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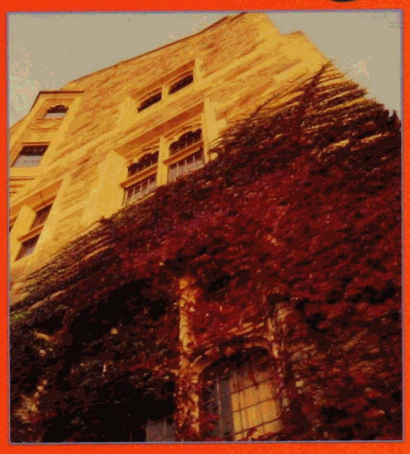
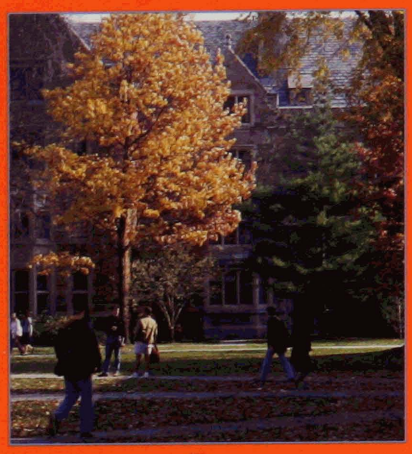
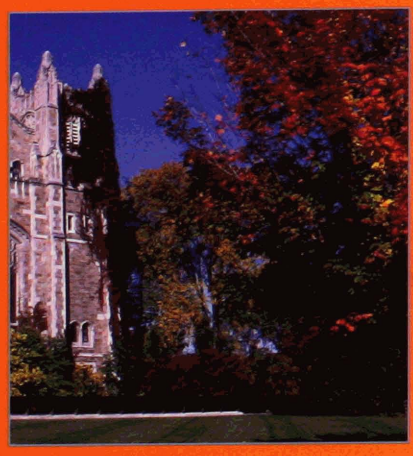
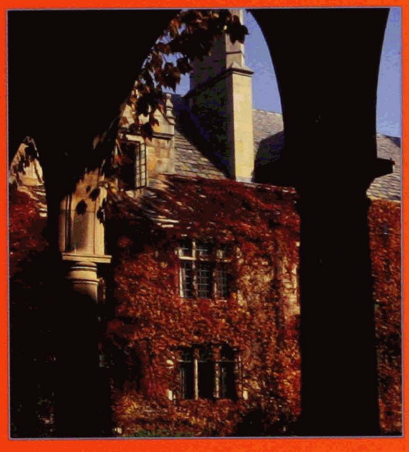
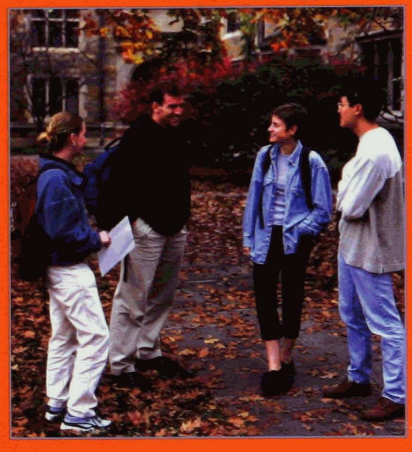
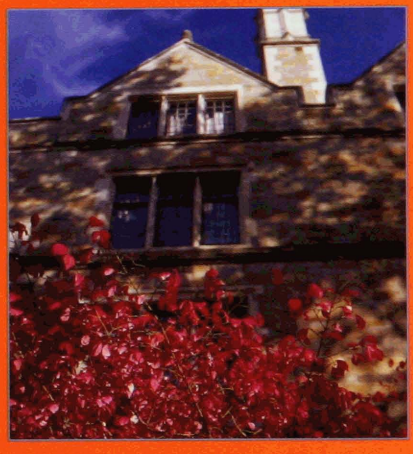
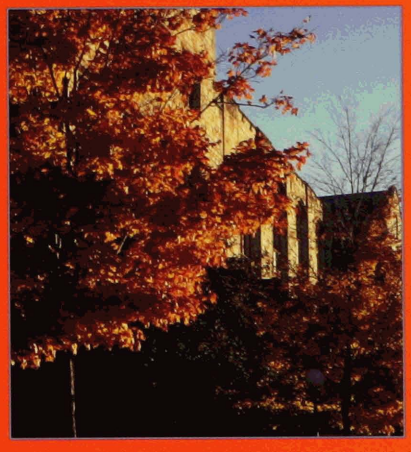
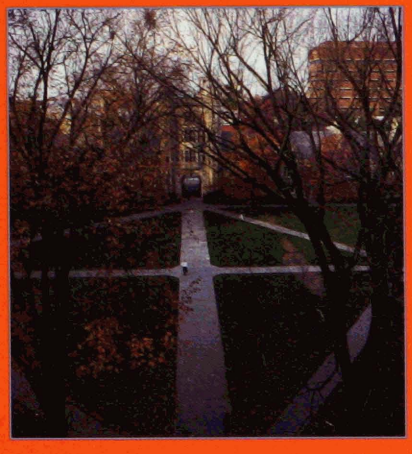
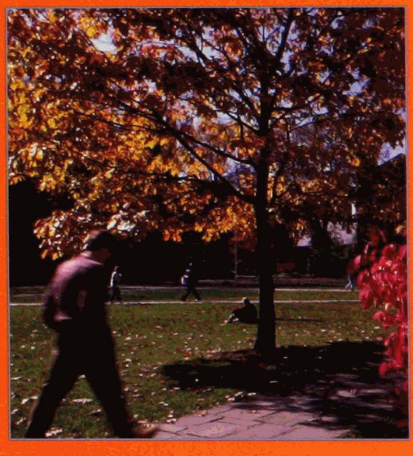
LAW QUADRANGLE NOTES

