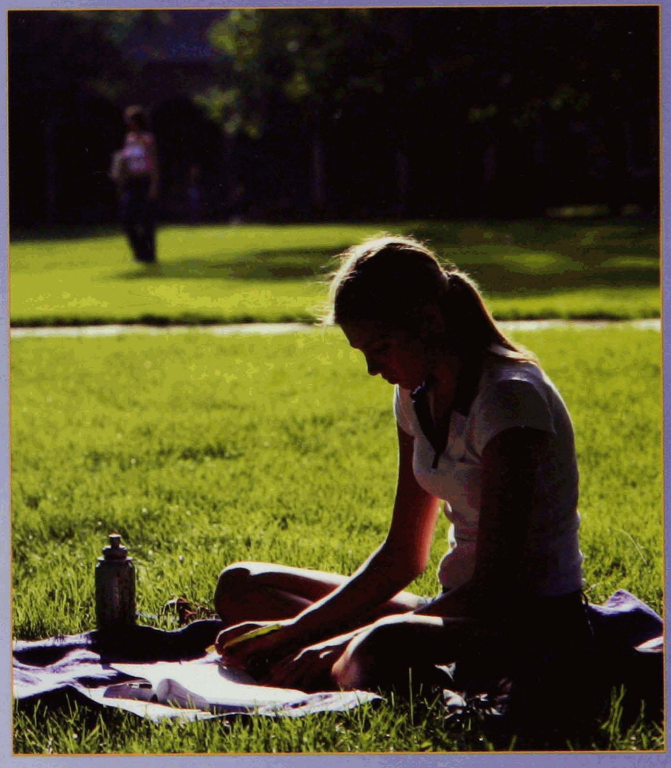
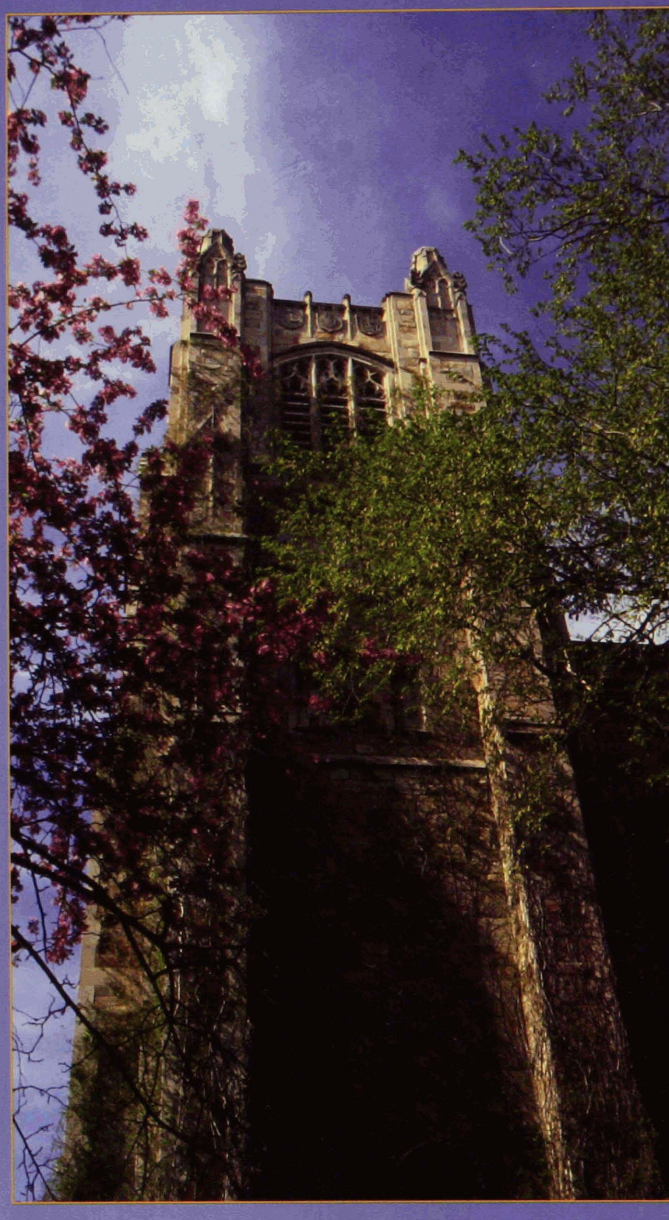
LAW QUADRANGLE NOTES





Shedding a tear

Evidence? Or emotional fuel?

Face to face with the right of confrontation

The University of Michigan Law School
46.3 – 47.1 • Spring 2004

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

46.3–47.1
SPRING 2004

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Editor, *Law Quadrangle Notes*,
University of Michigan Law School,
B10C Hutchins Hall,
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FACULTY ADVISORS:
Steven P. Croley, Edward Cooper,
and Yale Kamisar

EXECUTIVE EDITOR:
Geof L. Follansbee Jr.

EDITOR/WRITER: Tom Rogers

WRITER: Nancy Marshall

DIRECTOR OF COMMUNICATIONS:
Lisa Mitchell-Yellin

DESIGN:
Brent Futrell
Kimberly Ellsworth

www.law.umich.edu

Cover photos by Gregory Fox and Philip Dattilo

PHOTO CREDITS INSIDE:

Philip Dattilo
Gregory Fox
Brent Futrell
Marcia Ledford, University of Michigan Photo Services
Thomas Treuter

ILLUSTRATION CREDITS INSIDE:

Michelle Ranta
Jorge de Araujo, Cambridge University Press
Cornell University Press

Have you moved lately?

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

Law School
Development and
Alumni Relations
721 South State Street
Ann Arbor, MI 48104-3071

Phone: 734.615.4500

Fax: 734.615.4539

jteichow@umich.edu

Non-alumni readers should write directly to:

Law Quadrangle Notes
B10C Hutchins Hall
Ann Arbor, MI 48109-1215

Address all other news to:

Editor
Law Quadrangle Notes
B10C Hutchins Hall
Ann Arbor, MI 48109-1215

Phone: 734.647.3589

Fax: 734.615.4277

trogers@umich.edu

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- **Michigan runs on the national track**

  The Law School is hot. Graduates like you know how good this Law School is. So do growing numbers of those looking at the possibility of attending law school. We present a package of stories that reflect the Law School's growing attraction to students from throughout the United States and even the world, offers an insider's look at applicant selection, chats with students and graduates, and invites you to "a somewhat typical Wednesday" here.

- **Building a home for the laws of the world**

  The second and concluding portion of Law Library Director Margaret Leary's chronicle of development of the Law School's outstanding international law library collection. With comments from researchers who use the renowned collection.

- **Reunions: Graduates meet the new dean, learn "state of the Law School."**

  The listening and questioning lost no vigor for coming late on a Friday afternoon. Graduates back to the Law School for their reunions crowded into room 250 of Hutchins Hall to hear Dean Evan Caminker discuss "The State of the Law School" and to question him afterward. With final reunion reports for The Annual Report of Giving.

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- **Shedding a tear**

  "The tale that follows is also one of great gender anxiety, and it is true. I even think it happened exactly as I will relate it. . ." An excerpt from Faking It.

  — *William Ian Miller*

- **Evidence? Or emotional fuel?**

  "In theory, jurors are supposed to separate their decision about a defendant's guilt from their reaction to the heinousness of his conduct. If the evidence is weak, they should be just as willing to acquit a terrorist as a shoplifter." An excerpt from Defending Mohammad: Justice on Trial.

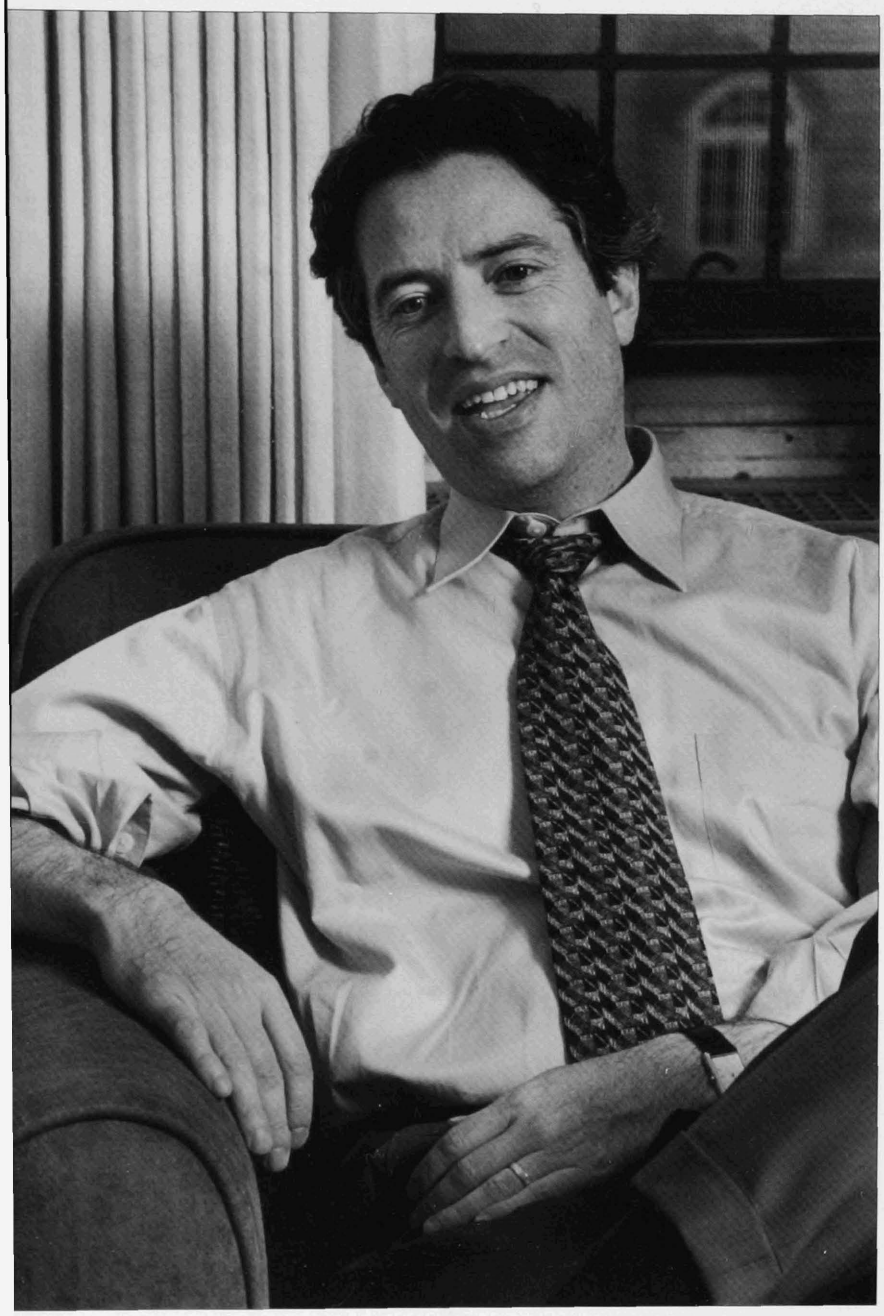
  — *Robert E. Precht*

- **Face to face with the right of confrontation**

  By granting certiorari *in this case, the U.S. Supreme Court has created an opportunity to replace an unsatisfactory conception of the Confrontation Clause with one that is historically well grounded, textually faithful, intuitively appealing, and straightforward in application. An excerpt from the* amicus curiae *brief filed in* Crawford v. Washington.

  — *Richard D. Friedman*

Message
from Dean Caminker



During the past six months I've driven across the state and flown around the country and even the world to meet with many hundreds, surely by now thousands, of Michigan Law School alumni and families. Airport security obstacle courses aside, it's been great fun. Over breakfast bagels and after-dinner drinks and every imaginable meal in-between (including Rose Bowl peanuts, sigh), I've enjoyed getting to know you and sharing news of the Law School with you. And I've learned a great deal from you through your questions and comments: how your legal training helped enable and shape your various career trajectories; how the practice of law has changed and the impact of such change on the challenges facing legal education today; and what you view as the most important aspirations for the Law School at the beginning of the 21st century.

These gatherings have confirmed what I have long heard: that our graduates form and maintain a very special relationship with this School and the people within it. The relationship begins with the lifelong value of the rigorous legal education you received here. Indeed, most of you still capitalize on that experience in your professional careers, and all of you draw some confidence and inspiration from your days in the Quad.

But as you've regaled me with story after story of your travails here, it's become increasingly clear to me that there's much more to it than just your gratitude for a top-notch legal education. At the heart of the matter is a personal connection to the institution and the

people you met here. Virtually everyone has a special memory of a particularly enlightening — or horrifying — experience in the classroom or a Crease Ball or Halloween costume party or some other social event in the Lawyers Club (maybe even involving donkeys, I hear). And virtually everyone still maintains some connections to former classmates, as friends, business associates, and perhaps even clients.

But the most inspirational and gripping stories you share concern the faculty, those special men and, increasingly, women who have made such significant and long-lasting impressions on you. I've heard tales of the greats of the 1940s and each succeeding generation, leaders in their fields and larger-than-life figures in the classroom. And while the names change the traditions continue; for every Hart Wright there is a Doug Kahn; for every Ralph Aigler there is a J. J. White; for every Paul Kauper there is a Tom. And then there's Yale.

Almost all of you ask about Yale Kamisar, knowing that he retired this past December. He taught his last class here on December 3rd. As is traditional, the entire faculty joined his students for the last part of the class by filing in the back and watching the master at work. When he finished, and the curtain fell for the last time (I mean on Yale, rather than on a hapless student), the faculty engaged in its traditional "clap-out," leading the students in a standing ovation as Yale exited the room. Not a dry eye in Hutchins Hall. We also celebrated Yale's many scholarly accomplishments at a dinner reception, which unsurprisingly turned into a roast. Bookended by a doctored audiotape of the *Miranda* oral argument before the Supreme Court suggesting that the Justices were bent on ruling in the manner most conducive to advancing Yale's scholarly career, and a search by uniformed officers who discovered some apparent contraband in a bag underneath Yale's chair, the faculty regaled each other with stories — few of which needed embellishment — of Yale's public accomplishments and private escapades. (My favorite characterizations, both offered by Ted St. Antoine, were that Yale was capable at any time of "auto-provocation" into an argument with himself, and that Yale is a "bull who carries around his own china shop").

Most memorable of all was the recounting of the many ways in which Yale was truly an intellectual leader of his generation, how he repeatedly influenced public discourse and decisionmaking on critical social issues of the day through his academic articles and casebooks, through his public op-ed and other advocacy pieces, and through his contribution to generations of students' own sense of mission. Yale made an inestimable contribution to our nation's efforts to grapple with such societal quandaries as police-suspect interactions, physician-assisted suicide, and, most recently, governmental responses to terrorist threats. In this sense, Yale truly exemplifies one of the central aspirations of the Law School — to study vexing issues of the day, and to contribute (both directly through the published word and indirectly through empowering and inspiring students) to the public weal by offering solutions or wise counsel.

Without a doubt, Yale is one-of-a-kind. And yet, I've heard many of you describe other faculty in similar terms. The truth is, while the individuals change, the greatness of the faculty continues on. And, while the names may be less familiar, there are professors here today who are equally talented, equally driven to make the world a better place through their study of and influence on the law and legal institutions, and almost equally memorable personalities.

As I continue my travels around the country and the world, and as I write columns and letters, I will share with you some of the specific actions we are undertaking and some of the specific challenges we confront as we ensure that the Yale Kamisars of the future are part of this faculty. No dean can have a higher priority.

Evan Caminker

In Detail

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Olin Lecture focuses on creativity

Why not? asked Ian Ayres. Why not "grandfather" existing postage stamps instead of issuing new ones when rates rise? Why not have a fixed rate mortgage that automatically re-finances when rates fall? Why not have babysitting at movie theaters, or Starbucks in public libraries?

Ayres, the William K. Townsend Professor of Law at Yale Law School, delivered the annual John M. Olin Lecture in Law and Economics at the Law School last fall. He called his talk "Why Not? How to Use Everyday Ingenuity to Solve Problems Big and Small." The lecture was part of the Law and Economics Workshop series of talks sponsored by the Law School's John M. Olin Center for Law and Economics.

Creative thinking, sometimes called "brainstorming," has been used in many fields, and can be useful in the legal field, Ayres said. "Is it possible to teach legal creativity?" he asked. "I want to suggest, guardedly, that the answer is yes."

Urging listeners to think in new, unrestrained, "out of the box" ways, Ayres noted that such thinking has led to the development of new pollution discharge regulation tools like pollution credits and to the use of "virtual strikes" to solve labor issues. "Virtual strikes," in which employees continue to work but earnings and profits are diverted, have been used at least twice in the United States and three times in Italy, he reported.

Sometimes, you've got a problem in search of a solution, he said. At other times, it may be a solution in search of a problem to solve. Sometimes, he suggested, "flipping things around let's you see things you haven't seen before."

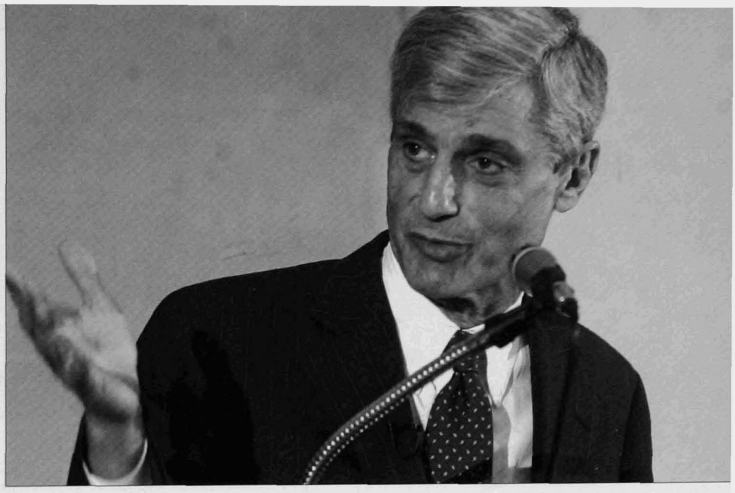
Law School opens fund-raising campaign May 14

A few weeks from now, on May 14, the University of Michigan Law School will embark on a major fund-raising campaign. For the past several years, special task forces, volunteer groups, and advisers have joined the leadership of the Law School in taking a critical look at what the future holds for legal education and what resources are essential for Michigan to affirm its leadership position among the very best law schools.

The Law School's previous multi-year fund-raising effort, the "Campaign for Michigan," ended in 1997 after building support for students, programs, and faculty totaling more than $91 million. The campaign launching in May will complement that effort and focus on one of the Law School's greatest assets: The Law Quadrangle.

The Law School campaign is part of the overall University campaign, titled "The Michigan Difference," which will benefit all facets of the University, including students and faculty as well as the facilities used in the pursuit of new knowledge. With the historic Law Quadrangle recognized as the architectural jewel of the University campus, the Law School's building project is expected to be a prominent part of the entire University campaign.

Volunteers and supporters from the Law School and the University will come to campus for a kick-off celebration on May 14. The Law School is busy planning for its role in the day's events.



Robert E. Rubin

Former Treasury Secretary Rubin:

Economic squeeze reduces options

Trade imbalances, tax reductions, and a lack of fiscal restraint are creating debits that the U.S. economy eventually must make good, the former Secretary of the Treasury and current director/chairman of the executive committee of Citigroup told an overflow audience at the Law School earlier this academic year.

These issues are "absolutely critical to the future of our economy," Robert E. Rubin explained in the Dean's Special Lecture in November. Speaking in a packed Honigman Auditorium, Rubin mixed humor — his well-timed, self-deprecating references to his new book,

In an Uncertain World: Tough Choices from Wall Street to Washington (Random House, 2003), always drew laughter — with economic savvy in his talk, called "Globalization, Trade, and Our Fiscal Morass: The Challenges Ahead."

The surpluses that had been built up during the economic expansion of the 1990s made it possible for the United States to respond to the terrorist attacks of September 11, 2001, without tax increases, Rubin said. But the $9 trillion surplus of the '90s now is predicted to become a $5.5 trillion deficit over the next few years.

"These enormous debts greatly affect our ability to respond to financial emergencies. . . . Fixing this morass, now that the fiscal hole is so deep, is going to take a long time," he predicted.

"The economic potential of our country is enormous, but realizing that potential is going to be heavily dependent on the policy choices we make [and] upon recognizing the complexity and importance of what we face."

Assistant Professor Michael Barr, who worked with Rubin at Treasury during the Clinton administration, introduced the former secretary, describing him as "the principle architect of the Clinton economic plan." Barr noted that among his accomplishments Rubin designed the financial aid plan that bailed out Mexico when its economy appeared to be spiraling into chaos. Rubin's plan reversed Mexico's decline and has brought the U.S. a "net gain of $580 million," Barr said.

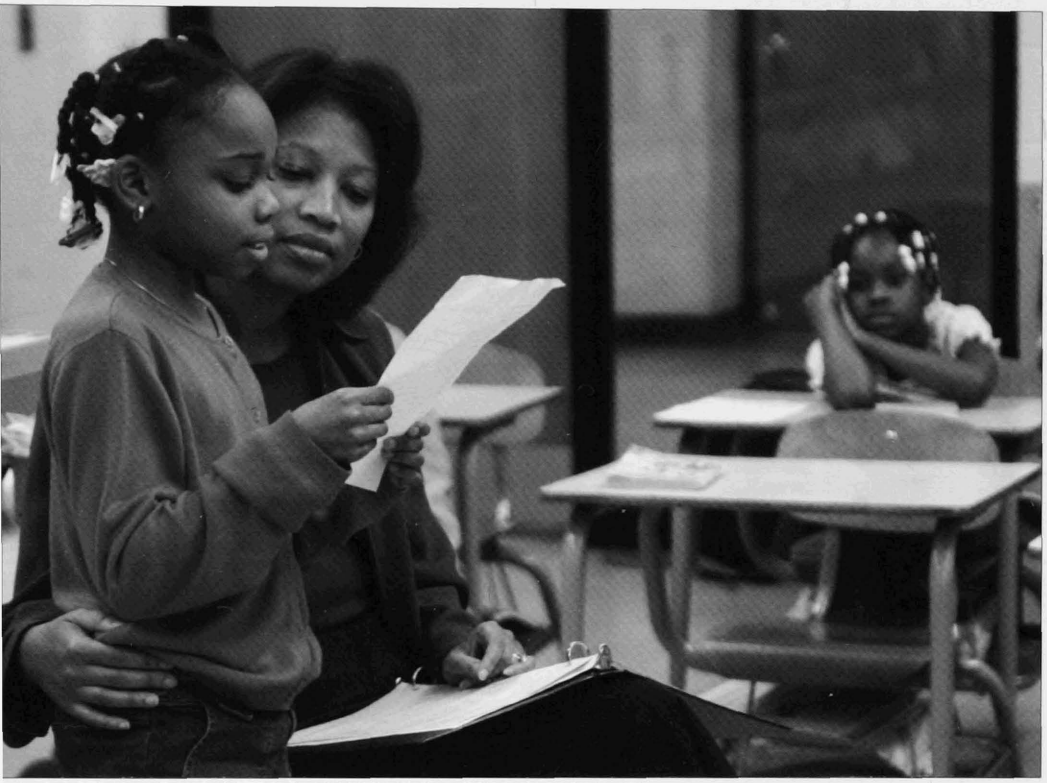
Barr also noted Rubin's concern for society's less fortunate members, and said that because of Rubin's philosophy it was not a surprise that the first position he accepted when he left Treasury was to head the Local Initiatives Support Corporation, whose 38 offices across the United States make it the nation's leading community development support organization.

Rubin touched many bases in his talk, among them:

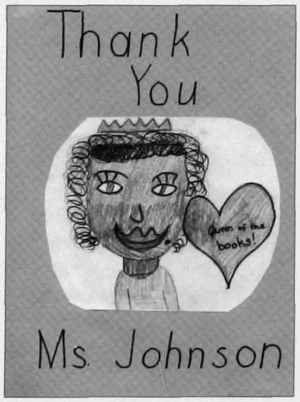
- The expansion of the1990s was "remarkable" but also led to "imbalances" like high consumer debt and excess production capacity, and these in turn have led to an "inevitable period of difficulties."
- Really complex [economic policy] decisions are based on probabilities and tradeoffs. "The number one priority is to have this mindset. Only with this mindset can we come to grips with the complexity of the economic environment, and, I think, the geopolitical environment."
- The "big question" is once recent stimuli like tax cuts have worked through the system ("which forecasters say will be sometime next year"), the question is if the recovery will continue and become sustaining. "I think that's uncertain."
- The United States should increase its foreign aid. Half the world's people earn less than $2 daily, and one-fifth earn less than $1 per day. Impoverished people are more likely to support terrorism.
- Imports can be good for the U.S. economy because they can stimulate new domestic economic activity.
- Liberalized trade is preferable, and "protectionism would only make things worse."

Assistant Dean Charlotte H. Johnson, '88:

'It's not enough to sit behind our desks'



Assistant Dean of Students Charlotte H. Johnson, '88, works with third grade students at Glazer Elementary School in Detroit, where she visits regularly.



A thank you card made by Pat Davidson's third grade class at Glazer Elementary School in Detroit, where Johnson volunteers as a reading coach.

Third grade teacher Pat Davidson thought Charlotte H. Johnson, '88, was one of the first-year law students when Johnson arrived at Glazer Elementary School in Detroit last summer. Assigned to Davidson's class, Johnson, who is an assistant dean of students at the Law School, arrived with a group of students who came to Glazer for the service day component of their new student orientation last fall.

Johnson helped the third graders with reading and thoroughly enjoyed the experience. "Why don't I just continue this and serve as a reading coach to the kids?" she wondered afterward. "Teachers can't do it all. Parents can't do it all."

Davidson welcomed her back, so Johnson now visits the class frequently. She has taught the third graders to develop a contract to do reading between her visits and give book reports when she returns. She has shared stories of her growing up years with the children, and discussed with them and showed photos of her visits to South Africa as director of the Law School's externship program there.

"A role model," is how Davidson describes Johnson. "I like the kids to see how one gets from one place to another, to hear success stories."

Volunteering at Glazer Elementary is one of many ways that Johnson contributes to improving her world and her profession, in the process providing an example for students and others to emulate. "It's not enough to sit behind our desks," she says, and backs up the sentiment with action.

Johnson joined the Law School administration in 1997 after eight years as a litigator with Garan, Lucow, Miller in Detroit, where she was also the firm's first African American female partner. Now one of two assistant deans of students (the other is David H. Baum, '89), she has become an integral part of Law School life — on the student side as a trusted adviser to groups and individuals, and on the institutional side as a senior administrator and a participant in the strategy and communication activities that accompanied the *Grutter* case that the Law School eventually won in the U.S. Supreme Court last summer.

"I think that bringing Charlotte back to the Law School was one of the best things I did as dean," says Jeffrey S. Lehman, '81, who was dean of the Law School for nine years before he became president of Cornell University last summer. "She has an extraordinary ability to help students — to find the right tool at the School to help them with a problem if one is available, or to show them why no tool exists if that is the case. During the litigation, she did a fabulous job of ensuring that the community remained in the loop about what was happening and why."

Johnson also has been active outside the Law School — in the National Bar Association, serving as regional director in 2002; and in the Michigan State Bar, where she chaired the Access to Justice Task Force for three years, is a member of the Standing Committee on Character and Fitness, and serves on the newly formed Standing Committee on Justice Initiatives. In addition, she recently was appointed to the board of the Women Lawyers of Michigan Foundation.

"My decision to leave a successful practice and come here wasn't a decision to stop growing professionally," Johnson explains of her move to the Law School. "In fact, the opposite is true. I have more flexibility in my schedule than when I was practicing, but the time commitment is still very significant. More importantly, I've had the opportunity to grow in this position as a manager, counselor, and as a lawyer.

"Almost every day, I'm called upon to interpret some policy or regulation, exercise sound judgment, or manage conflict. I've learned the importance of patience and have come to realize that 'reciprocity' is really about focusing on individual responsibility.

"As part of the senior administrative team, I've helped set Law School policy, served as an adviser to the deans, and have been a spokesperson for both the Law School and the University in the larger community. I've been fortunate enough to serve under deans who, while teaching me how to be a manager and while guiding my professional growth, have also let me be Charlotte. It's priceless to be in a position that meshes so perfectly with my core values."

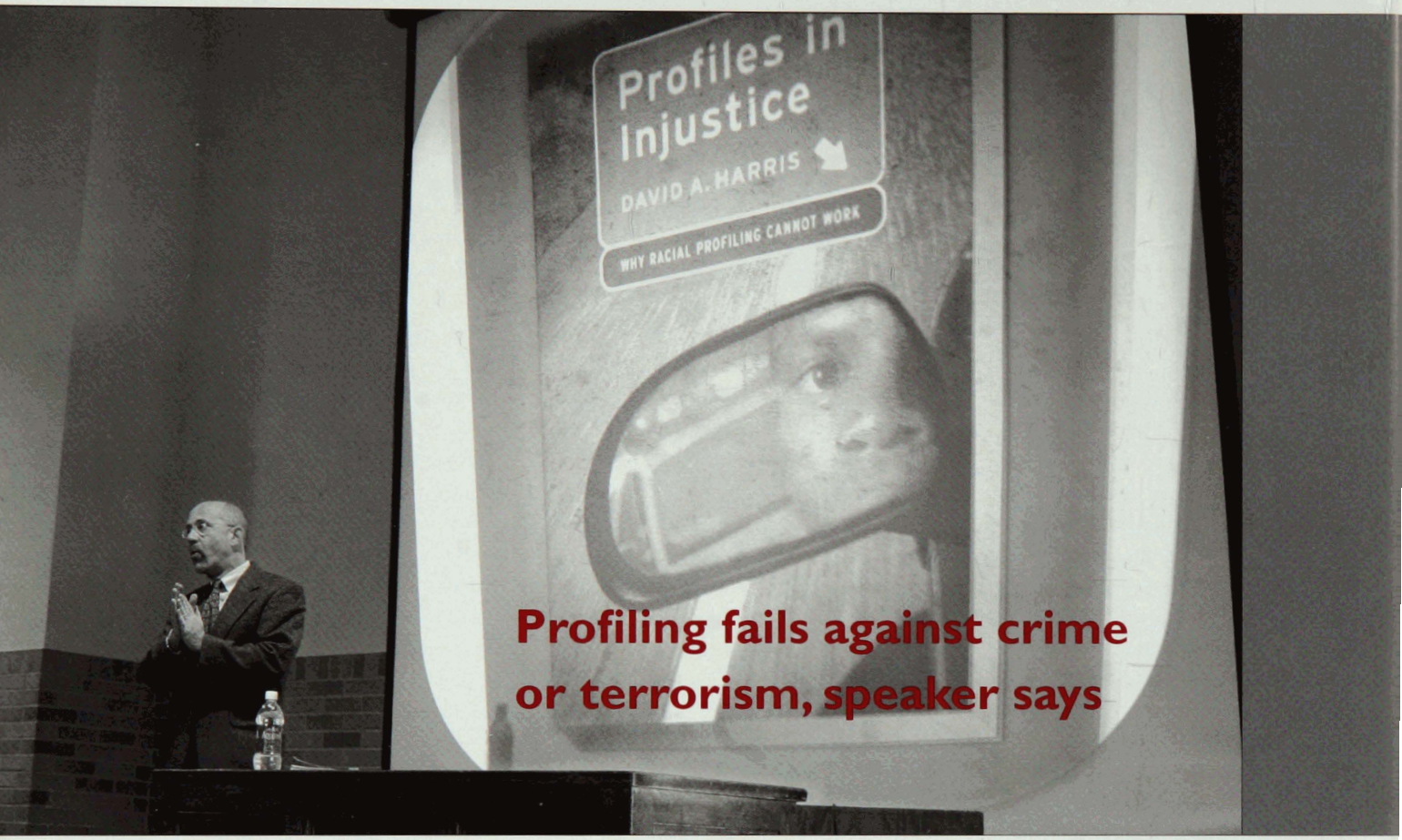
Students and co-workers alike praise Johnson's quiet, effective, and diplomatic way. For example, Ann Y. Chen, '03, who was president of the Asian Pacific Law Students Association in the 2001–02 academic year, recalls with pleasure how Johnson helped defuse an issue over membership in the student organization.

"She was the first person I thought of going to," said Chen, now an associate in the Intellectual Property Group at Kirkland & Ellis in Chicago. "Even if she hadn't been dean of students, I still probably would have gone to her. She was instrumental in helping us figure out a way to work out something. She also realized that an accusation like this had an effect on the student body and affected all student groups. She was very effective in bringing students together."

During the six-year litigation over admissions policies, "Charlotte was incredibly valuable to the litigation throughout the process," reported University of Michigan Vice President and General Counsel Marvin Krislov, who regularly teaches at the Law School. "She coordinated with Law School students and reached out to key members of the broader community. She also contributed valuable insights and ideas. Charlotte helped us meet many challenges in this litigation."

"It was a great experience for me," Johnson says of her work with the litigation team, whose membership included Lehman, Krislov, current Dean Evan Caminker, Assistant General Counsel Jonathon Alger, veteran Supreme Court attorney Maureen Mahoney, of Latham & Watkins in Washington, D.C., and John Payton of Wilmer Cutler Pickering, also in Washington, D.C. "I had a bird's eye view of the litigation."

"I've had lots of privileges in my life, a loving and supportive husband and family, wonderful friends and mentors, generous colleagues, and a topnotch legal education," Johnson says. "With that privilege comes an obligation to figure out what I can do to give back, over and over, all that's been given to me. That sense of obligation is not something students only hear from me; they get to see it played out in my professional and civic endeavors."



Profiling fails against crime or terrorism, speaker says

David A. Harris

Racial and ethnic profiling failed as a crime fighting method prior to September 11, 2001, and does more harm than good when directed at Middle Eastern and Muslim groups as part of antiterrorism efforts, according to an expert on the practice who spoke at the Law School last fall.

"If we use ethnic profiling on Arabs and people of Middle Eastern descent we will not be more safe, we will be less safe," said David A. Harris, author of *Profiles in Injustice: Why Racial Profiling Cannot Work* (The New Press 2002; soft cover with a new post 9/11 chapter 2003).

Harris is the Balk Professor of Law and Values at the University of Toledo College of Law and Soros Senior Justice Fellow at the Center for Crime, Communities, and Culture in New York. His talk was sponsored by these Law School student organizations: American Civil Liberties Union, American Constitution Society, Criminal Law Society, Black Law Students Alliance, and National Lawyers Guild.

Citing figures from the New York City Police Department for 1998–99, Harris noted that white people made up 42 percent of the population, but drew only 10 percent of the stop-and-frisk actions. Black people made up 25 percent of the population but accounted for half of the stop-and-frisks; and Latinos, 23 percent of the population, accounted for 33 percent of the stop-and-frisks. The findings contradict widespread beliefs in the law enforcement community that profiling provides "more bang for that law enforcement buck," Harris said.

The same realities apply post 9/11, he explained. Observing behavior, not acting on the person's appearance, is "the key to knowing what people are up to." Finding terrorists is like finding a needle in a haystack, he admitted, "but the one thing I wouldn't do is put more hay on the stack."

Good intelligence information must come from the Arab/Muslim community, but questioning members of this group and profiling them in other ways will destroy their goodwill and trust in law enforcement, he explained. "If we want this intelligence, we need the Middle Eastern/Arab community like we've never needed them before."

In addition, he noted, neither "shoe bomber" Richard Reed, an Englishman, nor "American Taliban" John Walker Linh fits the Arab/Muslim profile. Al Queda is patient and dedicated, and will do a recruiting end run around antiterrorism efforts based on profiling, he concluded.

Dean's Roundtable on Government Service panelists, from left, are: faculty members Joan L. Larsen, Michael S. Barr, and Carl E. Schneider, '79.

Examining government service

Granted, high-powered law firms and make-the-world-better public service lawyering often get more career-choosing attention than working for the government. But, said participants in the Dean's Roundtable on Government Service last fall, being on the public payroll offers some of the best of both of those other worlds.

In addition, Dean Evan Caminker offered in introducing the program, many of the Law School's faculty members have worked in government posts and can be helpful to students who are considering such positions.

"There is great value in government lawyering. There are great challenges and great opportunities," explained Caminker, who worked in the White House Office of Legal Counsel during the Clinton administration. Added adjunct faculty member Joan L. Larsen, who worked in the same office in the Bush administration: The Office of Legal Counsel was "filled with the most talented lawyers I think I ever worked with. I was surrounded with people so good, so committed to getting the right answers, you could trust their judgment."

"The goal of making government work — and work right — motivated these people," she added. "This was the most rewarding aspect of my government service."

Other panelists included Assistant Professor Michael S. Barr, who has worked in both the Office of Management and Budget and the U.S. Treasury Department, and Carl E. Schneider, '79, who holds the Chauncey Stillman Professorship for Ethics, Morality, and the Practice of Law and is studying Law School graduates' career choices and job satisfaction. All the panelists also clerked in the U.S. Supreme Court.

Practice with the federal government gives you the immediate chance to handle many aspects of a case and perhaps to try it, panelists said. Similar opportunities may wait for years in a large firm. While Schneider noted that financial realities have reduced private firms' ability to mentor new associates, Barr reported that in government work "the people who get the most mentoring/training are the people who want it the most. Even if you don't get mentoring/training — because you don't seek it out — you will get responsibility."

Panelists, sometimes in response to audience questions, also said:

- Political changes do not make government work a revolving door career. "In my experience, people who are civil service employees love their jobs," said Caminker. "By and large," he added, "all the political appointees know they depend day in and day out on the career people."
- Although workplace pressure and long hours tend to be less in government than in private legal work, "there's nothing wrong with working hard if you love what you do," Barr explained.
- "One advantage of working for the government is the huge range of jobs," said Schneider. He also noted: "At the start of your career, you will get more sophisticated experience in government. . . . Over a longer time, it is more likely to be more interesting."
- Experience counts in government work just as it does in private practice. Treasury Department lawyers need a decade of experience before they negotiate international agreements, according to Barr. You need three to four years of litigation experience to become an assistant U.S. attorney, added Caminker, and the U.S. attorney position is "a highly politicized position chosen by very political people."
- Government work offers the satisfaction of a day well spent, according to Caminker: "If you are the type of person who wants to say at the end of the day that you have accomplished something for society, this is a good place."

Dean Evan Caminker

Senior Day

December 19 2003

There's a special glow to commencement that reflects the proud faces of parents and graduates' loved ones, and the mix of excitement, relief, and anticipation that mark the faces of graduates. Standing in the Lawyers Club surrounded by celebrants, Dean Evan Caminker noted that he could feel that glow and was enjoying it.

Senior Day in December was his first to preside over as dean — last summer he succeeded Jeffrey S. Lehman, '81, who became president of Cornell University — and Caminker used the occasion to recall the major events that had transpired during the graduates' three years at the Law School. He also urged them to retain the flexibility that will help them find satisfying lives.

The terrorist attacks of 9/11, the civil liberties implications of America's reaction to those attacks, the Enron debacle and its reverberations throughout corporate America, and the lawsuit over Law School admissions policies decided last summer by the U.S. Supreme Court are "momentous issues" that "highlight the important role that lawyers can play by shaping legal and policy responses to the central challenges of the day," Caminker explained in his welcoming remarks.

You've learned to "think like a lawyer," he told graduates, "but 'thinking like a lawyer' does not require you to abandon the passion and commitments that brought you to law school. Rather, you should continue to draw strength from this passion as you become lawyers."

He continued: "As my mentor Justice Brennan [U.S. Supreme Court Justice William J. Brennan Jr., for whom Caminker clerked] was fond of saying, law is based on both reason and passion: Reason is necessary to order our society, but passion is necessary to give it direction and purpose."

Caminker added that some graduates will find satisfying lives in the craft of practicing law, others in the ideologies or clients they represent, and others in activities like business, politics, community involvement, or family ties. "If you recognize today that nothing about your career or life is set in stone, you might feel more free to explore, with both your eyes and heart, all of the various paths available, and stroll down the ones that are right for you — paths that prove challenging, paths that serve society in keeping with the commitments of the profession, and paths that, above all, are personally fulfilling."

Commencement speaker Richard D. Friedman, the Ralph W. Aigler Professor of Law, noted how the graduates will live their lives and practice their profession in a world of uncertainty and ambiguity. "If you want assurance about the future, you are almost certain to be disappointed; you are going to have to rely on your assessments of probabilities," Friedman explained. "And in the most significant decisions of your life, you will usually find that you have to make tradeoffs and value judgments. . . . I am mindful of the injunction attributed to the British statesman Arthur Balfour: 'Never is a word used only by very young politicians.'"

"Especially for us, living in a land of liberty and prosperity, but even for most others, life offers a cavalcade of joys and pleasures," Friedman continued: "Filial love, parental love, romantic love, friendship, laughter, community, games, sensual pleasure from the world around us, sexual pleasure, music, art of all kinds, food, drink, sleep, exercise, gratification from work and from personal achievement, and on and on. Oh my. . . .

"I think we can take the view, 'Here we are on earth. And what are we going to do with the opportunity to make a good life for us, and to improve the world for others?'

"Graduates, you, by the fortune of your being in this country, because of your talents, your achievement, and now your credentials as well, are in an

unusually advantageous position to do that, to make a good life for yourselves and to improve the world for others."

Other parts of the Senior Day program included:

- Law School Student Senate two-term President Maren R. Norton expressed her thanks and good wishes to the graduates and urged them to hold to their values: "When you leave, remember why you came." (See page 48 for Norton's description of a day at the Law School.)
- Paul S. Brar, elected by his fellow graduates to address them, praised his classmates and recalled his befuddlement when Friedman called on him in class during his first summer in Law School. "I never failed before a finer group of people," he confessed, bringing laughter to his fellow graduates. "Today is about the start, the start of the best and most exciting time of your lives," he said. "Congratulations for all that you have done and thank you for all that you have given to me."
- A selection of pieces by the Headnotes, the Law School's *a cappela* singing group, that opened with a musical version of the venerable Irish Blessing:

  May the road rise to meet you
  And the wind be only at your back.
  May the sun shine warm upon your face.
  May the rain fall softly upon your fields.
  And until we meet again
  May God hold you in the palm of his hand.

The (golden?) road to happiness *(and other career choices)*

Sure, you don't have to be rich to be happy, right? But that doesn't mean we don't want to earn more, does it?

But maybe, just maybe, happiness and income are not locked into the tight embrace we think. For example, some of the happiest people on this planet are those who have left careers, professions, and relatively well-paying positions to become subsistence farmers.

That's part of what Aaron C. Ahuvia, director of academic affairs for the International Society for Quality-of-Life Studies, has found in his research into what makes us happy. He outlined his findings in a kinetic talk that opened the fall program series sponsored by the Office of Career Services.

