can learn much from a Socratic dialog by listening attentively and answering each question silently. And large classes have the advantage of offering many well-prepared students with differing opinions.

Another reason people suspect Socratic teaching is less suited to Japan than America is cultural. That teaching requires students to participate vigorously in discussion. American students are notoriously disputatious; Japanese students are not. I acknowledge the difficulty but am optimistic about its solution. I have taught Socratically for many years not only in Japan, but also in Germany, another country commonly thought to present cultural barriers to Socratic teaching. True, my students volunteered for the experiment, but the results were uniformly uplifting. Students consistently reported themselves thrilled at the experience, which they thought educationally transformative in a way nothing they had ever encountered had been. "You really made me think" is perhaps the comment I hear most often. Students even perceived that being called on in class was a sign of the professor's concern for their ideas and their progress, a truth American students do not always cherish.

To be sure, Japanese and German students defer to age and rank in a way American students could hardly imagine or abide. But this can be put to good use, if the faculty exercises its authority to establish from the students' arrival that they are expected to speak vigorously in class. This works especially well if the students are encouraged to dispute with each other rather than with the professor. I am confirmed in all these happy thoughts by the fact that when I visited classes at Japan's Legal Training and Research Institute, they were conducted in a lively Socratic style that both professor and students seemed to relish.

Indeed, this is the moment Japan can structure its legal education to make Socratic teaching succeed in a way that is barred in Germany. First, you may choose your students. There are people of real intelligence who will never learn to think like a lawyer. A graduate program in law can exclude such people and give professors a class composed of people with an aptitude for the kind of reasoning the Socratic method teaches. This makes life delightfully easier for both students and professors. Second — and here again I speak with immoderate frankness — students prepare for class diligently and participate actively in it not just because it is stimulating, but also because they fear the career consequences of indolence. If an American student wants a good job, he needs good grades. This gives American students an essential incentive to take class seriously, an incentive German and Japanese students lack.

I have essayed a case for the Socratic method of teaching law. Part of that case has been that the Socratic method is preferable because it so far surpasses the alternatives. But I have also tried to convince you that that method abounds in virtues. Let me be frank with you one last time. I do not promise you a rose garden. There are days when my students want the cup of my questions to pass from their lips. There are days I am discouraged by my failure to inspire my students with my love for my subject and to bring them to the level of

craftsmanship lawyers owe their clients. Teaching is frustrating because it is not easy for an expert to know what it is fair to demand of novices. It is hard to find the just balance between sympathy and standards. Nevertheless, ultimately, I am sustained by my conviction that Socratic discourse can be a superb way of teaching and learning. The Socratic method brings to the classroom something that can be had in few other ways; for in it the teacher engages the student in a disciplined, rigorous, and rewarding encounter with the logic and the life of the law.



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PHOTO BY GREGORY FOX

Linda Liske, whose elegant touch shaped the design of *Law Quadrangle Notes* for the past nine years, died in May after a courageous battle with cancer.

She is missed.

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