Building On... The Campaign for the University of Michigan Law School

Degrees of Freedom: Building Citizenship in the Shadow of Slavery

The University of Michigan Law School
47.2 • Fall 2004

The University of Michigan Law School

Volume 47, Number 2
Fall 2004

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

Postmaster, send address changes to:
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B10C Hutchins Hall,
Ann Arbor, MI 48109-1215

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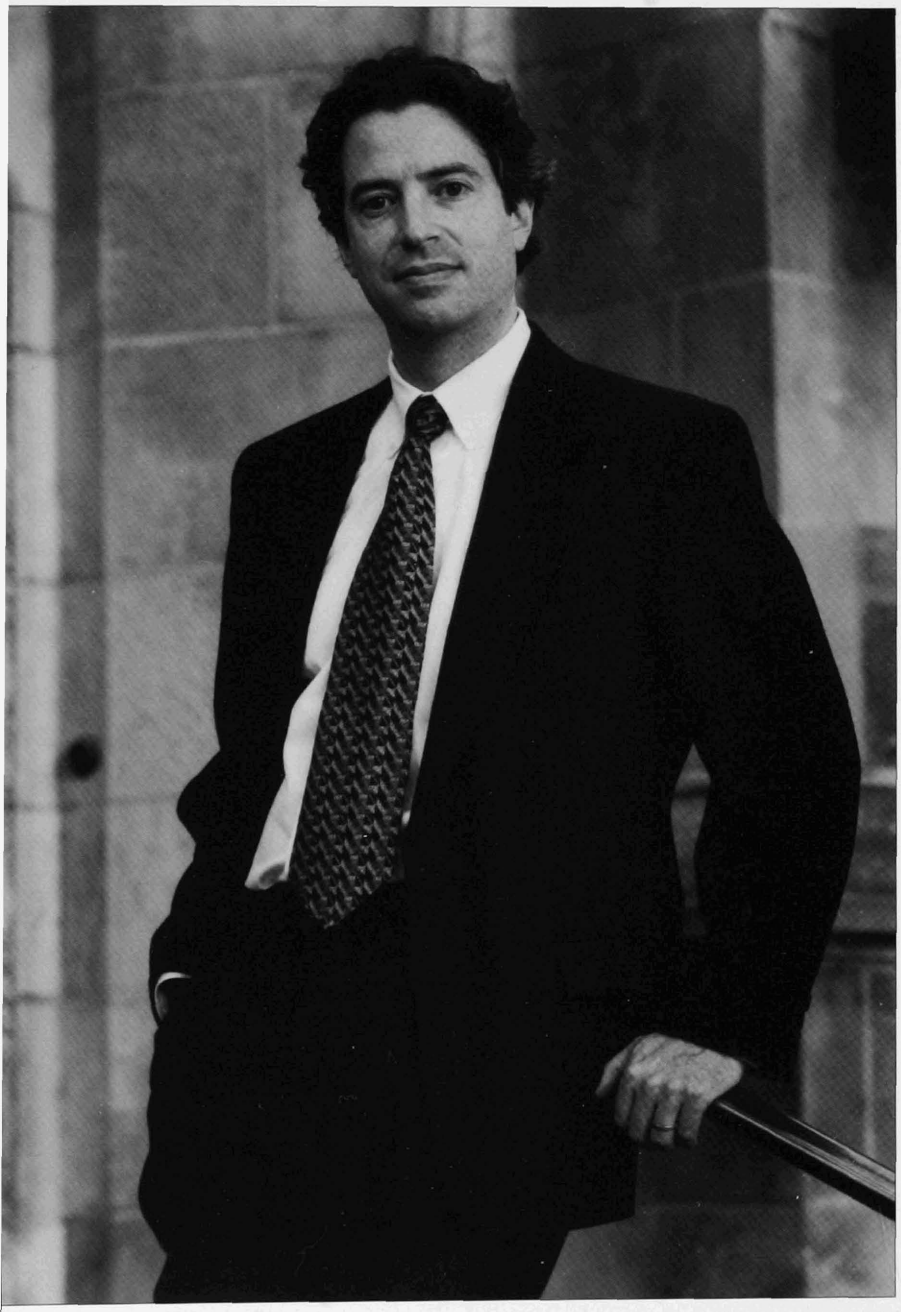
LAW QUADRANGLE NOTES