More than 90 percent of what makes for happiness comes from sources other than income, explained Ahuvia, an associate professor in the Department of Management Marketing area at the University of Michigan-Dearborn. "If you had asked me before I did my research how much does income matter, I would have said it's low. But I wouldn't have guessed [only] 3 percent. That number is so small, it surprised me."

No one's happy living in poverty, and rich nations' people tend to be happier than those in poor nations. But with a livable income, "satisfaction with income matters more than income *per se*," Ahuvia said. What's "positively weird is how many people are satisfied with their income. And "people who are not satisfied with their income remain unsatisfied with incredibly high incomes."

So what's going on here?

- Twenty-five to 50 percent of happiness is predisposed by genetics. Depression is linked to heredity, although medications and counseling can alleviate it.
- Parental optimism, love, and support are significant for children to grow into happy adults.
- Having several close friends helps make people happy.
- If you're married, having a good marriage may be the single most important factor in whether or not you are happy.
- Good health helps, as does feeling successful. Being engaged by your work and leisure activities also is important, as is having a faith or attachment to a cause that offers you social support, purpose, and hope.

Ahuvia's Rx?

- Do what you enjoy, are good at, and find meaningful. Then find a job where you can balance work and other goals. At that point, if you want, earn all you can.
- Don't get good at anything you don't want to do.
- Don't get used to a lifestyle you don't plan to keep.
- Find friends who will support your lifestyle philosophy. "Peer groups are extremely important."
- Care for your social relationships.
- Spend less than you earn. "Define freedom as saving your way to freedom rather than spending your way to freedom."

In other programs during the series:

- In October, practitioners from three different parts of the country discussed lifestyles and professional opportunities in smaller markets in the program "Bright Lights, Small City." Panelists included Jeffrey M. Gitchel, '97, of Butzel Long in Detroit; Phillip J. Kessler, of Butzel Long in Detroit; and Patricia Lee Refo, '83, of Snell & Wilmer LLP in Phoenix. Panelists discussed how to balance a satisfying and profitable career with a lifestyle that provides for personal and family relationships and how the location of your practice can influence those factors. Assistant Dean for Career Services Susan Guindi, '90, introduced the panelists.
- Also in October, a financial policy planner, federal court clerk, and corporate counsel discussed their road to careers that use their legal background in professions other than legal practice. Panelists included: Ronald E. Hall Jr., '98, group counsel for Johnson Controls Inc. Automotive Systems Group in Plymouth, Michigan; Elsie Mata, '99, law clerk to the Hon. Alvin W. Thompson of the U.S. District Court for the District of Connecticut, based in Hartford; and Yolanda D. McGill, '99, policy counsel for the Center for Responsible Lending of the nonprofit think tank Self Help, based in Durham, North Carolina. Addressing a standing-room-only crowd for the luncheon program, panelists stressed that new

lawyers should honestly and critically examine their strengths and weaknesses and likes and dislikes. "Know yourselves, what your inclinations are, and try to know as best as you can what options are open to you," advised Mata. Experience in a large firm is valuable, and the speakers recommended that new lawyers go into such work, at least for a time. They also offered cautions: "If you're not sure, don't over-commit," said McGill. High income won't buy a good life if you don't like what you're doing, warned Hall, a West Point graduate and former U.S. Army artillery officer now moving into a business career. Career Services counselor Carolyn Spencer arranged the program and introduced the panelists. Later the same day, Mata presented a program for law students interested in learning about clerkships and McGill addressed the Civil Procedure class taught by former classmate and adjunct professor Joel H. Samuels, '99.

- "Outside the Box: The Job Search Beyond OCI," featured three graduates describing job hunt tactics "beyond the on-campus interview." Panelists were: Mischa Gibbons, '00, an associate at Zausmer Kaufman August & Caldwell in Farmington Hills, Michigan; Ricardo Egozcue, '01, an attorney with Robbins Kaplan Miller & Ciresi, Minneapolis, Minnesota; and Craig Lawler, '02, an associate with Sherman and Howard in Denver, Colorado.
- Career Services joined hands with the Michigan Intellectual Property Law Association late last fall to sponsor "Tips in Landing an IP Job in the Legal World." Panelists included Robert Nolan of Cantor Colburn LLP in Troy, Michigan, and Charles Kiczek, of Dura Automotive Systems, Rochester Hills, Michigan.

Yolanda D. McGill, '99, policy counsel for the Center for Responsible Lending of the nonprofit think tank Self Help, outlines her work as a financial policy planner during a panel on "alternative" careers that utilize legal training. Other panelists include: Elsie Mata, '99, law clerk to the Hon. Alvin W. Thompson of the U.S. District Court for the District of Connecticut; and Ronald E. Hall Jr., '98, group counsel for Johnson Controls Inc. Automotive Systems Group in Plymouth, Michigan.

Aaron Ahuvia discusses the relationship between happiness and income.

Refugee and Asylum Law Fellows part of Amnesty International project

This year's six fellows in refugee and asylum law, who will spend six week internships this summer working with refugee assistance agencies in North America, Africa, and Europe, already are veterans of the "real world" of refugee work.

As enrollees in Professor James C. Hathaway's International Refugee Law course, they are part of the class' research projects for Amnesty International. In addition, several of the fellows have worked overseas and/or on refugee issues.

The class' association with Amnesty International began last summer when 2003 Refugee and Asylum Law Fellow Niketa Kutkarni spent her internship with the organization's office in London. "She noticed that they didn't have anybody to sit down and take a hard look at a difficult problem and do a thoughtful memo to explain how an issue should be properly resolved," explained Hathaway. "She suggested it would be an interesting idea if we could harness the energy of some of our students to fill the void."

Intrigued by Kutkarni's suggestion, Hathaway set to work with Eve Lester, Amnesty International's director of refugee work, to explore how his class and her organization could join hands. They came up with 16 concerns that Amnesty had on its agenda but lacked resources to examine thoroughly.

"These are tough intellectual questions," Hathaway explained. "They were not easy questions. They were hard questions that required students to do international and cooperative research, which is what the course focuses on."

One question, for example, asked under what circumstances a Bolivian subsistence farmer no longer able to raise coca because of government antidrug efforts can be considered a refugee.

Half of the class' 32 students tackled Amnesty's questions, and their findings and recommendations were sent to the organization in January. Others in the class fashioned their own projects. "My sense is that these are quite fine pieces of work," Hathaway reported.

Five of this year's six fellows worked on Amnesty International questions, while the sixth fellow worked on a project leading toward the International Colloquium in Refugee and Asylum Law that will be held at the Law School this spring.

The association with Amnesty International will continue this summer for Refugee and Asylum Fellow **Daria M. Fisher**, who will do her internship with the organization's Division of Refugee Work in London. Fisher worked as a legal intern last summer in Cambodia with the Promotion of Women's Rights Project, a German initiative. This term she is representing an asylum applicant under supervision of Freedom House, a Detroit-based organization that helps asylum seekers.

The other fellows and their internship locations are:

Louise Moor, Refugee Policy Division of Human Rights Watch, Geneva, Switzerland. An LL.M. candidate with bachelors of laws and arts degrees from the University of Auckland in New Zealand, Moor worked for two years as a legal associate with the Refugee Status Appeals Authority in her native New Zealand. Fluent in Spanish, she also has worked as a self-employed Spanish tutor and as a support staffer to a University of Auckland professor doing research in Argentina.

Jennifer M. Pence, European Union Office of the European Council on Refugees and Exiles, Brussels. Pence was a legal intern last summer at Freedom House in Detroit, where she helped refugees resettle in Canada or the United States and prepared and presented asylum applications to the Immigration Court. A graduate of Illinois Wesleyan University, she also studied at the University of Zagreb's School of Croatian Language and Culture in Croatia in 2001 and 2002 and attended the Instituto de Lenguas in Costa Rica.

Matthew D. Pryor, Refugee Status Appeals Authority, Auckland, New Zealand. In addition to working last summer as research assistant for Professors James E. Krier and Edward A. Parson, Pryor spent time in Cambodia working with the Ministry of Land Management, where he edited that country's first land law textbook for judges, lawyers, and law students. He is intrigued by the intersection of refugee and environmental issues, and has been developing a piece for the *Michigan Journal of International Law* to show that an environmental refugee can fit the definition of a refugee set forth in the 1951 Refugee Convention and its 1968 Protocol.

Larissa Wakim, Branch Office of the United Nations High Commissioner for Refugees, Washington, D.C. An LL.M. candidate with history and law degrees from the University of Auckland, Wakim has worked in the refugee field in Egypt, Cambodia, and New Zealand.

Dawson Williams, Jesuit Refugee Service, Lusaka, Zambia. In association with the International Rescue Committee in Salt Lake City, Williams worked with a family of Bosnian refugees to make their transition to American life. He was an NAIA Academic All-American in football at Willamette University, where he graduated in international studies and Spanish.

Summer fellows in refugee and asylum law are shown here with James C. Hathaway, the James E. and Sarah A. Degan Professor of Law and director of the Law School's Program in Refugee and Asylum Law. Seated in front are Matthew D. Pryor and Daria M. Fisher. Standing, from left, are Larissa Wakim, Louise Moor, Professor Hathaway, Dawson Williams, and Jennifer M. Pence.

Law School program draws international praise

The Law School's Program in Refugee and Asylum Law has drawn praise from the University of Auckland [New Zealand] Faculty of Law, which has growing ties with the program, and the American Society of International Law, in a newsletter article, has labeled the Refugee Caselaw Site, launched by the director of the Law School's program, as "unique" among the Internet resources for research in this field.

A recent issue of the New Zealand school's annual publication *Eden Crescent* reports that the U-M Law School program "is rightly described as the world's most comprehensive program in the study of international and comparative asylum law" and its director, James E. and Sarah A. Degan Professor of Law James C. Hathaway, is "one of the preeminent refugee scholars in the world today."

The *Eden Crescent* article also takes note of the New Zealand connection with the U-M Law School's biennial colloquia on Challenges in International Refugee Law and reports how the *Michigan Guidelines* developed by the two colloquia held so far have aided development of refugee law around the world. Each gathering brings together refugee law experts from around the world and Law School students for an intensive examination of a single issue; guidelines developed in the colloquium are sent to refugee law experts, judges, and others worldwide.

The first colloquium, held in 1999, dealt with the issue of refugee status when persecution occurs in part of, but not all of, a country; it stemmed from the New Zealand case *Butler v. Attorney General*. New Zealand's Refugee Status Appeals Authority has accepted *The Michigan Guidelines on the Internal Protection Alternative,* produced by the colloquium, because the authority believes they correctly interpret *Butler*.

The Michigan Guidelines on Nexus to a Convention Ground, the result of the second colloquium, held in March 2002, "have been enthusiastically endorsed by the Division of International Protection of the Office of the United Nations High Commissioner for Refugees," *Eden Crescent* reported.

Regarding the Refugee Caselaw Site, the article "What's Online in International Law" in the May/July 2003 issue of the American Society of International Law (ASIL) *Newsletter* notes that the site currently allows comprehensive searching of caselaw from the top appellate courts of eight countries (Australia, Austria, Canada, Germany, New Zealand, Switzerland, the United Kingdom, and the United States) and is being expanded "to cover cases that relate to adjudication of the rights of refugees, in addition to the current cases that interpret the legal definition of a refugee. There are also plans to include cases from the highest national courts of other asylum countries."

Speaker: 'Only time will tell'

The jury's still out, so no one knows yet if historical cycles repeat with post 9/11 rights restrictions morphing into similar restraints on U.S. citizens, according to the legal scholar and activist who delivered the Davis, Markert, Nickerson Lecture on Academic and Intellectual Freedom at the Law School last fall.

"I would like to think that here, today, we have learned from our mistakes, but only time will tell," Georgetown University Law Center Professor David D. Cole told a standing room only audience in a talk he called "Freedom and Terror: September 11th and the 21st Century Challenge."

Cole, author of the just-published *Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism*, said:

- "The history of anti-communism is more relevant today than ever, but the proper analogy is not McCarthyism, but its precursor, the first Red Scare of 1917–20."
- Universities are "a critical locus of questioning of the government in crisis periods," but only if academic freedom is strong.
- "Academic freedom itself has a mixed record in times of crisis."

Cole was the 13th lecturer for the annual Davis, Markert, Nickerson Lecture, which commemorates three University of Michigan faculty members who lost their jobs after they refused to testify before an arm of the House Un-American Activities Committee during the 1950s.

The Law School is a sponsor of the series and Academic Freedom Lecture Fund President Peggie J. Hollingsworth praised the support of Dean Evan Caminker in her introductory remarks.

A world of issues




From left: Kalypso Nicolaidis, Paul Joffe, Jochen Frowein, M.C.L. '58, Regan Ralph

Glance over the lineup of speakers for the Law School's International Workshop and you'll have an instant inventory of what is moving and shaking international and comparative law. If you're fortunate enough to attend the workshop's lectures, you'll come away with a deep appreciation for the issues that comprise that inventory.

Last fall's ILW lineup, for example, opened with two special programs:

- A talk by a judge of the UN's International Court of Justice on how a nation's growing clout on the international front can reduce its willingness to allow others to help resolve its international disputes. (See **Simma: Young U.S. pioneered modern arbitration**, page 28.)
- Delivery of the William H. Bishop Lecture in International Law by the U.S. Ambassador to the People's Republic of China, who offered an insider's view of how the restless Asian giant's footprints are striding into the international arena. (See **Ambassador Clark T. Randt Jr., '75: China, U.S. share much,** page 70.)

Other speakers last fall discussed the interaction of international law and U.S. power; the threats that globalization poses to human rights activism; power and superpower; environmental law and policy issues in the era of the global village; and the use of force in current international law.

Here's a rundown:

~ "Can International Law Accommodate U.S. Power?" asked Benedict Kingsbury, professor of law and director of the Institute for International Law and Justice at New York University School of Law.

The United States is party to nearly two-thirds of the major multinational treaties, like the Comprehensive Test Ban Treaty, but that is fewer than many other countries, Kingsbury said. The United States is outside of the International Criminal Court, for example, and "to a small extent" is acting as "a unilateral world government" through its national laws like the Sovereign Immunity Act and the Alien Tort Claims Act.

"The United States is the only country adopting a way of governing the world through national legislation," he noted. "To some extent, the United States is doing its own parallel system."

~ Regan Ralph, executive director of the newly formed Fund for Global Human Rights and formerly with Amnesty International, said she is doubtful that the past decade's development of human rights laws and awareness can be considered safe from backsliding.

"I think we are at a crossroads globally and in the United States," Ralph said in a talk called "Advancing Human Rights in an Era of Globalization: Threats to Front-Line Human Rights Activism."

There is a backlash to human rights expansion that must be dealt with, she said. And globalization, which has seen multinational corporations replace many governments as seats of real power, has widened the rich/poor, North/South, religious/secular, and us/them gaps. More than 3 billion people, half the world's population, earn less than $2 a day, and the world's three richest people have more wealth than the 48 poorest countries in the world.

"Human rights activists are feeling that for the system of justice to be viable, it must offer justice equally to everyone." But in countries like Liberia and Guatemala, where raw materials extraction occurs without regard for the welfare of those whose land is taken, or Sierra Leone, where women cannot inherit property, and other places, there is much work to be done.

"This is serious business, and this is what people are dealing with on a daily basis, in countries that are far away and not so far away," Ralph reported.

Also, she concluded, "the United States sets the tone. Whether you like it or not, it is the dominant face on the world stage." She chided the United States for being overzealous in its antiterrorist laws and actions, and noted the "chilling effect" that post-9/11 restrictions are having on charitable donations destined for overseas.

~ Kalypso Nicolaidis, university lecturer in International Relations, St. Antony's College, Oxford University, spoke on "The Power of the Superpower-less."

~ Paul Joffee, Director of International Affairs for the National Wildlife Federation, spoke on "Why it is so Hard to Make Environmental Law and Policy in the Global Village: Trouble in Seattle, Washington, D.C., and Johannesburg."

Joffe recapped and compared last September's World Trade Organization meeting in Cancun, Mexico, the WTO meeting in Seattle, Washington, in 1999, and the World Summit on Sustainable Development in Johannesburg, South Africa, in 2002, to portray a U.S. policy that opposes additional multilateral actions that have authority over the United States.

There already is a great deal of international environmental law, he agreed with a listener, "We can make environmental law on the easy challenges." Getting rid of chlorofluorocarbons was pretty easy, but regarding climate change, "We haven't begun to deal with the most enormous threat this planet faces."

"The difficulty is not just in making law, but in implementing law," he said.

~ Jochen Frowein, M.C.L. '58, former director of the Max Planck Institute for Public International Law, professor emeritus of the University of Heidelberg, and former vice president of the European Commission of Human Rights, spoke on "Use of Force in Present Day International Law."

Advising that analysts should look to what a country does in the international arena instead of what its leaders say publicly, Frowein argued that action against the Taliban regime in Afghanistan was justifiable self defense under Article 51 of the UN Charter because the government sheltered the organization that had mounted the September 11, 2001, terrorist actions in the United States. But, he continued, the preemptive move against Iraq was not similarly justified, even taking into account the reach and swiftness of modern weapons.

"Since World War II, international law has developed a new paradigm [of] collective security," he said. "The Westphalian period has ended and developed into something very different. Even the U.S. move into Iraq will not prevent international law from developing a structure [that relies on collective rather than individual action in international issues]."

The International Law Workshop's first semester programs were coordinated by Professors Daniel Halberstam, Robert Howse, and Michael Barr, and Assistant Dean for International Programs Virginia Gordan.

The winter term's lineup opened with International Bar Association President and visiting faculty member Emilio J. Cardenas, M.C.L. '66, discussing "The New Semi-Authoritarian Regimes: The Latin American Experience," followed by European University Institute/University of Aberdeen professor Neil Walker speaking on "The European Constitution: Founding Moment or Fading Momentum?"

Other winter term speakers and their topics:

- Foundation for International Environmental Law and Development Co-Director Alice Palmer, speaking on "A Public Voice in International Trade Disputes: NGO Strategies for the U.S. Challenge to European Regulation of Genetically Modified Organisms in the WTO";
- St. Antony's College, Oxford, Fellow in Modern Thought Jan-Werner Mueller, "On Euro-Patriotism";
- Delphi Corporation Vice President/General Counsel Logan G. Robinson, on "The International Legal Practice of U.S. Multinationals: The Global Beauty Contest"; and
- George Mason University School of Law Associate Professor Peter Berkowitz, on "The Struggle for Women's Suffrage in Kuwait."

Law School adds mediation clinic

The Law School has added to its clinical offerings lineup with a mediation clinic that features both class work and a special three-part 40-hour training program that can lead to certification as a mediator.

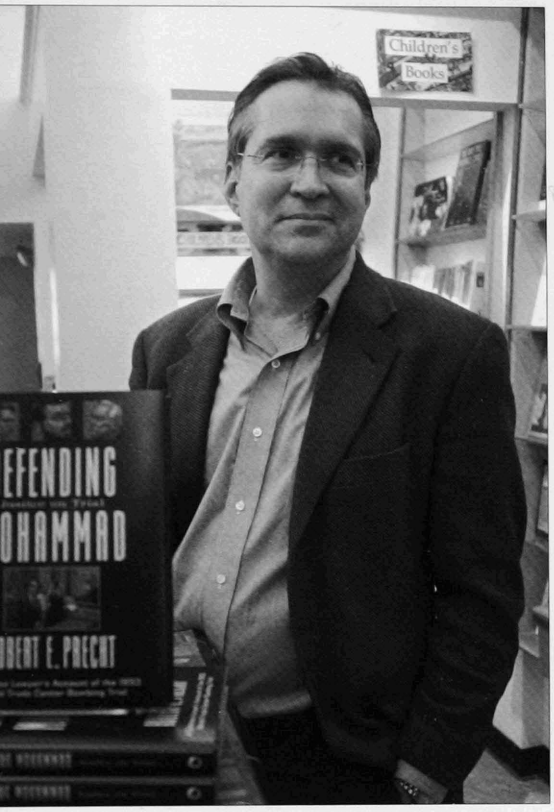
Clinical Professor of Law Donald N. Duquette, longtime director of the Law School's Child Advocacy Law Clinic, became a certified mediation instructor in preparation for teaching the new clinic. He is being assisted by veteran mediator and trainer Zena Zumeta, '75, president of the Mediation Training & Consultation Institute in Ann Arbor.

The clinic very quickly was a hit with students. Duquette said he had nearly 30 applicants within 24 hours of announcing the new offering. Eight students can take the 40-hour mediation training for one credit, which began before the start of regular classes and can lead to becoming a Michigan Supreme Court-approved mediator; eight other students can take the three-credit full clinical course, which meets each Friday throughout the term.

According to the announcement of the clinic from Assistant Dean of Students David H. Baum, '89, "students will be trained in facilitative mediation, as defined by the Michigan Court Rule: " 'Mediation' is a process in which a neutral third party facilitates communications between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. A mediator has no authoritative decision-making power."

Each year, more than 10,000 Michigan citizens resolve their disputes through mediation services supported by the Michigan Courts' Community Dispute Resolution Program (CDRP). Mediators settle about 80 percent of the disputes submitted to them.

Terrorists, trials, and tribunals



It's been 10 years since Robert E. Precht defended Mohammad Salameh, who was convicted of bombing the World Trade Center in 1993. And a little more than two years since the total destruction of the same building by terrorist-hijacked aircraft on September 11, 2001.

To Precht, each event haunts the other, raising grave questions about the legal system's ability to withstand efforts to thwart and punish terrorism. He detailed his 1993 defense of Salameh in the recently published *Defending Mohammad: Justice on Trial* (Cornell University Press, 2003) in the hope that reliving the case will shed light on the current round of antiterrorist proceedings. (An excerpt from the book begins on page 90.)

"Terrorism defendants are not predestined to receive unfair trials," Precht writes in the Preface to *Defending Mohammad*. "If we are alert to the stress factors that can undermine impartiality, we can take measures to avoid transforming the potential for injustice into the actuality of an unfair proceeding. I hope this story suggests ways to reduce the number of unfair proceedings in the future and illustrates why, for all of their difficulties, civilian trials are superior to their most likely replacements, military commissions."

Precht outlined his concerns during a lunchtime presentation last fall presented by the Office of Student Affairs. As Assistant Dean for Student Affairs David Baum, '89, noted in his introduction, these "brown bag" talks offer "insight into the daily life of a lawyer" and show how theory learned in the classroom links arms with practice in the courtroom.

"I think terrorism cases present the starkest and most unanswered questions about our criminal justice system," Precht told students. "Can accused terrorists in this country receive a fair trial?" he asked.

"Perhaps even more important, why should we care? Why should we care that our criminal justice system treats such people fairly? What does a fair trial mean?"

"What is a fair trial?" Precht continued. "The Supreme Court says it is a hearing before an impartial tribunal. . . . Impartiality requires us to make a very strong effort not to bring preconceptions to the case. . . .

"What does [being] open-minded mean? The jury must be completely neutral. . . they should not care at all going into a case if they acquit or convict a person."

The jury system itself helps to promote impartiality, as does the jury selection process and the rules that guarantee even-handedness on the part of the judge, Precht explained. And judicial review helps to ensure that these measures are followed properly.

A military tribunal, on the other hand, cannot provide such safeguards, Precht emphasized. Tribunals do not use juries, and those who hear the cases are military officers who have sworn to serve the interest of their government.

"The business of the [criminal justice] system is to dispense individualized justice, but the military tribunal system is based on the idea that courts must serve the interest of the government against terrorism," Precht said.

"What does this say to the enemies of this country if we give up on impartiality?" he concluded. "This is why I wrote the book, not just to tell my story, but to reflect on what we mean by justice."

Matt Nosanchuk of the Violence Policy Center

Two views of gun ownership

Separate programs by student organizations last fall took very different aim on Americans' right to bear arms: Speaking in a program sponsored by the Federalist Society, Robert Levy espoused the right to own a handgun for self defense, while Matt Nosanchuk, speaking in a program co-sponsored by the American Constitution Society and the Black Law Students Alliance (BLSA), said the widespread use of handguns in the United States is a public health menace.

The Federalist and American Constitution Societies have different constitutional perspectives and thus their programs reflect different approaches to the law. Here at the Law School, the two groups join forces on occasion to co-sponsor a program on a single subject, as in their annual previews of the upcoming U.S. Supreme Court session, held early in the fall.

Levy, a senior fellow in constitutional studies at the Cato Institute in Washington, D.C., explained that the Second Amendment guarantees an individual's right to own a firearm because the Constitution does not enumerate the power to regulate firearms. But in the view of Nosanchuk, individual handgun ownership is not protected under the Second Amendment and harm from wrongful handgun use falls disproportionately on the African American population. Nosanchuk is litigation director and legislative counsel for the Violence Policy Center, a gun control organization based in Washington, D.C.

Levy and Nosanchuk often have debated each other on the same platform, but their Law School appearances were a week apart.

To Levy, the right to own a handgun is individual, not collective. He proposed this hypothetical amendment — A well-educated electorate being needed to maintain a democracy, the right to keep and read books shall not be infringed — and claimed that "no one would argue that this means only voters can have and read books."

The framers of the Constitution feared a standing army and the power of the state, and therefore insured that individual citizens could keep arms, according to Levy. Forbid private ownership of defense weapons and you increase the need for police protection, he said. "An unarmed citizenry creates the conditions that can lead to a tyrannical state," he explained.

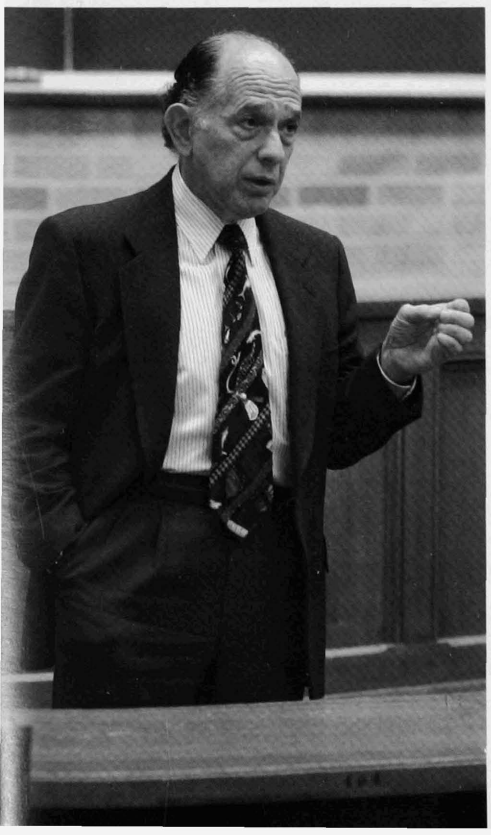
Levy reported that he has filed suit on behalf of half a dozen plaintiffs to overturn the District of Columbia's ban against registered firearms to keep in the home for protection. Should the case eventually reach the U.S. Supreme Court, he said, he expects the U.S. Justice Department to file a brief in favor of his position because of its argument in other recent cases that the Constitution guarantees the individual, not collective, right to keep and bear arms.

Reflecting the opposing view, Nosanchuk said of the Constitution's framers: "There's not any evidence that they were thinking about gun rights for self defense at the time the Constitution was being framed. . . . It is clear that the Constitution protects the ownership of firearms for lawful purposes."

Nosanchuk explained that the Violence Policy Center does not question the ownership of legitimate hunting rifles and shotguns, but opposes easy handgun ownership and is working to ensure renewal and strengthening of the federal ban on assault weapons. The ban expires next year.

He also noted that the African American population, which makes up only 12 percent of the U.S. population, suffers harm from handgun misuse that far surpasses its numbers. Firearm homicides are the leading cause of death among African Americans aged 15–24, he said, and African American victims made up nearly half of the 290,670 Americans who were the victims of irresponsible gun practices in 1978–98.

He also discounted the argument that citizens need guns to protect themselves against a tyrannical government. "We have something to defeat a tyrannical government," he said, "and that's speech, the First Amendment."



Robert Levy of the Cato Institute

At press time

U.S. Supreme Court gives Friedman, Fisher good news

Ralph W. Aigler Professor of Law Richard D. Friedman, longtime champion of a straightforward reading of the Sixth Amendment's confrontation clause, and Law School graduate Jeffrey Fisher, '97, who argued the position before the U.S. Supreme Court last fall, had their positions vindicated when the Court ruled unanimously in early March that the Constitution requires that witness testimony be challenged on cross-examination.

Fisher argued the case, *Crawford v. Washington* (02-9410), on November 10 and the Court announced its decision March 8, as *Law Quadrangle Notes* was going to press. The decision, written by Justice Antonin Scalia, cited Friedman's scholarship. (The decision is accessible via www.supremecourtus.gov/opinions/03slipopinion.html.)

Pre-decision stories in this issue discuss Friedman's role in preparing the case and his presence at the Supreme Court when it was argued (page 30) and Fisher's visit to the Law School as part of his preparation for arguing the case (page 76). An edited version of the *amicus curiae* brief that Friedman wrote for the case begins on page 92.

"This is a decision of great and beneficial importance," Friedman said. "It restores the confrontation clause to its proper position of glory as one of the chief bulwarks of our system of criminal justice.... Prosecutors will now understand better than before the importance of taking testimony subject to cross-examination, and we can anticipate that this will happen before trial more frequently than has been the case."

In *Crawford*, the Court ruled unanimously that the state of Washington violated Michael Crawford's constitutional right to confront and cross-examine a witness when it introduced a tape recording of his wife's police interrogation during his 1999 trial for attempted murder. Sylvia Crawford could not testify in person because Michael Crawford invoked spousal privilege to block her appearance.

Washington's action was allowable under the 1980 Supreme Court ruling in *Ohio v. Roberts*, which said that testimony could be accepted if the judge deemed it to be reliable.

"Admitting statements deemed reliable by a judge is fundamentally at odds with the right of confrontation," Scalia wrote in *Crawford*. "Dispensing with confrontation because testimony is obviously reliable is akin to dispensing with jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes."

Chief Justice William H. Rehnquist, joined by Justice Sandra Day O'Connor, wrote separately that he agreed with the result in *Crawford* but felt it could have been achieved without overruling Roberts.

"The Supreme Court's decision will fundamentally alter the way that criminal defendants are tried across the nation," Fisher said in a statement. "No more will governments be able to convict people of crimes on the basis of accusations that they are unable to cross-examine."

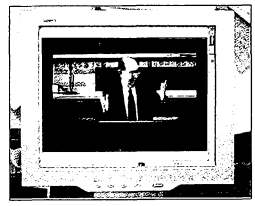
Yale Kamisar retires

"All right."

With these words — familiar as conversational punctuation to anyone who has heard him —Yale Kamisar called to order his final class in Criminal Justice. It was a Wednesday morning in December. Students filled the semicircle of forward seats of Honigman Auditorium in Hutchins Hall, many with their laptop computer screens up and their keyboards ready. A scattering of well wishers sat further back, among them recent as well as longer ago veterans of Kamisar's teaching.

Bill Kasselman, '56, a retired Pennsylvania attorney who now lives in Ann Arbor, said he came to this final class because he had heard so much about Kamisar even though he had graduated nearly a decade before Kamisar joined the faculty. Another graduate, visiting from Colorado, said he had studied under Kamisar and wanted to attend this final class.

Appropriately, much of the class centered on cases concerning the Miranda rule that were about to be argued in the U.S. Supreme Court. Miranda warnings, what they mean, what they should mean, and related issues have been a recurring theme throughout Kamisar's professional career, and began for him even before the U.S. Supreme Court handed down *Miranda v. Arizona* in 1966. "There are two Supreme Court cases pending and *Miranda* will mean more or less as these cases are resolved," Kamisar explained to his Criminal Justice class.



There were lighter moments, too. Like Kamisar's "Just what I need" fillip as he read a note from a friend in Israel saying he would be watching the live Web-cast of this class — at 5:10 p.m. "Holy Land Time." And there

were Kamisar's "Team Spirit" and "Most Valuable Player" awards to two students, the latter to a former Florida police officer whom Kamisar often called on so the class could share his law enforcement perspective, which usually ran counter to Kamisar's.

At the end, a bit of advice: "I don't care how successful you are, how big an office you have, how much you earn, you'll never feel like a real lawyer unless someday during your first 10 years of practice you are the court-appointed attorney for some indigent defendant. And when you are, don't let the prosecutor ever forget you."

As the clock ticked toward the end of the class hour, faculty members and others from the Law School community quietly slipped in and formed lines across the back to offer the Law School's traditional "Standing O" as Kamisar ended his long teaching career here and strode from the room.

Indeed, Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law, has been "all right" at the Law School for nearly 40 years, since he joined the faculty in 1965. Although he retired from teaching here at the end of the fall term, he is teaching this winter term at the University of California at San Diego Law School, and plans to continue to do so.

His presence at the Law School — as well as on the op-ed pages of the nation's newspapers and other venues arguing his side of the social/constitutional issues of our time — has been that of a giant. Early this year, the Criminal Justice Section of the Association of American Law Schools presented him with its Lifetime Acheivement Award.

As Associate Dean for Academic Affairs Steven Croley's research has revealed, Kamisar produced three books and 14 scholarly journal articles during just his first seven years of teaching. "And that fantastic pace has continued ever since," according to Croley.

Kamisar is known for producing solid scholarship — his name is on 10 editions of a criminal law casebook alone — and then often giving that scholarship life in the public arena. He does the research first, then recasts it for public debate. And he's prolific. A Law Library search for Kamisar-written opinion pieces in the popular, nonlegal press came up with more than 100 titles.

All right.

Law School colleagues, family members, and others feted Kamisar in November at a gala retirement dinner in the Lawyers Club. It was a multimedia evening choreographed by Croley, and included an audio cut from the Supreme Court oral arguments in *Miranda v. Arizona* in 1966, and videotaped comments from longtime collaborator Wayne R. LaFavre.

Citing Kamisar's "absolute intellectual integrity," William I. Miller, the Thomas G. Long Professor of Law, enthused, "I just love the man. We will never see the likes of him again." Former Dean and James E. and Sarah A. Degan Professor of Law Emeritus Theodore J. St. Antoine, '54, noted that "Yale has had more articles cited by the United States Supreme Court than any other contemporary scholar." Looking behind Kamisar's sometimes gruff manner to his deep concern for people, the law, and the Law School, longtime criminal law casebook co-author Jerold S. Israel reported that "most of Yale's writing of praise is buried in university files somewhere" because it was done in support of students, colleagues, and others who could benefit from a good word from him.

The evening's last word, agreed the more than 100 people present, had to be Kamisar's.

"Okay," Kamisar began. "All right."

His professional life has been filled by issues that just keep resurrecting, he explained. Dean Allan Smith called him in 1964 to come to Michigan from the University of Minnesota Law School, where he was teaching at the time. Kamisar accepted, and in 1966 the Supreme Court handed down *Miranda*.

The issue of physician-assisted suicide similarly has periodically come to the fore.

Not above self-targeted humor, Kamisar also confessed how he found himself locked in the Law School one night in 1965 and had to telephone Smith and ask the dean to come over to let him out.

Kamisar also praised his colleagues and the Law Library and took note of the Law School's "great resources and working conditions." For 35 years, he added, he and now-Professor Emeritus Jerold Israel have collaborated on their casebook in criminal law. "A little bit like being married," Kamisar joked.

"I leave the Law School in very good hands," he said. "I am optimistic about this young faculty. . . . I hope they live out their careers here. And when they retire 30 to 40 years out, I hope they feel as good about having spent their careers as Michigan Law School professors as I do tonight."

All right.

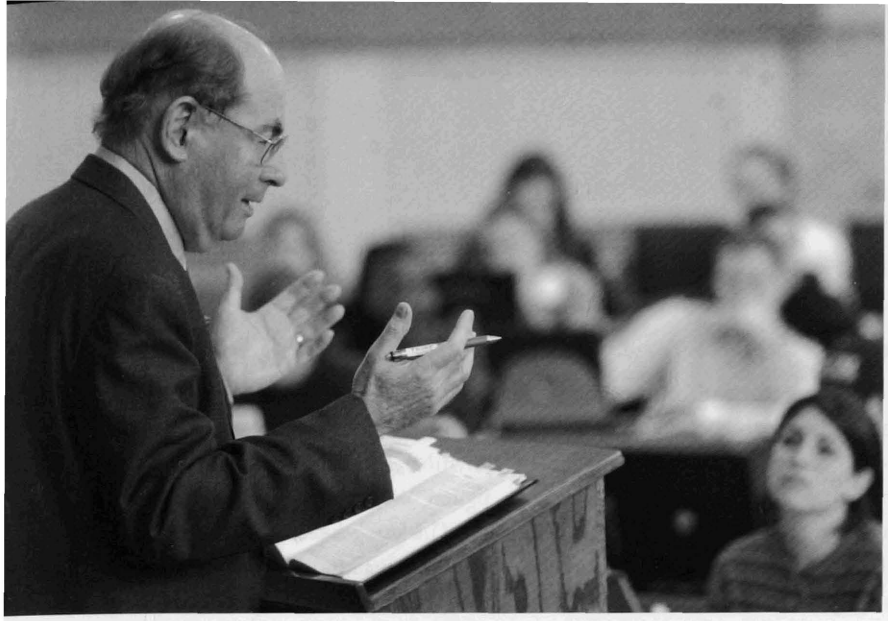
You have the right to remain silent: An interview with Yale Kamisar

The following is an edited version of the interview by Andy Daly and John Fedynsky that appeared last fall in the Law School student publication Res Gestae. *It appears here with permission.*

Have you had Kamisar? So goes the common follow-up when an alumnus finds out that you go to the Law School. Part legend and all character, Yale Kamisar is our Clarence Darrow Distinguished University Professor of Law. An expert on constitutional law in general and criminal procedure in particular, his course in the latter is a perennial favorite among students. He has been cited in at least 33 Supreme Court opinions beginning in the early 1960s, and not for just one seminal work, but for 19 articles, three casebook editions, and one collection of essays.

Beyond the scholarship is his engaging teaching style, which some find fearful and others wildly entertaining and effective. There is the lore of the book-flinging episode. "I was trying to make a point," explained Kamisar, noting that he was teaching criminal law and was on the case of the husband flinging a beer mug at his wife, who was holding a lit lamp. Alas, that teaching tool ended after Kamisar accidentally broke a student's eyeglasses. (The student was not wearing his glasses at the time; they were on his desk.) "I did pay for the glasses. It was the last time I threw the book."

Though the specific method has changed, Kamisar still tries to, in his words, "mix it up" with his students. As his last semester of teaching at the Law School neared its end, the *RG* sat down with Kamisar to "mix it up" one more time.



Q: It's been rumored this is your final year of teaching. Is that true?

Kamisar: It's my final year of teaching at Michigan. I'll continue to teach at the University of San Diego from January to May, but I'll be back in Ann Arbor from May through December. I'll teach a course at San Diego as long as I can still do it. I'll still live in Ann Arbor, I'm not going to move permanently to San Diego. I'll still live here, and still have an office here — although not as big as the one I have now, since you lose your office when you retire. There'll be an auction and somebody will bid for it. How I'm going to get rid of all the stuff I've accumulated I don't know.

Q: You've been here since 1965. How much have things changed since then?

Kamisar: It's much more of a national law school. When I first came here, you'd pick the top states most represented in the student body and it would be Michigan, Ohio, Illinois, Indiana. Today it's Michigan, New York, California, New Jersey. I was struck by the fact that there are 50 people from California in the first-year class, and 30 from New York. So that's just one example. I think the students now go all over the country more than they used to. In the 1960s we were very strong in places like Cleveland and Chicago; now, more people go to Washington, D.C., New York, Los Angeles, San Francisco, Seattle, Dallas, Houston. So I think in terms of students coming in and leaving and where they go, it's much more of a national law school.

Q: Has the character or the caliber of the students changed?

Kamisar: Obviously, current students have better credentials and more impressive records, but frankly I don't see much difference in class. In fact, it seems to me, the student culture is such that few people volunteer. I get the feeling that students think they lose points with their classmates if they volunteer. I would say that preparation is not as good as I would like. I stopped teaching first-year criminal law. I hated to give it up because the students were so eager and so well prepared. I think something happens after the first year. Students sort of figure, "Well, I'm a B student and I'll always be a B student, whether I work hard or not, or a C student, and I'll always be a C student." Perhaps students become very busy on the [*Michigan*] *Law Review* and the other journals or find other things to do and who knows what. It's just one of those things. I don't know, it may be the students really are prepared, but they don't want to mix it up, so they say they're unprepared. It's a sharp contrast to the first year, where people are raising their hands, and people are throwing themselves into the discussion all the time. If you ask me, "Is it clear that the students are brighter than the ones I had 10 years ago, or 30 years ago?" my honest answer is no, you can't tell that from class participation.

Q: What about the level of participation with 2Ls? More active than say, 10, 20, or 30 years ago? More prepared?

Kamisar: I am sure that second- and third-year students spend much more time and energy than they used to spend interviewing for jobs. When I first came here, summer clerkships were almost unheard of; especially between the first and second year; that was almost unheard of. Summer clerkships have become a much bigger thing. And the money for getting a summer clerkship is much greater. When I worked at Covington and Burling in the summer of 1954, I got paid $50 a week, and that firm was one of the top firms in the country.

I'm not complaining, because $50 a week went further in paying my tuition than your $2,000 a week goes now. Tuition at Columbia Law School, where I went, was $750. I'd work 10 weeks and get $500. That was two-thirds of my tuition. Current students work 10 weeks and get $20,000, and that's not quite two-thirds of their tuition. It seems incredible. Present students make $2,000 a week; I made $4,000 a year at the top firm in Washington. And yet, when you compare it to the tuition, present students are not any further ahead than I was. Think about that.

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Q: Have you felt that your teaching style has changed over the last 25 years?

Kamisar: Yes, my teaching style has changed, in a strange way. It may not be evident, but I prepare more than I used to. And I think more about the structure of the class. I was more likely to go in 30 years ago and wing it, you know, think out loud. But now I'm more likely to have a structure, I'm going to have specific questions I want to ask. I have so many points I want to make, I want to end the hour a certain way. So I think of each class as more of a series of one-hour units, so that each class has a story of its own. Originally, I don't think I did that as much. You get older, and pride is a funny thing. I find myself working harder when I prepare for class — and when I write articles. When I write something on confessions, I tell myself "Well this has to be something special, because I'm supposed to be an expert on confessions."

When I first started writing, I just wasn't that self-conscious about it. Many years later, I read a symposium on legal writing, and if I had started writing at that time, I would have been completely inhibited. When I began writing law review articles, I wasn't thinking about all those things that were supposed to be in an article. I just wrote.