FALL 2004

Message
from Dean Caminker



For the past 75 years, the spirit, significance, and ambition of a Michigan legal education have been reflected in, even defined by, the Quadrangle. The distinctive and magnificent buildings that house our community inspire us, stir our imagination, elevate our intellect, and call forth effort to produce meaningful work with a lasting impact here and around the globe.

But the times are changing; methods of legal education and the practice of law are changing; and our buildings must grow and change to keep pace. As I complete my first year in the dean's seat it is clear to me, more than ever, that the time has come to transform the Quadrangle into a space that is both inspiring and as suited to contemporary legal education as the original Quad was to its time. We must ensure that our buildings continue to facilitate an extraordinary educational experience in the 21st century.

To this end, we have launched an ambitious fundraising campaign to secure our top ranking among the nation's law schools for decades to come. The campaign involves three objectives:

- An unprecedented building project;
- Increased support for the Law School Fund; and
- Significant enhancement of faculty and student support.

The latter two goals likely come as no surprise. We must broaden the community of giving to the Law School Fund, and we need additional resources to support our core foundation — the highest quality faculty and

students. But I want to focus here on the goal that grabs immediate attention — the building project. The new buildings we propose will create much-needed new classrooms and seminar rooms, offices for faculty and support services, and appropriate spaces for clinical programs. And as I have seen in my short tenure as dean, the need is manifest.

The Quad was built to accommodate a remote, authoritarian style of education, with instruction in large lecture halls and with little interaction among students. Today's curriculum includes a much wider array of subjects. Smaller classes and seminars, in which students engage in fruitful dialogue with peers and with their teachers, are now important components of a first-rate legal education. At Michigan we work hard to use the most innovative teaching practices, but we can't continue to ask faculty to lead 12-person seminars huddled around long, fixed tables in Room 100 or our other cavernous lecture halls.

Today, organizations and activities that could not be envisioned 70 years ago are central to the life of Michigan Law School. More than 40 interest groups now gather regularly, with students passionate about everything from politics to sports law. Clinical education, a crucial component of contemporary legal training at all top-tier law schools, teaches students to work with clients so they can hit the ground running. Our legal practice program, now taught by members of the faculty rather than third-year students, provides our students the contemporary legal skills required for productive lawyering right out of law school — a response to the demise of old-style, on-the-job mentoring for new associates.

The increased use of technology is beneficial in many ways, but it also threatens to change the treasured culture of this School. Old meeting places have been replaced by e-mail. Legal research — now conducted on the Web rather than in the stacks — is much more efficient, but far less social. We must create new spaces that accommodate both our new patterns of electronic work and the traditional culture of collaborative and collegial interactions.