When I put together seven or eight articles on confessions in a book, called *Essays on Police Interrogation and Confessions*, one of the most interesting reviewers said there was almost a complete lack of self-consciousness, I mean, Kamisar is writing these articles and he had no idea when he wrote the first one that someday he'd write seven or eight more of them and put them together in a collection. And that's true. I wrote about things that interested me, and I didn't know where and how it was coming out.

Now, I feel more pressure to write well, more pressure to be careful, to be measured, to search for the right word. I've probably toned down my strong criticism compared to the wild guy I was in the 50s or 60s. That's what happens when you get older.

Q: Would you attribute that to the amount of time you've been writing? Or is it because your name is coast-to-coast on that subject?

Kamisar: I remember a conversation one day in the faculty lounge. They were talking about somebody else, and the first guy says, "Great article." And the second guy says, "You expect something more, something special from that person. He's supposed to be a big expert on the subject." It was kind of chilling. It doesn't get easier. Again, it's pride. I'm assuming I'm a popular teacher. I still want to be a popular teacher. And so I am working harder on it than I used to. But that's another story.

I used to teach two sections. When I first started teaching I taught two sections of criminal law and two sections of civil procedure. I would say things that would make people laugh in the first section of criminal law and I'd write them down. In the second section, I'd repeat the same remark that produced laughs earlier but nobody would laugh. It seems there's no substitute for spontaneity. People can tell when it's spontaneous and when it's not. It's the funniest thing in the world — but only the first time. Maybe the students told the other section during lunchtime what made them laugh. I'm funny when I don't want to be.

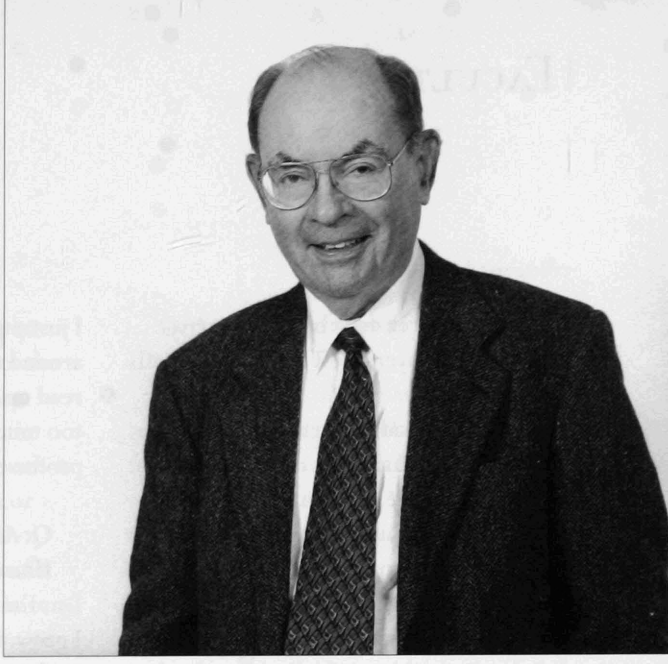
I miss the students who used to really go after me. Really, just head on. "You're a bleeding heart, what about all the victims?" It would work me up, and I think I'm really at my best mixing it up with students. But students rarely do that anymore. I don't know whether they just figure "Well, this guy knows too much" or "This guy's been around the block too much," but I kind of miss it. I try to bait them; I have a former police officer in my class right now, and I try to bait him all the time. In fact, he's contributed greatly to class discussion.

Q: What part of the job do you enjoy more, the writing and research, or the teaching and taking on students on your feet?

Kamisar: It's different, you can't compare them. It's like asking a baseball player who loves the game, "Do you enjoy catching a baseball while going toward the fence with the bases loaded, or do you enjoy hitting a double with the bases loaded?" I enjoy both aspects of it. Sometimes I'm in the middle of something and I say, "Oops, I have to prepare for class now," or "I have a class in a few minutes" and I wish I could finish the thought I had, but once I'm in the classroom I get wound up. So I enjoy that part of it, but I must say that I wouldn't be in this business if I just did the teaching; the writing is important.

Q: What about practicing law?

Kamisar: There are some professors who haven't really practiced much, and that's O.K. for the most part. Jerry Israel [Alene and Allan F. Smith Professor Emeritus of Law Jerold H. Israel, Kamisar's longtime colleague and co-author] never practiced law but he was involved in consulting later and wrote great things. But I do think that you lose something when you don't practice. And one of the things you lose is that you don't appreciate how fortunate you are to be a professor.



Before I went into teaching, I only handled one criminal procedure case as court appointed counsel, because I worked very hard at a big firm. And in that case I ran into a problem [but] I didn't realize it until about a day before the argument. I had five or six hours to do research and all of the cases were against me. I felt helpless. If the prosecutor brought up that point, I didn't have anything to say. I didn't have enough time to think it through and find any authority for my side. Actually, it was a case where my client was arrested illegally and taken to the police station where he could be searched more thoroughly. He had cocaine capsules in a cigarette package which he threw on the floor of the police station. And there's a cop behind him who saw him do it. And he said, "What's that?" And my client says, "You've got me, it's cocaine, it's drugs, you've got me."

I focused on how to get the cocaine capsules thrown out in the face of an argument that my client abandoned the evidence. I successfully argued on appeal that the illegal search tainted the throwing away. It was clearly an illegal arrest; the police had nothing to go on really. So I argued that the throwing away was the fruit of illegal arrest.

The problem was, the day before the oral argument, it just struck me, "What if the government argues O.K., the drug capsules should be suppressed, but the statement "you got me, it's drugs," is admissible?" This was 1956 or 1957. I checked the law hurriedly, and all the cases were against me. The black letter law was that the illegality of the arrest had no bearing on the admissibility of voluntary statements. The illegality of the arrest was irrelevant. I thought that was wrong. I thought that if the illegality of the arrest taints the search of a person's pocket and the government can't use the physical evidence its agents find, that it's tainted by the illegal arrest, [then] the statements should also be tainted by the illegal arrest. But all of the law was against me. I almost panicked. Fortunately the government never made that argument, never separated the statement "You've got me, it's drugs" from the drugs. If the government had made the argument, I would have been a dead duck.

Q: Did that experience have an impact on your academic career?

Kamisar: Yes, that's the point I'm trying to make. Five or six years later, I wrote an article — probably worked on it for six or seven months — basically on that point. I read everything. I thought about it a lot. I did all sorts of things and I finally published an article, I think in 1961, arguing essentially that the courts ought to change the law and say that even though a statement is voluntary or even spontaneous, if it was preceded by an illegal arrest it should be thrown out as the fruit of the illegal arrest, just the way physical evidence is. All the law was against me. I went through every edition of *Wigmore*, through every edition of *Greenleaf*, 16 editions of *Greanleaf*, but that statement appeared all the way back to the early 1800s. And incredibly there was a case on this, two years later, called *Wong Sun*. It's a famous case; in that case, the Court held, in an opinion by Justice Brennan, that there should not be a separate rule for statements tainted after an illegal arrest and physical evidence found as a result of an illegal arrest or search. They should be treated the same; in both instances the evidence should be thrown out. The Supreme Court relied on my article. But I couldn't have done all that work — all that research — if I weren't a law professor, if I hadn't had the luxury of months of time and the resources of a great law library. Getting the Supreme Court to change its position, that's what you live for, something like that.

Q: Earlier you used a sports analogy, which many of your students would notice you tend to do in class. Do you have a certain penchant for sports?

Kamisar: I was sports editor of my college newspaper. I love sports. Strangely enough, the only sport I knew when I grew up was baseball. Because when I grew up in New York City you didn't have much college football. When I was a kid you didn't have much college basketball. All I knew was baseball; football was little more than a semi-pro sport, like volleyball is today. You could buy a franchise, an NFL franchise, for like $1,500; I'm serious.

I tried out for the sports desk of the college newspaper (NYU), and was told everything was taken except track and field. I didn't know a darn thing about track and field. But I learned all about it. I learned all about the discus throw and the shot put and the pole vault and the javelin throw. I became a nut about track and field.

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Then my three sons became tournament tennis players, so I became a nut about tennis.

In college I had a sports column. It was called "The Yale Key to Sports," and I had to write the column three times a week. I really think that helped me a lot. It helped me become a good writer. You had to write a beginning and an ending and organize a theme three times a week. It helped me write exams in law school. It would help me write op-ed pieces; I've written a lot of these over the years, probably 100. I always submit my op-ed pieces to the *New York Times* first. When they turn me down I go to the *Washington Post*. When they turn me down I go to the *Los Angeles Times*. I've written a lot for the *LA Times*. I've also written a lot of pieces for the *Detroit News* and the *National Law Journal* and the *Legal Times*. I think that I can write op-ed pieces pretty easily because I was once a sports writer. When I write an op-ed piece, I'm almost always feeding off an article. I've done the research, I've spent six months, eight months on an article. When a case comes up, some issue comes up, I think, well, I can just go back and re-read my article, take out some little piece and have 750 words. I almost never do new research for an op-ed piece. Frankly, I believe law professors should do more of that. I think the payoff is big. I've sent reprints of articles to hundreds of people, and then something comes up, and I'll write an op-ed piece that was really based on one of these articles, then 10 or 15 people who should have read the reprints say it's "a great op-ed piece" and make it perfectly clear that they never read a page of the article I sent them earlier. So maybe 50 people read reprints. I only read them when I have to, when I'm revising a casebook or I'm writing an article and it is on my subject. I get so many reprints, I must get about 45 or 50 a month. So I just put them in a big pile and I get around to them when I can. But people read op-ed pieces. I just think there is too much law review writing for other professors and not enough for the public.

Q: Are you a Yankees fan?

Kamisar: NO! I'm not a Yankees fan. I'm a Giants fan. I don't know why, I grew up in the Bronx, I should be a Yankees fan, but I'm not, I'm a Giants fan. I never liked the Yankees. How can you like the Yankees? It's like liking General Motors (although GM is not what it used to be). I should revise that; it is like liking Toyota. To tell you the truth, I don't watch baseball anymore. I watched the Cubs and the Red Sox [in last fall's playoffs], hoping that they would win for a change, but I lost interest when they both lost. Aside from something special like the Cubs or the Red Sox, I haven't watched baseball for years.

The reason is, I don't know the names of the players anymore. I remember one year Jack Morris was a pitcher for the Detroit Tigers, and the next four years he pitched for four different teams. How can you possibly get involved in an organization where the players keep moving every year? When I grew up Mel Ott and Carl Hubbel played for the Giants forever, and then Willie Mays played for the Giants forever. The notion that Willie Mays would play for the Giants one year and then the Yankees the next year, and then the Cubs the following year — how can you have any loyalty if the players don't? I think that's really hurt baseball a lot. And I also think that it's too slow a game. I didn't think that until I watched football or basketball for many years. Baseball is just too slow. I'm not going to spend four hours watching some pitcher scratch his butt or fix his cap or some batter spit on or put more dirt on his hands; I mean, come on. You get about one minute of action for every 30 minutes. Baseball was my first love, but I have lost interest in it.

Q: Have you ever had any run-ins with the cops?

Kamisar: I've been stopped a few times for speeding, stuff like that, nothing other than that. I remember one incident. It was a cold December day and I was driving to the indoor tennis courts, the first year we had an indoor tennis facility in Ann Arbor. I would just put on my shorts and a jacket and tennis shoes so I could just run right out of the car and right on to the tennis courts rather than change. So I am driving along about 5 degrees below zero and some cop stops me for speeding and makes me get out of the car. There I am in my tennis shorts just shivering. The cop knew who I was. He said, "I once went to a lecture you gave to some police officers. You should be more careful because we don't want to lose you because you're so valuable." He just kept me outside my car shivering; I think it was just one big joke for him. I was part-icicle when I got back in my car.

And I tell this story in my class, and it's true, about the time I asked another police officer who stopped me: "Am I under arrest?" I'll never forget it because I think I was the first person who ever asked this officer: "Am I under arrest?" It was perfectly clear that he didn't know. He didn't know what to say. He was getting very frustrated and very angry. He was getting so angry that I decided I had better cool it. So I withdrew my question. And the funny thing about it was that I was reading an article the night before about what is an arrest and so forth. It isn't that simple, especially back in those days, back in the 50s or the early 60s where people didn't quite know what an arrest was. Many people thought that unless the police booked you, you weren't arrested. In fact I had

been arrested. This officer told me I hadn't been arrested, so I said I'd leave and he said, "If you leave, I will arrest you." So I said, "Then I *am* under arrest." He was getting so red in the face, so mad that I decided to cool it. He probably was shocked that anybody would ask him a question like that.

Q: So do you have it in for the cops?

Kamisar: I'm not against cops *per se*. I'm against cops who mistreat people. I'm against cops who attack the courts. More generally, I'm against authority. I just don't like authority. My mother was very authoritarian. I fought her all my life. In fact, I practiced on her. When I got older she used to tell me that I would debate her when I was 10 years old and "you would make all these speeches about how I was unfair." She was right. I practiced on her. I sometimes persuaded her that she was being unfair and unjust and got her to change her position. I thought it was an accomplishment. So I owe her that. She brought out the sense of injustice in me.

People get away with so much because the people they are dealing with don't know what to do. I have a very low threshold. Years ago they would say, "Thanks for not smoking." But I'd say, "Wait a minute, I am smoking. Days when I can smoke a pipe I'm going to smoke. Don't say thanks for not smoking." I get very annoyed when I'm waiting two or three hours on a plane and the captain comes on the intercom and he says, "Thanks for being so patient. I feel like shouting out: "I'm not being patient!"

These carpets (in the professors' offices) are paid for by a special fund, the Wolfson Fund. And one day, many years ago, shortly after we were told we were to get carpeting and drapes out of the fund, it turns out there was a University interior decorator and she came by to each professor and said, "The rest of the University is demoralized by the Law School, it has so much money, and the offices are so much bigger than the other offices. People teaching economics or political science know the Law School is just rolling in money and so I think it would be a good idea if you didn't have wall-to-wall carpeting and just had area rugs. Moreover, I really think it would be a good idea if you didn't have full drapes, just half drapes that don't close all the way." And she's going on and on like this.

Somehow this person reminded me of the police officers who are always pressuring you to "consent" to a search of your car and the great majority of people do "consent" under these circumstances. But I wasn't going to consent to anything less than I was entitled to. So I asked the interior decorator: "Do I have a choice? It sounds like you're trying hard to persuade me to go in a certain direction, but that I have a choice. Do I? Is it my choice? Do I make the decision? Can I reject your 'advice'"? And she said, "I'm only telling you what I think is the right thing to do, but it's your decision." I retorted: "O.K. I want wall-to-wall carpeting and I want full drapes, end of discussion." She left the room in tears and went to the dean. Then word got out that I got wall-to-wall carpeting and a bunch of other faculty changed their minds and asked for the same thing. That shows you what a [bleep] I am.

Q: Any last thoughts you would like to share . . .?

Kamisar: You think it will never end. It just goes so fast. I remember my first few classes very well. But between 1968 and 1998, it's like a blur. You feel like the same guy you were when you were 28 or 38, but you're 58, then 68, and, one day, 74. I probably caused the deans more grief than most people. I've been treated very well. Except for being a Supreme Court Justice or the head coach of the Michigan football team (but only on game day), I can't think of a better job than being a law professor at the U-M Law School.

Simma: Young United States pioneered modern arbitration

The Jay Treaty of 1794, promoted by a young, weak United States to resolve boundary and compensation issues, "gave birth to the modern method of arbitration," according to International Court of Justice Judge Bruno Simma.

The landmark commissions that the treaty established — to deal with the northeastern boundary of the United States with Canada, compensation for British and U.S. citizens for Revolutionary War losses, and compensation for American citizens during the pre-Napoleonic wars — are "an important precedent for dispute settlement without resorting to war," Simma explained to a Law School audience early this academic year.

A member of the Law School's Affiliated Overseas Faculty, Simma was sworn in early last year as a judge on the International Court of Justice, the United Nations' main judicial arm. He returned to the Law School in September to present this special lecture that opened the fall season of the Law School's International Law Workshop. (Reports on other International Law Workshop talks appear on page 16.)

Speaking on "The United States and International Adjudication: How Power Complicates Life," Simma described the young United States during the 19th century as generally willing to mediate international disputes rather than go to war over them. For example, the United States and Britain nearly went to war over the case of the British-built Confederate battleship *Alabama*. They avoided war through agreement to an arbitrated claims settlement in which Britain paid $50 million in gold to the United States.

The "blank spot on that shining record" of the 19th century came when the United States confirmed the Monroe Doctrine, which drew an American boundary around the Americas, and the U.S. Senate claimed the right to oppose arbitration to settle international disputes, Simma said.

By the 20th century, U.S. willingness to allow an impartial third party outside of its jurisdiction to settle its international disputes began to wane, according to Simma. The United States never joined the League of Nations that arose out

of World War I; it did join the United Nations that grew out of World War II, but at least twice Congress restricted conditions that would allow U.S. participation in cases before the UN's International Court of Justice.

However, U.S. involvement in cases before the International Court of Justice was generally "positive" until the court declared the United States guilty of using force against Nicaragua in 1984, Simma said. Since then, the record has been spotty: in a boundary dispute with Canada, the United States used the "chamber" system, having western ICJ judges hear the case and excluding Asian judges. But "to the United States' credit," it participated in the oil platform cases before the ICJ, and accepted the court's ruling in favor of Iran.

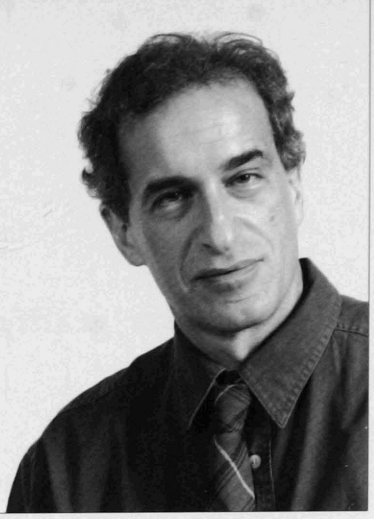
"The sad end of my story is the story of the International Criminal Court" (ICC), Simma reported. The treaty creating the ICC was signed in Rome in 1998 and entered into force without the United States. In one of his last official acts, President Clinton signed the statute bringing the United States into the ICC. But the Bush administration, citing the need to protect its soldiers from facing trial before the ICC, "unsigned" it, declared that the United States has no intention of ratifying the treaty, and Congress passed the American Serviceman's Protection Act.

The day after speaking at the Law School, Simma delivered a second lecture as part of the 10th anniversary celebration of the University of Michigan's International Institute. Addressing "The Importance of Human Rights in the Development of International Law," he noted that "the human rights movement has almost literally turned states inside out." The "black box" of the traditionally sovereign state "has changed to a glass house open to international scrutiny."

He said the impact can be seen in three major areas:

- U.S. fondness for customary international law, which tends to accept what a country says it is doing, is diluting the human rights impact of international law.
- The "mutuality of interests" that usually characterizes treaties isn't reflected the same way in human rights treaties, which often include "reservations" on the part of one or more signatories. "Some of the treaties look like Swiss cheese," according to Simma. "You have the treaty, and then you have holes, holes, holes."

Regarding the impact on state responsibility, the traditional idea that only the immediate victim of a breach of human rights law can act on that breach is being replaced by a paradigm of state responsibility that can be compared to the role of a traffic light at an intersection: If you run the red light through the intersection and nothing happens you still are liable because you broke the rule. There is no need for property or personal damage.



Is William Ian Miller *Faking It*?

You know as soon as you see the dust jacket that William Ian Miller has done it again. The facial skeleton behind the hand-held face (whose eyes are looking at you) is your fitting introduction to *Faking It*, Miller's most recent book examining the emotions and behaviors of humankind. Once again he's probing what makes him, you, and me — us.

Miller, the Thomas G. Long Professor of Law, has written previously of *The Anatomy of Disgust* and *The Mystery of Courage*. He says that *Faking It* (Cambridge University Press, 2003) "is unified by the intrusive fear that we may not be what we appear to be or, worse, that we may be only what we appear to be and nothing more."

A specialist in Icelandic sagas and the literature of bloodfeuds, Miller uses *Faking It* to examine "being watched and judged by ourselves and by others as we posture and pose. It treats of praise and flattery, of vanity, esteem and self-esteem, false modesty, seeming virtue and virtuous seeming, deception, and self-deception. It is about roles and identity and our engagement in the roles we play, our doubts about our identities amidst the flux of roles, and thus about anxieties of authenticity."

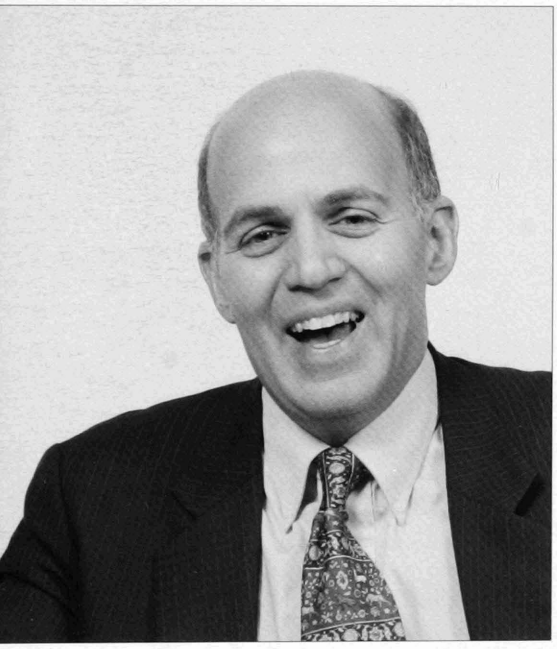
Says Ronald De Sousa of the University of Toronto: "William Ian Miller mixes psychology, philosophy, literary criticism, and confessional meditation to show that faking it is fundamental to human nature. His writing is compulsively readable, often hilarious, and sometimes embarrassing in its penetrating pose of hyper-self-consciousness. *Faking It* is a fascinating book."

An excerpt from the book begins on page 88.

Friedman has 'gratifying' day at U.S. Supreme Court

When Jeffrey Fisher, '97, rose to argue *Crawford v. Washington* before the U.S. Supreme Court last November, Ralph W. Aigler Professor of Law Richard D. Friedman had one of the best seats in the house — the chair next to Fisher's.

"I didn't say a word," Friedman recalled. "I was just sitting there for whatever moral support I could give Jeff." It was the first time that Friedman, a scholar of Supreme Court history, evidence, and the Confrontation Clause, which was at issue in *Crawford*, had sat in the inner arena where attorneys argue their positions and fence with justices' questions.



"The whole thing is very dramatic in some ways," he explained. "The clerk bangs the gavel, calls out, 'Oyez, oyez,' and all the justices come out from behind the curtain at the same time."

"Every 40 minutes during argument," Friedman continued, "the Chief Justice [William H. Rehnquist] gets up, slips behind the curtain , and walks around for 24 seconds — I didn't count, but that's what the clerk told us — to relieve his back. The argument continues, and he can hear it. And then at the end of the argument, the justices disappear as quickly as they emerged."

Friedman also wrote a friend-of-the-court brief in the case, and several times during the oral argument justices referred to it, calling it "the law professor's brief." This was "very gratifying," Friedman said. Law School faculty members Sherman Clark and Bridget McCormack also signed the brief. (See excerpt beginning on page 92.)

Crawford was the first of two cases Fisher, who practices with Davis, Wright and Tremaine in Seattle, has before the Court this term. He asked Friedman's assistance because *Crawford* involves the issue of confrontation, one of Friedman's scholarly specialties.

"When I was a law clerk [for Justice John Paul Stevens] I had a couple of confrontation cases," Fisher explained. "I remember his *Georgetown Law Review* piece being cited, along with a couple other academic pieces, all of which seemed to me powerful critiques on the current doctrine."

Fisher never had studied with Friedman. "In fact, I didn't even know Professor Friedman at Michigan. After I did the *cert* petition in *Crawford*, I mentioned to a friend in my office who also went to Michigan that I was pitching a theory that Professor Friedman had written about. My friend told me what a nice guy Rich was and encouraged me to e-mail a copy of the petition to him.

"So I did, and before the day was up, I had an enthusiastic response from Rich. We then started talking, and when the Court eventually accepted the case, things really took off.

"In a sense, the fact that I didn't know Rich before this case speaks, I think even more strongly, for the Law School community. As I joked at my Law School talk (see story on page 76), my experience here provides a whole new reason to listen to your law professors' theories. It might just get you into the Supreme Court."

"The first I knew about the case was when Jeff sent me the *cert* petition," Friedman explained. "I got very excited. As I read the first half, I thought it was a very good *cert* petition. When I read the second half, which cited and used my work, I thought it was a great petition!"

"It's immensely satisfying for me to be involved in the case," continued Friedman. "I've always wanted to have some impact on the law, and when you work in the way I have [in scholarly articles] calling for a total reorganizing of the way of thinking regarding a well-defined body of law, you're thinking in the long-term." But when the question goes before the highest court of the land, long-term can telescope into a single Court term.

Adds Fisher: "It's a real accomplishment for a professor to get his theory so explicitly considered by the Supreme Court. There are thousands of law review articles published every year criticizing Supreme Court doctrine, but the Court hardly ever — less than once a year — grants review in a case explicitly to consider whether to abandon its current doctrine in favor of a new theory espoused in a law review. The Law School and Professor Friedman should be very proud, regardless of how the case eventually comes out."

Simply put, Friedman believes that the confrontation right is not a broad rule

riddled with exceptions but a narrow and unequivocal one: A criminal defendant has the right to confront and cross-examine witnesses who give testimony that is used against him, and testimony is a statement that is made in anticipation of likely use as evidence. "One thing about my approach is that it's easy to explain," he notes.

For example, *Crawford* involves what Friedman calls "stationhouse testimony" — a statement to the police after the alleged crime has been committed by someone who was present at the scene, pointing the finger at the defendant. "I think a case like this illustrates the core principle," Friedman explained. "The point of the Confrontation Clause was to ensure that a witness could not testify in that way, out of the presence of the defendant and with no chance for cross-examination."

So on November 10 Friedman found himself at the table with Fisher, who said it was "very helpful" to have Friedman's support throughout the case. "As an initial matter," Fisher explained, "I was able to piggyback on his previous work in getting myself going on this new confrontation theory. And beyond that, Professor Friedman has thought about these confrontation issues so much that it was a real advantage to be able to talk strategic things out with him.

"One example is on hypotheticals — the Court loves to think about and ask hypotheticals. Having Professor Friedman's brief, which addresses many of these scenarios, allowed me to keep my focus on my client's case. And having Professor Friedman at the counsel table gave me confidence that if I got stumped on some issue at oral argument, he could help me work up an answer for my reply."

At deadline time, the Court had not yet announced a decision in the case.

Reimann brings *American Journal of Comparative Law* back home

The circle comes round again with the naming of Hessel E. Yntema Professor of Law Mathias W. Reimann, LL.M. '83, as one of the top editors of the prestigious journal that Yntema founded when he was a professor at the University of Michigan Law School.

Reimann is one of three editors in chief of the *American Journal of Comparative Law*, a quarterly journal considered preeminent in its field that was founded at the Law School in 1952. The *Journal* has been located at Boalt Hall at the University of California at Berkeley since it left the Law School in the early 1970s. The other editors in chief are:

- George A. Bermann, the Walter Gellhorn Professor of Law, Jean Monnet Professor in European Union Law, and Director of the European Legal Studies Center at Columbia University of Law; and
- James R. Gordley, the Shannon Cecil Turner Professor of Jurisprudence at the University of California at Berkeley School of Law (Boalt Hall).

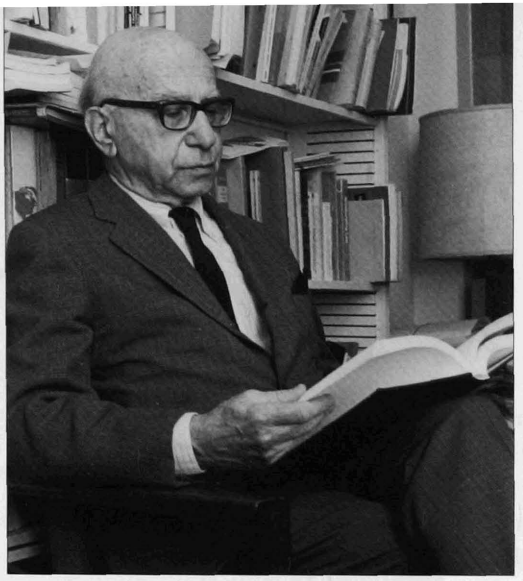
Yntema was part of the group of scholars that launched the American Society of Comparative Law (ASCL) in 1971, and served as ASCL's vice president. Within a year, he also launched the new organization's journal and began his stewardship as editor in chief. Two other Law School faculty members, Professors B. J. George and Al Conard, followed him as editor in chief.

The *Journal* benefitted from the longserving presence of the multitalented and multilingual Vera Bolgár, who was executive secretary and an associate editor throughout its nearly 20-year presence in Ann Arbor. Bolgár died last December.

Yntema envisioned a two-fold role for the *Journal*:

"The purposes in view, corresponding to the practical and scientific objectives of comparative law, are twofold: on the one hand, to encourage *general* investigation of legal problems, whether theoretical or empirical, as essential to the advancement of legal science and, on the other, to provide information respecting foreign legal developments, as increasingly requisite in legal practice and for legal reform.

"That these, the scientific and the practical, are complementary aspects of law, both of which require attention, has been recognized in the organization of the *Journal,* which is designed to provide a forum in which academic scholarship and the practicing bar can provide mutual assistance in the examination of basic or current legal problems on a comparative basis."



Spencer LeVan Kimball

Former Law School faculty member Spencer LeVan Kimball died October 26 in Salt Lake City, where he had retired. He was 85.

Kimball was a member of the U-M Law School faculty from 1957–68, serving as professor of law and director of legal research.

Kimball earned his bachelors degree at the University of Arizona, served in the U.S. Navy during World War II, then studied at Lincoln College, Oxford, as a Rhodes Scholar. He earned his S.J.D. from the University of Utah Law School, where at age 35 he became the youngest dean in the school's history.

He also served as dean of the University of Wisconsin Law School, was a law professor at the University of Chicago, and served as executive director of the American Bar Association Foundation in Chicago.

European Union Studies Association awards Stein 'Lifetime Prize'

Eric Stein, '42, the Hessel E. Yntema Professor of Law Emeritus, has become the first law professor to be awarded the Lifetime Contribution to the Field prize from the European Union Studies Association (EUSA). He is to receive the prize at EUSA's biennial international conference in Texas in 2005.

"Your work has meant a great deal to us and, more importantly, has been fundamental for EU [European Union] studies by alerting us to an essential dimension of the new Europe, that Europeans are peoples of the law who have assiduously and fastidiously insisted that the rule of law must lie at the very foundations of the construction of the EU," George W. Ross, EUSA chair, wrote to Stein.

Ross said the executive committee noted that Stein:

- Was the first to observe that the European Court of Justice's (ECJ) actions were constitutionalizing the Treaty of Rome, in 1951 published the first article on the ECJ in English, and in 1981 published an article that "launched the expansive scholarship focusing on the European Court of Justice."
- Was "one of the pioneers in the field of EU [European Union] law, established one of the first European law (then 'common market law') courses taught in a U.S. law school," and built up "a major and renowned center of EU law study at the University of Michigan."
- Co-wrote a casebook that "was a standard for years," and authored several articles that became "very widely known and used."

"You have been described as a 'master comparativist,' and in addition to establishing European law as a subject worthy of study in North America, your work on comparative federalism and comparative law has been important and influential," Ross wrote Stein.

"You are the first law recipient of this award, but the committee noted that your influence has transcended disciplines and that your work has frequently been cited by political scientists and others. Beyond your work, your continued intellectual engagement is an inspiration and model to all."

Stein is the fourth recipient of the prize. Previous winners include Stanley Hoffmann (2003), Harvard University; Leon Lindberg (2001), University of Wisconsin-Madison; and Ernst B. Haas (1999), University of California at Berkeley.

Activities

Reuven S. Avi-Yonah, the Irwin I. Cohen Professor of Law, presented his paper on "Corporations, Society, and the State: A Defense of the Corporate Tax" at law schools at the University of Michigan, Northwestern, Columbia, Harvard, New York University, University of California at Los Angeles, and at the Brookings Institution during the fall and early this year. In December, he spoke at the regulatory network conference organized by the Center for Tax Systems Integrity at the Australian National University. In November, he testified on tax shelters before the U.S. Senate Permanent Subcommittee on Investigations. Earlier in the fall, he presented a paper on "Side Event on Tax Cooperation" to the UN General Assembly and took part in the American Bar Association Tax Section Panel on Corporate Tax Integration. He also taught mini-courses on international tax at ITAM in Mexico City and the Vienna Economic University in Austria.

The University of Michigan Institute for Social Research's Survey Research Center has chosen Assistant Professor of Law **Michael S. Barr** as Detroit Area Survey Faculty Investigator 2004–05 for a survey on "Financial Services for the Poor." Barr also has been appointed program chair for the Financial Institutions and Consumer Financial Services Section of the Association of American Law Schools for 2004 and is the Section chair-elect for 2004-2005. In other activities during the fall, he: presented the paper "State and Federal Policy Initiatives to Increase Low-Income Access to Banking" at the conference on asset-building innovations sponsored by the Federal Reserve Board of Chicago and the National Center on Poverty Law in September in Chicago; presented "Banking the Poor" (available at www.fdic.gov/news/conferences/tum_barr.html) at the Federal Deposit Insurance Corporation symposium "Tapping the Unbanked Market: Helping People Enter the Financial Mainstream" at the National Press Club in Washington, D.C., in November (he also presented the paper at the Law School's Law & Economics Workshop in October); and co-presented "Institutions and Inclusion in Savings Policy" at "Building Assets, Building Credit: A Symposium on Improving Financial Services in Low-Income Communities" at the Joint Center for Housing Studies, Kennedy School of Government and Harvard Design School, Harvard University, also in November. In January, he moderated the panel on "Expanding Access to Credit and Financial Services for Low-Income and Minority Households: The Challenges Ahead" at the Association of American Law Schools Annual Meeting in Atlanta; and in February spoke on "New Perspectives on Community Economic Development" at the American Bar Association forum on affordable housing conference in Miami. Barr also is co-organizer for the conference on "Globalization, Law, and Development" at the Law School in April 2004.

Professor **Omri Ben-Shahar**, director of the John M. Olin Center for Law and Economics since 2001, last fall presented the article "Contracts Without Consent" at the Yale Law School Legal Theory Workshop and the paper "The Law of Duress and the Economics of Credible Threats" at the annual meeting of the American Law and Economics Association in Toronto. He also participated in the conference on "Settlement Outcomes" at Georgetown Law Center.

Clinical Professor of Law **Donald N. Duquette**, director of the Child Advocacy Clinic and founder of the Law School's new Mediation Clinic (see story on page 17), in October spoke at Albuquerque, New Mexico, on why "Two Distinct Lawyers Roles are Required" as part of the conference Representing Children in Abuse and Neglect Cases: Is It Time for a Change? In September, he described "Scottish Children's Hearings at a Crossroads: A View from America" at the University of Glasgow program on Scottish hearings issues.

Ralph W. Aigler Professor of Law **Richard D. Friedman** sat at the counsel's table with attorney Jeffrey Fisher, '97, for the oral argument of *Crawford v. Washington* before the U.S. Supreme Court in November. Friedman wrote an *amicus* brief for the case (co-signed by Law School faculty members Sherman J. Clark and Bridget McCormack, and others) and worked with Fisher on the case, which centers on the issue of confrontation. Friedman also spoke on issues involved in the case at Boston University, Stanford, Berkeley, and Georgetown. (See related stories on pages 30 and 76.)

Thomas A. Green, the John Philip Dawson Collegiate Professor of Law, spent much of the fall semester at the University of Nebraska College of Law as the Harvey and Susan Perlman Distinguished Visiting Professor of Law.

Assistant Professor of Law **Daniel Halberstam** served as co-director and lecturer for the international seminar "Advanced Issues of European Law" February 29–March 7 at the Inter-

University Center in Dubrovnik, Croatia. Last fall, at the European Commission, he participated in the European Policy Center/Royal Institute for International Relations joint conference "Will the IGC Deliver the Europe We Need?" Halberstam also was co-drafter of "Making It Our Own: A Trans-European Proposal on Amending the Draft Constitutional Treaty for the European Union," which was signed by 100 European Union scholars in the United States and Europe. (The full proposal is available at the University of Michigan's European Center Web site, www.eucentre.org [select Academics/ Michigan Paper Series].)

In October, James E. and Sarah A. Degan Professor of Law **James C. Hathaway**, director of the Law School's Program in Refugee and Asylum Law, traveled to Scandinavia to lead two courses in international refugee law. First, Hathaway was keynote lecturer at a seminar attended by more than 100 lawyers and judges from Finland and the Baltic countries to celebrate the 10th anniversary of "Pakolais Neuvonta," the Finnish national refugee legal advice center. He was then invited to Oslo by the Norwegian Ministry of Local Government and Regional Development to conduct an intensive two-day course for all members of the National Asylum Department, which is responsible for adjudication of refugee status claims.

Assistant Professor of Law **Jill Horwitz**, who joined the Law School faculty this academic year, won Honorable Mention in the National Academy of Social Insurance's 2004 John Heinz Dissertation Award competition for her Yale University doctoral dissertation *Corporate Form of Hospitals: Behavior and Obligations*. Said Dissertation Award Committee Chairman Robert B. Hudson: "Jill Horwitz's dissertation addresses critical legal and policy questions surrounding health care, is marked by a stunning versatility of approaches, and emerges as a powerful and integrated whole in which the approaches lead to powerful and provocative conclusions." In November, Horwitz discussed "Does Corporate Form Matter: Medical Service Provision in the Hospital Industry" at the National Bureau of Economic Research. Last August, she spoke on "What Kind of Hospital Do You Want to Practice In?" at the University of Michigan Medical School.

Alene and Allan F. Smith Professor of Law **Robert Howse** in November was a panelist for discussion of "The WTO and Social Regulation: Law, Science, and Democracy in Recent Cases" at a colloquium of the Program on Science, Technology, and Society at Harvard University's Kennedy School of Government; spoke on WTO trade law regarding goods and public health at the Society for Social Medicine's Conference on Globalization and Health at Birbeck College, University of London; and spoke on the failure of the Cancun WTO talks and European Union and U.S. responses at the Trade and WTO Group meeting of the Global Economic Governance Program at Oxford University. Earlier in the fall, he: lectured on the "Democratic Deficit of the WTO" at Catholic University in Leuven; was commentator for the CEGLA (a center at Tel Aviv University in Israel) conference on law and economics at the University of Pennsylvania Law School; presented three co-authored reports at the American Law Institute reporters meeting on WTO law at Columbia University; and in connection with the WTO meeting in Cancun, Mexico, took part in the International Institute for Sustainable Development's advisory group meeting on research in trade and environment, and was a panelist for the Center for International Environmental Law's discussion of "European Communities: Measures Affecting the Approval and Marketing of Biotech Products." Last summer, he testified before the House Energy Sub-Committee on Environment and Hazardous Materials on WTO and NAFTA implications of proposed legislation on trans-boundary movement of garbage.

Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law, last fall debated his former student and student research assistant, Ronald Allen, '73, the John Henry Wigmore Professor of Law at Northwestern University, on the subject of Miranda warnings for the National Public Radio series Justice Talking.

Assistant Professor of Law **Ellen D. Katz** presented her paper "Resurrecting the White Primary" at the symposium "The Law of Democracy Since *Bush v. Gore*" in February at the University of Pennsylvania Law School.

Earl Warren Delano Professor of Law **James E. Krier** participated in the Harvard University workshop on Environmental Protection and the Social Responsibility of Firms in December at the Kennedy School of Government.

Associate Dean for Clinical Affairs and Clinical Professor of Law **Bridget McCormack** has been elected vice president of the National Board of Trial Advocacy and has been named to the Board of Editors of the *Clinical Law Review*. In October, she spoke on "Confrontation and Hearsay Jurisprudence" at the annual meeting of the Criminal Defense Attorneys of Michigan.

Assistant Professor of Law **Richard Primus** last fall presented his paper (and forthcoming journal article) "Equal Protection and Disparate Impact: Round Three" to the faculty of Harvard Law School.

Professor of Law **Adam C. Pritchard** was commentator for the Pomerantz Lecture Program at Brooklyn Law School in February and also took part in the Corporate Law Symposium at the University of Cincinnati College of Law. In November, he served as commentator for the Eugene P. and Delia S. Murphy Conference on Corporate Law at Fordham University School of Law and participated in the Friday Afternoon Faculty Colloquium at the University of Texas School of Law. In October, he participated in the faculty workshop at Washington & Lee University School of Law, and in September took part in the annual meeting of the American Law and Economics Association. During the summer, he participated in the conference on "The Role of Law in Creating Long Term Value for Shareholders" at Boalt Hall at the University of California at Berkeley.

Hessel E. Yntema Professor of Law **Mathias Reimann**, LL.M. '83, has been elected one of three co-editors in chief of the *American Journal of Comparative Law*, which was founded by Yntema and others in 1952 and had its first home at the U-M Law School. (See story on page 31.) Reimann also: spoke as part of a panel on "The Historical School in Comparative Perspective" at the annual meeting of the American Society of Legal History in Washington, D.C., in December; and took part in the colloquium on "Conflict of Laws and Multistate Justice" at the University of California at Davis in February.

Theodore J. St. Antoine, '54, the James E. and Sarah A. Degan Professor Emeritus of Law, lectured on alternative dispute resolution in the Peoples Republic of China in December as part of two weeks of activities that concluded a two-year University of Michigan project in China funded through the U.S.-China Legal Cooperation Fund with support from the Chinese and U.S. embassies. St. Antoine delivered lectures at Capital University of Economics and Business and the U.S. Embassy in Beijing and the U.S. Consulate in Shanghai. Other Law School participants in the two-year project have included Professor Emeritus **Whitmore Gray** and Clinical Assistant Professor of Law **Laurence D. Connor**, '65.

Charles F. and Edith J. Clyne Professor of Law **A.W. (Brian) Simpson** presented the Maccabean Lecture in Jurisprudence at the British Academy in October and also delivered the talk at the University of Nottingham in December. In October he lectured at the Centre for Human Rights in the London School of Economics as part of activities celebrating the 50th anniversary of the activation of the European Convention on Human Rights and participated in the two-day seminar to mark the 10th anniversary of the AIRE Centre in London.

Stephanie M. Smith, adjunct clinical professor with the Legal Assistance for Urban Communities Clinic in Detroit, spoke on "The Role of the Development Attorney for the Nonprofit Real Estate Developer" at the Housing Initiative Workshop in Detroit in January; in another portion of the workshop, which is presented as successive one-day programs over three months, she presented a paper on the legal and political issues that can help or hinder development of an affordable housing project. Late last fall, she participated in a workshop at Rutgers Law School in Camden, New Jersey, on the virtues of grammar and vices of modern-day talk in legal writing.