With all of these changes in pedagogy, law practice, and technology, how will our School adapt? How shall we maintain the distinctive character and excellence that Michigan Law School has achieved in the last 150 years? How can we protect the collegial community that defines us? How can we ensure that our School will continue to set the pace among top law schools in the nation?

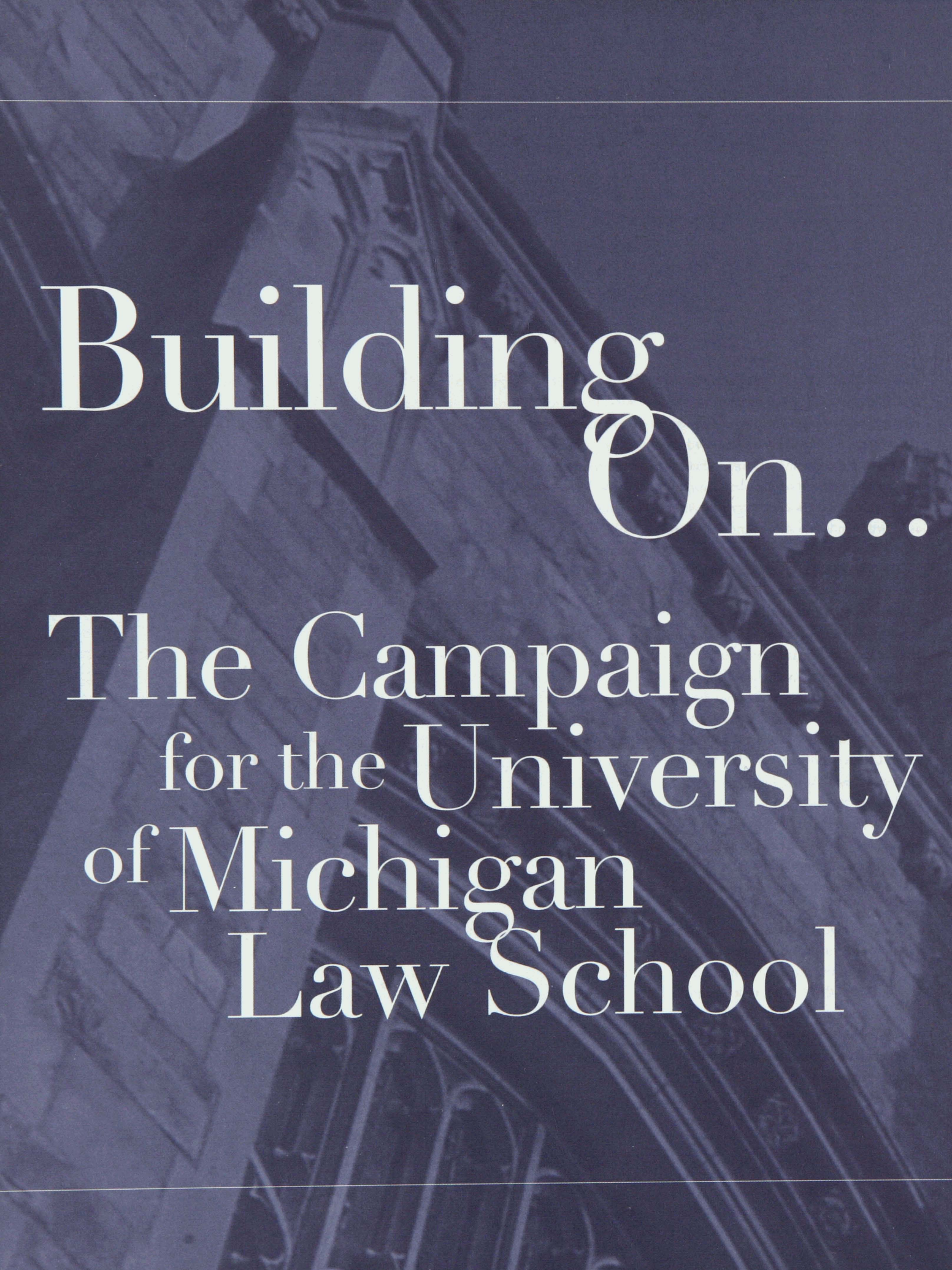
We have asked the Renzo Piano Building Workshop to address the Law School's need for new space. Piano is internationally recognized for his sensitive and imaginative additions to architecturally significant sites, and he has proposed an inspired solution.