Clinical Professor of Law **Grace C. Tonner**, director of the Law School's Legal Practice Program, presented a program on "Designing a New Writing Program" at the Association of Legal Writing Directors annual meeting in Windsor last summer.

Harry Burns Hutchins Professor of Law **Joseph Vining** was speaker for a seminar/discussion of "The Humanity of Science: Science and Spirit after the 20th Century" in December at the Center for the Study of Science and Religion at Columbia University. The center is one of several within the Earth Institute, an organization for the integrated study of Earth, its environment, and society.

Visiting faculty

Leonard Niehoff, '84, of Butzel Long in Ann Arbor, earlier this academic year: addressed the U-M's Knight-Wallace Journalism Fellows on "Civil Liberties After 9/11"; spoke on "Constitutional and Civil Rights Litigation in the Federal Courts" at the University of Detroit — Mercy Law School; and spoke at the Detroit College of Law at Michigan State University on "Media Law: A Practitioner's View." In November, he appeared *pro bono* on behalf of the NAACP in filing an *amicus* brief in support of the ACLU's challenge to the constitutionality of Section 215 of the U.S.A. Patriot Act.

Michigan runs on the national track

The Law School is hot.

Graduates like you know how good this Law School is. So do growing numbers of those looking at the possibility of attending law school. Recent trends in applicants' credentials and home residences show that the Law School is a truly national leader in legal education that stands shoulder to shoulder with the best law schools in this country.

(And beyond. A small but growing number of J.D candidates are coming to the Law School from overseas.)

The number of applications for the Law School's limited number of spaces in each incoming class has been climbing steadily in recent years. This trend remains unabated this year — by midway through last fall, the number of applications was running nearly 30 percent ahead of the same time the previous year.

And more of those to whom we offered admission accepted that invitation last year. Law school applicants are comparison shoppers and all law schools experience rejection from students who have been admitted. But last year, 35 percent of the applicants accepted in the Law School chose to come here, up from 31 percent the previous year. At 35 percent, our yield (the percentage of accepted applicants who choose to enter this Law School) is better than all but a handful of other top law schools.

This year's entering class of 406 students, the largest in recent memory, also is evidence of the school's attractiveness. This is especially true when you consider that four out of five applicants, including many who are clearly academically qualified, are rejected. (See story on page 40.)

In addition, anecdotal evidence from discussions among admissions professionals confirms the hard numbers: The University of Michigan Law School is enjoying a greater attraction to applicants than many of its peer private or public law schools in the United States.

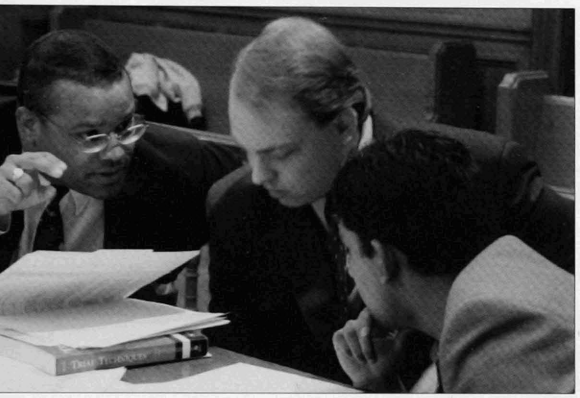
Michigan has always been hot, of course. Michigan's quality and reputation are longstanding. The ranks of all branches of federal and state governments have long been populated at the highest levels with our graduates, just as have the boards of America's Fortune 500 companies. Any listing of top lawyers by specialty, race,

The 2003 entering class

There are 406 J.D. candidates — 102 of whom are summer starters — in the 2003 entering class, the largest Law School entering class in recent memory. Thirty-five percent of the accepted applicants chose to enroll at Michigan.

- Median LSAT: **167** (96 percentile)
- Median Undergraduate Grade Point Average: **3.6** (based on 4.0 system)
- Mean age: **24**
- Michigan residents: **24 percent**
- Minorities: **30 percent**
  - American Indian or Alaska Native: **3 percent**
  - Black/African American: **6 percent**
  - Hispanic/Latino: **8 percent**
  - Asian American or Pacific Islander: **12 percent**
- Women: **49 percent**

The entering class also includes 45 LL.M. candidates who come from 23 countries and six continents. Three of these students are LL.M./S.J.D. candidates, three are International Tax LL.M. candidates, and 15 are women. Among these students are professors, lecturers, government officials, judges, and practitioners; their academic interests range from international law and human rights to corporate law and antitrust to constitutional law and civil procedure.



geography, or age is well, and often disproportionately, represented with Michigan Law alumni.

If any one factor has shaped our position among providers of legal education it is, of course, a century-old tradition of having in our midst a stellar faculty known for its scholarship and teaching expertise. Each graduate can name one or two from their era who exemplified all that is great about this School. Much of our reputation results from our outstanding Law Library of more than 941,000 volumes with its unrivalled international collection built up over much of the past century. (See related story beginning on page 50.)

As communication and transportation shrank geographic and psychological distances, our reputation grew beyond its early midwestern origins. Our faculty remains unparalleled, our library among the world's finest, and we have continued to be a community of people from around the globe that truly enjoys learning with and from each other. There is no question that the long legal battle that ended in the U.S. Supreme Court last summer drew greater and more sustained national attention to the University of Michigan and its Law School than ever before. And people have liked what they have been seeing.

The accompanying charts help to track this story. The essay by Assistant Dean and Director of Admissions Sarah C. Zearfoss, '92, explores the intricacies of choosing among applicants. Interviews with students and graduates shed further light on what makes Michigan so appealing. And, finally, Law School Student Senate President Maren Norton's tour introduces you to "a somewhat typical Wednesday" at the Law School.

Veteran teachers like Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law, who retired last fall after teaching here since 1965, have watched — and contributed to — the national standing that the Law School enjoys. Kamisar noted in an interview last fall (see page 22) that "current students have better credentials and more impressive records," they work harder to find internships and jobs, and that doing a clerkship or two after graduation before launching a career in practice or teaching has become much more prevalent.

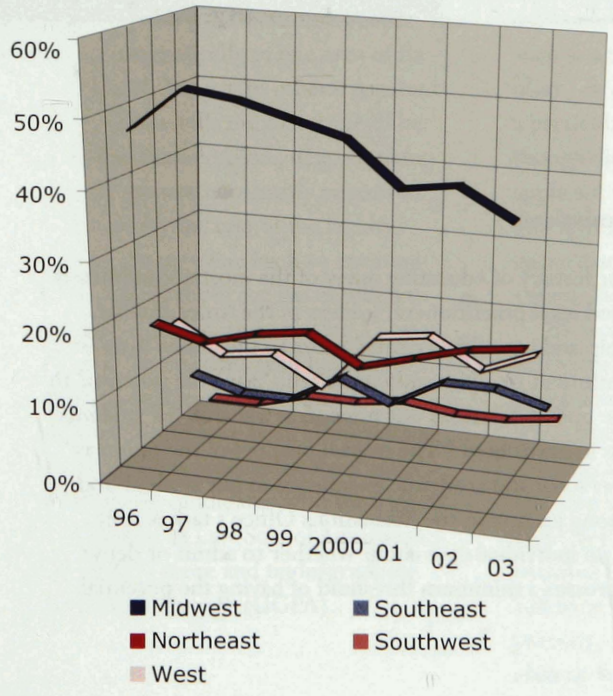
Kamisar also reported that there are many more students in his classes from beyond the Midwest than there used to be and that recent Law School graduates establish practices and make homes far more widely across the United States than their predecessors did.

"It's much more of a national law school," he said. "When I first came here, you'd pick the top states most represented in the student body and it would be Michigan, Ohio, Illinois, Indiana. Today it's Michigan, New York, California, New Jersey. I was struck by the fact that there are 50 people from California in the first-year class, and 30 from New York. So that's just one example.

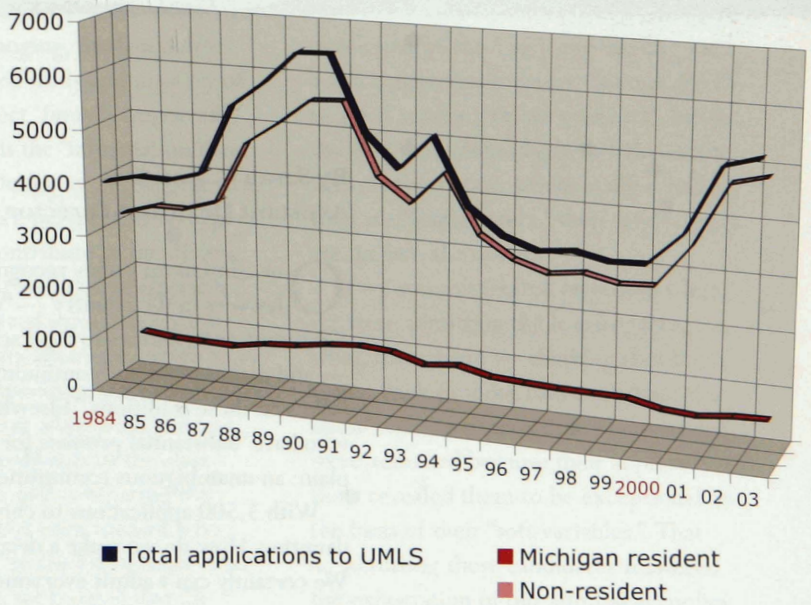
"I think students now go all over the country more than they used to. In the 1960s, we were very strong in places like Cleveland and Chicago; now, more people go to Washington, D.C., New York, Los Angeles, San Francisco, Seattle, Dallas, Houston. So I think in terms of students coming in and leaving and where they go, it's much more of a national law school."

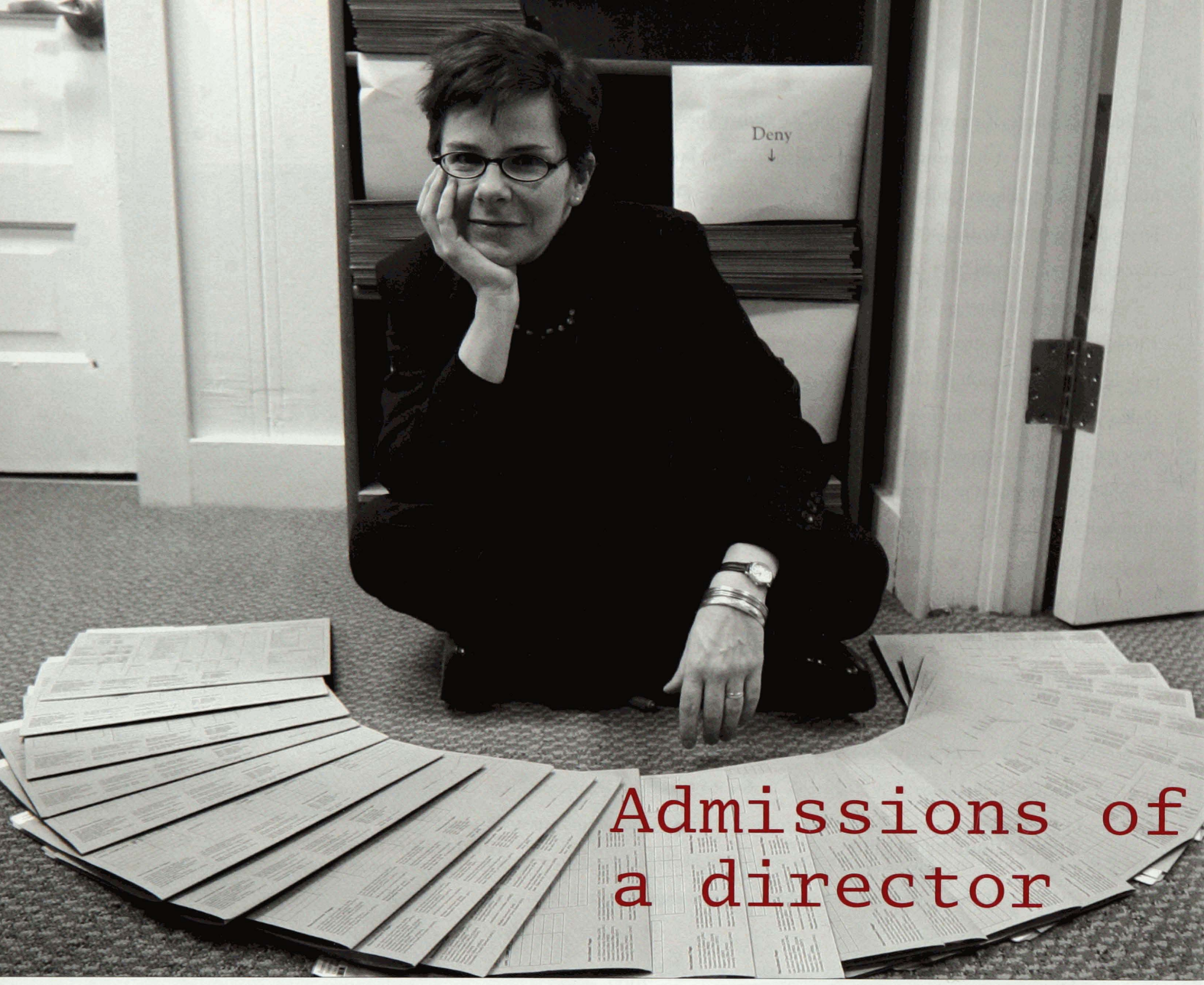
"I like to think that the proper conclusion to all the indicators is that Michigan is more popular than ever," says Assistant Dean and Director of Admissions Zearfoss. As she told the law student publication *Res Gestae* last fall: "It is far better to have a large and academically strong class than it is to be working the waiting list in late August, begging people to join you; several of our peer schools were in the latter position, and trust me, they weren't happy about it."

Applications by Region



Total Applications





Admissions of a director

By Sarah C. Zearfoss
Assistant Dean and Director of Admissions

Our admissions policy recognizes our history of educating many of the most accomplished lawyers in the country — "esteemed legal practitioners, leaders of the American bar, significant contributors to legal scholarship and/or selfless contributors to the public interest" — and makes plain our continuing commitment to admit only those who "have the potential to follow in these traditions." Elsewhere, the policy describes our mission as a search for students who have "substantial promise for success in law school." The overall purport of the policy is plain: an unambiguous commitment to personal and academic excellence in our student body.

With 5,500 applications to choose among each year, the Admissions Office's task is a bit daunting. How do we make a decision in an individual case about whether to admit or deny? We certainly can't admit everyone who crosses a minimum threshold of having the potential

to graduate without a serious academic problem, or we wouldn't have room to move through the hallways; indeed, we must deny admission to four out of five of our applicants. There has, therefore, to be some system for rationally choosing some particularly stellar fraction of those whom we anticipate have "substantial promise for success." Devising such a system requires coming to grips with the meaning of the "substantial promise" standard. It can't reflect simply an aspiration that those we admit finish with good grades; after all, since we are not Lake Wobegon, 50 percent of any class entering the Law School will necessarily end up graduating in the bottom half. Certainly someone whose law school grades were low but who was an active campus leader, or a lively classroom participant — and anecdotal evidence abounds that the best classroom participants often turn out to be modest scorers on exams — cannot be classed as one of those dreaded "admissions mistakes." What about the graduates who have a distinguished legal career despite not having attained an illustrious transcript?

Institutional folklore has it that at least one of our famous graduates was a mediocre student at best — but no one would wish to rescind the offer of admission. Or what about the people who succeed dramatically in one area of the Law School, but not in others? A patent law professor tells me that some of her most intellectually alive, deep-thinking students are not necessarily perceived as all-stars by the rest of the faculty. Further, having gone back to examine the files of all those she has extolled to me (the woman has an amazing 15-year memory for students who have impressed her), it is undeniable that very few of her favorites would have been admitted had our admissions process involved simply selecting the candidates with the highest combination of Law School Admission Test (LSAT) score and undergraduate grade-point average (UGPA).

These various students are valued at least as highly by the faculty and by the Law School community as a whole as those whose graded performance is consistently impressive. A sound pedagogical reason supports the valuing of variety: bringing diverse people and viewpoints into the classroom is critical to the Law School's mission of serving as a professional training ground for a career in a multicultural and constantly changing world. It is no surprise, then, that our office, with the freedom to choose from among large numbers of superbly well-qualified applicants, takes "soft variables" into account in assembling a class, rather than scrutinizing solely the score data.

Nonscore information in the application lets us draw conclusions about promise and potential in a number of ways. We may learn, for example, that the applicant has a history of outperforming the predictions of standardized tests, or we may learn that his college career was marred by some personal tragedy. More generally, the application "may tell us something about the applicant's likely contributions to the intellectual and social life of the institution." There is, obviously, an abundance of factors in an academic record that reveal greater academic depth than a mere number can, such as a wide-ranging, fearless curriculum, or advanced study and mastery of a particular subject. Equally important, though distinct, is the "information in an applicant's file [that] may . . . suggest that that applicant has a perspective or experiences that will contribute to the diverse student body that we hope to assemble."

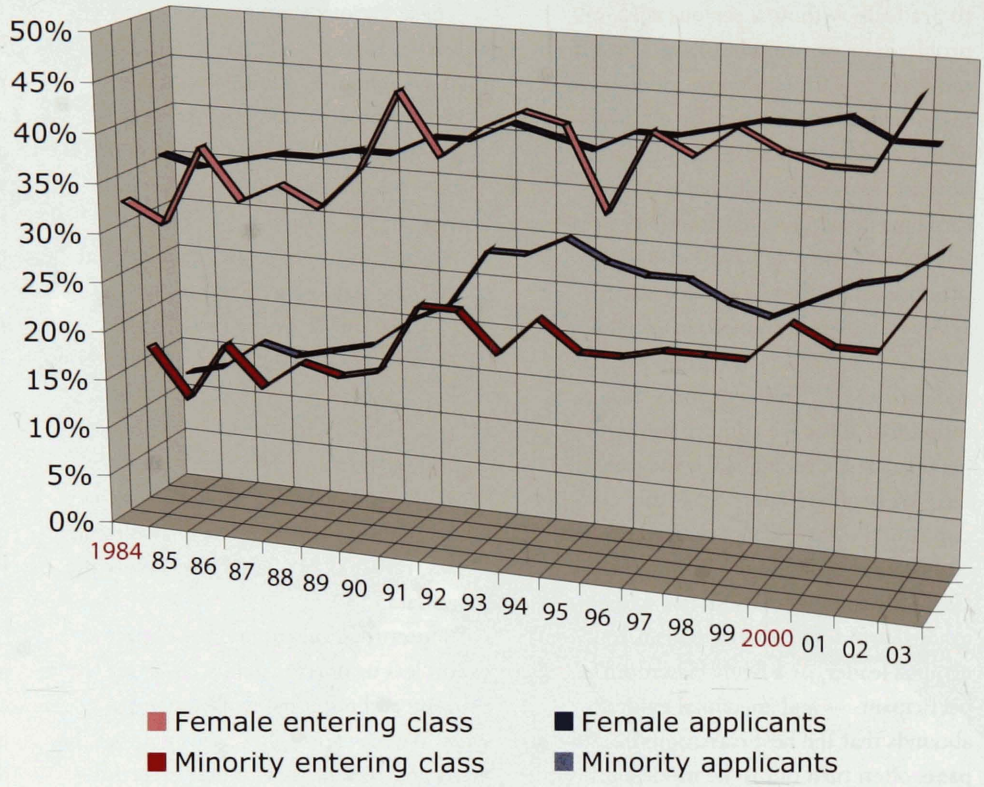
We have gathered some interesting and surprising data about the extent to which those perspectives and experiences matter in our admissions process. Looking at the applicants to the class entering in 2001, and comparing the LSAT and UGPA of each student who enrolled in 2001 to the list of those who had been denied, we learned that 20 percent, or 76 students, of an enrolled class of 362 had both lower LSAT and UGPA than at least 100 applicants who had been denied; another nearly 30 percent, or 103, had both lower LSAT and UGPA than at least 23 and as many as 99 of the denied applicants. Moreover, these enrolled students comprised a racially diverse group: More than two-thirds were white or Asian, while the remainder were African American, Native American, or Latino.

In other words, our commitment to matriculating a class that is not merely promising and talented, but interesting and diverse, meant that half of the class entering in 2001 was admitted in favor of candidates whose scores were higher. Internally and informally, we at the Law School came to refer to this group as "leapfroggers," a shorthand term which has the virtue of vividness, and which we used to connote the abundance of energy, initiative, and ambition these students had demonstrated.

To some degree, though, the imagery implicitly validates the notion that the score criteria are the sole "real" measure of "merit." To the extent the term suggests that only rarely can a few extraordinary applicants persuade us to glance away from a numerical grid of LSAT and UGPA that otherwise inflexibly governs our decisions, it is misleading. Our process does not consist of framing a presumption based on the LSAT and UGPA, with a subsequent quick glance through the file to see if anything offers a rebuttal. In fact, the data show definitively that this is not the way the system works at all; if half the class are "leapfroggers," then leapfroggers are, in fact, the norm.

If we weren't fixated on scores when we were admitting the leapfroggers, what, then, were we thinking about? Going back to those files confirmed the initial obvious supposition: These students were admitted because their applications revealed them to be exceptional on the basis of their "soft variables." That is, admitting these candidates answered the exhortation of our admissions policy that we seek to admit students who will contribute to "the intellectual and social

The charts at right reflect trends in total applications to the Law School from women and members of minority groups and these groups' proportions within entering classes; the four charts at far right reflect these trends for each of the identified groups considered within the category of minority groups: African Americans, Asian Americans, Hispanic Americans, and Native Americans.



life of the institution" in ways and to a degree that their LSAT and UGPA alone fail to reveal.

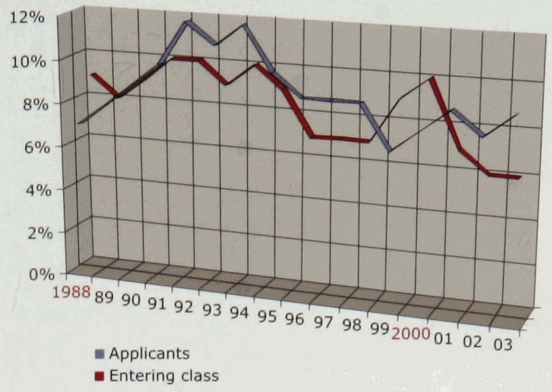
Most compelling were the rare students who had overcome extraordinary obstacles that left me wondering how they were able to stand upright, let alone fill out law school applications and supplement them with highly respectable LSATs and UGPAs. People had been abandoned by their parents at young ages; some raised themselves and siblings from the time of their early teens. People had been raised in extreme poverty, to the extent that they had no running water throughout their childhood. People had suffered serious physical disability or chronic disease. Now, J.J. White [Robert A. Sullivan Professor of Law James J. White, '62] may tease me about being a bleeding heart, but scholastic achievement in the face of these odds is, to me, astonishing.

Other students had truly remarkable backgrounds of community or public service. The applicant who worked for very low pay as an investigator for a well-regarded legal services organization, and who evinced a high degree of motivation to continue such service as an attorney; the applicants who endured a high level of personal discomfort and life disruption to volunteer in third-world countries; and the applicants who challenged themselves by serving as teachers in underfunded urban schools all stood out as outstanding and desirable additions to the class.

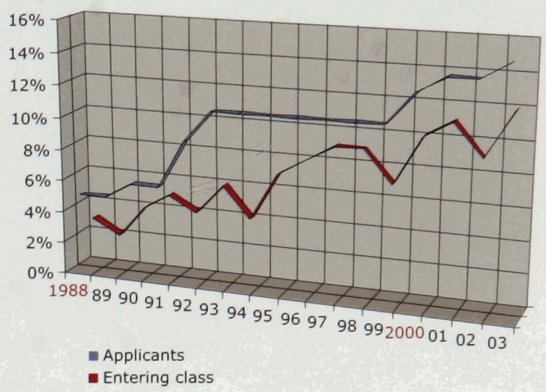
Some applicants had backgrounds that simply set them apart, and provided them with experiences from which their fellow students could learn. Military service, entrepreneurship, Ph.D.s and M.D.s, and impressive athletic accomplishments all made a difference for some applicants. Other applicants had personal qualities that are unusual in our applicant pool and that we value accordingly: Some were non-U.S. citizens whose country of origin had significant cultural differences from the United States; some were older, returning to school for the first time in decades; some were of ethnicities that, while not formally mentioned in our admissions policy, we view as important voices — Arab American, for example, or Hmong.

One difficulty in assessing these files and attempting to judge, after the fact, what might have made the difference for an applicant, and the extent of the difference it made, is my sense that students' stories do not fall neatly into discrete categories of "LSAT and UGPA not predictive" and "likely to contribute to social life" and "likely to contribute to intellectual life." For example, an applicant who grows up in China and learns English in high school might be someone for whom we think an LSAT score is not predictive, given the language issues, but might also be someone whose background we could reasonably expect would lead him to make special contributions to both the social and the intellectual life at the Law School.

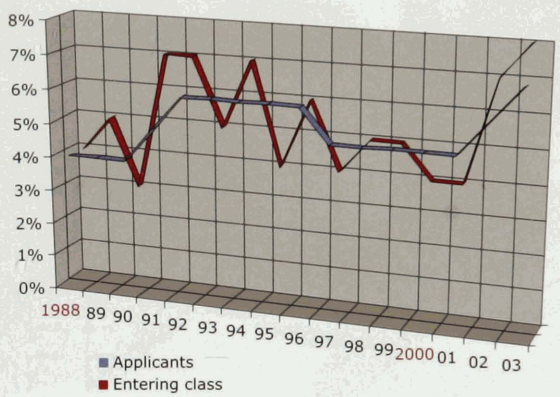
African American



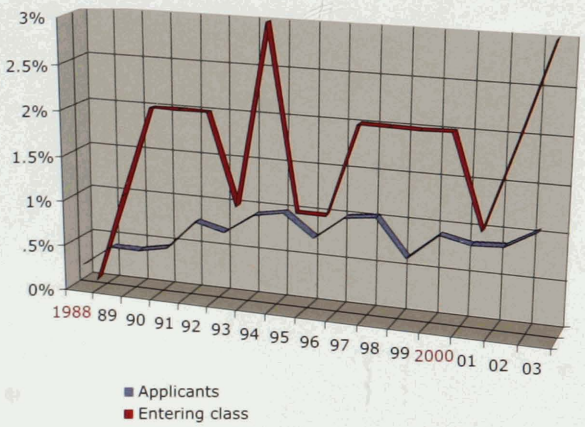
Asian American



Hispanic American



Native American



There is, moreover, the problem of intersectionality. This same Chinese applicant might have grown up in poverty, and become a student activist during college; we have in this one applicant, therefore, the obstacle of socioeconomic disadvantage overcome as well as a strong suggestion of leadership. We must understand his achievements in light of the extraordinary hurdles in his path, but we are also attracted to his demonstrated potential for leadership, and intrigued by his unique voice. Similarly, a Ph.D. may have an extraordinary record of public service; a feminist activist may be from the rural South and, moreover, be a practicing Christian Scientist; and so on. Which factor led to admission? And which factor, had it been absent, would have put the applicant in the "no" pile? And mightn't the combination result in a whole that is greater than the sum of its parts?

Finally, we are always looking for something more than the fact of a particular experience; rather, we seek evidence that the experience will be of value in the classroom. If a student will not speak, then it doesn't matter what he has to say. If a student is inarticulate, then his interesting experiences will not advance the classroom dialogue. We find indications of willingness and ability to contribute in the candidate's power of expression in his or her personal statement and essays; in the content of recommendation letters; and implicitly, overall, in the care that is taken with the application as a whole.

Admissions is an art and not a science: Bottom-line, one candidate with certain numbers and a certain set of experiences might fare quite differently from another with identical numbers and similar background, simply because one was persuasive and one was not. The bounds of diversity are endless. But the concept is real; it is not narrowly limited to race; and it has far-reaching effect in our admissions decisions. We are committed to matriculating an extraordinary group of students to the Law School every year, and we know that "extraordinary" is not a term we can narrowly define.

Sarah C. Zearfoss, *'92, received her A.B.* cum laude *in psychology from Bryn Mawr College and her J.D.* magna cum laude *from the Law School. At Michigan, Dean Zearfoss was the editor in chief of the* Michigan Journal of International Law, *and authored a note on women's rights for which she received the Eric Stein Award. While at the Law School, she was also a recipient of the Henry M. Bates Memorial Scholarship and of the Robert S. Feldman Labor Law Award, and was a member of the Order of the Coif. Following graduation, Dean Zearfoss clerked for the Hon. James L. Ryan of the U.S. Court of Appeals for the Sixth Circuit and then practiced labor and employment law at Pepper Hamilton LLP's Detroit office. She became Assistant Dean and Director of the Admissions Office in March 2001.*

Students and the Law School experience

Ask Ann Landis, '03, why she chose the University of Michigan Law School and she'll tell you that it was a major decision. It took a year to make, in fact.

Landis, who earned a bachelor's degree in English and political science from the University of Nebraska, wasn't even sure she wanted to study law. With imposing credentials, she was accepted here but decided instead to sample legal studies for a year at the University of Iowa because it cost her less to attend there. She discovered during her year at Iowa that she loved the law, so she transferred to Michigan to get "the best legal education I could."

"Michigan's debt management program and wide variety of classes made it the best choice," she explained. "In addition, Ann Arbor seemed to be a fun place to live."

Landis, who currently is clerking for a state district court in Kansas, used one of the less-traveled routes that students take on their way to the Law School. Many come directly from undergraduate colleges, where they've not only compiled impressive academic credentials but also often have been active in campus and community activities. Others work or travel for a time before enrolling, accumulating the life experiences that are so critical to the appropriate development and function of the law.

Second-year law student Sam Erman came to the Law School after earning his degree in English at Harvard University, where he fashioned an impressive record of activity: "My primary undergraduate commitment was working on a biweekly undergraduate political magazine where I contributed, recruited, and edited articles and held a variety of positions. I also participated in a fund-raising organization that promoted small, creative projects in developing countries, briefly taught Spanish for an adult education organization, and when home from school volunteered at Food Gatherers, an excellent food rescue organization in Ann Arbor."

Here at the Law School, he's applying his writing and editing skills as a member of the *Michigan Law Review*.

Third-year law student Merrill C. Hodnefield, on the other hand, enrolled at the Law School five very full years after earning her bachelor's degree in anthropology at Albion College. Before coming here she did social work, community volunteer work, was a factory employee and a political worker, even did a stint as manager of a trailer park. (Actually, she points out, a "manufactured home community.")

"Everything I did in my five years before law school made me not only have more familiarity with the subject matter (for instance contracts and business organization from running a business and working in nonprofit administration), but more facility in learning to practice law well," she explains.

"So, for instance, my stint in social work, my experiences in community volunteering, and my own family experiences since undergrad have helped me to recognize that people have special sets of needs when dealing with very difficult situations. This aided me immensely in working with clients in the clinic, in trying to really hear them, and in helping to parse out how I can be of most use to them as a counselor."

The experiences that these and other students bring to the Law School are the ingredients for an ever-changing reflection of the intricacies, complexities, and endless variety of the world they join after graduation. Rich, poor, white, black, Asian American, American Indian, Hispanic, male, female students — all study here together. Perhaps even more importantly, they share ideas, social and work time, and forge often lifelong friendships in an atmosphere that safely brings together many different people in the common endeavor of learning law and learning about each other.

Yes, it can be difficult to struggle with viewpoints and opinions different from your own. It can shake your convictions. Even change them. Or strengthen them. This process is the bedrock of education.

And students appreciate the differences and variety that their classmates bring to their lives. "It is helpful when students draw on their real-world experience to explain how things actually occur in practice," notes third-year law student Eric J. Carsten, an Emory University graduate in philosophy and English. "For instance, one of my fellow students studying Patent Law was a chemist who had worked at a large pharmaceutical company. Her expertise was greatly appreciated."

Carsten doesn't stop there, however. With mature insight, he adds that "when discussing large policy issues, there is a danger when students extrapolate from their own limited experiences. Anecdotal evidence, by itself, is often a weak argument, and it is frustrating to hear students who claim that because something happened to them or to someone they know, broad generalizations can be made."

"The Law School is a place that encourages debate, and even disagreement, but it also provides a safe arena for that competition of ideas," explains Dean Evan Caminker. "We believe that encounters with new ideas and different people are critical for intellectual and personal growth, and such encounters frequently reveal that people share more than they dispute.

"We also believe that appreciating differences and having civil discussions, as students here learn to do and indeed as the legal profession demands, will continue to characterize our graduates and to prepare them for successful and rewarding careers."

Landis, who transferred into the Law School, puts it this way:

"At Michigan, I was taught, and taught well, the value of diversity, but it didn't come from a classroom discussion. It came from talking with a classmate about the countries she'd lived in, from being told by another about volunteering at a refuge for zoo animals, from learning that one of us had written a book.

"Learning about the various areas where people had lived, and the experiences they had gone through, forced me to look at myself in a new light. Knowing that others — people I knew — had done different things made me question my life and the lines I had drawn for myself. The world opened up."

What more could a law school ask?

A conversation with former Deputy U.S. Attorney General

Larry D. Thompson, '74

In the following interview, former Deputy U.S. Attorney General Larry D. Thompson, '74, who recently became a senior fellow at the Brookings Institution and Visiting Professor of Law at the University of Georgia Law School for the 2004 spring semester, reflects on his Law School association and discusses some of the ideas that have propelled his career. Thompson's 30-year career has been marked by successes in both the private and public spheres. He was a longtime partner with King and Spalding in Atlanta, where he earned high regard as a specialist in the fields of criminal law and corporate crime. In the public sector, he has served as U.S. Attorney for the Northern District of Georgia, Director of the Southeastern Organized Crime Drug Enforcement Task Force, Independent Counsel for the Department of Housing and Urban Development Investigation, and Chairman of the Judicial Review Commission on Foreign Asset Control.

Q: Do you recall your thoughts when you arrived here in 1971? And today, what kinds of high and low points do you recall from your three years here? Do any of your Law School experiences, teachers, or fellow students especially stand out in your memory?

When I started law school, my thoughts were that there were so many bright people there, and I had some doubt whether I could successfully compete. Some of the classes were very difficult. In fact, I recall having to withdraw from an advanced business law class because I didn't have the requisite accounting background. On the other hand, some of the other classes were very exciting. Professors were intellectually stimulating, challenging, encouraging, nurturing, and most important, accessible.

Interestingly, a seminar I took on corporate criminal issues taught by Professor Joe Vining [Harry Burns Hutchins Collegiate Professor of Law

Joseph Vining] stimulated for the first time, and quite frankly, helped to shape many of my views regarding corporate criminal issues. I referred to Joe's class in my mind many times as I had to deal with the corporate scandals as Deputy Attorney General. I think this experience demonstrates that a topnotch legal education is not only important, but it can be very influential in one's career and professional life. I learned in dealing with the very bright people I attended school with my strengths and my limitations.

Take, for example, the Case Clubs [precursors to the current Legal Practice program]. I remember the Case Clubs being unusual in that I enjoyed them and did very well in them. And I thought to myself, if this is what lawyers do when they litigate, I'm going to be okay. That was a great confidence builder. I recall having many philosophical, political, and even legal discussions with my law school peers.

And I have remained in contact with several of my fellow law school classmates. For example, I have remained in touch with Sara Beale, '74 (who teaches at Duke Law School), who impressed me as a student and now as a top legal scholar.

Q: Despite your very full schedule, you have made time in recent years to return to the University of Michigan and the Law School several times as a speaker. Why? Is this something you encourage other graduates to do?

First, I really enjoy interacting with the students. When I have returned to lecture in a class, I have found that the preparation process pushed me to think about and organize some of the substantive issues that would be involved in the lecture in ways that even helped me appreciate the subject matter better. Other times, I've returned to encourage students to enter legal careers in the public sector, especially government. I think it's very important to encourage students at topnotch law schools like Michigan to pursue government legal positions. I look at it as a win-win situation for our society, and it's good for the students. The students will be in a position to develop professional skills earlier than they would otherwise, they will take a great deal of responsibility quickly, and be exposed in short order to professionally rewarding and challenging work. I think lawyers owe it to the profession to share their practice experiences with other lawyers, including law students.

Q: A significant part of legal education is learning to understand and respect viewpoints different from your own. Being a good lawyer requires a mental agility that is enhanced by encountering many perspectives. The recent court challenge to Law School admissions policies focused on racial diversity as one source of varying perspectives, but there are others, too. How do you view the role of diversity in legal education?

I believe diversity in the broadest sense possible is important to a good legal education. I also believe the manner in which the University handled the *Grutter* and *Gratz* cases was very professional. Unlike some, the University avoided blatant emotional appeals that would not have served the interest of the students, especially the minority students involved in the litigation.

We obviously live in a diverse society, and diversity is important to lawyers in a legal education setting as well as in the workplace. But I believe diversity should focus on more than just race and ethnicity, although they both continue to be important considerations. As one who is old enough to remember state-sponsored racial discrimination, I continue to believe that we have to be very, very careful about making decisions based upon racial and ethnic classifications. And I'm still not convinced that when we make decisions based on these classifications, that we can avoid some sort of negative stigma being attached to the decision.

No matter how well meaning we may be in our efforts, I believe, we as a society need to move beyond making decisions solely on the basis of race or ethnicity as soon as possible. More attention should be paid to socioeconomic considerations when we talk about diversity. In a legal education setting, diversity of viewpoints, I believe, is absolutely critical. It would be truly unfortunate if all the law students and faculty subscribe to the same point of view, even on the issue of diversity. I believe the Law School leadership clearly understands how important it is for the University of Michigan to have diversity of viewpoints — all kinds of legal, political, and ideological viewpoints.

Q: Indeed, how do you view the role of diversity in legal practice and contemporary life generally?

Notwithstanding the fact that we are a very diverse society in all kinds of ways, successful lawyers will continue to need to be able to deal with people — their clients, their colleagues — on an individual basis.

Q: If you could rewind, are there other paths you would take or choices you would make?

I do not think so. I've been very fortunate in having a satisfying and meaningful practice. I've had to deal with several challenging public assignments and matters. On the other hand, I've also derived a great deal of satisfaction out of helping my private clients through difficult legal situations.

'. . . a somewhat typical Wednesday'

By Maren R. Norton, President
Law School Student Senate

It seemed like such a simple assignment: "Write about Michigan Law, as you know it and live it as a student and as a two-term president of the Law School Student Senate." How hard could that be? Yet, when I sat down to write a few words, I was at a total loss. (Shocking to those who know me best, I'm sure.) Do words exist that capture the essence of my whirlwind Law School life? If they do, I cannot find them. So, instead, allow me to take you on a walk around the Law School.

It's a somewhat typical Wednesday at the University of Michigan Law School. Outside Room 100 (Honigman Auditorium), the Lexis Nexis representative is hocking bonus points for using Lexis, a Law School Student Senate (LSSS) member is selling tickets to the annual Halloween Party, representatives from the Latino Law Students Association are selling a wide array of baked goods to raise money, and stacks of the latest edition of the *Res Gestae* are waiting to be grabbed by the students soon to emerge from class.

Shortly, Room 150 will be filled with students eagerly eating free pizza while listening to a lunchtime presentation on gun control sponsored by the American Constitution Society. Next door, the Christian Legal Society is hosting a Notre Dame professor for a discussion of legal ethics. Down the hall, the Black Law Students Alliance is holding its weekly meeting. And, upstairs, the Criminal Law Society is electing a new slate of officers for the year.

The computer lab in Room 200 is packed with students. Most are checking e-mail between classes while a few await help from computer guru *extraordinaire*, Phil the Computer Lab Guy. When a computer opens up, I sit down to quickly check my e-mail. My inbox is packed, including 10 new messages that appeared in the 10 minutes since I started this walk. They span the spectrum of issues and events. There are some with questions and concerns about various facets of Law School life. One student reiterates his concerns about Career Services, another wants to know how to start a new student group, other students would like an ATM in the Law School, and, finally, one is sick of the endless lost and found e-mails sent to the student e-mail listserv. Then there is an invitation to a pregame tailgate at the Tappan House (longtime home to years of law students). Another is a response to an e-mail survey I'm conducting for my Feminist Legal Theory final paper. Still others are promoting various events, such as the LSSS

Law School Student Senate President Maren R. Norton, standing at the stern, and fellow students aboard Donna Marie, *the sailboat owned by Clinical Professor of Law Donald N. Duquette. The students' successful bid in last spring's Student Funded Fellowships auction bought them a weekend sail aboard* Donna Marie.

Bar Night, the monthly Blue Jeans Lecture, the Dean's Forum, and countless speakers promising intriguing discussion and pizza over lunch. The last e-mail is from my mom asking when I'll be home for the holidays.

Walking back downstairs to the basement of Legal Research, home to the student organizations offices where I spend most of my time, extends to almost an hour as classes let out and there are lots of people to chat with. Some are headed to the Reading Room to read for their next class. Others are headed to the "subs" (the underground library) to complete cite-checking assignments for their journals. Still others are on their way to study at one of the countless coffee shops in Ann Arbor. They are all classmates and friends who bring diverse experiences from all different walks of life, regions of the country, countries of the world, racial and ethnic backgrounds, sexes, ages, familial attachments, political ideologies, and life philosophies.

The LSSS office is quiet when I finally get there. Quiet moments in the Law School are a rarity this year. Our victory in the Supreme Court, a new dean, and a huge first-year class bring renewed energy to the Law School. Even with low spots, such as the difficult job market that 2Ls and many 3Ls are maneuvering through, the Law School is alive and bustling with life.

This walk captures only a snapshot of life in the Law School. As my time here winds down, I see more than the few gray hairs I discovered, the few pounds I lost, and the new bags I gained under my eyes. These are merely superficial reminders of the road I've traveled with the amazing individuals who began as classmates and have become trusted colleagues and cherished friends. Few buildings are as spectacular as the majestic Law Quad, but it is the people therein that make the University of Michigan Law School truly great.

Maren R. Norton, *two-term president of the Law School Student Senate, graduates from the Law School in May. From Shoreline, Washington, she earned her bachelor's degree in political science at Stanford University. After graduation this May, she will return to Washington State to practice with Stoel Rives LLP in Seattle.*

Building a home for the laws of the world

By Margaret A. Leary

Building a home for the laws of the world

Part II: Hoping, hunting, and honing

The following feature is the second, concluding portion of the edited version of "Building a Foreign Law Collection at the University of Michigan Law Library, 1910–1960," © Margaret A. Leary, 2002, which originally appeared at 94 Law Library Journal *395–425 (2002), and appears here with permission of the author. The first part of the article (46.2* Law Quadrangle Notes *46–53 [Summer 2003]) detailed how the vision of Dean Henry Bates, generosity of graduate William W. Cook, and skills of librarian/traveler/negotiator Hobart Coffey combined to launch the building of the Law Library's international collection into one of the best in the world.*

By Margaret A. Leary

The minutes of the Library Committee from 1898 to 1906 show monthly meetings in Dean Hutchins' office. Not only did this committee handle faculty suggestions for purchases, it also interviewed prospective employees and authorized the purchase of rubber stamps. Bates [Dean Henry M. Bates] was consistently a member of the committee.

[Hobart] Coffey's account of how the collection was built gives credit to several faculty members who helped with foreign acquisitions. This initial reliance on faculty advice was typical and Michigan's experience was the same as that of other university libraries. Ultimately, however, although faculty expertise was essential to ensure depth in specialized topics, building a great collection also required consistency in moving towards an articulated goal. Coffey and Bates' goal was a collection of primary material — the text of the laws — from all over the world and of scholarly secondary material — books and articles about the law. Faculty helped to identify the existing material that fit that goal.

A review of the minutes of the faculty Library Committee from 1922–52 shows that at first the committee worked mainly from lists created by faculty members (and later by Coffey), and that final approval came from the committee rather than the librarian. By March 1925, however, the committee was dividing up the work. It named [faculty members] Dickinson, Drake, and Shartel to advise Coffey specifically on foreign acquisitions. By 1928, minutes show disappointment at the lack of faculty suggestions, and the records of Coffey's trips to Europe show that want lists were developed primarily by library staff, although some ideas continued to come from a few dedicated faculty members.

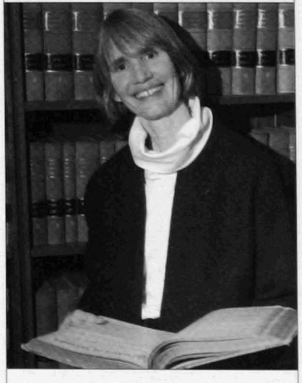
Faculty requests also influenced the development of the U.S. collection. Minutes show that some decisions were taken to the faculty as a whole (for example, state digests in 1924), but most suggestions were handled within the committee. In fall 1928, faculty suggested acquiring codified ordinances of the main cities in the United States and U.S. Supreme Court records and briefs offered by the Library of Congress, completing the collection of state session laws, and beginning to collect the reports of state banking and insurance commissions.

During the 1920s, the role of the dean and the Library Committee seems to have evolved from that of doing title by title selection to one encompassing the broader responsibilities of setting collection development objectives and helping make hard decisions, such as denying requests to transfer material from the Law Library to the University General Library. For example, in May 1929 the committee supported the librarian's recommendation not to transfer the *Congressional Globe* [the predecessor of the *Congressional Record*] to the General Library.

The Library Committee files also show faculty suggestions that, after some consideration and efforts, were abandoned. For example, one faculty member advocated acquisition of the journals of each of the state legislatures. Another urged that the Library selectively acquire transcripts and all other court documents of important trials. Coffey would, in the case of particularly demanding requests, suggest that as an experiment the faculty member's secretary do the collecting for a year or two to gather representative material and test the time required. Requests thus treated did not recur.

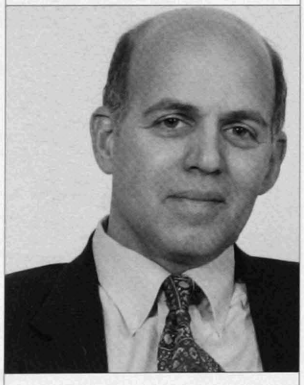
"The actual proceedings of the Cuban Constitutional Convention of 1901 are a very rare book. It turns out that the Law Library owns the personal copy of Lino D'Ou, one of Cuba's most distinguished public figures of color in late 19th and early 20th century journalism and political life. When I asked for the book, thinking it would not arrive for a while because it would have to come through interlibrary loan, the Law Library staff brought it right to me."

Rebecca Scott
Professor of Law
and Charles Gibson
Distinguished University
Professor of History



"A great deal of my research on the laws of confrontation and hearsay has involved historical inquiry into the early English materials, going intensively as far back as the 16th century. Our spectacular collection has made this research much, much easier and more productive than it otherwise would be."

Richard D. Friedman
Ralph W. Aigler
Professor of Law



Travel aboard

Librarian Coffey went abroad many times: Paris in 1924–25; Berlin and Munich in 1925–26; Europe more broadly in 1928 and again in 1931; Ireland, England, Denmark, Finland, Russia, Poland, Germany, and France in 1935; Mexico and Central America in 1941; and a final trip in 1950 to Central and South America (including every country except Bolivia and Paraguay). Finally after 25 years, Coffey had carried out Dean Bates' 1925 directive.

The records of the Law Library contain many lists of what Coffey sought and what he obtained on these trips. The general procedure was to spend months or years creating want lists. These were very detailed: for monographs, editions were specified. For serials of any kind — law reviews, session laws, court reports — volumes and years were provided. The lists included questions about what had actually been published. The librarian's report to the dean each year specified major purchases in great detail.

In general, the priorities from 1922 to 1950 were first to complete the collection of U.S. primary and major secondary material, then to do the same for the rest of the Anglo-American world, including British colonies and former colonies. These were followed in order of priority by Western Europe, Central and South America, and finally, after World War II, Japan and other parts of Asia, new nations, and intergovernmental organizations.

Before each trip, library staff performed many tasks to smooth the way. Preparing the want lists was the important job, but staff also compiled lists of libraries and law schools to visit. Coffey himself wrote in advance to librarians, law school deans and faculty members, and Michigan Law School graduates to arrange meetings during the upcoming trip. He wanted to know about developing areas of law, prominent scholars, and publishing and book selling practices. He sought to discover the best means to acquire books on the want lists and to set up reliable methods to acquire material in the future.

The Law School Library records contain a great deal of correspondence between Coffey and the staff back in Ann Arbor. A typical exchange is the following excerpt from a letter to order librarian Rebecca Wilson written from The Hague during his 1925 trip to Europe. First, Coffey thanks her for sending guides and bibliographies. He then discusses the *Code de la Martinique* and whether to pay what either book dealer, Nijhoff or Karpinski, asked for it:

"In a previous letter I expressed a feeling that had been growing on me for some time — viz. that Nijhoff was the most expensive place in Europe to buy books. Since coming to The Hague I have investigated the matter still further and I am more convinced than ever. Nijhoff has a sort of monopoly on foreign books. He charges just as much as his customer will stand. Most of his business is with American libraries. I feel that our best plan is to try to buy books in the country where they are published. This will not always be possible, especially in the case of old books. But if we do it where it is possible we shall save a lot of money. As an example . . . Mr. Hicks of Columbia paid $1,000 for a collection of Brazilian reports which can be bought in Rio for a song. . . .

"By the time I have finished in Europe I shall know most of the large libraries and booksellers. And when I recommend books, I shall try always to give you the publisher, date, etc. This will help you in ordering. . . . Paris is a much cheaper place to have binding done — cheaper than in America or Holland. It seems to me that now is the most advantageous time to buy French books. I shall soon have another list of recommendations for you. The Hague is an excellent place to get a line on books."

In another letter from 1925, Coffey expressed his thoughts about the Soviet Union:

"I am wondering whether we have started a collection of Russian law. While I doubt whether anyone on the present faculty reads Russian, we shall certainly have someone sooner or later who will be interested in this field. From a purely scientific viewpoint, I think we cannot afford to neglect Russian legislation. At present, there are a few works on Russian law in German, which I shall recommend in my next list. They consist, unfortunately, largely of extracts. An attempt is being made in France to translate the Soviet code, but thus far only one or two small volumes have appeared."

The next year, the Library was "very fortunate to secure a set of laws of Russia from 1649 to 1866, purchases through Russell Batsell of the Reference Service in Paris. He bought

these laws in Russia during his visit there last May." In 1928, the Library acquired a set of the statutes of the Russian Empire covering 1866–1913.

And the area remained important. The 1935 report to the dean includes "added legal material for Imperial Russia, including the first and second editions of the Russian code of 1649." The next year, "We were fortunate to add a number of important items to our collection of Russian material dealing with the history and law of the Empire. Among these items are the proceedings of the State Duma; the reports of the Council of State; and a nearly complete collection of the various editions of the Russian codes. One item of importance for the law of the new regime was secured: the official journal of the Soviet Commissariat of Justice." In 1950, Coffey reported acquiring a 14-volume set of the proceedings and researches of the Russian Code Commission of 1899. "Although the proposed code never became law, the research of the commission constitutes one of the most valuable and scholarly studies ever made in any country."

Some of the pre-Soviet material in the Michigan collection contains ownership marks showing that it was once part of the Russian Czar's library in the Winter Palace. [Note: The significance of these ownership marks was identified by Professor Emeritus of Law Whitmore Gray.]

Another example of material formerly owned by an historically important person is the Library's copy of the *Diario de sesiones* of the Cuban Constitutional Convention, 1900–01. It is inscribed with the name of Lino D'Ou. D'Ou was a journalist and writer who organized several black societies in Cuba and became a Conservative Party representative from the province of Oriente in 1908. That his copy of the *Diario* came to Michigan in 1954 is ironic, if the description by U.S. authorities of him as someone who hated whites, "particularly Americans," is correct. D'Ou remained a prominent Afro-Cuban political and intellectual figure until his death in 1939. [Note: The significance of the inscription was noted by Latin American historian and Professor of Law Rebecca Scott, who recently was named to a Distinguished University Professorship.]

The best-documented trip was the one Coffey made to South America in 1950, which also serves as a prime example of the third tool used to build the Michigan collection, developing relationships.

Developing relationships: Relationships abroad

The following excerpt from the Librarian's Report, 1949–50, illustrates the wide range of relationship building during his second trip south of the border. This trip is the best documented of them all.

"My trip to Central and South America had been planned for the winter of 1941–42, but was deferred because of the war and for personal reasons. My trip began with a visit to Havana, Cuba, . . . followed by visits to Haiti, Dominican Republic, Puerto Rico, Venezuela, Trinidad, Brazil, Uruguay, Argentina, Chile, Peru, Ecuador, Colombia, Panama, Costa Rica, Nicaragua, Honduras, El Salvador, Guatemala, and Mexico. The only South American countries not visited were Paraguay and Bolivia.

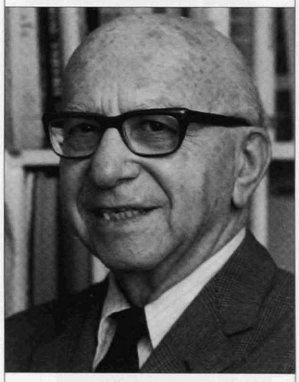
"In every country I called on our agents, ironed out difficulties which had accumulated over the years, and arranged for our agents to supply materials relating to the law of their particular country.

"In each city I visited I went to the second-hand bookstores, picked out what we needed. In each country I visited I tried to do the following:

- "Visit the leading law schools, talk with the dean and some of the professors, find out what I could about trends in legal education, publications being brought out by the faculty, new books being published in the country, etc.
- "Wherever possible I tried to get our Library on the mailing list for free copies of laws, court reports, and journals. In some cases I arranged to send the *Michigan Law Review* in return.
- "In almost every country I contacted some of the leading members of the bar, visited bar association libraries, inspected the libraries of individuals, and called on some public officials.
- "Went to bookstores searching for material we could use, and arranged for the shipment of same.
- "In every country I went to the National Library and talked with the director and some of his staff. I also visited every other library of importance, including the

"I cannot praise the Library service enough. I could not have done what I have done without it. I send in a request involving foreign language material, and I receive a response promptly. The service has no peer in the country. The collection is outstanding."

Eric Stein, '42
Hessel E. Yntema Professor Emeritus of Law



"I give the collection a lot of wear. I use the treatises and rely heavily on the Hanrei taikei CD-ROM database for searches of Japanese case law; my work would be nearly impossible without it. I regularly look at about 10 Japanese journals; they keep me on top of things. I have done two projects that required me to trace the historical development of Japanese laws; once, I was able to look up in hard copy how the commercial code has changed through every revision of its 54-year history; in another, I was able to walk right up to the shelf and get the 1890 laws that I needed.

"The combination of (a) the law collection, (b) the Asia Library collection, and (c) the library staff makes this the best place in the world — yes, in the world — to research the Japan-related legal

American libraries maintained in some countries under the sponsorship of the U.S. Department of State. These libraries are often connected with a "cultural relations center," an institution found in several Latin American countries for the promotion of better understanding between those countries and our own, for teaching English, providing information, etc.

"In Cuba, Venezuela, Brazil, Argentina, Chile, Peru, Columbia, and Panama I contacted former students of this Law School, who were of tremendous help to me in arranging for visits to libraries, making appointments, and smoothing the way for visits to public officials, lawyers, and judges. Without the help of these men I should have accomplished far less than I did, especially in view of the limitations on my time.

"During the course of my trip I acquired considerable material in the form of gifts from individuals or government agencies. Often, material which we had never been able to secure through correspondence was readily produced when I made a person[al] call. In Colombia a former student, Señor Jose Perdomo, and his uncle, Señor Pedro Escobar, presented me with a collection of Colombian material of considerable value and scope.

"For each country visited I carried a list of the important materials which our library already owned and a list of the books which we wanted to acquire. These lists, incidentally, had entailed months of work on the part of Miss Wilson, our chief order librarian; Mrs. Roberts, chief bibliographer; and Mrs. Patrick, who did the typing. Without their help my visit would have been of little value.

"Most of the materials we were looking for were out of print and, consequently, hard to obtain. The almost complete lack of organization of the book trade in most countries added to the difficulty. While I did succeed in uncovering many of the items needed by contacting individuals or searching in the second-hand stores, it was impossible in a few days time to do the whole job. The only practical arrangement was to find a satisfactory person who would agree to keep hunting for the material on our list and send it to us when found. I am happy to report that I was able to make such an arrangement in every country except Honduras. Material on our want-lists is now coming in from practically every country and will continue to come for a considerable time. Our contacts at the present time are excellent in nearly all countries. Unfortunately, many of these contacts are not with established law book firms (often no such firm exists) but with individuals — public officials, members of the bar, American diplomatic officers, representatives of American companies, etc. These contacts have the bad habit of disappearing after a time — men retire, change their occupation, return to this country, or simply grow weary in well doing. Acquiring materials from Latin America is a matter of eternal vigilance."

Coffey was less formal when he wrote back to the staff during the trip with observations about individual people and the conditions in each place he visited:

- "Weather is pleasant, not too hot, glad I brought along my summer clothes. Don't care much for this city! It is *smelly*, terribly over-crowded, and the noisiest place I have ever seen. It is as though all hell had broken loose." (Havana, January 6, 1950)
- "Here I am in a beautiful villa on the side of a mountain looking out on the sea. I have the best room and the best food thus far." (Port au Prince, Haiti, January 11, 1950)
- "Had a devil of a time finding Laurent. . . . He used to be in the archives but was thrown out to make room for a political hack. They say he took part of the archives with him, and I suspect he did. Lazy, indifferent, he cannot be moved or pushed. You should see his 'store,' I'll tell you about it later. [describes several items purchased from Laurent]. Also included are three or four old things we may be able to use. If not, we'll sell to Harvard at a stiff price. Legal material is so hard to find here that it ought to be worth its weight in gold. Last night I went to the Exposition . . . saw a marvelous bit of voodoo dancing. . . . No one here has heard of the *Revue de droit l'haiti*. The street number you gave is a *shack* with room for two or three pigs. . . . This is a country of over 3 million . . . and woefully poor. . . . [S]tudents rely on books from France. . . . The French is Creole, unintelligible. Only a few . . . taxi drivers speak English. I suspect they learned it in jail, because they are a gang of thieves." (Port au Prince, Haiti, January 11, 1950)
- "The hotel is one of the most beautiful I have ever seen. The city is clean, beautiful, and quiet." (Ciudad Trujillo, Dominican Republic, January 14, 1950)

- "Here I am in Caracas, the boomtown of the Americas. The expansion of the city, the construction of new buildings, roads, what not almost passes belief. The city has a gold rush atmosphere, big fortunes being made overnight . . . but I shall probably never return unless I make a fortune in oil. I had two long sessions with Ahrensburg. We must keep him as our agent. . . . He is blue-eyed, blond, stocky, grandson of a German professor who came to Caracas and spent his life here in scientific work. He is part German, part English, and the rest Venezuelan, employed by an oil company, a book collector and broker on the side. . . . The high court will be interested in some of our publications in exchange." (Caracas, January 15, 1950)
- "Arrived in Rio after a long and hard flight from Trinidad. Amazingly beautiful city with a kind, friendly population. Have seen Leyte and shall have another conference with him. He is said to be about the only one in Rio who will do this sort of work. Leyte is a Brazilian, speaks no Spanish or English. We had to talk German. He keeps a good file of what the various libraries lack and when he buys an old library he tries to fill in the gaps in the collections of the various libraries. Beerens is Belgian, as is his wife. They have been in Rio a long time. Brazilians may be able to grasp what you have said in Spanish, but when they reply in Portuguese you are about where you were in the beginning. I have been able to make my way. . . . There are more German-speaking people here than Spanish. Beerens' main job is to supply American publications to Brazilians. He is handling Brazilian subscriptions for us and a lot of other libraries, a new venture for him. He says he would rather try to get 20 American periodicals than one Brazilian. For complete sets and back runs we have to rely on Leyte it seems." (January 31, 1950)
- "I arrived in Sao Paulo late Friday night. . . . Certain institutions and individuals can probably use many of our foreign law duplicates on exchange. . . . Hold them until I get back. I have picked up a few ideas on library equipment . . . one is a newspaper rack, better than the makeshift we have now." (January 31, 1950)
- "Barreiro does not want to handle subscriptions, but will pass on subscription inquiries to the publisher. I can understand his difficulties. Subscriptions are a headache and there is no profit in them in a country like this. . . . The Bibliotheque National is housed in the university, provisionally and has been there 45 years, but a new building is going up. When the library is moved and organized we may hope to get a list of duplicates. . . . In Sao Paulo had a grand visit with Teizera, one of the finest we had at Michigan. . . . At the moment it looks as if Chile might be in a revolution or state of siege by the time I am ready to go. . . . I am well but homesick." (Montevideo, February 3, 1950)
- "Visits to government agencies in Buenos Aires were not too satisfactory. People are being changed all the time, publications discontinued, etc. Heavy dirty hand of Peron and the light but even dirtier hand of Evita are felt everywhere. . . . I spent much time with Bunge and with some friends of Perriaux. Many lawyers and judges came to see me. I was entertained, too much. I felt I was leaving BA in sheer self-defense. Chile has been almost as bad. My great problem is how to slip away for a day so that I can avoid eating anything at all. The amount of food that people can consume here passes all belief. Must be some Swedish influence . . . prosperous people are nearly all fat. Santiago is very ugly in the *centro*, many old buildings are being torn down, the city is damaged by improvements!" (Santiago, February 19, 1950)
- "Am now in Lima. . . . Rosay is dead, his store discontinued, and his business in bankruptcy. No use to depend on them. Lib. Internacional is the biggest and most active but the manager is thought to be slippery; have placed our list with Iturriega. Two partners, one a German Jew who came here about 1928. He is well educated, very bright, knows books, and has a great memory and a flair for bibliography. The other partner, Iturriega, is a young Peruvian, a musician and composer, who recently won first prize in Peru and will go to Paris in October. The firm has almost no stock, uses runners who go out and buy. Here as in many other countries, new law books are as much of a problem as old, out of print books, because authors publish their works privately and do

issues that interest me. I can get more materials here faster than I could anywhere else. If I were at another school, I would not have written as much, and one article (on the world's first futures market, in Osaka, which relied heavily on historical sources) would never have entered my mind."

Mark D. West
Nippon Life Professor of Law; director of the Law School's Program in Japanese Law; director of the Law School's Center for International and Comparative Law; and director of the University of Michigan Japanese Studies Center

"I work with the collection all the time and have nothing but praise for it. To put it simply, most of my work could not be done without it. Examples (other than law review articles) include my book *Conflict of Laws in Western Europe: A Guide Through the Jungle* (1995), my *General Report for the International Academy of Comparative Law on Liability for Defective Products and Services: Emergence of a Worldwide Standard* (2002), and my teaching materials for International Litigation and Transnational Law. Currently, I am working with Karima Bennounce, '94 (an assistant professor at Rutgers Law School), and Tim Dickinson, '79

not give them to the stores. To get one new book a dealer has to make telephone calls (usually the author has no phone because they are very scarce here) and then make one or more trips. Don't pay Rosay any more." (Lima, February 28, 1950)

- "Here in Quito . . . obviously some of my letters never reached their destination. In some countries the postmen take the letters, steam off the stamps, and sell them. Imagine! Have seen Chavez and Munoz and shall see them again this afternoon. Munoz is not an old professor, but a comparatively young man, all dressed in black. He speaks as he writes, i.e., at great length, and pays little attention to what I say. He is fascinating, a real scholar, a character." (Quito, March 11, 1950)

These samples show the effort Coffey put into finding people he trusted to help build the collection from afar.

Relationships within the University

In accordance with the Bylaws of the Board of Regents, the Law Library at Michigan has always been a part of the Law School and independent from the University Library. The bylaws provide for a Library Council, consisting of the directors of the individual libraries (University, Law, Business, Clements, and Bentley), that meets periodically to coordinate activities.

For the most part, coordination of collection development between the libraries has involved questions relating to American legal and law-related materials, such as constitutional conventions, criminology, journals of state legislatures, and reports of state commissions. But there was conscious collaboration on some topics related to foreign and international law as well. For example, in response to an inquiry from University Library Director William Warner Bishop, Coffey wrote:

"We checked our holdings of treaties using *Myers Manual of Collections of Treaties and of Collections Relating to Treaties*, 1922, indicated our holdings, and where we had something important not on the list, we added to the list. The list is incomplete because treaties get into the statutes, official gazettes, textbooks, and all sorts of places. . . . Our policy has been to rely on the League of Nations Series for most of the treaties made since 1919. We bought very extensively in this field in an attempt to get together the leading treaty collections prior to the beginning of the League of Nations series."

Later Coffey offered to help the University general library locate dealers and dispose of duplicates on his Latin American trip.

In general, though, foreign and comparative law was not the subject of collaborative discussions. A major exception was countries whose language was in a non Roman script and for which there was outside support for "area studies" programs, that is, the nations of Asia and the Middle East. In 1953 Coffey wrote to University Librarian Warner Rice that "our policy for Japan and China is the same as for all other countries . . . to acquire basic materials. . . . We have lagged behind in building up our collections for the Orient . . . [but] still we have made some progress. It is my view that the Law Library should continue to be responsible for the acquisition of Japanese legal materials." Over time, however, the Asia Library did acquire a great deal of legal material, as did the Law Library. In 2001, the Law Library established an "approval plan" by which to acquire secondary material from Japan.

Exchanging or selling duplicates

The value of exchanges (the *Michigan Law Review* was usually the currency from Michigan) in foreign acquisitions is clear from the examples in the previous section. These exchanges meant that the Library paid the *Michigan Law Review* for subscriptions to be sent to other institutions, which in turn would send material to the Library.

One result of buying when abroad, from whence Coffey was unable to check existing holdings, was the acquisition of unneeded duplicates. Many gifts were also duplicates. In the 1930s, with the Depression deepening, the sale or exchange of this material was significant. From a 1932 report comes this description:

"Duplicates exchanged, free for transportation, or sold totaled 2,475 books and 1,050 periodicals; total amount of money $2,115.58.

"Exchange relations have been established with Michigan State Library, New York State Library, Association of the Bar of the City of New York, Louisville Law Library Co., New York County Lawyers' Association, University of Chicago, University of Illinois, the law libraries of Columbia, Duke, and Yale.

"More than half of the duplicates have been sold to such institutions as the Colorado Supreme Court Library, the Cincinnati Law Library Association, the New York County Lawyers' Association, the Iowa State Library, and the law libraries of such universities as Duke, Cornell, Iowa State, New York University, Minnesota, Pennsylvania, Chicago, Indiana, and Yale.

"The legal treatises which remained on the first duplicate list were offered to some of the smaller law libraries for the cost of transportation. The law libraries of Howard University, the University of Missouri, the University of Arizona, and the University of Arkansas took advantage of this offer."

This is only one example. The files reflect a very conscientious effort to find a home for material that was duplicative or out of scope for a law library. However, most of this activity related to domestic rather than foreign or international material. With the exception of offerings from Harvard, exchanges with other libraries were not an important acquisition tool for Michigan's foreign collection. However, exchanges directly with the law schools or other legal institutions of foreign countries were often significant, especially when a country had no established book trade.

Gifts

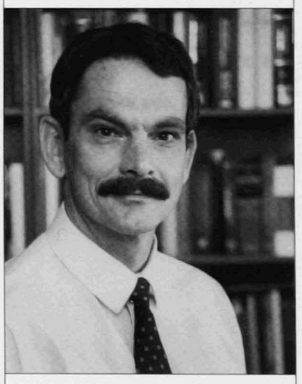
Gifts also appear to have been far less important for building the foreign, comparative, and international law collections than they were for the American collection. The collection of domestic law was "composed of a small collection of about 350 volumes donated by Judge Thomas M. Cooley" in 1859 and a gift of almost 800 volumes from the Honorable Richard Fletcher in 1866, who was "moved entirely by his admiration for this institution." The collection almost doubled as a result of a gift in 1885 from Christian Buhl, who had "carefully selected a complete library of English and American textbooks and reports." On the other hand, the librarian's annual reports to the Library Committee or the dean show that most of the foreign collection was acquired by purchasing items from the want lists constructed as described earlier.

There are important exceptions, however. The annual reports include the number of gift volumes received and describe notable gifts. Those that enhanced the collection beyond the borders of the United States included:

- 1931–32: Dartmouth College, 67 volumes of early editions of English treatises.
- 1930–40: Over this period, Orla Taylor, an 1887 graduate of the University of Michigan Law School, made several gifts of early law books. The files reveal a classic donor-recipient relationship, in which Taylor offered books to Dean Bates in 1930, suggesting that the books could be placed in display cases in conjunction with construction of the new library. Coffey assessed the value of the proposed gift and concluded "the value of the gift is too slight to warrant us accepting it on the terms Taylor seems to demand." Coffey cited the cost of the exhibit cases, which would exceed the value of the books; the likelihood of ruining the books by keeping them on permanent exhibit; and the fact that people would cease to pay attention to a permanent exhibit and that the library already owned at least 200 more valuable volumes. Nevertheless, and probably because of estimates of what Taylor might do for the University later, the library accepted the books and built display cases. In 1932 Taylor gave 14 early English books and a 1625 *Grotius*. The next year, he gave "an excellent 15th century manuscript containing a Register of Writs used by lawyers of the period, and in 1940 a copy of Sir J. Fortescue's *A Learned Commendation of the Politque Lawes of England*, 1599.
- 1935: Judge George A. Malcolm of the Supreme Court of the Philippines sold a collection of Philippine material at such a low price it was termed "in the nature of a gift."
- 1946–50: the records of some of the Japanese war crimes trials came as a gift from Col. Edward H. Young of the Judge Advocate General's Office in 1947. Judge V.C. Swearingen gave records of the trials of German war criminals that year. Two years later, Col. Rowland W. Fixel gave 300 volumes of transcripts, records, and exhibits in the Japanese war crimes trials, and in 1950 the Office of Chief Counsel for War Crimes gave 415 volumes of Nuremberg war crimes trials records and proceedings. Also that year the library selected 148 volumes from the library of

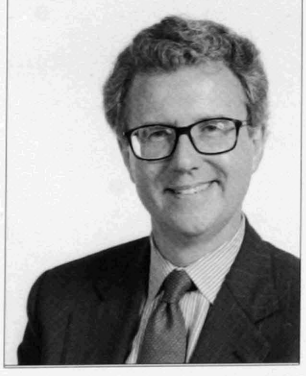
(of Dickinson Wright in Washington, D.C. and Ann Arbor), on a casebook for the Transnational Law course. Virtually every page of that book will be indebted to the Library's international and foreign law collection."

Mathias W. Reimann, L.L.M., '83, Hessel E. Yntema Professor of Law



"I have been working for the past year on a book, *Buying Social Justice*, about the worldwide use of government contracting as a technique for promoting equality. The international collection at the Law School has been outstanding. When I've needed something, as often as not, there it is. Quite simply, I couldn't have done the research without it. A real treasure."

J. Christopher McCrudden
U-M Law School Affiliated Overseas Faculty; Fellow and Tutor in Law, Lincoln College, Oxford; Professor of Human Rights Law, University of Oxford; and non-practicing Barrister-at-Law (Gray's Inn)



George Melchior, a distinguished author and international lawyer in The Hague. The collection was primarily secondary sources, most in German, published from 1900–35 and included five "Treaties of Peace with Germany," 1919–20, and five collections of German laws published from 1889 to 1939. Judge Henry M. Butzel gave three volumes called *Microcosm of London*, an original edition with 104 cold acqua plates which Coffey estimated was worth $1,000 in 1949.

- 1950 Latin American Trip: "During the course of my trip I acquired considerable material in the form of gifts from individuals or government agencies. Often, material which we had never been able to secure through correspondence was readily produced when I made a personal call. In Colombia a former student, Jose Perdomo, and his uncle, Pedro Escobar, presented me with a collection of Colombian material of considerable value and scope."

By 1947, the librarian reported that "few of the gifts offered or made actually furnish material which we can use. Ninety-nine percent of a lawyers's library which comes to us is duplicate. We have donated this material to the University of the Philippines and to the devastated libraries of Europe. Large libraries, like large nations, must necessarily help to bear the burdens of the weak."

Special Note: The impact of World War II

The Librarian's Report for 1940–41 notes that practically no books or periodicals arrived from continental Europe. In 1941–42, Coffey notes the increased difficulty of purchasing materials for the library because of the spread of the World War. "A large share of the world is now cut off from us, and transportation restrictions and marine hazards make it difficult to import material, even when it can be purchased." Nevertheless, "a few items dealing with continental European law were secured from libraries of German refugees." This statement was accompanied by a list of several hundred volumes from Austria and the Czech Republic. In the library that year, staff inventoried the whole collection for the first time since the move to the Legal Research Building in 1931. Practically all staff participated, and they completed the inventory in little more than two weeks. They found many misshelved volumes, and errors in cataloging were uncovered and corrected. Of the 166,000 volumes, only 181 could not be found. Coffey's work with policies and records succeeded in avoiding what he had observed at Harvard in 1929, a lack of bibliographic and physical control over the contents of the collection.

Fear of Japanese and German bombs led the Law Library to move a large share of its most valuable holdings to the nearly bomb-poof quarters available, but the material was not easy to access there. Coffey wrote that, "In doing this, we have exposed it to another hazard, i.e., water. We believe that few libraries in America have been able to safeguard their collections as well as we have."

The 1943–44 report continued the theme of acquisition difficulties and extended that to predictions of continued post-war problems. "No material was received for any part of continental Europe. Material from England declined in volume, but still continued to arrive. . . . We were able to import a large number of books from Latin America, thus fortifying our already strong collection in that field. Visiting scholars from certain South American countries report that our holdings are frequently more complete than those in their own countries." Coffey went on to predict that "the opening of the European sources of supply will see a mad scramble for the materials available. The supply is bound to be much restricted because of the wholesale destruction of English and European libraries and book houses."

However, the lull in acquisitions provided time to take care of the existing foreign law collection. In 1944–45:

"The assistant librarian disposed of 80 years' stock of duplicate material, including many tons of completely worthless material which was given to the waste-paper drive. The Cataloging Department spent considerable time adding call numbers to catalog cards covering foreign law. Shelf classification of foreign law, so ably planned and carried out by the assistant law librarian, has now been completed. We plan to now classify international law and criminology, and may complete it this fiscal year."

The 1945–46 report refers to the resumption of nearly normal acquisitions except from Europe, as well as the return of more students than ever.

By the 1946–47 report, books again began to flow from Europe to the United States:

"Material in considerable amounts, some of it an accumulation of the war period, has come to us from Spain, Italy, and Holland. Material from France has arrived irregularly and in small quantities. French dealers, in general, showed little inclination to resume business. It seems likely that in countries with unstable or greatly depreciated currencies owners of books prefer to hold tangible property rather than money of uncertain value.

The German situation remains hopeless, as before. Some of the leading book houses, especially those in Leipzig, were completely wiped out in bombing raids. Those not completely destroyed have found it impossible or impracticable to ship us materials. Thus far, there has been no way by which we could make payment for German material that comes to us in a roundabout way through friends, Army personnel, etc. Until normal trade relations are resumed, there is little chance that we shall be able to fill in the gaps caused by the war or to secure the few current works now being published in Germany. Even when normal trade relations are resumed, it is feared that the supply of material available will be very small indeed, and for this supply there will be the keenest competition not only in America but in Germany itself. One great source of supply of scholarly and research materials had always been professors' libraries. Professors' collections have largely disappeared in the last two decades. German libraries which suffered heavily during the war will absorb a large share of the scanty supply of books which may be available."

The collection building era comes to an end

Following the war, the foreign law collections continued to grow, but with more emphasis on the developing intergovernmental organizations and new nations than on retrospective collecting, although that too continued. For example, the 1948–49 report said:

"Our collection of documents continues to increase, especially with the huge addition from the United Nations. The time is fast approaching when we shall have to have the services of a full-time documents librarian who would be responsible not only for the selection and the acquisition of most of our documents but for their cataloging as well. Such an employee could also be of great help on the reference side.

"Last year we were fortunate in being able to add a considerable amount of Chinese material which helped in a small way to make up for past neglect. Our collection of material for the Orient has never been strong — a fact that was brought home to us in the last war when such material was needed and we were unable to supply it.

"Beginning in the spring of 1949 we have employed a part-time assistant who has knowledge of Russian and a genuine interest in Russian law. This assistant has been checking our holdings and keeping close watch on new Soviet publications. With this sort of help we may in time build up our Soviet collection to a satisfactory level.

"A considerable amount of Japanese material has come to us in the past year, largely through an exchange arrangement carried on under the supervision of the occupation authorities. These materials, together with those from China and the Soviet Union, obviously throw an added burden on both the order and catalog departments, particularly because of language difficulties.

"During the war years our whole European collection fell into arrears because of the impossibility of obtaining continuations and new works as published. Since the conclusion of hostilities we have been gradually filling in the gaps, and although we still have a long way to go we are able to report a considerable progress."

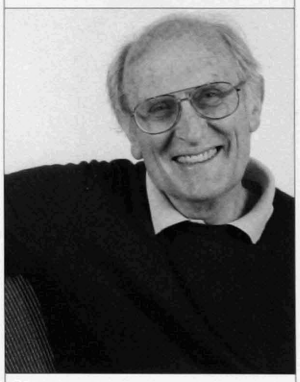
The report concluded with a long list of journals and primary material, current and retrospective, from Western Europe.

The next year, 1949–50, contained affirmation of the collection development policy Coffey supported back in 1928:

"Our aim is still to acquire the leading and significant legal materials, first for this country and those countries where the common law prevails . . . and next, . . . for the other important countries of the world. During the past year we have added considerabl[y] to our holdings from Japan, a country hitherto almost unrepresented in our collection. . . . Last year we obtained some very valuable material for Czechoslovakia to bring our collection up to date. . . . As Czechoslovakia passes more and more under the control of the Soviet Union we

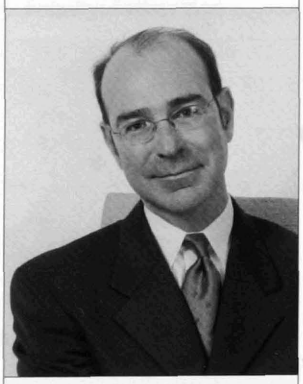
"I have used this collection in the course of writing a book on the history of the European Convention on Human Rights and for numerous articles, and I am continually amazed at how good it is. Its utility is further enhanced by the skill and professional competence of the staff of the library. Those whose experience is confined to using it just do not realize how fortunate they are. "

A.W. Brian Simpson
Charles F. and Edith J. Clyne Professor of Law



"Thanks to the efforts of Margaret Leary and her colleagues, it is now possible to access at Michigan the refugee law jurisprudence of virtually all asylum states either electronically, or in hard copy. This has been an invaluable resource to me, and to the many students enrolled in our Program in Refugee and Asylum Law."

James C. Hathaway
James E. and Sarah A. Degan Professor of Law



may expect that the character and trend of the law will change and opportunities for further acquisitions will all but disappear."

By 1951–52, Coffey could look back with satisfaction, yet still see room for improvement in the foreign collections:

"Our collections for the various European countries have often shown an uneven development. This is due in part to the fact that in building up a library, the librarian is forced to buy in a given year what he can find. Also, when we have had our choice we have tried to acquire first those materials dealing with the law of the more important countries, such as Germany, France, and Italy. Some countries have been almost completely neglected, e.g. the Balkans, Hungary, Finland, and the Near East. Recently we have been able to strengthen some of the weaker sections in our collection. In the past year we have been particularly fortunate in having the aid of a specialist in Slavic materials, Israel Perlstein of New York, who has helped us to fill many gaps in our Russian and Czechoslovakian sections, and has supplied us with many of the fundamental legal source materials for Yugoslavia, a country hitherto almost unrepresented in our library. Altogether we secured from Yugoslavia approximately 350 volumes. Our dealer is at present on a buying trip in the Balkans, and will undoubtedly help us again to complete some of our sets and fill in important gaps. Among the items acquired for the territory now known as Yugoslavia are [followed by a long list of primary and secondary material]."

In 1957, the Michigan Law Library became the first academic library in the United States to be designated a depository for publications of the European Coal and Steel Community, one of the predecessors of the present European Union. The Library continues in this role to the present. In 2001, the University of Michigan was honored to become an official European Union Center institution.

The major work in building the foreign, comparative, and international collections retrospectively was completed by 1960. The director's role remained central, but gradually the primary responsibility for selecting individual titles shifted to reference librarians who were assigned collection development responsibilities for areas of the world congruent with their reference work duties. By the time Coffey retired in 1965 he was "more than any other person or group of persons . . . responsible for the fact that the library of [the Michigan] Law School is one of the world's great law libraries." His successor, Beverley J. Pooley, wrote of him:

"His first and primary concern was with building the collection, and the Michigan Law Library today stands as a memorial to his towering achievement. . . . [W]hen he came [the library was about 80,000 volumes], a modest, primarily American collection; [it was] 350,000 in 1965 when he retired, comprising one of the great legal research collections of the world. His interest and special skills ranged widely: He collected early American session laws, as well as the rare volumes of French Coutumes; canon law, as well as anthropology; British commonwealth materials as well as Indian (Native American) treaties. He brought to bear upon the task of collection-building a keen legal intellect, a broad range of humanist scholarship, including a knowledge of six languages, and a curiosity that remained undiminished until the end."

Conclusion

As collection building gradually took less of his time, Hobart Coffey increasingly turned to other activities. He had taught admiralty and domestic relations since the 1930s and this continued; he also taught the part of a law and equity course that dealt with sources of law and using the Law Library. He wrote several manuals on the use of a law library, two articles for the *Dictionary of American Biography*, half a dozen book reviews, and many articles on law libraries and legal education.

He was a leader in the library profession beyond the law library world. In 1937–38, he was chair of the Michigan State Board for Libraries, which had general supervision over the Michigan State Library. In 1949 he was not only the president of the American Association of Law Libraries, he was also president of the Michigan Library Association. From 1938–53, he was originator, president, treasurer, and generally responsible for the Legal Microfilms Association, a nonprofit corporation that began the microfilming of United States Supreme Court records and briefs. Locally, he was a very active member of a cooperative eating club, the Wolverine Cooperative, from 1932 until its dissolution in 1951. In 1940 it was the largest

enterprise of its kind in the country, serving 500 to 600 dinners each night. He was chair of the Ann Arbor branch of the American Civil Liberties Union in 1932 and ran a meeting that spring, in the depths of the Great Depression and unemployment, to discuss what to do about "the recent march of the unemployed in Dearborn, and the shooting of several of the marchers by the Dearborn and Ford Factory police," and its impact on civil liberties.

As he reflected on the growth of the Michigan Law Library collection, Coffey himself never failed to give credit to Dean Bates for its development:

"A large part of the credit for the development of the Library . . . must go to Dean Henry Bates, who brought to Michigan a genuine appreciation of the value of research material in a library. . . . He showed from the beginning a keen personal interest in the development of the law collection, and saw to it that his colleagues obtained the materials necessary for their research."

As Bates completed his deanship, Coffey's 1938–39 report commented that "under the administration and general supervision of our present dean the Library has grown from an insignificant collection of about 20,000 to one of 145,000. The Library today, both in its collection of materials and in its organization, is one of the oustanding law libraries in the country. It has been a center of research for lawyers, judges, and professors from all parts of the country."

William Cook's gift of buildings and an endowment to support research, York and Sawyer's design for the inspirational Legal Research Building, Henry Bates' expansionary view of legal education and legal research, and Hobart Coffey's superb collection efforts spanning five decades brought reality to what was only a hope in 1934: "To have a collection of law books which will permit scholars to do research work in any field of law, regardless of country or period."

Law Library Director **Margaret A. Leary**, ***above*** *left, is shown with librarians* Barbara Garavaglia, Beatrice Tice, *'80, and* Jennifer Selby, *all of whom hold J.D. degrees and with whom she works to manage and enlarge the Law Library's international holdings. From 1973 to 1981, Leary served as assistant director and from 1982 through 1984 as associate director of the Law Library. She received a B.A. from Cornell University, an M.A. from the University of Minnesota School of Library Science, and a J.D. from the William Mitchell College of Law. Leary has worked to build the comprehensive library collection to support current and future research in law and a wide range of disciplines. She has also developed strong services to support faculty research. The Law Library is known for its international law resources, which attract research scholars from around the world.*

Barbara Garavaglia, '80, *head of reference and librarian with the Law Library, holds a master's degree from the University of Michigan School of Information and Library Studies. She earned her J.D.,* cum laude, *at the Law School and her B.A. in political science,* summa cum laude, *at the State University of New York at Buffalo. A member of the Law Library staff since 1988, she previously had been assistant director of the (Michigan) State Law Library in Lansing and had worked as a research attorney in Ann Arbor.*

Beatrice Tice, *who regularly teaches research techniques at the Law School as an adjunct professor, is the Law Library's foreign and comparative law librarian. She holds an M.L.I.S., with a special certificate in law librarianship, from the University of Washington and a J.D., with distinction, from Stanford Law School. She earned her M.A. in linguistics from Yale University and her B.A.,* magna cum laude, *in modern languages from Pomona College. She has practiced law in California and joined the Law Library staff in 2000. She is fluent in French and German, has reading knowledge of Italian, Spanish, and Latin, and is familiar with Welsh, Scots Gaelic, and Irish Gaelic.*

International Law Librarian **Jennifer Selby,** *who joined the Law Library staff in 1999, earned her M.S. at the University of Michigan School of Information, her J.D. at Chicago-Kent College of Law, and her B.A. in chemistry at Michigan State University. She has practiced law in Michigan and Illinois.*

Reunioning graduates meet the new dean, learn 'state of the Law School'

The listening and questioning lost no vigor for coming late on a Friday afternoon. Just the opposite in fact, as graduates back to the Law School for their reunion crowded into room 250 of Hutchins Hall to hear Dean Evan Caminker discuss "The State of the Law School" and to question him afterward.