In recent decades we have taken the measures necessary only to accommodate the growing number of books in our library. Now it is time to design instead for people and academic programs. To this end, we will remove the aluminum-clad stacks addition appended to the Legal Research Building and replace it with a welcoming entryway. This entryway "piazza" will function as an internal town square for the School, knitting the existing buildings together into an integrated whole and facilitating the integration of faculty and student life. This addition will be the most significant expansion to the Law Quadrangle since its inception.

Our peer schools have each invested hundreds of millions of dollars in new facilities and renovations over the past decade. It is now time for us to build the next phase of Michigan's legacy. Indeed, we believe this building project, guided by Renzo Piano, will ensure Michigan's leadership for generations to come.

I welcome your support, your best ideas, and your questions as we move forward to complete the Quadrangle.

Evan Caminker



Building On...

The Campaign for the University of Michigan Law School

The Law School has launched the largest campaign in the School's history. The leadership backing the project is extraordinary, tapping into the talents of alumni around the country. Dean Caminker and campaign chairman Bruce Bickner offer insight on why this campaign is so important to the future of the Michigan Law School.

A chat with Campaign Chair Bruce P. Bickner, '68

Bruce P. Bickner, '68, took on the chairmanship of the volunteer Campaign Steering Committee because of his deep affection for the Law School and his firm belief that Michigan should remain a worldwide leader in legal education.

The need is real and the time is now, he responds when you ask why he would shoulder such a responsibility. "The Law School gave me the training I needed for the successful career I've had," says Bickner, a Sycamore, Illinois, resident who was CEO of DEKALB Genetics and became a vice president of Monsanto when that company acquired the agricultural seed and biotechnology firm.

"My memories of Law School are fond ones, and my career constantly reminds me of the value of that training," Bickner adds. "I also was profoundly impressed by the Michigan Law School alumni I encountered, either as colleagues or adversaries. I think it is critical that future generations be given the same opportunity I was afforded at Michigan."

Bickner continues to maintain his DEKALB office after retiring from Monsanto in 2002. He divides his time among a number of community efforts, including his positions as Chairman of the Board of North Park University in Chicago and a Director of the Board of Nicor Inc. This is in addition to the Law School Campaign. He took time out to discuss his commitment and the nature of the volunteer campaign committee he chairs:

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Q: Why did you agree to shoulder the responsibility of chairing the Campaign Steering Committee?

A: I've enjoyed a successful and satisfying career thanks to the Law School and I want to be sure that Michigan remains among the world's top law schools. With the aggressive steps our peer schools have taken in the form of building projects and new programs, I feel that this campaign is imperative — especially the building project. When Dean Lehman first presented me with the plans for the new building, I was immediately sold. Enabling new and expanded programs by completing the Law Quadrangle is what Michigan needs now. Architect Renzo Piano's plans do such a remarkable job of honoring Cook's legacy, while answering specific and critical program needs and providing space for vital faculty/student interchange.

The previous campaign, which ended in the late 1990s, raised funds for educational programs, student aid, and faculty support. The success of that campaign laid the groundwork for this one. The new building will be program-enabling. It will grow from, expand on, and re-energize the facilities and programs that are the trademarks of this Law School. Yes, it's an expensive and aggressive project, but one that William W. Cook would be proud of and something that truly respects his legacy. This opportunity will only be available once. Given all that, it was an easy decision to accept the opportunity to chair the campaign committee.

Q: The current portion of the campaign was launched publicly on May 14, the same day as the University of Michigan-wide campaign. The U-M campaign has a goal of $2.5 billion. How does the Law School campaign fit into this University-wide campaign?

A: The Law School is a very important part of the overall U-M campaign, because, indeed, the Law School is an integral part of this great University. A great law school, like this one, is made better when it is embedded in a great university, like the University of Michigan. Our extensive program of joint degree offerings with other units of the University attests to the strength of our interrelationship. Conversely, the University is enriched intellectually and socially by the integral presence of a great law school.