For most in the audience, it was their first opportunity to see Caminker in action — he had become dean only the previous August 1— and they were anxious to meet the new head of the Law School that had trained them. Turnout for Caminker's talk was similarly robust for both reunion weekends last fall, September 5–7 for the Classes of 1953, '58, '63, '68, and '73, and October 24–27 for the classes of 1978, '83, '88, '93, and '98. The following report is a composite of the two programs.

With more than 400 students, the current first-year class is "the largest entering class we think we've ever had," Caminker reported. J.D. candidates come from 40 states and 8 countries, and the 45 LL.M. candidates hail from 23 countries and six continents. A quarter of the first-year students are from Michigan and 49 percent are women.

In other areas of Law School life:

- The addition of Law Professors Phoebe Ellsworth and Rebecca Scott to the ranks of the U-M's Distinguished University Professors brings to four the number of Law School professors who hold such an honor, a number that is "as much as any other school on the entire

campus."The other professors are Yale Kamisar, the Clarence Darrow Distinguished University Professor of Law, and Richard O. Lemptert, '68, the Eric Stein Distinguished Professor of Law and Sociology.

• Overseas Affiliated Faculty member Bruno Simma has been elected a judge on the International Court of Justice and began serving with the court early in 2003. Simma is from Germany.

• Five scholars have joined the faculty: Professor Edward A. Parson; Assistant Professors Laura N. Beny, Jill R. Horwitz, and John A.E. Pottow; and Professor Steven R. Ratner, currently the Albert Sidney Burleson Professor in Law at the University of Texas Law School, who will join the U-M Law School faculty in the fall. (Stories on Parson, Beny, Horwitz, and Pottow were among the profiles that appeared in "Law School welcomes new faculty members" on page 20 of the Summer 2003 issue of *Law Quadrangle Notes*.)

• The Law School has not been immune to the national trend of cutbacks in public funding for higher education. Although less than four percent of the Law School's budget comes from state appropriations, the decrease from $3 million last year to $2.1 million this year is a serious cutback that cannot be ignored.

• Plans for expansion and renovation of Law School facilities are proceeding. The buildings of the Law Quadrangle were "the premier buildings" of legal education when they were built during the 1920s and 1930s, but "since then we haven't built any new buildings for people, only for books, [and] now we have more students, more classes, and more administrative functions." The Admissions Office is away from the Quadrangle, as are most clinical offices. In addition, there is "a radically different vision of legal education now."The new facilities will provide space for students to talk with each other as well as faculty members, to mix, to meet, and to share ideas. Renovation plans also call for making the cathedral-like Reading Room the "centerpiece of the Law School."

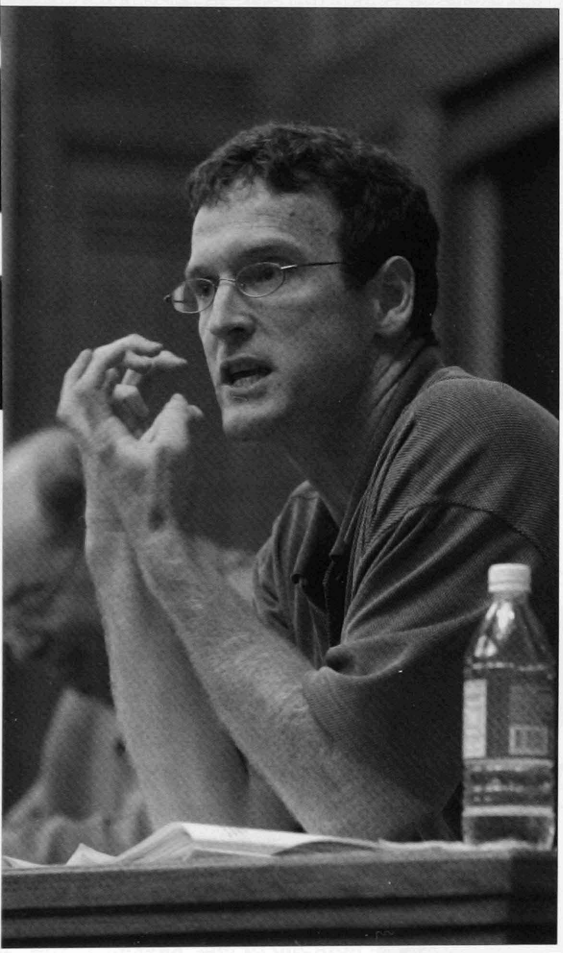
True to their Law School student days, graduates raised questions that brought these answers from Caminker:

• In admissions decisions, "the Law School has always looked at the whole person. . . . The idea is to create a class that is more than the sum of its parts." (See the essay by Sarah Zearfoss, '88, assistant dean for admissions, on page 40.) The effort to achieve diversity in the Law School student body involves consideration of geographic, economic, experiential, and other factors. An admission candidate's background, experience in having studied abroad, employment, or public service, all these and other factors are considered. "The idea behind diversity is to ensure that we have a vibrant conversation in the classroom. . . . The assumption is not that individuals of the same race will all think alike. Quite the opposite. We may have a Thurgood Marshall and a Clarence Thomas. We want to break down false stereotypes." The Law School's interest in diversity does not equate only to race. To believe that it does "is just wrong" and is an "unfortunate" consequence of the lawsuit over Law School admissions policies "which was about race." The six-year-long lawsuit eventually went to the U.S. Supreme Court, which ruled last June that the Law School's policies are consistent with the Constitution.

• Some 5,500 students applied for the Law School's 406 seats for new students this academic year.

• The public phase of the Law School's fund-raising campaign is expected to begin this spring. (See story on page 3.) Construction/renovation costs will be paid for through private philanthropy. "Fifty years from now, we want people who are celebrating their 50th reunion to come back to something just as good as we have today."

Graduates sample verve of Law School days



Roderick M. Hills Jr.

Graduates who return to the Law School for reunions have the opportunity to sample some of what attracted them to law school in the first place — faculty members offering the insight of their experience and scholarship on some of the leading legal and academic issues of the day. This year's reunions followed suit, with faculty members presenting talks on a variety of topics ranging from the intersection of Internet, copyright, and First Amendment law to reports on the current Law School curriculum and plans for expansion/renovation of Law School facilities.

Following is a report on the panel discussion of the U.S.A. Patriot Act sponsored by the Classes of 1968 and 1973 during their reunion in September. Panelists included Professors Richard D. Friedman, Roderick M. Hills Jr., and Yale Kamisar, and Visiting Professor Jill Hasday, a professor at the University of Chicago Law School.

Tracing the history of national security law, Hasday noted that the kinds of things that civil libertarians criticize in the U.S.A. Patriot Act are not unusual. "Congress historically has not taken the lead in national security," she noted, and throughout U.S. history "the judiciary also defers to the executive branch on security issues." The result is that in times of security crises there is "a consistent augmentation of presidential power."

Domestic surveillance is nothing new, Hasday continued. The FBI tapped the telephone of civil rights leader Martin Luther King: "When he called his wife from the Birmingham Jail, we have that conversation. . . . The historical problem with domestic surveillance is not that people were prosecuted, but that people were being spied on all the time."

Kamisar, Friedman, and Hills offered a variety of viewpoints ranging from criticism to seeing the Patriot Act as catalyst to increased freedoms.

Kamisar, the Clarence Darrow Distinguished University Professor of Law and a renowned scholar of criminal law and defendant rights, criticized the Patriot Act's authorization to eavesdrop on attorney-client conversations. "There is no history of lawyer as conspirator," he said. Peering into the audience, he asked criminal defense specialist Stephen B. Hrones, '68, "Could you defend someone under these conditions?"

No way, answered Hrones, of Hrones & Garrity in Boston, Massachusettes. "What is more basic than attorney/client privilege?. . . This is the ultimate kangaroo court."

Richard D. Friedman, Jill Hasaday, Yale Kamisar, and Roderick M. Hills Jr.

Kamisar also:

- Criticized the position that prisoners held at the U.S. base at Guantanamo Bay in Cuba do not have constitutional protections because the military base is outside of the United States and subject to Cuban sovereignty. "If Cuba has sovereignty over Guantanamo Bay, that's news to Fidel Castro," he quipped.
- Criticized current blurring of the distinctions between who is a prisoner of war entitled to Geneva Convention protections and who is an unlawful combatant not entitled to such protections.
- Paraphrased William Webster: "We do not solve these problems by avoiding the process that made us what we are."

Friedman, the Ralph W. Aigler Professor of Law, presented a mixed report card: He noted he is encouraged "by the stoutness of civil liberties" in these times. "I don't think we're doing that bad, although I am concerned about attorney/client privilege and the military tribunals [authorized after the terrorist attacks of September 11, 2001]."

It could be that the Geneva Convention doesn't reflect the kind of war we find ourselves in today, in which combatants often do not wear traditional uniforms, Friedman theorized. However, "I think for most of these cases the civilian courts are the appropriate response."

He also noted that the detention of people from Arab and Muslim countries is "one of the more troubling" issues.

Professor of Law Hills encouraged the debate by taking the position that "war is good for civil rights historically" and "war is good for the non delegation of rights and the separations of powers."

Security crises sharpen the lines between citizen and noncitizen, and generally the right to vote follows for groups that have been discriminated against, Hills claimed. For example, granting the vote to 18-year-olds was a consequence of demanding that they serve in the military, he said. The Patriot Act's authorization of government monitoring of e-mail contacts was accompanied by a withdrawal of the same right from private providers, who had monitored e-mail usage for years.

In other reunion programs:

- Lewis M. Simes Professor of Law Lawrence W. Waggoner led a discussion of "The Current Curriculum" for the Classes of 1958 and 1963. Henry M. Butzel Professor of Law Thomas E. Kauper, '66, co-chairman of the Law School's Building Committee, followed Waggoner's program with an update on construction/renovation plans for the Law School.
- In a talk to graduates, Assistant Professor Molly S. Van Houweling outlined some of the connections between intellectual property, the Internet, and copyright, and discussed her research in these areas.

Molly S. Van Houweling

Reunions 2003: Final report on giving

The timing of the celebration of the Class of 1978, 1983, 1988, 1993, and 1998 reunions prevented a full report on their respective giving in the Law School's *Annual Report of Giving*, published last fall. Below you will find the final report for each of these five classes, plus charts that provide final data on all class reunion giving. Donors whose names appear in boldface qualify as members of the Cavaedium Society. The Law School continues to be grateful to those whose names appear below and to all who support the Law School. Your gifts are essential to our mission.

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Class participation: 28%
Reunion Giving: $296,009
Total Class Giving: $306,009

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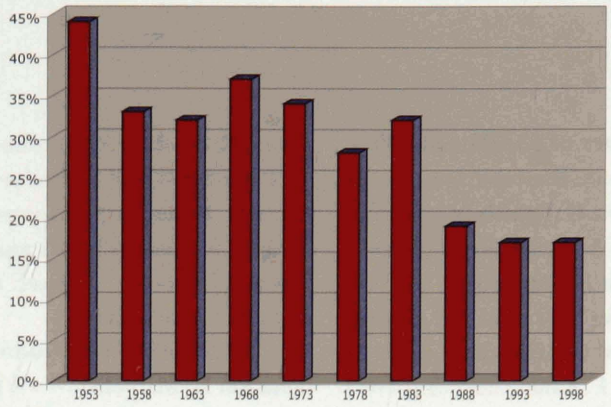
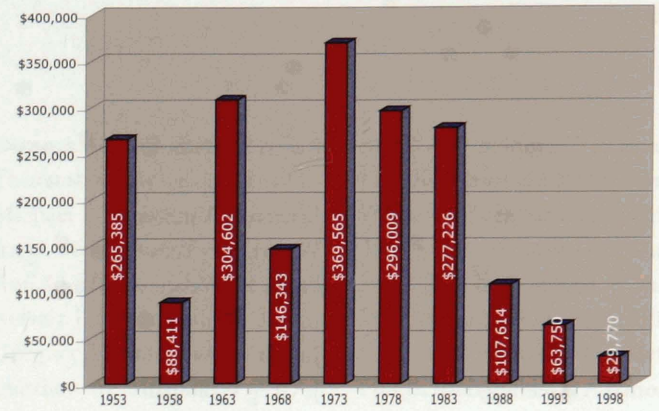
Class Participation (final)



Reunion Totals (final)



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1983

Class Participation: 32%
Reunion Giving: $277,226
Total Class Giving: $294,976

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1988

Class participation: 19%
Reunion Giving: $107,614
Total Class Giving: $111,264

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1993

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Reunion Giving: $63,750
Total Class Giving: $64,150

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1998

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Reunion Giving: $29,770
Total Class Giving: $31,368

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Corrections to the *Annual Report of Giving*:

Reunion Committee member **J. William Holland**, '63, was omitted from the list in the $2,500 - $4,999 category.

John H. Widdowson, '48, was incorrectly listed in the Participating Donor category in the July 1, 2003 - June 30, 2003 *Report of Giving*. He should have been listed in the Partner in Leadership category.

Recognitions of the Japan Foundation also should recognize the law firm Nagashima, Ohno, and Tsunematsu, whose gift supports the grant from the Japan Foundation.

In Detail

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Cavaedium Society

Dean Evan Caminker welcomes members of the Law School's new Cavaedium Society at a reception at the University's Ingles House last fall. The new society — Cavaedium is the Latin word for "the inner part of a quadrangle" — recognizes the critical role that members play in the life of the Law School and is open to graduates who donate $2,500 or more annually to the unrestricted Law School Fund. Cavaedium Society members have their own special events and a Web site that features a photo gallery and links to other parts of the Law School's extensive Web pages. For more information telephone 734.615.4521 or e-mail law.cavaedium.society@umich.edu.

Ambassador Clark T. Randt Jr., '75: China, U.S. share much

Twenty-first century China is "emerging as a great power and an important player on the global scene," the U.S. Ambassador to the People's Republic of China told a Law School audience last fall. Indeed, said Clark T. Randt Jr., '75, U.S.-China relations "arguably" may be the "most important bilateral relationship in the world."

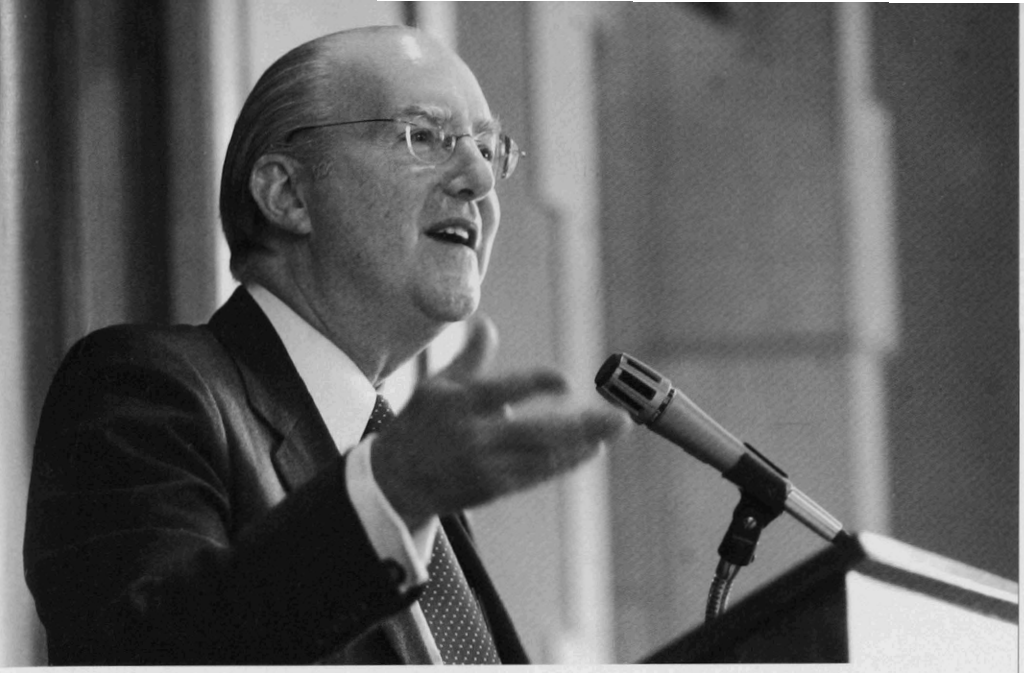
"In the space of one year, President Bush made two visits to China, and hosted President Jin at his ranch in Crawford, Texas," said Randt, whom Bush named U.S. Ambassador to China in 2001. "No other [U.S.] president has visited China more than once."

Randt, a fluent Mandarin speaker, has spent nearly 30 years observing China and working there. In that time he has seen the emergence of "a car-owning, cell-phone-toting middle class" and "entrepreneurs joining the Communist Party." China "in many respects is a work in progress," he said: The managed economy of communism is morphing into a market system; the agrarian production system is giving way to industrialization; and China's former go-it-alone foreign policy is fading as the country becomes a global ensemble player.

And none of these changes is stopable.

"In the 21st century China will exert a powerful influence in Asia," Randt predicted. "1.3 billion people cannot be ignored."

Randt visited the Law School last fall to deliver the William W. Bishop Lecture in International Law, established after long-time faculty member Bishop's death in 1987. The lecture also was part of the fall program lineup of the Center for International and Comparative Law's International Law Workshop.



A 1931 graduate of the Law School, Bishop served in the U.S. Department of State and was a legal adviser to the U.S. Delegation to the Council of Foreign Ministers and the Paris Peace Conference after World War II. He was a renowned scholar of international law, was on the board of editors and served as editor in chief of the *American Journal of International Law*, and was a member of the Permanent Court of Arbitration from 1975–81. His international law casebook was the leading one in the field for decades, and he was invited twice to give the coveted Hague Lectures at The Hague Academy of International Law. Bishop's daughter, Betty, attended Randt's lecture here last fall.

Randt studied law under Bishop, and recalled that Bishop "imbued his students with his enthusiasm for international law." Randt also recognized two of his former professors in the audience, emeritus professors Eric Stein, '42 (see related story on page 32), and Whitmore Gray.

China's newly active role on the world stage is fueled by self-interest, Randt explained, and that self-interest often corresponds with U.S. policies because of "the new paradigm that great powers have more in common [than in conflict]." So China, like the United States, opposes North Korea's nuclear arms development. Chinese opposition stems from the effects of the arms program on Japan, which is discussing re-arming, and South Korea, which feels it must develop missile defense systems.

The People's Republic was among the first to offer condolences to the United States after the 9/11 terrorist attacks on the World Trade Center and the Pentagon, Randt reported. China also took steps to protect U.S. citizens on its territory, "promptly" sealed its border with Afghanistan, and urged Pakistani President Pervez Musharraf to cooperate with U.S. efforts against terrorism.

"9/11 demonstrated to America that we have real enemies, and China is not among them," Randt said.

That is not to say there are no U.S.-China differences, according to Randt. The U.S. trade deficit with China remains an issue, as does Beijing's observance of consular agreements and Chinese human rights practices. "In 2002, the Chinese released a record number of individuals, including a group of Tibetan prisoners," Randt reported. "But in 2003 we have been sorely disappointed and have made the Chinese aware of that."

Lehman at Cornell: 'Triple inauguration'

Former Law School Dean Jeffrey S. Lehman, '81, was inaugurated last October as Cornell University's 11th and first alumnus president in an historic "triple inauguration" ceremonies October 12–13 at the new Weill Cornell Medical College in Doha, Qatar; October 15 at Weill Cornell Medical College in New York City; and October 16–17 at the main Cornell University campus in Ithaca, New York.

At Ithaca, U.S. Supreme Court Justice Ruth Bader Ginsburg used her inauguration remarks to praise Lehman's successful defense of race as a factor in making admissions decisions. The Supreme Court's ruling upholding the Law School's policies was announced only eight days before Lehman ended his nine-year deanship here to begin duties as Cornell's president.

In his inaugural address, Lehman said:

"Earlier in this inaugural week, on our campus in Doha, Qatar, I expressed my belief that great universities must continue to nurture a transnational perspective on the human condition. On our campus in New York City, I expressed my belief that great universities must continue to advance scientific understanding of our world's unifying forces.

'Today, on this campus in Ithaca, let me express my belief that great universities must continue to promote the spiritually satisfying coexistence of people with one another and with our planet. The dividing lines of race and religion have long been especially powerful stimuli for conflict, mistrust, segregation, and war. Scientific and technological progress have long challenged societal institutions to sustain humanistic and environmental values, even as they enhanced the quality of human life.

"I believe that universities have a special capacity to help students to be open to these challenges, to appreciate their complexity, and to engage them with all of the scientific, social scientific, and humanistic resources we can muster."

Thanks, Judge Gadola

By Donald N. Duquette
Clinical Professor of Law and Director, Child Advocacy Law Clinic

I first came to know Judge [Thomas L.] Gadola, '57, in 1978 when I approached him to ask if the Genesee [County] Court would appoint the Child Advocacy Law Clinic to represent children in cases of alleged child abuse and neglect.

Even then he was a bit rumpled and casual and easy-going off the bench. You knew you had his attention when he gave you a certain sidelong stare as you talked. We call it "active listening" now, but what I remember were reassuring rumbles and growls that seemed to say, "OK, OK, I'm following you." He was great. "Won't these students want to take every case to trial?" he asked. So off I went explaining that clinical legal education was about training lawyers in good practice and it is not good practice to take every case to trial. And on we talked.

From 1978 to 2003, I took law students to Flint, Michigan, to advocate for children before the Genesee [County] Court. For the first three or four years the *only* judge who allowed us to appear was Judge Gadola. Gradually, he persuaded his colleagues, one by one, that having student attorneys in the court was not so bad — in fact, the students were actually positive forces in the proceedings. By the time of his death in 2003, Child Advocacy law students had been appearing for some time before *all* the Genesee Family Court judges and referees. Thanks, Judge Gadola.

He kept up with everything at Michigan. He really loved this University and the Law School. "So, how are things at the U of M?" he would ask. "How is the president doing?" "How do you like your new dean?" (I *always* just loved my new dean, whoever it was!) "Bo and the Wolverines looked pretty good last Saturday." "I don't know about this affirmative action business, what do you think?"

In our 25 years working together, he and I experienced dramatic changes in how the legal system dealt with child abuse and neglect cases. The changes were reflected in our advocacy for children — some saw us as too pushy — and more than once Judge Gadola saved my bacon.

In the late 80s some influential staff persons at the court complained about the Child Advocacy Law Clinic and wanted us excluded from the court. "They expect too much of the court staff and the state foster care workers," was the complaint. "They are always asking us to do things." "None of the other lawyers ask us to do all these things."

A meeting was scheduled that included court staff, referees, and two or three of the judges — and me. After hearing the concerns of the court staff I apologized if any of our students lacked the appropriate diplomatic skills and asked that they bring any such behavior to my attention. But then Judge Gadola asked the staff persons, "Aren't these things you and the case-workers should be doing for the children anyway?" The answer was yes. The meeting was over. The Child Advocacy Law Clinic was still welcome in the Genesee Court.

He was great on the bench. He always listened attentively to our students and never was condescending. He was so personally sensitive to the children and families before him. In one case I remember we represented two little boys, 8 and 9, who had been sexually

Judge Thomas L. Gadola, '57

Judge Thomas L. Gadola, '57, an avid supporter of Law School educational programs and the University of Michigan generally, died while watching the Michigan-Indiana football game at Ann Arbor on September 27. He was 70 and had attended virtually every U-M home football game since 1953. He also earned his undergraduate degree at the University.

A resident of Grand Blanc, Michigan, Gadola was the brother of the Hon. Paul V. Gadola, '53, of the U.S. District Court in Flint.

Named to the bench in 1977, Thomas Gadola was the longest-serving Genesee County Probate judge at the time of his death. In December 2003, he proudly administered the oaths of office to sons John A. Gadola, who became a judge on the Genesee County Family Court, and Miles T. Gadola, a Flint District Court probation officer and then-newly elected Genesee County commissioner. Gadola himself had served on the County Board of Commissioners before being named to the bench.

Gadola was a pioneer in allowing law students to argue cases before him, and helped to convince other judges to do the same. "Fittingly, many a Michigan law student had their first appearance in court before Judge Tom Gadola," said Clinical Professor of Law Donald N. Duquette, director of the Law School's Child Advocacy Law Clinic. "He heard many of our cases over about 25 years. He was a terrific man and a fine and caring judge. He will be missed." (See Duquette's adjoining story: "Thanks, Judge Gadola.")

"He was a kind, decent, pro-child man, and he and his wife, Sue, raised a wonderful and successful family," Genesee County Chief Probate Judge Allen J. Nelson said of Gadola.

Area attorney Michael P. Manley, who argued many times before Gadola, called his death "a devastating loss to our legal community." Gadola was "a first-class human being and a first-class judge," Manley said.

abused by a cousin and were now living with their grandmother. The student attorneys told Judge Gadola that the youngest boy wanted to say something to the court. The judge called the boy by name and said, "What would you like to tell me?" We expected the child to sit in his seat at counsel table and mumble something about how he liked living at his grandma's. Instead, this little eight-year-old, having seen his share of TV no doubt, got up from his chair, walked ceremoniously up to the witness stand, and raised his hand. Judge Gadola, recognizing the ritual, gave him an oath. The Judge and I exchanged questioning glances. Judge Gadola repeated his question, "What would you like to tell me?" The little boy then told the story of how he and his brother had been sodomized by this cousin and how wrong that was. He was mad that people would do that. Judge Gadola knew the cousin had been convicted and sentenced for a similar crime against other children, but had not been charged or tried for the crimes against these two brothers. The cousin was serving a long prison sentence. Judge Gadola said, "You are right, this is wrong. Nobody should do such a thing to a child. He is in prison so he will never do this again to you or anybody else. You did nothing wrong. You are a good boy. He is a very bad man. I am proud of you for telling me what happened." The boy beamed. He left the witness stand prouder and stronger. This experience defines, "catharsis" for me.

Judge Thomas Gadola was a rare spirit. He will be missed.

Father, daughter win separate recognitions

Former Michigan State Bar President Alfred Butzbaugh, '66, and his daughter Mia Butzbaugh, '01, both recently have been honored.

Michigan Governor Jennifer Granholm named Alfred Butzbaugh judge of the 2nd Circuit Court in Berrien County, Michigan, and investiture took place in December, with Michigan Supreme Court Chief Justice Maura D. Corrigan presiding. Some 300 persons attended.

A longtime practitioner with Butzbaugh & Dewane PLC in St. Joseph, Michigan, Butzbaugh replaced Judge John. N. Fields, who retired. Butzbaugh was president of the State Bar of Michigan from 1999–2000 and used his term, among other initiatives, to champion the bar's Access to Justice Program, which provides legal help to those who cannot afford it.

"Al's heart and soul are committed to equal justice," Granholm said of Butzbaugh. "He is driven by a dedication to fairness and respect for his fellow citizens."

Mia Butzbaugh has been named one of the world's "Ten Best Emerging Social Entrepreneurs" by the global social venture fund Echoing Green; she and her co-winner, D. Michael Dale, receive an Echoing Green Fellowship of $90,000 to establish the Northwest Workers' Justice Project, based in Portland, Oregon.

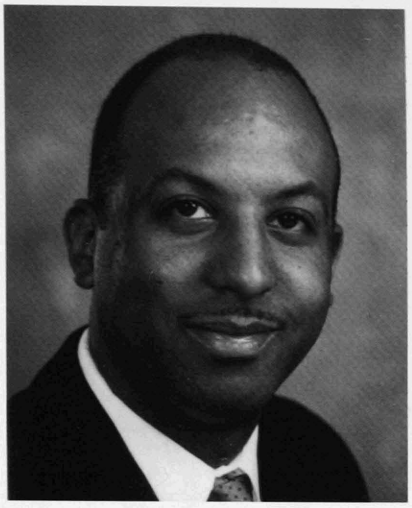
"The needs of the powerless can suffer in a system where legal services to the poor are provided largely through public funding," Mia Butzbaugh explained. "By identifying nontraditional funders, the Northwest Workers' Justice Project is creating a strong foundation to tackle important policy issues and enforce the rights of low-wage workers."

According to Mia Butzbaugh and Dale, an expert in migrant law with more than 25 years' experience, shifting employment trends have created a need for workers to protect themselves. An

Oregon Bar Association study in 2001 found that 55.6 percent of farmworkers and 44 percent of immigrant workers have needed legal help for employment-related problems.

"Most Oregon legal services offices do not accept employment cases outside of agriculture," explained Mia Butzbaugh. "Legal Services corporation-funded organizations do not serve undocumented workers and many private attorneys only accept lucrative cases. As a result, thousands of low-wage workers have no access to legal assistance. The Northwest Workers' Justice Project seeks to fill this gap."

Dale and Butzbaugh's organization is one of 10 to receive 2003 Echoing Green fellowships from nearly 1,000 applicants in 60 countries. "We take risks on emerging leaders with innovative solutions because the greatest risk is overlooking an idea that can change the world," explained Echoing Green President Cheryl Dorsey, a 1992 Echoing Green fellow.



Washington State Bar honors Tony Miles, '99

The Young Lawyers Division (YLD) of the Washington State Bar Association has named Tony Miles, '99, a 2003 Outstanding Young Lawyer of the Year. Miles has practiced with Preston Gates & Ellis LLP in Seattle since 1999.

The award was one of four presented by the bar association's YLD. A colleague at Preston Gates also won one of the four awards.

Miles was honored for his commitment to providing *pro bono* services as well as his contributions to the professional community. A member of Preston Gates' Health Care Practice Group, he specializes in transactional and regulatory matters related to health care delivery services, research, and the intersection of health care and technology.

In part, the award recognizes Miles' contribution to preparation of the recent U-M Law School affirmative action case before the U.S. Supreme Court. He and two other Preston Gates attorneys filed an *amicus* brief on behalf of 112 members of Congress and the Mayor of Detroit in support of the University of Michigan and the Law School.

Preston Gates & Ellis managing partner Gerry Johnson said that Miles and his colleague "embody the firm's commitment to community and professional service. Beyond tremendous client service, they have dedicated significant time and energy to *pro bono* service and professional and civic leadership. Recognition for their contributions is well deserved."

Hirshon, '73, becomes CEO at Tonkon Torp

Robert E. Hirshon, '73, past president of the American Bar Association and longstanding shareholder in the Portland, Maine, law firm of Drummond, Woodsum & MacMahon PA, has become chief executive officer of Portland, Oregon-based Tonkon Torp LLP.

The CEO position is a new one for Tonkon Torp, which is responsible for management and operations of a practice that includes 74 attorneys and nearly 100 support personnel. Hirshon also is a member of the Law School's Committee of Visitors, an advisory group.

Hirshon reports to Tonkon Torp's managing board, headed by corporate attorney Kenneth D. Stephens, who said the firm's partners are elated to have "someone with Bob's skills, experience, and stature" to fill the new CEO position.

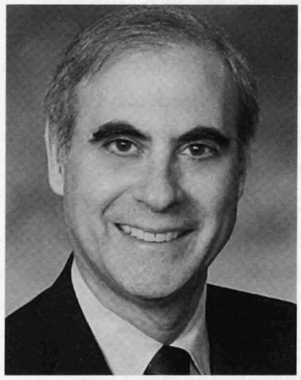
"The new management structure allows our attorneys to maintain the high standards of our profession by focusing their attention fully on the practice of law while Bob applies his considerable talents and perspective to the management and growth of our practice," said Stephens. "Realizing the benefits this business model will bring to our clients and our firm, we set out to find the best candidate in the country. We are absolutely delighted to have attracted an individual with the talents that Bob possesses."

Tonkon's new management structure reflects the changing competitive environment for law firms, according to James W. Jones of Hildebrandt International in Washington, D.C., a management consulting firm for the legal industry. "It is increasingly important for law firms of any significant size to place primary management responsibilities in the hands of a CEO who can devote full time and attention to overseeing the operations and strategic direction of the firm," Jones explained.

As a practicing attorney, Hirshon has represented corporations, individuals, financial service companies, and associations. As president of the ABA from August 2001–02, he oversaw the organization's implementation of a major technology initiative and redesign of its annual convention to make it more member-friendly. Hirshon also tackled the corporate governance issue by appointing an ABA task force on corporate responsibility.

Hirshon has worked with state legislatures, members of Congress, White House staff members, and federal agencies, and lectures frequently on insurance, banking, civil litigation, civil justice, and other issues. In 2003, the College of Law at Willamette University presented him an honorary degree. In 1997, he received the National Association of Pro Bono Coordinators Award, and recently was the first practicing attorney to be honored with the Muskie Access to Justice Award, named after former Maine U.S. Senator Edmund Muskie.

"I am eager to put my experience to work on behalf of a law firm of Tonkon Torp's caliber in a location as wonderful



as Portland, Oregon," Hirshon says. "This is an opportunity to apply my management skills and my understanding of national legal trends to support an excellent group of attorneys and their clients."

Kinnari Cowell-Shah, '95, and Christopher Cowell-Shah, center, are surrounded at their wedding by Law School graduates and their spouses and children.

Bride/reporter: Kinnari Cowell-Shah, '95

At least twice previously, Kinnari Shah, '95, has kept us up to date with reports of weddings among her Law School classmates. So when her e-mail arrived we read it with great interest — and immediately sent our congratulations to **Kinnari Cowell-Shah**, '95, who this time had written *Law Quadrangle Notes* about her own wedding.

"Do you remember me?" she began. (As if we could forget.) "I've sent you several 'class updates' over the years about happenings in the lives of other friends of mine from the class of 1995, and now it's my turn! I was married in June 2003, and a lot of my friends from Michigan were bridesmaids and guests at the wedding. I'm attaching both a write-up as well as a wedding picture with the whole Michigan crew!"

Here's her report:

"**Kinnari Shah** was married to Christopher Cowell (Harvard '91, Berkeley Ph.D. '01) on June 21, 2003, at the Faculty Club on the UC Berkeley campus. Kinnari and Chris met in 1999 while singing in the University of California Alumni Chorus, members of which sang — along with several former members of the Michigan Law School Headnotes and the Harvard Krokodiloes — during the outdoor joint Jain and Episcopalian ceremony.

"Chris received a Ph.D. in philosophy from UC Berkeley in 2001 (after doing two years of post-baccalaureate research in philosophy at the University of Michigan) and now works as a computer consultant with Accenture's research and development labs in Palo Alto. The couple will continue to live in San Francisco, and both will be changing their last name to Cowell-Shah.

"Other [Law School] alums in attendance (from the class of 1995 unless otherwise indicated) included [from left in the accompanying photo] **Gina Roccanova**, **Rachael Meny** (with husband Dr. Matthew Hinsch and son Holden, age 12 months), **Joel Schoenmeyer** ('96), **Kimberly Curran**, **Ruth Armstrong Schoenmeyer** (and daughter Sophia, 18 months — not pictured), **Jennifer Lewis**, **Stacey Mufson** and husband Mark Lecker, **Karen Zatz** and husband Dr. Paul Bloom, and **Ann Wright Whitley** and **Jeff Whitley** with their children Megan, age 5, and Tommy, age 18 months."

Thank you and best wishes, Kinnari and Chris.

Labor practices

National Labor Relations Board Chairman (NLRB) Robert J. Battista, '64, below, details the history and operation of the five-member NLRB, which receives about 30,000 unfair labor practice complaints each year. Battista said current cases include two from Columbia and Brown universities over the question of whether graduate teaching assistants are university students or employees and another over the issue of the representation of nonunionized employees by their fellow employees. Battista spoke at the Law School last fall in a program sponsored by the Employment and Labor Law Association. He was introduced by visiting professor and former NLRB Chicago Regional Office Director Elizabeth Kinney, '68. Later in the day, Battista also participated in Kinney's seminar in Advanced Problems before the NLRB.

Help is all in the 'family'

The "Law School family" is a very real thing for Jeffrey Fisher, '97. "Family" is where you can turn when you need help.

An attorney with Davis, Wright and Tremaine in Seattle, Washington, Fisher returned to the Law School last fall to prep for his upcoming appearances before the U.S. Supreme Court.

Fisher, who argued *Crawford v. Washington* before the Court on November 10, still was awaiting an oral argument date for his second argument before the Court this term, *Blakely v. Washington,* when he visited here November 3. He consulted with faculty members during his visit, presented a mock trial of *Crawford*, and delivered a midday talk on "The Anatomy of a Supreme Court Case."

"It pays to pay attention in class" and keep in touch with professors, Fisher joshed as he explained that Richard D. Friedman, the Ralph W. Aigler Professor of Law, has assisted him in *Crawford*. Friedman, a specialist in evidence and the history of the Court, also submitted an *amicus* brief in the case, which revolves around another of his specialties, the issue of confrontation. (An excerpt from the brief begins on page 82 and a related story appears on page 30.)

Crawford centers on the Constitution's confrontation clause, which appears to guarantee a defendant the right to cross-examine his accuser. Fisher became involved with the case through his work with the National Association of Criminal Defense Attorneys (NACDL). His NACDL work also led him to *Blakely v. Washington*, but more about that later.

Fisher got what he called "a clerk's eye view of the process" of getting a case to the U.S. Supreme Court when he clerked for Supreme Court Justice John Paul Stevens. (He also clerked for the Hon. Stephen Reinhardt, of the U.S. Court of Appeals for the Ninth Circuit.) "Once you leave law school, you realize how much goes into a case before it ever gets to court, and how many variables there are," he explained.

And very few cases make it to consideration by the U.S. Supreme Court — about 75 of the 9,000–10,000 petitions the Court receives each year. The Court mostly looks to two issues in considering whether or not to take a case: Is there conflict in decisions of lower courts? How important is this case? Or, to put it another way, does this case have legal significance beyond the principals involved in it?

"You need to pitch your case to the Court so there is no good reason for them to deny it," Fisher said. While it may take years for a case to work its way up to the Court, the Supreme Court "actually is one of the fastest courts" in hearing arguments and handing down decisions, Fisher reported. Oral arguments and decisions are completed in the same term.

In *Crawford*, Fisher argues that Michael Crawford should not be convicted in the altercation he had with his wife's lover without being able to cross examine the statements his wife made to police. Prosecutors used her statements at trial, where Crawford was convicted. The conviction was reversed by the appeals court, but the Washington Supreme Court overruled the appeals court and re-affirmed the trial court conviction.

Friedman, who praised Fisher's success at arguing two cases before the Supreme Court so few years after graduation, also filed a brief in the case.

Fisher's second case before the Court this term, *Blakely v. Washington,* also came about because of his work with NACDL. Fisher noticed when he was a Supreme Court clerk that NACDL, but few other organizations, often filed briefs on behalf of defendants. Impressed, he contacted NACDL and now monitors West Coast cases for the organizations.

Blakely seeks to clarify the roles of judges and juries in determining sentences and their relation to sentencing guidelines. A Washington State judge sentenced Ralph H. Blakely Jr. to 90 months for kidnapping his wife, a sentence that exceeded the 53 months called for by sentencing guidelines. The judge said the added factors of domestic violence and cruelty in the crime called for the additional prison time. The Washington State Court of Appeals rejected Blakely's claim that such a decision must be made by a jury.

In *Ring v. Arizona*, decided during the Court's previous term, the Court ruled that "aggravating" factors in a death penalty case must be determined by the jury. *Blakely* will determine if *Ring* applies beyond death penalty cases.

From left, J. Richard (Dick) Emens, '59; Mark Shaevsky, '59; Wendell Smith, '59.

1949

55th Reunion

The Class of 1949 reunion will be October 8–10

1952

Frederick R. Keydel joined Berry Moorman PC's Detroit, Michigan, office in December 2003. He is serving as of counsel (retired). Listed in *The Best Lawyers in America*, Keydel has written extensively and lectured on estate and trust topics throughout the United States.

1954

50th Reunion

The Class of 1954 reunion will be October 8–10

1959

45th Reunion

The Class of 1959 reunion will be October 8–10

J. Richard (Dick) Emens, partner in the law firm Chester, Willcox and Saxbe LLP in Columbus, Ohio, has been named chairman of the Whittier Peninsula Park Advisory Board, which will do the initial planning for a 180-acre inner city Metro Park with an Audubon Nature Center. Emens also is president of Audubon Ohio and is listed in *Best Lawyers in America* in the Corporate Law and Natural Resources categories.

Wallace M. Handler, who is with Sullivan, Ward, Bone, Tyler & Asher PC in Southfield, Michigan, has been named in *The Best Lawyers in America 2003–2004* and also has been recognized in every edition of the book since it was first published. He practices in the area of creditor and debtor rights (bankruptcy law, including business reorganization).

Michael Best & Friedrich LLP attorney **Richard Z. Kabaker** has been recognized as the Father of the Year for 2003 by the American Diabetes Association's Father's Day Council. The award recognizes Kabaker's ability to balance his personal life while achieving a high level of success in his career. In 1971, he gave up his career with a Cleveland law firm and spent 10 years as a law professor, which allowed him to spend more time with his children during their formative years. Today, Kabaker practices law in Madison, Wisconsin, focusing his practice on estate planning, trust and estate administration, marital property law, and laws relating to the formation, taxation, and operation of nonprofit organizations.

Mark Shaevsky, of counsel in the corporate law department of Detroit-based Honigman Miller Schwartz and Cohn LLP, has been named to the 10th edition of *The Best Lawyers in America 2003–2004*. He has been recognized in the previous four editions as a top practitioner in corporate law.

Gann Law Books has announced the release of the 2004 edition of *New Jersey Condominium & Community Association Law*, co-authored by **Wendell A. Smith** and Dennis A. Estis, partners in the law firm of Greenbaum, Rowe, Smith, Ravin, Davis & Himmel LLP. The book is a practical guide to assist condominium and other common interest communities, attorneys, and other professionals, as well as lay persons, in thoroughly understanding the rights and obligations of common property ownership and enabling officers and board members of condominium and community associations to better understand their roles.

1962

William R. Jones Jr., of Jones, Skelton & Hochuli in Phoenix, has received the 2003 Samuel E. Gates Litigation Award from the American College of Trial Lawyers. The award was established in 1980 to recognize a lawyer who has made a significant contribution to the improvement of the litigation process. (Law School Professor Emeritus John Reed was the fifth recipient of the award.)