The Law School plans to raise $30 million for endowment enhancement and $35 million for the Law School Fund during the four-year University campaign. During that time we also plan to raise most of what is needed to break ground and build the 91,000 square foot Law Center and the 79,000 square foot Tappan-Monroe building that architect Renzo Piano has designed. The Cook Law Quadrangle is magnificent and beautiful, but the Law School needs additional facilities — differently configured and equipped — to meet the modern and changing needs of legal education.

The campaign for the new building may extend beyond the University's four-year drive. Our goal, and my goal as steering committee chairman, is to keep our campaign on track and efficient, so that we can break ground and build as soon as possible and as quickly as possible. We are still developing some of the details of this effort, and of course our schedule depends on the timing of our donors' generosity.

Q: What do you think about most when you reflect on your education at Michigan and how that education has impacted your career?

A: When I went to Law School, in the mid-1960s, there was a euphoric sense that the law could do wonders, could make wrong right. It can do those things, despite what the critics and naysayers claim. But lawyers need to be well grounded in ethics and the concept of justice, as well as traditional legal skills. All this means that they must take their training from the best teachers possible, in the company of the best fellow students available in the best facilities we can provide. This three-part equation defines the Michigan Law School for me. I want to be sure that the equation continues to resonate with future law students as well as practicing lawyers. That's not to say that there won't be change, significant change, sometimes unnerving change, but one of the purposes of education is to prepare us for such change.

It's also important for those, like me, who have been out of law school for many years, to have a lodestone to which we can return — a place where we can reclaim the energy, optimism, and excitement we felt as students. Topnotch facilities, topnotch teachers, and topnotch colleagues are the recipe for that. Legal education is like the field of agricultural genetics in which I spent so much of my career. You mix and match and never stop changing and improving the formula. But you also never stray so far from the core chemistry that you lose your value.

Q: How do you keep in touch with the Steering Committee members? Aren't they scattered across the United States?

A: Yes, they are purposely located all over the [U.S.] map, so that collectively we can represent and interface with our broad alumni base. We meet twice a year and have interim teleconferences.

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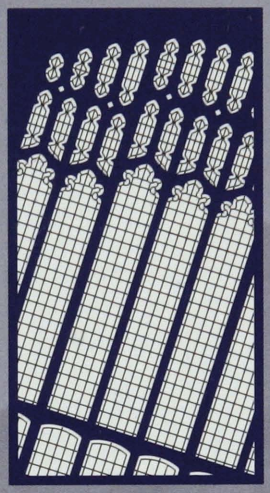

BUILDING ON...
THE
CAMPAIGN
FOR THE
UNIVERSITY
OF MICHIGAN
LAW SCHOOL

The Law School's Campaign Steering Committee is composed of volunteers who lend their time, experience, and insight to the complex task of forging and maintaining the fundraising effort. The members are:

Campaign Steering Committee members

Leo R. Beus, '70
Beus Gilbert PLLC
Scottsdale, Arizona

Bruce P. Bickner, '68
Chair
Sycamore, Illinois

Richard Burns, '71
Hanft Fride PA
Duluth, Minnesota

Evan Caminker, Dean
University of Michigan Law School
Ann Arbor, Michigan

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Robert B. Fiske Jr., '55
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Detroit, Michigan

William R. Jentes, '56
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Barrie Lawson Loeks, '79
Loeks & Loeks Entertainment
Rye, New York

Greg Mutz, '73
Amli Residential
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John M. Nannes, '73
Skadden, Arps, Slate, Meagher & Flom
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Eric A. Oesterle, '73
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Chicago, Illinois

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John H. Pickering, '40
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Wilmer Cutler Pickering Hale & Dorr
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Dennis Earl Ross, '78
Ford Motor Company World Headquarters
Dearborn, Michigan

Mary E. Snapp, '84
Microsoft Corporation Law & Corporate Affairs
Redmond, Washington

Keith C. Wetmore, '80
Morrison & Foerster LLP
San Francisco, California

Kathryn D. Wriston, '63
Honorary Chair
New York, New York

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I am privileged to be working with a group of 20 dedicated peers. To a person they are filled with enthusiasm and ideas for this campaign. Their commitment is immeasurable, and their affection for this Law School is a wonderful thing to behold. I feel honored to work with them. We're all attached to the same goal — raising the funds that this Law School, our Law School, needs. There is a unity of vision that unites us in a way that perhaps nothing else could.