1963

Robert Z. Feldstein, president of Robert Z. Feldstein PC and of counsel to the Troy, Michigan, law firm of Kemp, Klein, Umphrey, Endelman & May PC, has been included in *The Best Lawyers in America 2003–2004*, and has been in every edition since 1991. A sustaining member of the Oakland County Bar Association and the Oakland County Bar Foundation, Feldstein is also a fellow of the American Academy of Matrimonial Lawyers.

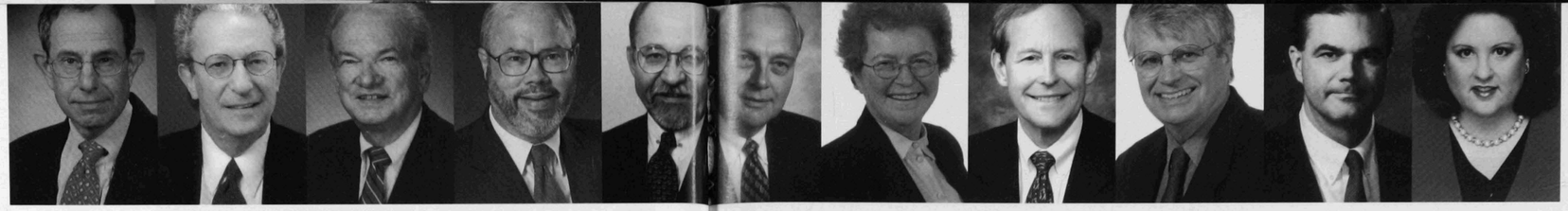
1964

40th Reunion

The Class of 1949 reunion will be October 8–10

1966

At the invitation of the Chinese Ministry of Commerce and the U.S. Embassy in Beijing, **Terence Murphy** was the only private-sector participant in the September 2003 Sino-U.S. Export Controls Seminar held in Shanghai. In London, he is the organizing chair of the annual Globalization of Export Controls conference, and he is a strategic exports adviser to the U.S. Commerce and Defense Departments. On November 1, he became general counsel to MK Technology, a leading international trade consultancy based in Washington, D.C., and he still keeps ties with Murphy Ellis Weber, which he founded in 1986. A member of the Law School's Committee of Visitors, a former member of the American Bar Association's Administrative Law Council, and an honorary officer of the Order of the British Empire, in July 2003 he became one of the first two Distinguished Alumni of his high school in Calument-Laurium on Michigan's Upper Peninsula.



From left, Joel S. Adelman, '67; I. William Cohen, '67; Thomas E. Sliney, '67; Lee Hornberger, '68; Carl H. von Ende, '68; Claude L. Vander Ploeg,'69; Bettye S. Elkins, '70; James P. Feeney, '71; Charles A. Duerr Jr., '72; Thomas Murray, '72; Barbara Rom, '72.

1967

Joel S. Adelman, a partner in the Real Estate Law Department and vice chairman of Detroit-based Honigman Miller Schwartz and Cohn LLP, has been named in *The Best Lawyers in America 2003–2004*.

I. William Cohen, chairman of the bankruptcy and reorganization practice at Pepper Hamilton LLP and a member of the firm's executive committee, has been elected to the board of directors of the American College of Bankruptcy. He also has been elected a member of the board of directors of the Foundation for the American College of Bankruptcy. Cohen has been a fellow of the American College of Bankruptcy since 1991 and is a member of its board of regents, which is responsible for nomination and selection of candidates to fellowship in the college.

Hodgson Russ LLP attorney **Thomas E. Sliney** is part of the firm's new Government Relations Team. The team, which offers extensive knowledge of legislative and regulatory processes and issues and key relationships with government decision makers, works to address clients' problems through legislative or administrative action. Sliney, who is a member of the Boca Raton office, has practiced law in South Florida since 1971 and has extensive governmental, municipal, and zoning experience. He was recently reappointed by Florida Governor Jeb Bush to the Judicial Nominating Commission, Fourth District Court of Appeals, for a four-year term. Sliney is a past president of the South Palm Beach County Bar Association.

John Stout has been elected to the board of directors of the National Association of Corporate Directors. He has served the organization in many capacities including as a member of several commissions such as Director of Professionalism, Preventing and Detecting Financial Fraud and other Illegal Activities. He has also presented at annual meetings and chapter events and served as president of the organization's Minnesota chapter. Stout is an attorney at Fredrikson & Byron, Minneapolis, Minnesota, where he chairs the Corporate Governance Group. He focuses his practice on domestic and international business organization, finance, and governance.

1968

Attorney **Lee Hornberger**'s article, "Employment Discrimination Law in Michigan," was published in the September edition of the *Michigan Bar Journal*, the official journal of the State Bar of Michigan. Hornberger practices all aspects of employment law and mediation in Traverse City. He is a volunteer mediator with the Equal Employment Opportunity Commission, Michigan Department of Civil Rights, the Gaylord Community Mediation Services, the Traverse City Community Reconciliation Services, and Charlevoix Northern Community Mediation.

Carl H. von Ende, a principal at Miller, Canfield, Paddock and Stone PLC, is ranked one of Michigan's top attorneys in *Chambers USA: America's Leading Business Lawyers 2003–2004* — listed in Michigan's Litigation section. The publication is a client's referral guide designed to present an objective guide to the best practitioners in the main areas of corporate law. He has also been listed in all the editions of *The Best Lawyers in America*, Banking Law section and Business Litigation section. A member of Miller Canfield's Detroit office, he practices in the Litigation Group, where he represents clients in a variety of areas from bank mergers, antitrust cases, and constitutional disputes, to securities, class actions, and takeover matters. He is past president of the Detroit Metropolitan Bar Association and is active in the American College of Trial Lawyers, State Bar of Michigan, and a number of civic and professional organizations.

1969

35th Reunion

The Class of 1969 reunion will be October 8–10

Robert M. Meisner has been appointed as an adjunct professor of law at Cooley Law School teaching condominium and community association law. He is also an adjunct professor at the Detroit College of Law at Michigan State University and remains in private practice in Bingham Farms, Michigan, concentrating on condominium, real estate, and community association law.

Claude L. Vander Ploeg, of Mika Meyers Beckett & Jones PLC in Grand Rapids, Michigan, has been named to the firm's Management Committee for 2004.

Harvey B. Wallace II has joined the Detroit, Michigan, office of Berry Moorman PC as a principal. Wallace is nationally recognized in estate and trust practice areas and has written and lectured extensively on these subjects. He is listed in *The Best Lawyers in America 2003–2004*.

1970

Les Abramson, a professor at the Louis D. Brandeis School of Law at the University of Louisville, has won the Trustees Award, which the university's board of trustees gives in recognition of a faculty member's "extraordinary impact on students." The award was presented at commencement last May. "Professor Abramson has given exceptional devotion to students as a mentor, colleague, and a friend," according to the award announcement. "He shows enormous care for students and thus serves as a valuable role model. He is available to students both inside and outside of class. He incorporates real world skills assignments into his classes and provides extensive feedback on written and oral exercises. He serves as an advisor to students about what academic courses to take and what career opportunities to consider."

Bettye S. Elkins, principal in the Miller, Canfield, Paddock and Stone PLC Ann Arbor office, has been named one of the Most Influential Women of 2003 by *Business Direct Weekly*, a publication serving the Ann Arbor, Livingston, and Washtenaw communities. Elkins is a member of the firm's Health Law and Intellectual Property Practice Groups, counseling health care and other clients with major system acquisitions and ongoing computer contracting. She is a member of the American Bar Association, State Bar of Michigan, and Washtenaw County Bar Association, and has served on the board of directors of a hospital, a home health agency, and a hospice organization, as well as on the boards of several civic and cultural agencies, and an independent school. Elkins is listed in the Health Care Section and the Cyber Law Section of the last five editions of *The Best Lawyers in America*.

1971

James P. Feeney, director of national litigation for Dykema Gossett PLLC, was inducted into the American College of Trial Lawyers at the organization's 2003 Annual Meeting in Montreal. Fellowship in the College is open only to lawyers with 15 or more years of experience and is by invitation only. Feeney is nationally known for his representation of auto manufacturers in high exposure product liability cases across the United States, and was retained by Time-Warner to defend the highly publicized Jenny Jones case.

1972

Charles A. Duerr Jr., a principal in the Ann Arbor office of Miller, Canfield, Paddock and Stone PLC, has received a Thomas M. Cooley Law Review 2003 Distinguished Brief Award along with colleague and 1979 Law School graduate **Linda O. Goldberg** (see below). The annual award is given in recognition of the most scholarly briefs filed before the Michigan Supreme Court. Their brief won the Supreme Court case for which it was written. Duerr practices in education law including labor, tenure, general school law, employment discrimination, open meetings and freedom of information, civil rights, and constitutional law.

Zyomyx Inc., a leader in protein biochip technologies that is located in Hayward, California, has announced that **Thomas J. McNaughton** has joined the company as vice president of intellectual property. McNaughton is responsible for expanding and enforcing Zyomyx' patent portfolio and for supporting Zyomyx in its transactions with partners and customers. Prior to joining Zyomyx, McNaughton served as vice president of legal affairs at Aclara Biosciences Inc., where he doubled Aclara's patent pending portfolio and completed a wide array of transactions including joint ventures, research, and licensing contracts, and supply, distribution, and lease agreements. He is a member of the California State Bar with admission to the U.S. Patent and Trademark Office.

Veteran litigator **Thomas Murray** has joined Lathrop & Gage LC as of counsel in the firm's Overland Park, Kansas, office. He practiced for the previous 31 years with Barber, Emerson, Springer, Zinn & Murray LC in Lawrence, Kansas, and specializes in civil and construction litigation and labor, employment, and banking law. Murray has deep roots in the Kansas City area; his paternal grandfather practiced law in Kansas City for many years and his maternal grandfather co-founded the law firm Black & Veatch. Murray is a member of the Kansas Board of Law Examiners, which oversees admission of attorneys to the Kansas Bar; he also is a member of the board of directors of The Reuter Organ Company and the Hall Center for the Humanities at the University of Kansas. He has taught as adjunct professor at the University of Kansas Law School and in the University of Kansas Western Civilization program.

Barbara Rom, partner in the Detroit office of Pepper Hamilton LLP and a member of the Law School's Committee of Visitors, has been certified by the American Board of Certification as a specialist in business bankruptcy. Only 14 attorneys in Michigan have received this distinction. Rom is a former president of the Detroit Metropolitan Bar Association, one of only a handful of Michigan Fellows of the American College of Bankruptcy, 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. In addition, she is a member of several legal, business, and community committees, is designated a Life Delegate by the Federal Court of Appeals for the Sixth Circuit, and has been appointed by the chief judge to the Sixth Circuit Merit Selection Panel for Bankruptcy Judges and Advisory Committee on Rules.

Florida Governor Jeb Bush has appointed **Frank A. Shepherd** as a judge of the District Court of Appeal, Third Appellate District of Florida. The Third District Court of Appeal is one of five intermediate appellate courts in the state and hears all appeals for Miami-Dade and Monroe Counties. Shepherd is one of 11 judges on the court.

Lynda Zengerle and **Joe Zengerle** each made career changes in December 2003. Lynda became a partner in Washington, D.C.-based Steptoe & Johnson to establish a full-service immigration practice for the firm. She had founded the immigration practice

From left, Curtis L. Mack, '73; William J. Danhoff, '74; Connye Y. Harper, '75; Peter D. Holmes, '75; Thomas W. Linn, '76; John W. Amberg, '79; Beverly Hall Burns, '79; Brant A. Freer, '79; Linda O. Goldberg, '79; Todd Anson, '80.

as a partner at Arent Fox, also in Washington, and then became the first international partner for Baker & McKenzie's North American practice. Joe, having created the seminar on Homeland Security and the War on Terror at George Mason University School of Law, became the founding director of the law school's Clinic for Legal Assistance to Servicemembers (CLAS) and their families. A Vietnam veteran and former assistant secretary of the Air Force under President Carter, Joe Zengerle had been executive director of the Legal Aid Society of DC after serving 15 years as cofounding partner of the District of Columbia office of now-Gingham McCutchen. The Zengerles have two sons, Jason, associate editor of *The New Republic* in Chapel Hill, North Carolina, and Tucker, a DHL global unit manager in Prague, Czech Republic.

1973

Curtis L. Mack, a partner in the Atlanta office of McGuireWoods LLP, was named one of the country's leading lawyers in the November issue of *Black Enterprise* magazine. Mack practices in the firm's Labor and Employment Department. Nationally recognized as a labor and employment lawyer, he has served as lead counsel in numerous cases in state and federal courts and has represented 30 of the nation's Fortune 100 companies during his career. He has negotiated or tried more than 250 individual termination actions, as well as sexual and racial harassment cases, and National Labor Relations Board and public section hearings. In addition, he is a former law professor for the University of Florida and has served as an adjunct professor of labor law at the University of Michigan Law School and Emory University. He is also a member of the Michigan State University College of Social Science Board of Visitors.

1974

30th Reunion

The Class of 1974 reunion will be October 8–10

William J. Danhoff, a principal at Miller, Canfield, Paddock and Stone PLC in Lansing and group leader of the firm's Public Law Practice Group, is listed as a new inductee in the category Public Finance Law and Banking in the *Best Lawyers in America 2003–2004*. Danhoff is among 31 Miller Canfield attorneys listed in the guide, which includes fewer than 3 percent U.S. practitioners.

The American College of Trust and Estate Counsel has elected **Bart J. Schenone** of Schenone & Peck law offices in Hayward, California, as a fellow of the college.

1975

Connye Y. Harper, associate general counsel of the International Union, UAW, has been appointed commissioner of the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession. Harper is also a member of the Council of the Section on Labor and Employment Law of the American Bar Association.

Peter D. Holmes, who leads the environmental law practice at Clark Hill PLC in Detroit, has been elected secretary treasurer of the Environmental Law Section of the State Bar of Michigan. The section provides education, information, and analysis through a variety of means, including publication of *The Michigan Environmental Law Journal*. Holmes is assistant editor of the *Journal*, a past chair of the Surface Water/Groundwater Committee of the Environmental Law Section, and past chair of the Environmental Law Section of the Washtenaw County Bar Association.

Masayuki Oku, LL.M., was incorrectly identified in the preceding issue of *Law Quadrangle Notes* as president of Nippon Life Insurance Company in Tokyo, Japan. He is in fact a vice president of Sumitomo Mitsui Banking Corporation, also in Japan. *Law Quadrangle Notes* regrets the error. (Another Law School graduate, **Mitsuhiro Ishibashi, M.C.L. '74**, is a vice president with Nippon Life.)

Honigman Miller Schwartz & Cohn LLP's **Joseph M. Polito** has been named among the 30 best in his practice area in *The Best of the Best 2003*, a publication that features the top environmental and other specialty lawyers. Each year only 30 environmental lawyers worldwide are included in the publication. Polito has practiced with the firm for his entire career and served as chair of the Environmental Law Department for more than 23 years. He resides with his family in Troy, Michigan.

1976

Thomas W. Linn, CEO of Miller Canfield, Paddock and Stone PLC, has been appointed secretary of the 2003 Metropolitan Affairs Coalition's (MAC) executive committee. MAC is a regional partnership dedicated to enhancing the quality of life and economy of southeastern Michigan and is a subsidiary of Southeast Michigan Council of Governments. He was also appointed in July to a one-year term on the board of directors of the Detroit Regional Chamber, the largest Chamber of Commerce in the United States. Linn practices out of Miller Canfield's headquarters in Detroit, and concentrates on commercial lending and letters of credit, project finance, municipal law, securities, and commercial and banking law. He is a member of the American Bar Association, State Bar of Michigan, and the Detroit Metropolitan Bar Association, and serves on several charitable boards. He is also listed in the Banking Law section of *The Best Lawyers in America 2003–2004*.

Lynn Schefsky has been named as one of three new members of the Adrian College Board of Trustees. Schefsky has worked for Dow Chemical in Midland, Michigan, since 1985 and is currently a global lawyer with the company's Thermosets and Automobile business unit. Active in the community, he is president of the board of directors of the Midland County Big Brothers/Big Sisters, a member of the board of Midland County Volunteers in Probation, the David Reese House, Brazoria County (Texas) Youth Home, and the Midland Soccer Club. In addition, he coaches and manages Midland's traveling soccer teams. Schefsky is licensed to practice law in Michigan, Texas, and California.

1979

25th Reunion

The Class of 1979 reunion will be September 17–19

John W. Amberg, a partner in the firm of Bryan Cave LLP in Santa Monica, has been appointed to serve on the State Bar of California's Committee on Professional Responsibility and Conduct, and has been reappointed to the Los Angeles County Bar Association's Professional Responsibility and Ethics Committee. His practice focuses on litigation with a concentration on general business and commercial litigation, product liability, and professional liability matters. Amberg also serves on the firm's Ethics and Conflicts Committee and frequently lectures and writes on legal ethics issues.

Beverly Hall Burns was honored in November as a finalist for the Executive Woman of the Year Award, sponsored in 2003 by the firms of Grant Thornton, Butzel Long, and Comerica. The winner and five finalists were selected by a distinguished judging panel of professional women. "I was honored to be recognized among leaders from all over the state," Burns said of the competition, which drew more than 140 nominations from throughout Michigan. Burns, a member of Miller, Canfield, Paddock and Stone PLC's Automotive Industry Group, specializes in labor law, is active in the Michigan, American and Detroit Metropolitan bar associations and the Michigan and National councils of school attorneys. A board member of the Michigan State University (MSU) Alumni Association, she is chair-elect of the Alumni Board of MSU's College of Arts and Letters and also chair-elect of the Michigan Women's Foundation.

Brant A. Freer was been appointed vice chairman of the National Association of Bond Lawyers' Special Committee on Technology. He is a senior counsel with Miller, Canfield, Paddock and Stone PLC in Detroit, where he is a member of the Public Law Group and the Federal Tax Group and focuses on federal income tax aspects of public finance. He also heads the firm's Information Systems Committee and directs the knowledge management efforts.

Miller, Canfield, Paddock and Stone PLC principal **Linda O. Goldberg** has received a Thomas M. Cooley Law Review 2003 Distinguished Brief Award along with colleague and 1972 Law School graduate **Charles A. Duerr Jr**. (see above). The annual award is given in recognition of the most scholarly briefs filed before the Michigan Supreme Court. Their brief won the Supreme Court case for which it was written. Goldberg's practice involves labor and employment law matters, representing individuals and companies in the defense of employment discrimination, employee benefits, wrongful discharge, school matters, and advising clients regarding HIPAA compliance.

Julie Greenberg, professor of law at Thomas Jefferson School of Law in San Diego, California, has been named Associate Dean for Faculty Development. Greenberg joined the faculty in 1990 and teaches Business Associations and courses related to gender and sexuality. She has written numerous articles on transgender legal issues and her scholarship has been cited by a number of state appellate and supreme courts, as well as courts in other countries.

Mark L. Kowalsky, a partner in the Bloomfield Hills, Michigan, law firm of Hertz, Schram & Saretsky PC, discussed "Drafting More Effective Discovery Documents" as an invited speaker at the HMS (Half Moon LLC) Continuing Legal Education seminar in Advanced Litigation Skills for Paralegals, held recently in Dearborn, Michigan.

1980

Ernst & Young has recognized **Todd J. Anson** as a finalist for its Entrepreneur of the Year for 2003 in San Diego, California. Anson, who since 1999 has been the founder and co-owner of Cisterra Partners LLC, a real estate development company, practiced for 19 years at Brobeck, Phleger & Harrison in San Francisco and San Diego where he was involved in senior management. He served as managing partner of the San Diego office. Cisterra Partners has developed 1 million plus square foot headquarters projects for Cisco Systems Inc. in Amsterdam and Boston, is currently developing a project in La Jolla, California, for IDEC Pharmaceuticals Inc., and is developing an office tower at San Diego's new Petco Park that will become the first class A office tower developed as part of a major league ballpark.

Keefe A. Brooks, a director and shareholder in the Detroit, Michigan, law firm of Butzel Long PC, is listed in *The Best Lawyers in America 2003–2004*. He practices in the area of general business litigation and professional responsibility. Brooks is also one of the authors of the recently released treatise, *Civil Procedure Before Trial*, published by the West Group as part of its Michigan Practice

From left, Patricia Lee Refo, '83; Jeffrey W. Stone, '83; John A. Nixon, '88.

Guides series. The other authors include Michigan Supreme Court Justice Maura Corrigan and Wayne County Circuit Court Judge **William Giovan, '61**.

1981

David B. Calzone, a director and shareholder with Vercruysse Metz & Murry, Bingham Farms, Michigan, has been elected as a fellow of the College of Labor and Employment Lawyers. A frequent lecturer on employment issues, Calzone is a member of the Council of the Labor and Employment Law Section of the State Bar of Michigan, the American Bar Association (Labor and Employment Law Section and Employee Rights and Responsibilities Committee), and the Federal Bar Association (Labor Law Section). He is a member of the American Employment Law Council, a fellow of the Michigan State Bar Foundation, has served on the Federal Bar Association's Civil Practice Manual Committee, and is co-editor and co-author of *Employment Litigation in Michigan* (ICLE 1999). Calzone also is listed in *The Best Lawyers in America 2003–2004* Management Labor Lawyers section.

Kenneth G. Dau-Schmidt, the Willard and Margaret Carr Professor of Labor and Employment Law at Indiana University School of Law, has won Indiana University's Sylvia Bowman Award for Teaching Excellence and Indiana University School of Law's Leon H. Wallace Award for Teaching Excellence. The Bowman Award, established in 1994, honors exemplary faculty members in areas related to American civilization; the Wallace Award is given by law students in recognition of excellence in teaching. "Kenneth Dau-Schmidt treats his classes so outrageously that in no time, they're picketing, filing complaints, and organizing unions. And that's precisely his intention," according to one report of Dau-Schmidt's teaching method. Students in his class on collective bargaining have gone on strike, and even have used a black shirt and Darth Vader mask to create an effigy of Dau-Schmidt. "I won the awards for my somewhat unorthodox method of teaching labor law in which I treat the students as employees who must organize and collectively bargain with me to receive fair treatment in the class," according to Dau-Schmidt. "The class includes a full union election campaign, including pro- and anti-union literature, a unit determination, unfair labor practices, and a board election."

Deryck A. Palmer, partner with Weil, Gotshal & Manges LLP's New York, NY, office, has been named among an elite group of America's leading lawyers in the November issue of *Black Enterprise* magazine. Palmer concentrates his practice in representing debtors as well as creditors under Chapter 11 bankruptcy and has handled a wide variety of workout and corporate restructuring matters. The magazine recognized him for his representation of AK Steel in its bid to acquire National Steel Corp. and for the fact that he chairs Health Watch, the only organization in the country devoted exclusively to minority health improvement.

1983

Snell & Wilmer has announced that **Patricia Lee Refo** has become chair of the American Bar Association Section of Litigation. Refo is a partner with the firm's Phoenix, Arizona, office and focuses her practice on complex commercial litigation. She has also been appointed by Chief Justice William Rehnquist to serve on the Advisory Committee on the Federal Rules of Evidence for the United States Judicial Conference, and she is a member of the faculty of the National Institute for Trial Advocacy, having taught trial advocacy programs across the United States, in Argentina, and in Hong Kong.

Hodgson Russ Attorneys LLP's **Jeffrey W. Stone** will chair the Bar Association of Erie County's Municipal and School Law Committee. Stone, who is a partner in the Real Estate and Finance Practice Group and heads the firm's General Obligation Bond Group, acts as bond counsel for dozens of schools and municipalities in Western New York and throughout New York State.

1984

20th Reunion

The Class of 1984 reunion will be September 17-19

Meg Waite Clayton has had her first novel, *The Language of Light*, published by St. Martin's Press. The novel appeared last fall as a St. Martin's Fresh Fiction Selection, a MacNaughton Selection, and was a finalist for the Bellwether Prize. It is also being published in Germany this year. The book is set in the horse country of Maryland and tells of a young mother trying to reassemble her life after the death of her husband. St. Martin's describes the novel as "a brilliant, old-fashioned read, filled with secrets and surprises" and says it is "a beautifully told story of a woman moving into the future by uncovering the past."

Michael R. Shpiece of the Southfield, Michigan, based firm of Miller, Shpiece & Tischler PC has been named chair-elect of the Employee Benefits Committee of the Tort, Trial, and Insurance Practice Section of the American Bar Association (ABA) at the organization's Annual Meeting in San Francisco, California. He was also named a member of the Joint Committee on Employee Benefits of the ABA and of the Continuing Legal Education Board of the Tort, Trial, and Insurance Practice Section. Shpiece is also an adjunct professor of law at Wayne State University Law School.

1985

Susan T. Bart, a partner in the Private Clients & Estate Planning Group at Sidley Austin Brown & Wood LLP, Chicago, is author of *Education Planning and Gifts to Minors*, published in January this year by the Illinois Institute of Continuing Legal Education (IICLE). The book shows estate planners how to develop tax-efficient plans to finance higher education of their clients' children and grandchildren. Bart is a co-author of IICLE's *Illinois Estate Planning Forms and Commentary* and writes a monthly column on Section 529 college savings accounts for morningstar.com.

The State Bar of Michigan has elected **Kimberly M. Cahill** as secretary for 2003–2004. Cahill is a partner with Schoenherr & Cahill PC in Center Line. Cahill practices in the areas of real property, probate and estate planning, and family. In addition to her activities with the State Bar, she is active in the Macomb County Bar Association and is a past president of the Women Lawyers Association of Michigan.

1986

David Matuszewski has been elected to the partnership of Holland & Knight LLP. He is a member of the firm's Business Law Section and practices in the Washington, D.C., office, specializing in finance, mergers, and acquisitions.

1987

Dawda, Mann, Mulcahy & Adler PLC member **John Mucha III** has been voted president-elect for the Birmingham (Michigan) Rotary Club for 2003–2004 and will become president for the 2004–2005 year. Mucha concentrates his practice in commercial litigation. He has been an active member of the Birmingham Rotary Club since 1999 and currently serves as a member of its board of directors. The Birmingham Club recently distinguished itself as one of the regional leaders in fundraising for Rotary International's Polio Eradication Drive.

1988

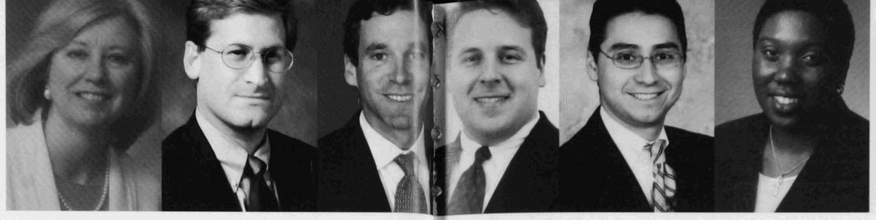
Commentator **Ann Coulter**, author of the best-selling books *Treason: Liberal Treachery from the Cold War to the War on Terrorism, Slander: Liberal Lies about the American Right,* and *High Crimes* and *Misdemeanors: The Case Against Bill Clinton*, also provides commentary via a battery-powered Talking Action Figure offered by Conservative Book Service. (Talking Action Figures also are available as Bill Clinton, Donald H. Rumsfeld, and George H.W. Bush.) "This incredibly lifelike action figure looks just like the beautiful Ann Coulter, and best of all . . . it sounds like Ann, too!" Conservative Book Service says in its Web site information (www.conseravtivebookservice.com). Coulter has recorded several "Coulterisms" for the figure to speak, like "At least when right-wingers rant, there's a point." Conservative Book Service also advises: "Don't forget to order replacement batteries!"

The Law Bulletin Publishing Company named **Michael H. Cramer** one of the "40 Illinois Attorneys Under Forty to Watch." Cramer, a partner at Sachnoff & Weaver Ltd, Chicago, Illinois, was featured in the July 2003 edition of *Chicago Lawyer* and in a special supplement to the *Chicago Daily Law Bulletin*. Cramer, who is a labor and employment and litigation attorney, also handles *pro bono* matters and serves as vice president of the board of directors of the Coordinated Advice and Referral Program for Legal Services, Cook County's legal assistance hotline. Cramer is also an artist whose works have been exhibited throughout Chicago.

University of Michigan Law School Assistant Dean of Students **Charlotte H. Johnson** (see story on page 6) accepted a Special Chair's Award from the National Bar Association in behalf of the Law School at the NBA Annual Convention this summer. The award recognized the Law School's support for affirmative action and was presented by 1996 graduate **Travis Richardson**.

John A. Nixon, partner in the Philadelphia, Pennsylvania, office of Blank Rome LLP's Employment, Benefits, and Labor Practice Group, was a faculty member at the Annual American Law Institute-American Bar Association course of study in September — Retirement, Deferred Compensation, and Welfare Plans of Tax-Exempt and Governmental Employers. He also participated in a panel discussion of new developments affecting governmental retirement programs at the same conference. Nixon concentrates his practice in the design, implementation, and maintenance of pension, retirement, and welfare benefits programs. He is a member of the Tax and Investment Committees of the National Association of Public Pension Attorneys, the American Bar Association, the Tax Section of the National Bar Association, the Business Law Section of the Philadelphia Bar Association, and the International Foundation of Employee Benefit Plans, The Barrister's Association of Philadelphia.

T. Christopher Pinedo and Makal Watts tried *Margie Sanches v. Warner Lambert Company* in 2001, the first Rezulin® case in the United States to result in a plaintiff's verdict. The jury assessed damages in the amount of $43,000,000, finding the defendant guilty of engaging in malicious conduct. Pinedo had focused his career on plaintiff personal injury practice. He joined the Watts Law Firm in 2002. He is admitted to practice law in the



From left, Nancy L. Little, '89; Sam Silver, '89; Henry R. Chalmers, '92; Glenn E. Forbis, '94; Ross I. Romero, '96; Erika Butler-Akinyemi, '98.

state courts of Texas, in the U.S. District Court for the Eastern District of Michigan, the U.S. District Courts for the Southern and Western Districts of Texas, and the U.S. Court of Appeals for the Fifth Circuit. Pinedo and his wife, Gabriela Von Hauske, and their four sons reside in Corpus Christi.

1989

15th Reunion

The Class of 1989 reunion will be September 17-19

Nancy L. Little, a shareholder with Foster Zack & Lowe PC, has been named a Fellow of the American College of Trust and Estate Counsel, an international professional association. Fellows are selected for professional reputation and ability in the fields of trust and estates and for contributions to these fields through lecturing, writing, teaching, and bar activities. Little specializes in estate planning, trust and estate administration, federal estate and gift tax, and guardianships and conservatorships. Named in *The Best Lawyers in America*, she is a member of the State Bar of Michigan's Probate and Estate Planning Council and is editor of the *State Bar Probate Journal*. Foster Zack & Lowe has offices in Okemos and Howell, Michigan.

Sam Silver, chair of the Product Liability and Mass Tort Practice Group at Schnader Harrison Segal & Lewis LLP in Philadelphia, Pennsylvania, has been selected by *The Legal Intelligencer* and *Pennsylvania Law Weekly* as a winner of the "Lawyers on the Fast Track" competition. The award honors the rising leaders of the legal profession in Pennsylvania. He received accolades in the categories of Advocacy and Community Contributions, which include his successful first-chair trial experience in a variety of civil cases and his notable *pro bono* successes. He has twice in three years won reversals of unjust death sentences by unanimous verdict for clients, and he serves as coordinator of the Prisoner Civil Rights Panel for the U.S. District Court for the Eastern District of Pennsylvania.

Charles J. Vigil, a shareholder and director in the Albuquerque office of Rodey, Dickason, Sloan, Akin & Robb PA, is 2004 president-elect of the State Bar of New Mexico. Vigil practices in Rodey's Litigation Department in employment law, commercial litigation, professional liability, and products liability. He also teaches seminars and advises and consults with personnel managers on discipline, discharge, compliance with employment laws, and the preparation and revision of personnel handbooks.

1991

Daniel R. Hurley and **Barbara L. McQuade** announce the birth of their fourth child, Katherine McQuade Hurley, on December 19, 2003. Hurley and McQuade are federal prosecutors at the U.S. Attorney's Office in Detroit.

1992

Henry R. Chalmers has become a partner in the Litigation Department of Arnall Golden Gregory LLP, a full service law firm in Atlanta, Georgia. He focuses his work on business and commercial litigation. In addition, he is an associate editor of the *ABA Litigation News*, which is published six times a year for the American Bar Association Section of Litigation's more than 60,000 members.

The Northern Trust Company, Chicago, Illinois, recently named **Stacy E. Singer** a vice president. She is responsible for Estate Administration in the Estate Settlement Services Group. Prior to joining Northern Trust, Singer was a vice president-estate administration at Harris Trust & Savings Bank. She is a member of the Chicago Estate Planning Council and the Trust Law Committee and the Probate Practice Committee of the Chicago Bar Association, as well as an adjunct professor at the John Marshall Law School, Center for Tax Law and Employee Benefits, and is on the faculty of the American Bankers Association National Trust School.

1993

Sudekum, Cassidy & Shulruff CHTD, located in Chicago, Illinois, has welcomed **Lynette D. Simmons** as a partner. Simmons joined the firm in 2000 and became a shareholder in 2003. Prior to joining Sudekum, she worked at a small firm serving as counsel to a variety of health care providers including home health agencies, physicians, and physician organizations. Simmons concentrates her practice in first and third party insurance defense.

1994

10th Reunion

The Class of 1989 reunion will be September 17-19

Glenn E. Forbis of the Bloomfield Hills, Michigan, office of Rader, Fishman & Grauer has been elected to a two-year term as a managing partner. In this position, he will help guide the firm's direction and policies while he continues his current practice in all areas of intellectual property law. He has extensive experience in patent, trademark, copyright, trade secret, and unfair competition litigation before U.S. District Courts across the United States.

Elaine Murphy Rice has been named a shareholder of Fowler White Boggs Banker, which maintains eight offices in Florida. She is in the firm's Securities, Financial Services, and White Collar Practice Group, and concentrates her practice on securities litigation and commercial litigation. She is a member of the Florida Bar, State Bar of Texas, U.S. Court of Appeals for the Fifth Circuit, U.S. District Courts for the Northern, Southern, and Middle Districts of Florida, U.S. District Courts for the Northern, Southern, Western, and Eastern Districts of Texas, and the Litigation Section of the American Bar Association.

Microsoft Corporation has promoted **Gregory Ritts** to the status of senior attorney. Ritts supports the Business Development Group in Microsoft's Consumer Division.

Gregory Teufel has been named partner in the law firm of Schnader, Harrison, Segal & Lewis LP. Teufel practices commercial litigation at the firm's Pittsburgh, Pennsylvania, office.

1995

Brian Byrne has recently been appointed partner with the Cleary Gottlieb office in Washington, D.C. Byrne, who joined the firm in 1995, has extensive experience in antitrust review before the U.S. Federal Trade Commission and Department of Justice. He represented Conoco in its merger with Phillips Petroleum, which created one of the largest refiners and marketers of petroleum products in the United States. He also represented Dow Chemical in its acquisition of Union Carbide, the largest chemical industry merger ever.

Kemp, Klein, Umphrey, Endelman & May PC, a Troy, Michigan-based law firm, has named **Cynthia L. Della Torre** to its board of directors. She concentrates her practice in the areas of exit planning, business planning and transactions, estate planning, and post-death administration.

Rebecca Guldi Tankersley has been promoted to vice president and general counsel of Software Spectrum Inc. in Dallas, Texas. She was previously an associate with Locke Liddell & Sapp, a Dallas law firm, where she worked in the areas of general corporate law, securities, and mergers and acquisitions. She and her husband, Scott, have two children and reside in Dallas.

1996

Fred K. Herrmann has been elected a member of Kerr, Russell, and Weber PLC in Detroit. Herrmann specializes in commercial and complex litigation.

Travis Richardson of the Law Offices of Travis Richardson, Chicago, Illinois, has been elected to the Executive Committee of the National Bar Association by the NBA's Board of Governors. He also has been elected director of the NBA Midwest Region. Richardson, who served as the immediate past chair of the NBA Young Lawyers Division, presented a Special Chair's Award to the University of Michigan Law School for supporting affirmative action at the NBA Annual Convention this summer. The award was accepted on behalf of the Law School by Assistant Dean of Students **Charlotte H. Johnson**, '88.

The Salt Lake City, Utah, office of Jones Waldo Holbrook & McDonough PC has promoted **Ross I. Romero** to shareholder. Romero's areas of practice include commercial litigation, labor and employment, intellectual property, medical malpractice, and government relations.

Jeffrey Spalding has been named deputy chief of the Electronic Surveillance Unit (ESU), United States Department of Justice, Criminal Division. He formerly was a trial attorney with ESU. The ESU oversees requests from federal law enforcement agencies and U.S. Attorneys' Offices to conduct wire, oral, and electronic surveillance in criminal investigations.

Michael J. Thomas works with the legal office of the New Mexico State Land Office, an independent state agency that administers New Mexico's trust lands consisting of about 9 million acres. In addition, in January 2004 he completed training to become a reserve police officer for the Albuquerque Police Department. He and his wife, an attorney for the New Mexico Department of Health, were married in October 2002 at a ceremony at which **Joe Warburton**, '96, served as best man. The Thomases reside in Albuquerque.

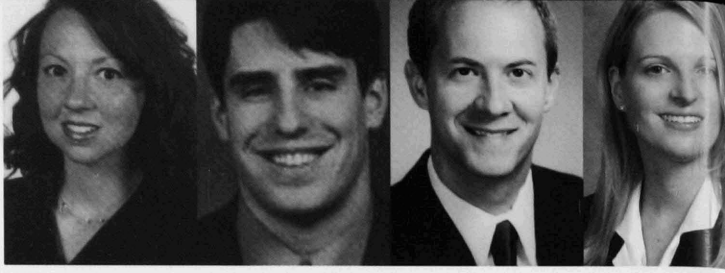
1997

Kristine C. Danz has been named partner at the law firm of Ice Miller effective January 1, 2004. Danz practices in the Indianapolis, Indiana, office in the areas of venture capital and private equity financings, general corporate matters, mergers and acquisitions, and sports and entertainment law.

1998

Erika Butler-Akinyemi, an associate with Detroit-based Jaffe Raitt Heuer & Weiss PC, has been named the 2003 recipient of the Michigan State Bar Association's Regeana Myrick Outstanding Young Lawyer Award. The award is given annually to a young lawyer in recognition of his or her outstanding service to the public and the profession. Butler-Akinyemi is a member of Jaffe Raitt's Litigation Group.

Bellenden Rand Hutcheson has been named as a partner at Erskine & Erskine Attorneys at Law in Worchester, Massachusetts. He specializes in advanced planning strategies and tactics, and his experience includes family succession planning, estate-freeze transactions, and charitable giving using innovative planning opportunities.



From left, Leah Sellers, '00; J.J. Burchman, '03; Michael W. Groebe, '03; Jessica S. Hylander, '03.

Scott D. Pomfret, a practicing attorney and writer in Boston, Massachusetts, is one of the founders of Romentics Novels, which produces romance novels aimed at the 16.5 million member gay market and its $450 billion of buying power. More information is available at www.romentics.com.

1999

5th Reunion

The Class of 1999 reunion will be September 17-19

2000

Leah Sellers has been recognized as a successful civic leader and has been awarded a position in the Cleveland Bridge Builders Flagship Program (CBB). The CBB is a leadership development organization that identifies and strives to develop young leaders who contribute to the civic and economic development of the region.

2001

Scott A. Martin has joined Baker Botts in Washington, D.C., as an associate. An energy and technology law firm, Baker Botts has more than 100 attorneys in Washington and some 600 worldwide.

2002

Noah Leavitt is working as advocacy director of the Jewish Council on Urban Affairs in Chicago. The council is a 40-year-old organization that works in cooperation with Chicago communities on issues of racism, poverty and anti-Semitism.

McDonough, Holland & Allen, Sacramento, California, has announced that **Katy Locker** has joined the firm's Public Agency and Redevelopment sections. Locker emphasizes transactional and litigation matters in redevelopment, environmental, and public law. Her legal experience includes a summer clerkship for the City of Chicago Department of Law, a student internship for the Office of the Public Advocate in New York City, and administrative and research analysis work for the Judicial Council of California, Administrative Office of the Courts in San Francisco.

2003

J.J. Burchman has become associated with Howard & Howard Attorneys PC in Bloomfield Hills. Having recently passed the Michigan bar, he was sworn into practice in November by Justice Marilyn Kelly of the Michigan Supreme Court. He concentrates his practice in commercial litigation and general corporate law.

Kirsten Carlson has been awarded the ABA's Henry J. Ramsey Diversity Award for her extensive efforts toward promoting diversity and eliminating biases in the legal profession and judicial system. Carlson is clerking on the Eighth Circuit Court of Appeals for the Hon. Diana Murphy. While she was a student at the Law School, she was an area representative for the Native American Law Students Association and worked on a *Grutter amicus* brief. In addition, a profile of Carlson was one of the featured stories in the Law School's 2003 *Report of Giving*.