Also, it has been wonderful to work with Dean Evan Caminker. He is full of ideas, responsive to others' thoughts, creative, and flexible. The campaign and the Law School could not ask for a better leader.

Q: What does your family think of this endeavor? How do they feel about you taking on this task so soon after retirement from a long, sometimes frenetic career?

A: My wife Joan is extremely supportive. She often offers some of the best ideas and suggestions. She is also very involved in the University campaign as a member of the Kinesiology campaign committee. We've been married 37 years, so in a very real way she has shared the impact that the Law School has had on me and on my career.

As a family, we are having a very busy year. In March, our oldest son Brian and his wife Amy welcomed their first child, Ava, into the world. It was our first grandchild. We're excited about arrival in August of the first baby for middle son Kevin and his wife, and our youngest daughter Julie is getting married in October. It is a busy year for the Bickners, but all my family understand how important the Law School is to me, and they respect the fact that I get very involved in those things which are important to me.

Bruce P. Bickner, '68

Bruce P. Bickner, '68, chairman of the Law School's Campaign Steering Committee, retired in 2002 as chief executive officer of DEKALB Genetics Corporation and executive vice president of Monsanto Company. He received his B.A. in political science from DePauw University in 1965 and his J.D. from the University of Michigan Law School in 1968, where he was an editor of the *Michigan Law Review*.

Bickner joined Monsanto in 1998 in connection with Monsanto's acquisition of DEKALB Genetics Corporation, a company engaged in agricultural genetics and biotechnology for seed and swine. He served the company or its predecessor organizations in many roles until being named its chairman and chief executive officer in 1998. As executive vice president of Monsanto, he was responsible for global strategy with respect to industry competitors and affiliates. Prior to that, he helped lead the integration of Monsanto's Global Seed Group.

Earlier in his career, Bickner was a partner in the Chicago law practice of Sidley & Austin. Following graduation from the Law School, Bickner clerked for the Honorable John W. Reynolds with the U.S. District Court for the Eastern District of Wisconsin in Milwaukee.

At the Law School, in addition to chairing the volunteer Campaign Steering Committee, Bickner serves on the Committee of Visitors and is a founding member of the Cavaedium Society. He also chaired the Law School's Corporate Giving Task Force.

Bickner's wife, Joan (B.S.N. '65 North Park University), is a member of the Campaign Council for the University of Michigan Department of Kinesiology.

Dean Evan Caminker addresses supporters at the Law School Campaign Kickoff.

Dean Caminker discusses the Law School campaign

Members of the Law School community have many questions about the recently launched Law School Campaign. Dean Evan H. Caminker answers the most-asked queries.

Q: Why is the Law School entering into a campaign?

A: Simply put, this campaign will ensure that Michigan remains among the very top law schools in the country. This is a critical time in legal education and in the history of this institution. Two issues are converging. Peer schools are investing hundreds of millions of dollars in their programs and facilities. At the same time, state funding is no longer a meaningful source of income. In 1935, state funding accounted for nearly 50 percent of the budget, but in 2004 state funding stands at less than 4 percent. Although there is a long history of private philanthropy at the Law School, most notably William Cook's gift of the Law Quadrangle, many alumni incorrectly assume that a significant portion of funding is still provided by the state. In this campaign, it is critical that we educate our alumni on the importance of private support to the future of this institution.

Q: What will the campaign accomplish?

A: The campaign has four goals: initiate a new building project, raise the level of annual giving, increase the endowment for faculty, and increase the endowment for student support.

Q: Didn't the Law School just complete a major fundraising campaign a few years ago?

A: The previous campaign actually ended in 1997. We successfully raised more than $91 million for teaching and programs but the campaign did not provide funds for the Law School's physical facilities. In fact, the Law School has not added new space designed for students and faculty since the original Cook Quadrangle was completed. The Underground Library added space for books. And, rising costs and shrinking state support make private support for the Law School critical.

Q: How can we preserve the Quadrangle while adding new space?