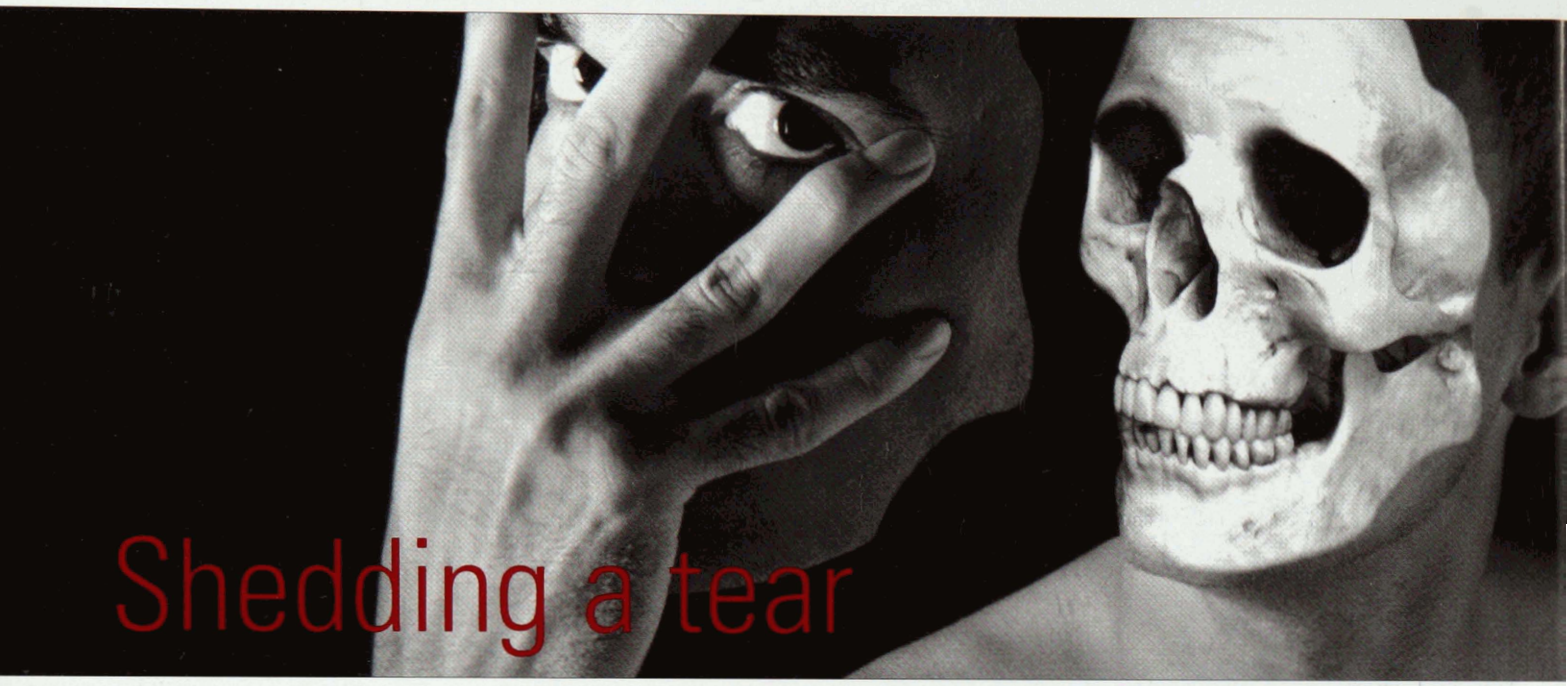
Michael W. Groebe has joined Clark Hill PLC as a labor and employment associate in the firm's Detroit office. He resides in Warren, Michigan.

Jessica S. Hylander has joined the Dinsmore & Shohl Cincinnati, Ohio, office as an associate. Her practice areas are litigation, municipal and government law, products liability, and workers' compensation.

The Brown Rudnick Berlack Israels office in Boston, Massachusetts, has announced that first-year associate **Amanda D. Mitchell** has passed the Massachusetts State Bar Exam. Mitchell, who earned her J.D. *cum laude*, also served as an associate editor of the *Michigan Journal of International Law*. She currently works with the firm's Banking and Finance Practice Group.

In Memoriam

'11	A.B. Feldman	
'12	George V. LeSage	
'29	Benjamin Marcus	3/10/2003
	Reymont Paul	
'30	Abraham Satovsky	9/20/2003
'32	William F. Kenney	4/1/2003
'33	William J. Greenhouse	12/15/2002
'35	Jack J. Kraizman	9/20/2003
	Lucas S. Miel	11/20/2002
	Nelson A. Sharfman	4/30/2003
'36	John S. Clark	10/7/2003
	Hugh M. Colopy	10/5/2003
	Oliver A. Witterman	11/28/2002
'37	Wyman Finley	4/15/2003
	Albert A. Smith	10/15/2003
'38	L. James Arthur	11/3/2002
	William F. Borgmann	11/3/2003
'39	Howard W. Boggs	7/19/2003
	James D. Tracy	7/22/2003
'40	Jacob Clair Aldinger	6/20/2003
	The Hon. John R. Man	11/4/2003
	Lawrence R. Pizer	4/4/2003
'41	Eugene T. Kinder	10/11/2003
'42	Dean G. Beier	10/26/2003
	The Hon. Fred J. Borci	9/29/2003
	The Hon. Clarence C. Kunc, LL.M.	3/30/2003
	Lloyd A. Rowland	9/10/2003
	Loyall G. Watson	6/7/2003
'43	William A.L. Kaugmann	6/24/2003
'46	Roger J. Blake	9/17/2003
'47	Dr. William M. Beaney Jr.	7/20/2003
	Roland Fred Rhead	10/7/2003
	Edward R. Tinsley	7/3/2003
'48	Edwin B. Bartow	10/25/2003
	John A. Rickerson	9/13/2003
'49	Stanton Babcock	8/6/2003
	The Hon. Julian F. Hughes	9/3/2003
	Morris Milmet	11/6/2003
	Nathan S. Peterman	9/14/2003
	William Paul Spaniola	11/21/2003
	B. James Theodoroff	8/4/2003
	Calvin L. Wells	8/24/2003
'50	R. Lawrence Storms	7/9/2003
'51	James W. Baker	8/8/2003
	Robert L. Blough	7/17/2003
	Thomas H. McIntosh	7/8/2003
	W.W.G. Reitzer	9/22/2003
	Earl L. Tyner Jr.	10/20/2003
'52	Wilber M. Bruckner Jr.	11/9/2003
	The Hon. John Gallagher	10/18/2003
	Coleman P. Hall	11/2/2003
'54	Thomas David Carey	11/15/2003
'55	William D. Goldsberry	7/10/2003
	Fred Mallender II	6/12/2003
'56	The Hon. William H. Alexander	8/17/2003
	William C. Becker	7/14/2003
	John B. Kuhr	10/14/2003
'57	The Hon. Donald J. DeYoung	7/23/2003
	The Hon. Thomas L. Gadola	9/27/2003
'60	Robert A. Miller	7/1/2003
'63	Douglas K. Goss	12/4/2002
'64	Burton L. Hutchings	8/20/2003
	Henry M. Ingram	9/15/2002
	Charles M. McLaughlin	7/30/2003
'66	Sen. Renato L. Cayetano, LL.M. (S.J.D. '72)	6/1/2003
'68	Kenneth H. Finney	7/18/2003
'69	Nancy E. Holler	6/26/2003
'70	W. Scott Chilman	9/12/2003
	Robert N. Smith	10/28/2003
'72	Robert Lewin Morrison	9/25/2003
'73	Robert M. Bellatti	10/17/2003
	Carl L. Kleemann	9/18/2003
'76	Jack C. Barthwell III	9/19/2003
'84	Katherine E. Rakowsky	7/8/2003



Shedding a tear

The following excerpt is from Chapter 16, "Boys Crying and Girls Playing Dumb," from Faking It *(Cambridge University Press, 2003) by William Ian Miller. It appears here with permission of Cambridge University Press and the copyright holder. ©William Ian Miller 2003.*

By William Ian Miller

The tale that follows is also one of great gender anxiety, and it is true. I even think it happened exactly as I will relate it, for the events are so vivid in my mind's eye. I know — vividness has no necessary relation with veracity, at least where memory is concerned. I have told stories about myself that were largely true, but I remember altering the details to make them funnier, more suspenseful, or less boring, or to present myself as either wittier or more endearingly pathetic than really was the case. Now for the life of me I can no longer construct what really happened. I see it as I have told it, though I remember — no, I *know* — that I fabricated parts, but I no longer know which parts. My intentions are good, and even if they were not, I take the refuge of the postmodern scoundrel: Whether true or not it makes no difference. The tale raises the same points whether it happened exactly as I remember or not.

One day the acknowledged toughest kid announced to a group of us 15-year-old guys that he had had a fight with his girlfriend and that he had cried in front of her. I cannot recall the reaction of the others, but I remember mine to have been something like, no way, impossible. The impossibility was not that boys, especially ones for whom toughness was the chief virtue, could not cry; hell, you were on the verge of tears all the time, every boy-on-boy confrontation being a dare not to shed them. But what could possibly prompt you to shed them over and in front of a girl who could not beat you up?

Yet over the course of the next month, one by one, boy after boy announced a big breakup with their various girlfriends in which they had broken down in tears and had begged to be taken back. I could see I would have to take my turn in this new rite of initiation; I either had to make confession of tears spilled for love or be forever cast among the uncool. Unfair, I thought, to keep changing the rules of cool like this. Was Ron, the guy who started all this, just trying to see how much of a trendsetter he could be; was he even telling the truth? And if he was, could it be possible that all the other guys were telling the truth? Had they really cried?

As I try to access what I truly felt through the distorted lens of memory, it seems that whatever distrustfulness I had of Ron was muted. In short I believe every outrageous tale these guys told, and the consequences of my naiveté were that I often got into more trouble than they did actually trying to do (and failing) what they only said they had done. I was too uniformed and naïve to lie about sex. My lying was restricted mainly to how many beers I had downed, and in another year I would add tales of how fast I had taken the corner in the car, though I still accepted everyone else's tall tales as gospel, and probably even deluded myself into believing my own fabrications. But maybe they did cry, and my retrospective suspiciousness is as naïve in its own way as my gullibility was back then.

My turn, I saw, had arrived. It is clear to me now, and I think it was clear to me then, why I was the last to join the new emotion display fashion. I was barely holding it together in my act as a wound-be tough guy. Pretending to be tough took all my energy and resolve; I had no margin of error. These guys could afford to announce they had cried, because no matter how hard they got hit in a game or fight they would never shed a tear or show signs of fear. They could actually benefit from the thought that people

would mistrust their tale of having shed a tear over a fight with their girlfriend, but should I tell the same tale, they would believe it with no discount for whether or not I was lying. Of course Miller cried. For I suspected they suspected me of being a fake real guy. I leaked unacceptable truths about myself more often than I would have liked. I couldn't, for instance, disguise, in junior year, much as I tried, my excitement over *Hamlet*, a guy whom I understood to have been as nervous about sex and revenge as I was. That I tried to cover for my interest by getting kicked out of the class fooled no one, though I was accorded some grace for it.

Why not put my unmanliness to good use? Because few would doubt I had shed a tear, I could make up a tale that I had had a fight with my girlfriend (who dumped me shortly after these events took place) and forget actually having to worry about generating false tears, or a false occasion for real tears. I was not sure, either, that these guys hadn't actually shed tears, and if that is what toughness had become in our high school, then I guess I had to go along.

What did I do? I picked a fight with my girlfriend. I cannot recall precisely the grounds. No doubt it was some jealousy that you were never quite sure you weren't faking anyway. Strangely, it was the guys who insisted you feel jealous. Hey Miller, I saw Ellen dancing with Zawatska at the CYO. No way I was going to bring that up with her; Zawatska could kill me with both hands tied behind his back. Ellen was surnamed Hickok and she claimed Wild Bill as a distant kinsman and would have insisted I address myself to Zawatska if I had any complaints. Whatever the grounds, the moment had come to shed my tears, but none appeared. I was thinking of everything I could to coax them out, but nothing worked, not even the thought of my dog getting run over. I was obdurate; me, who had faked his way through every minute of my public life since the onset of puberty and a lot before that too, could not generate tears.

Desperately I embraced Ellen — I am ashamed to confess this — so that I could poke my eyes real hard behind her back, all for the sake of telling the truth that I too had shed tears in this new cursed regime Ron had inaugurated. Real tears, genuine fake real tears. But no tears came. I took some solace in the thought that she was not expecting tears from me anyway. I just hoped she hadn't noticed all the ridiculous commotion behind her back. The truth is I was so worried about what to say to the guys that I can't remember anything else about the interaction except a small sensation of cowardice over my inability to gouge my eyes hard enough to provoke the tears I desired.

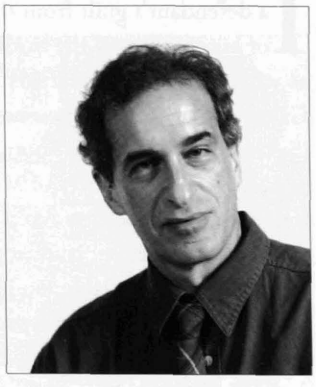
I never wondered — and if I didn't wonder I doubt the other guys did — though surely it must have been the case, whether the girls were also commenting on the new regime; unless, that is, Ron and every other guy had made the whole thing up and no girl had seen any of the boys in tears. Maybe she was faking going along with it too, knowing only too well that I was playing a role. Besides, I had a distinct feeling I was not playing convincingly any aspect of this post pubescent daily trauma. Who was I playing this for anyway? Not for her, but for the guys, but not the guys either, because I could have lied. It must have been my homage to the dominant adolescent social order, and I was a member of that audience, judging my competence in proper emotion display.

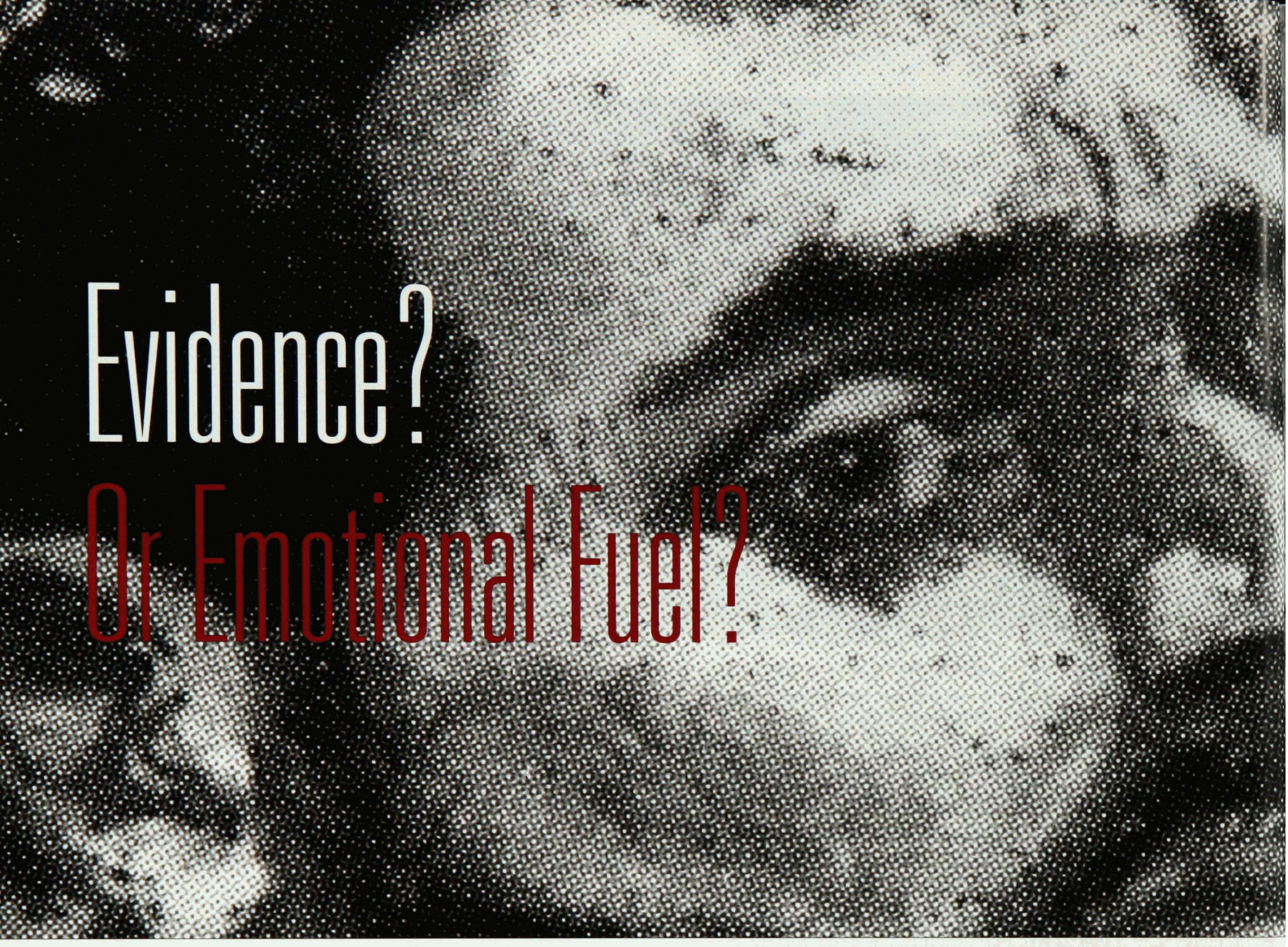
If this was how emotions and courtship were to proceed "naturally," why didn't nature operate a little more automatically? Had any evolutionary psychologists — who blithely come up with just-so stories to show why it is written in our genes that attractive undergraduate women must inevitably find middle-aged male evolutionary psychologists sexy — ever been teenagers? None of this was coming naturally. I was learning a part that I only wish had been better programmed into my genes (and jeans). We were acting; mimicking actors in the movies of enacting what the other kids lied about doing when they were our age that they had got from the movies: life imitating art.

I was utterly clueless, operating in a fog. As I dimly recall, the whole game was played with alternating senses, alternating fast as a strobe light, of an acute awareness of fumbling cluelessly through a role not fully understood, and of being so totally immersed in it that my parents started sending away for brochures from various military academies as threats to get me to cool it with the fair Ellen.

I was thrown back on my first plan. Tell the guys I had had a big fight with Ellen and that I couldn't help it, but that I had broken down and cried. That is what I did. I was lying through my teeth, but no one called me on it, for there was in fact a real truth to my lie. I had committed myself by it to the new order; I was giving it the homage of paying it lip service.

William I. Miller, *the Thomas G. Long Professor of Law, has been a member of the University of Michigan faculty since 1984. Students have found that his bloodfeuds course equips them to handle axes as well as arguments in courtrooms. His research used to center on saga Iceland from whence the materials studied in the bloodfeuds class and his book* Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland. *He presently writes on emotions, mostly unpleasant ones involving self-assessment, and select vices and virtues. Thus his books* The Mystery of Courage, The Anatomy of Disgust, Humiliation, *and* Faking It *(2003), which deals with anxieties of role, identity, and posturings of authenticity.* The Anatomy of Disgust *was named the best book of 1997 in anthropology/sociology by the Association of American Publishers. Miller earned his B.A from the University of Wisconsin and received both a Ph.D. in English and a J.D. from Yale. He has also been a visiting professor at Yale, the University of Chicago, the University of Bergen, Tel Aviv University, and Harvard.*





Evidence? Or Emotional Fuel?

The following excerpt is from Defending Mohammad: Justice on Trial *(Cornell University Press, 2003), by Robert E. Precht, and appears here with permission of Cornell University Press. The excerpt is from Chapter 8, "Relevance and Prejudice." The book is based on the author's experience as public defender for Mohammad Salameh, the lead suspect in the 1993 bombing of the World Trade Center.*

By Robert E. Precht

In theory, jurors are supposed to separate their decision about a defendant's guilt from their reaction to the heinousness of his conduct. If the evidence is weak, they should be just as willing to acquit a terrorist as a shoplifter. As scholar Samuel Gross notes, however, no one believes this actually happens. [Samuel R. Gross is the Thomas G. and Mabel Long Professor of Law at the University of Michigan Law School.] Even in civil trials, where the jury is asked to decide a case by a preponderance of the evidence, studies suggest that juries are more likely to find defendants liable, on identical evidence, as the harm to the plaintiff increases. In criminal trials, the problem is worse, because the government must prove its case beyond a reasonable doubt. In a close criminal case, jurors are supposed to release a defendant even if they believe he is probably guilty. This is a distasteful task under any circumstances, but it becomes increasingly unpalatable — and unlikely — as the severity increases from nonviolent crime, to violent crime, to homicide, to terrorist acts of mass murder. Prosecutors can limit the impact of heinousness by avoiding appealing to the jury's emotions and instead keeping the members focused strictly on the evidence of the defendants' actions.

During the first month of testimony, prosecutors never mentioned the defendants. Instead, they called witness after witness to document the human suffering and physical destruction caused by the explosion. For days, anguished survivors relived their brushes with death when the bomb detonated in the garage of the Trade Center complex at exactly 12:18 in the early afternoon of February 26. The testimony was gripping. It is all the more heart wrenching today in that the witnesses' words seem eerily to foreshadow the tragedy of eight years later.

A hurricane of hot air hurled stockbroker Timothy Lang a hundred feet, dropping him near the rim of the crater caused by the bomb. He crawled in the darkness and came to the edge of [the] huge pit. "I looked inside the pit, and it looked very, very deep, and at the base I saw a yellow glow, but the stuff spewing out of the pit was hot and very smoky. I could almost see the particles and taste them. I sensed a great danger there, and moved away from the pit."

Floyd Edwards, a worker in the mechanical shop in an underground level of the Trade Center, wandered the black underworld with a co-worker in search of an exit. They were down on their knees clawing through the rubble with their bare hands. "I remember looking at Jerry and I said, 'I got a bad feeling about this,' and he said, 'me too.' And I thought, damn, we're going to die here, Jerry, and it's going to be twenty years before they find us. We thought both towers done fell in on top of us." He blacked out and regained consciousness when a rescuer stumbled on him.

The elevator in which Peter Rinaldi and ten others were traveling came to an abrupt halt on the sixty-first floor. They remained calm for fifteen minutes, but then they began to smell smoke. Their eyes began to tear, and they started coughing. Ten minutes later the smoke had thickened and the passengers were now gasping for breath. In desperation, they pried open the elevator doors only to be confronted by two inches of sheetrock. They used keys to claw a small opening and felt air.

When firefighter William Duffy opened another elevator, this one stuck on the forty-fourth floor, a blast of hot air, ash, smoke, and soot washed over him. He found people lying on the floor head to toe and thought they were dead. "They looked like they were coated with charcoal," he said. "It was like a tomb." The people were revived, and they escaped.

Port Authority police officer Michael Podolak, sent to the forty-first floor, recalled drilling a hole in the roof of the elevator and finding a dozen young children, most about five years old, who were at the Trade Center on a school trip to the observation deck. One of the first out, a little girl, "was all curled up and scared. She held onto my neck, real tight."

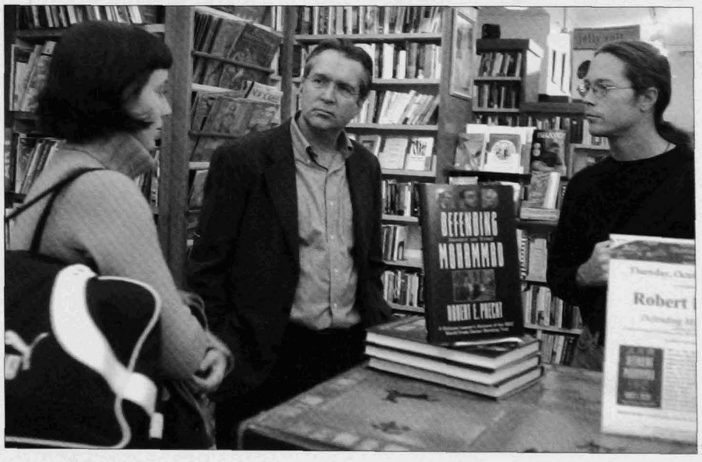
People who tried to make it down the stairs faced their own hell. One witness reported looking down the smoke-choked stairwell and crying. A man had fallen down, and people were clambering over him. "I thought we were all going to die due to smoke inhalation," the witness recalled.

Throughout, the defense lawyers repeatedly objected that the admission of this testimony violated the Federal Rules of Evidence. Rule 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable." Rule 403 states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." We argued that victims' testimony was irrelevant because it did not make it more likely that the defendants committed the acts with which they were charged. Moreover, even if the testimony was marginally relevant, the relevance was outweighed by the danger that it would inflame the passions of the jury and distract them from the legal issues. Judge Duffy denied all our objections and permitted the government to parade the emotional accounts.

Robert E. Precht, *below center, at a book signing, is assistant dean of public service and director of the Office of Public Service at the Law School. His writing and professional activities focus on criminal justice and terrorism issues. Precht came to Michigan from The Legal Aid Socicty's Federal Defender Division, Southern District of New York, where he was a staff attorney from 1985 to 1994. Precht received his B.A. in history from Northwestern University and his J.D. from the University of Wisconsin Law School.*

As an undergraduate, Precht was awarded the Hearst Fellowship for Academic Excellence. In law school, he was a member of the National Moot Court Team.

A gifted speaker, Precht was named the 2002 Goodman Cohen Lecturer in Trial Advocacy by Wayne State University Law School. He has published articles in The New York Times, *the* National Law Journal, *and the* Fordham Urban Law Journal. *His most recent work includes an inquiry into the use of the criminal justice system to prosecute accused terrorists in the aftermath of the September 11 attacks.*



Face to face with the right of confrontation

The following edited excerpt is from the amicus curiae *brief filed in* Crawford v. Washington, *heard before the U.S. Supreme Court on November 10, 2003. (An elaborated form of the brief appears at 2004* International Journal of Evidence and Proof *1-30.) Law School graduate Jeffrey Fisher, '97, (see stories on page 30 and page 76) argued on behalf of Crawford. The brief was written by Ralph W. Aigler Professor of Law Richard D. Friedman. David A. Moran, '91, Assistant Professor at Wayne State Law School, was of counsel. Among the signatories are Professor of Law Sherman J. Clark and Associate Dean for Clinical Affairs Bridget McCormack, both of the Law School faculty. At deadline time, the Court had not yet announced its decision in the case.*

By Richard D. Friedman

Like *Lee v. Illinois*, 476 U.S. 530 (1986), and *Lilly v. Virginia*, 527 U.S. 116 (1999), this case is an example of what might be called station-house testimony. Sylvia Crawford, the petitioner's wife, made a tape-recorded statement to investigating officers at the police station on the night of the alleged crime. Sylvia was unwilling to testify at trial against her husband, and was deemed by all parties to be unavailable as a witness. Over petitioner's objection, Sylvia's statement was introduced, and petitioner was convicted. *Amici* file this brief to address the second Question Presented in the petition for *certiorari*:

"Whether this Court should reevaluate [the] Confrontation Clause framework established in *Ohio v. Roberts*, 448 U.S. 56 (1980), and hold that the Clause unequivocally prohibits the admission of out-of-court statements insofar as they are contained in 'testimonial' materials, such as tape-recorded custodial statements."

Summary of argument

By granting *certiorari* in this case, the Court has created an opportunity to replace an unsatisfactory conception of the Confrontation Clause with one that is historically well grounded, textually faithful, intuitively appealing, and straightforward in application. This conception confines the Clause to its proper sphere and at the same time makes clear the place of the confrontation right as one of the fundamental cornerstones of our system of criminal justice. Adopting this conception will also make the law far easier than current doctrine for the lower courts to follow, because the Confrontation Clause decisions of this Court will be explained by reference to a robust, easily understood principle with deep roots in the Anglo-American tradition and, indeed, throughout Western jurisprudence. This principle is that the testimony of a witness may not be used against an accused unless it was given under the conditions prescribed for testimony, among which are that it be under oath or affirmation, that it be given in the presence of the accused, and that it be subject to cross-examination.

Implementation of the principle requires recognition that a statement may be testimonial in nature even though it was not made under the conditions prescribed for testimony. Thus, a statement made knowingly to authorities accusing another person of a crime is clearly a testimonial statement — even though it was made without oath or cross-examination and in the presence of no one but the authorities. If a report by the authorities of a statement made in this way may be considered by the trier of fact, then a system has been created that tolerates the giving of testimony behind closed doors. The very point of the Confrontation Clause was to prevent the creation of such a system. That a statement was made absent the conditions required by the system for testimony does not render the statement non-testimonial in nature — rather, if the statement was testimonial in nature, the absence of those conditions renders the testimony intolerable. Put another way, the Confrontation Clause gives the accused more than a right to confront "all those who appear and give evidence at trial." (*California v. Green*, 399 U.S. 149, 175 [1970] Harlan, J., concurring). Its primary impact is to ensure that prosecution witnesses do give their evidence at trial, or if necessary at a pretrial proceeding at which the accused is able to confront them.

Like the right to counsel and the right to a jury trial, the right to confront witnesses is subject to waiver, and it is also subject to forfeiture, for the accused has no ground to complain if his own wrongdoing causes his inability to confront the witness. Like those other rights, the right to confront adverse witnesses can and should be applied unequivocally. That is, if the statement is a testimonial one and the right has not been waived or forfeited, then the right should apply without exceptions. This simple approach is possible because the scope of the right, properly conceived, is quite narrow. It does not reach out-of-court statements in general, but only those that are testimonial in nature.

Under the currently prevailing doctrine, by contrast, the scope of the Clause is extremely broad: Any hearsay statement made by an out-of-court declarant is presumptively excluded by the Clause. A flat exclusionary rule of such breadth would be impractical, and so the doctrine exempts from the presumptive rule many statements that are deemed to be reliable — purportedly so reliable that cross-examination would be of little value. Statements that fit within "firmly rooted" hearsay exceptions are deemed reliable without more. Just which of the many hearsay exceptions — a term used in this brief to cover both exceptions proper to the rule against hearsay and exclusions from the definition of hearsay — are considered to be "firmly rooted" is a question that this Court has only partially resolved. On an *ad hoc* basis, the Court has declared hearsay exceptions, or part of them, either within that category or not, but the Court has never offered a clear set of criteria for determining what makes an exception "firmly rooted." If a statement does not fit within a "firmly rooted" exception, it may yet satisfy the reliability requirement, if the statement is deemed to have "individualized guarantees of trustworthiness." This standard is heavily fact-bound and demands case-by-case review. Even if a statement is deemed reliable, the Confrontation Clause may bar its use if the declarant is available to be a witness. As with reliability, the criteria for the unavailability requirement are unclear. If the statement falls within the exception for former testimony, the declarant must be unavailable or the Clause will preclude its use; if the statement falls within the exceptions for spontaneous declarations, statements made for purposes of medical treatment, and conspirator declarations, unavailability is not required; in other contexts it is not yet known whether the unavailability requirement applies.

Even if a statement is deemed reliable, the Confrontation Clause may bar its use if the declarant is available to be a witness.

This framework is unpredictable and overcomplicated, and so it too frequently yields very bad results in the lower courts. The framework is capable of producing good results; indeed, adopting the approach proposed in this brief would not require the Court to overrule any of its Confrontation Clause decisions. But the existing framework reaches good results consistently only if it is manipulated. In this respect, it resembles the Ptolemeian astronomical system. That system, too, was capable of yielding good results, but only if it was manipulated and made ever more complex to ensure that its results matched empirical observations. Ultimately, the system failed to explain coherently the phenomenon it was trying to describe. Because the system's predictive power was thus limited, it became necessary to adopt a new organizing principle. In the confrontation context, too, a new organizing principle is necessary: Rather than treating the Confrontation Clause as a generalized attempt to exclude unreliable hearsay evidence, the Court should recognize that the Clause is a guarantee that testimony offered against an accused must be given in the manner prescribed for centuries, in the presence of the accused and subject to cross-examination.

Argument

I. The text of the Confrontation Clause supports a testimonial approach to the Clause, and not the *Roberts* framework.

We begin with the text of the Confrontation Clause. It provides in simple terms: In all criminal prosecutions, "the accused shall enjoy the right . . . to be confronted with the witnesses against him."

Now compare how this language squares respectively with the prevailing framework established by *Roberts* and with the testimonial approach proposed here. The prevailing framework was laid out by *Roberts*, 448 U.S. at 66. As subsequently modified, it has these principal elements:

1. "[W]hen a hearsay declarant is not present for cross-examination at trial," use of the hearsay declaration is presumptively barred by the Confrontation Clause.

2. Even though it is hearsay, an out-of-court statement may be admitted against an accused (subject to the possible applicability of an unavailability requirement) if it is sufficiently reliable. Under this doctrine, statements are deemed reliable if the evidence either "falls within a firmly rooted hearsay exception" or "contains 'particularlized guarantees of trustworthiness' such that adversarial testing would be expected to add little, if anything, to the statements' reliability." (*Lilly*, 527 U.S. at 124-25, quoting in part *Roberts*, 448 U.S. at 66.)

In short, the *Roberts* framework depends on a set of concepts — hearsay, reliability, and exceptions — none of which is supported by the text of the Confrontation Clause.

In contrast, that text squares very well with the testimonial approach, the core of which may be expressed as follows: Use against an accused of the statement of a witness — that is, a statement that is testimonial in nature — violates a right of the accused unless the accused has or has had an adequate opportunity to confront the witness. A subsidiary principle is that if the accused has had an adequate opportunity to confront the witness at an earlier time but, without fault of the prosecution, the witness is unavailable to testify at trial, then the witness' prior statement may be used. . . .

II. The history underlying the Confrontation Clause supports a testimonial approach to the Clause, and not the *Roberts* framework.

If an adjudicative system is rational, then it must rely in large part on the testimony of witnesses and prescribe the conditions under which they may testify. For many systems, one such condition is that testimony must be given under oath. Another common condition, characteristic of the common law system but not limited to it, is that testimony of a prosecution witness must be given in the presence of the accused, subject to questions by him or on his behalf.

Once the irrational methods of medieval adjudication, such as trial by ordeal and by battle, withered away, Western legal systems developed different approaches to testimony. Continental systems tended to take testimony on written questions behind closed doors and out of the presence of the parties for fear that the witnesses would be coached or intimidated. In contrast, beginning in the 15th century and continuing for centuries afterwards, numerous English judges and commentators — John Fortescue, Thomas Smith, Matthew Hale, and William Blackstone among them — praised the open and confrontational style of the English criminal trial.

To be sure, the norm of confrontation was not always respected. First, a set of courts in England followed continental procedures rather than those of the common law. Precisely for that reason, they were politically controversial, and most of them (notably the Court of Star Chamber), being viewed as arms of an unlimited royal power, did not survive the upheavals of the 17th century. . . . Perhaps most significantly, in politically charged cases the Crown, trying to control its adversaries though the criminal law, sometimes used testimony taken out of the presence of the accused. Thus, the battle for confrontation was most clearly fought in the treason cases of Tudor and Stuart England. Even early in the 16th century, treason defendants demanded that witnesses be brought before them; often they used the term "face to face." Sometimes these demands were heeded, but what is most notable is that they found recurrent legislative supports, acts of Parliament repeatedly requiring that accusing witnesses be brought "face to face" with the accused. By the middle of the 17th century, the battle was won, and courts routinely required that treason witnesses testify before the accused and be subjected to questioning by him.

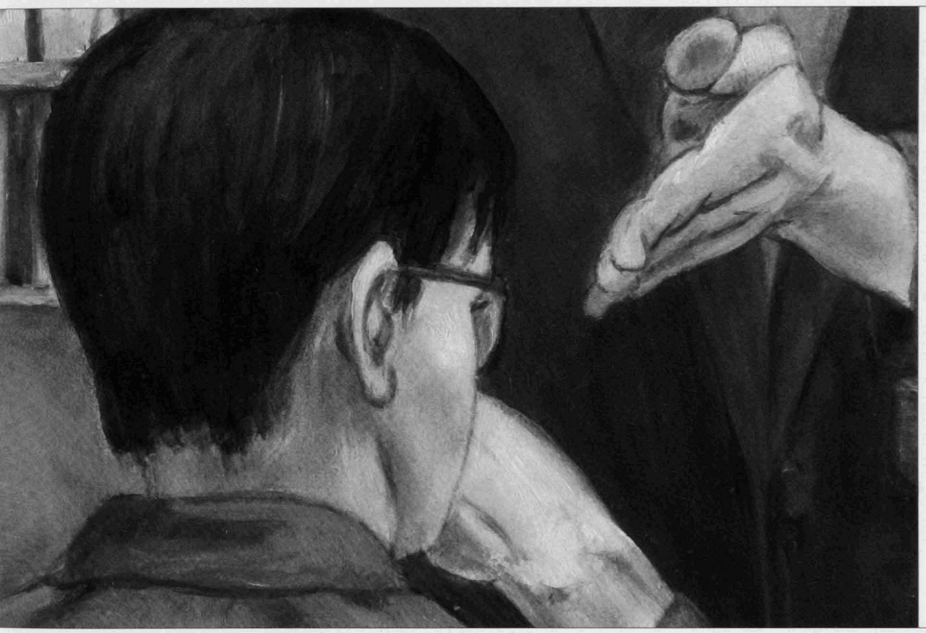
The confrontation right naturally found its way to America. There, the right to counsel developed far more quickly than in England, and with it an adversarial spirit that made confrontation especially crucial. The right became a particular focus of

American concerns in the 1760s when the Stamp Acts and other Parliamentary regulations of the colonies provided for the examination of witnesses upon interrogatories in certain circumstances. Not surprisingly, the early state constitutions guaranteed the confrontation right. Some used the time-honored "face to face" formula; others, following Hale and Blackstone, adopted language strikingly similar to that later used in the Sixth Amendment's Confrontation Clause.

This account has not mentioned reliability. Though one of the advantages perceived for confrontation was its contribution to truth-determination, the confrontation right was not considered contingent, inapplicable upon a judicial determination that the particular testimony was unreliable.

Similarly, the law against hearsay has not played a role in this account. Hearsay law, like evidence law more generally, was not well developed at the time the Clause was adopted, much less during the previous centuries. In expressing a fundamental procedural principle governing how testimony must be given, the Clause was not meant to constitutionalize the law of hearsay. The *Roberts* framework is a latter-day construct, with no historical roots.

- Confrontation guarantees openness of procedure, which among other benefits ensures that the witness' testimony is not the product of torture or of milder forms of coercion or intimidation.
- Confrontation provides a chance for the defendant, personally or through counsel, to dispute and explore the weaknesses in the witness' testimony.
- Confrontation discourages falsehood as well as assists in its detection. The prospect of testifying under oath, subject to cross-examination, and in the presence of the accused, makes false accusation much more difficult than it would be otherwise.
- If, as is usually the case, the confrontation occurs at trial or in a videotaped proceeding, the trier of fact has an opportunity to assess the demeanor of the witness.
- Confrontation eliminates the need for intermediaries, and along with it any doubt about what the witness' testimony is.



The confrontation right naturally found its way to America. There, the right to counsel developed far more quickly than in England, and with it an adversarial spirit that made confrontation especially crucial.

III. The testimonial approach reflects values warranting constitutional protection, and the *Roberts* framework does not.

When the statement is testimonial, the question is not simply an evidentiary one, whether the particular statement should be included in the body of information presented to the trier of fact. Rather, there is now a basic procedural issue, of how testimony against an accused shall be given. And there is no doubt that the constitutional demand is that such testimony be given face to face with the accused, subject to cross-examination. Insisting on such confrontation as the required method for giving testimony serves several important instrumental purposes:

IV. As compared to the Roberts framework, the testimonial approach gives better guidance to the lower courts, is more practical to implement, and is less susceptible to manipulation.

The testimonial approach can be articulated in terms of four basic questions.

1. First, was the statement testimonial in nature? The statement falls within the scope of the Confrontation Clause if and only if the answer is affirmative. It is clear that Sylvia Crawford's statement to the police was testimonial, under any reasonable approach. The statement was electronically recorded by the police in a police station after the incident at issue. The recording was made with considerable ceremony, clearly for use in later proceedings, and Ms. Crawford spoke in response to questioning much as if in a deposition — but without oath or cross-examination. If statements made in such circumstances are allowed as proof at trial, then under any plausible view the declarant is testifying when she

made such a statement, for there is no doubt that a reasonable person in her position would anticipate that her statements would likely be used as evidence in a future criminal proceeding.

Just as in this case, the question of whether a given statement should be considered testimonial can usually be rather easily resolved, as indicated by the following "rules of thumb":

- A statement made by a person claiming to be the victim of a crime and describing the crime is usually testimonial, whether made directly to the authorities or not.
- If, in the case of a crime committed over a short period of time, a statement is made before the crime is committed, it almost certainly is not testimonial.
- A statement made by one participant in a criminal enterprise to another, intended to further the enterprise, is not testimonial.
- And neither is a statement made in the course of going about one's ordinary business, made before the criminal act has occurred or with no recognition that it relates to criminal activity.

Thus, testimonial statements include not only statements made as testimony at the trial itself, but also testimony given at a prior trial or other judicial proceeding, and statements, like the one in this case, knowingly made to investigating authorities or with the understanding that they will reach and be used by those authorities. Inevitably, some cases remain near the borderline, but that in itself is not troubling.

2. Assuming the statement is testimonial, the second basic question is: Will the accused have had an adequate opportunity to confront the witness? In some settings, this question poses interesting issues, such as whether the witness may testify via an electronic connection to the courtroom, whether an opportunity to cross-examine at a preliminary hearing suffices for purposes of the Confrontation Clause, or whether the witness' memory loss at the time of cross-examination unduly impairs the accused's confrontation opportunity. Usually, though, the answer to this question is clear, as it is here; Michael Crawford did not have an opportunity to cross-examine Sylvia.

If the accused will not have had an adequate opportunity to confront the witness, then introduction of the testimonial statement to prove the truth of what it asserts violates the accused's confrontation right unless the answer to the third question is in the affirmative:

3. Did the accused waive the right to confrontation by failing to object, or forfeit it by misconduct? The accused might forfeit the right, for example, by intimidating the witness, kidnapping her, or murdering her. An accused cannot complain about this inability to confront the witness if it is his own wrongful conduct that created that inability. This principle — rather than the fiction that cross-examination would be practically useless anyway because a declarant would not wish to die with a lie on her lips — best explains the admissibility of certain statements by dying witnesses.

If the testimonial statement was made at an earlier time, and the accused then had an adequate opportunity to confront the witness, a fourth question arises:

4. Has the witness been shown to be unavailable to testify at trial? If the answer is negative, then the statement may not be used, because live testimony is possible and preferred. If the answer is affirmative, however, the Confrontation Clause poses no obstacle to admissibility of the statement, unless the prosecution's wrongdoing causes the unavailability. Taking the testimony at trial would be ideal, but the ideal is not possible; an opportunity for confrontation is what is essential, and the accused has had it.

Conclusion

Current doctrine relies on hearsay law to do the work that should be performed by the Confrontation Clause, and this has been detrimental to both. It has made hearsay law overly rigid, and it has obscured the meaning of the Clause. Once it is recognized that the scope of the Clause is narrower than that of hearsay law, and that it applies only to those statements that are testimonial in nature, the essence of that right becomes apparent: It protects one of the central procedural aspects of our system of criminal justice, the presentation of testimony in the presence of the accused and subject to cross-examination. That right may be waived or forfeited, but it is not subject to exceptions nor can it be trumped by a judicial determination that the particular statement at issue is reliable.

Richard D. Friedman, *the Ralph W. Aigler Professor of Law, earned a B.A. and a J.D. from Harvard, where he was an editor of the* Harvard Law Review, *and a D.Phil. in modern history from Oxford University. His research focuses principally on evidence and Supreme Court history. He is the general editor of* The New Wigmore, *a multi-volume treatise on evidence, and has been designated to write the volume on the Hughes Court in the* Oliver Wendell Holmes Devise History of the United States Supreme Court. *In addition, he has published an evidence textbook,* The Elements of Evidence, *the third edition of which is now in press, and many law review articles and essays. Friedman clerked for Judge Irving R. Kaufman of the U.S. Court of Appeals for the Second Circuit, and was then an associate for the law firm of Paul, Weiss, Rifkind, Wharton & Garrison in New York City. He came to the Law School faculty in 1988 from Cardozo Law School.*