A: As we started discussions of a building project, all alumni appropriately expressed concern for preserving the beauty of the Quadrangle. In fact, we rejected some initial designs based on how they related to the original buildings. It is important for any design not just to preserve the original Quadrangle, but also to preserve and enhance the sense of community that distinguishes Michigan from all other top law schools. The design we selected, as outlined by world-renowned architect Renzo Piano of the Renzo Piano Building Workshop,

Above, Henry Clay, '75, Bruce Bickner, '68, Saul Green, '72, and Diane Green.

Law student Matt Nolan with Mark Griffin, '53.

calls for 170,000 square feet of new space and the demolition of the library stacks and aluminum catwalk that were tacked onto the Law Quad during the 1950s. The project will open a new vista revealing the Reading Room from the south to mirror that from the north.

Q: Who is Renzo Piano?

A: Piano is one of the world's best-known architects. He was trained in the construction field and has earned praise for fusing older, traditional buildings with new spaces. His work complements the existing structure while supplementing and updating it. One of Piano's current projects is the Whitney Museum in New York, a historic building with similar integration issues to those facing the Law School. Piano also can be avant-garde, as in his design for the Osaka Airport, which required constructing a mile-long island as the foundation for the project. He has won countless architectural awards and completed many projects that indicate he is the ideal choice to tackle the specific needs of this project.

Q: What has Renzo Piano proposed for the Law School?

A: Piano's plan calls for removing the library stacks and catwalk and opening the south side of the Reading Room to view. He envisions a glass-roofed student activity area, a "piazza" as he calls it, that would become the Law School's main entrance — its first main entrance, by the way — from Monroe Street. The piazza would allow clear views from the front doors through to the Reading Room, provide a student and faculty gathering place, and overall become the focal point for the energy of the Law School. It would also connect with the Alene and Allan F. Smith underground library and with Hutchins Hall. For the first time the separate Law School buildings will be brought together into a seamless, cohesive whole. Piano's plan also calls for a new building at the southeast corner, now covered by the lawn over the underground library. This new building will hold classrooms and seminar rooms, offices for faculty and support services, and appropriate space for clinical programs. Piano envisions a stone and glass motif that will complement the existing Law Quadrangle, which he describes as "magnificent."

Q: Does the Law School really need more space? Legal education hasn't changed that dramatically, has it?

A: In many ways legal education has changed. Some statistics: In 1933, 513 students studied under 18 permanent faculty members; today there are 1,205 students and 71 faculty members. The number of visiting faculty has ballooned — four visiting and adjunct faculty members in 1933; today there are more than 60. The Law School offered 55

Left, Professor Joseph Vining chats with graduates Robert B. Webster, '57, and Frank Zinn, '59. Below, adjunct faculty member Joan L. Larsen and Associate Dean for Clinical Affairs Bridget M. McCormack share a light moment.

courses in 1933; today it offers 186. No law clinics existed in 1933, the School now has nine clinics. There was one student-edited journal in 1933; there are six today. These numbers barely hint at the need for teaching and office space. Every empty closet is now an office; critical programs operate in space off-campus; we simply have to come up with new space. And, space that is respectful of the Quadrangle.

Q: You mentioned that our peer schools are expanding. Can you tell us more about that?

A: Our peer law schools have done what we need to do — build. Just since 1997, when Harvard renovated Langdell Hall, many of our peer law schools have expanded and/or renovated their physical facilities. Chicago added a new center for clinical education in 1998. In 2000, Penn overhauled and renamed its main law school building. The next year, Stanford and Yale modernized and renovated their law school facilities. In 2002, Virginia added a new student/faculty center; last year Columbia added a new student residence hall; and this year New York University's law school doubled its size with a new building. We must modernize and expand our facilities in order to remain in the top tier.

Q: Why do we need to raise the level of annual giving?

A: While the Law School Fund has grown over the years, it still lags significantly behind our peers. If we can make the Fund a more substantial, reliable source of income, we can strengthen existing programs and develop new ones. We can support student and faculty initiatives and respond quickly to opportunities that present themselves. A more substantial Law School Fund, led by our Cavaedium Society members who give $2,500 or more annually, will sustain the vitality of the Law School community. It is an enormous priority for me and an objective of unsurpassed importance to this campaign.

Q: I thought Michigan was among the best in terms of faculty support. Isn't there a Cook endowment for faculty?

A: Yes. For many decades Michigan has been a leader in faculty support, thanks to William Cook's original gift to fund legal research. Cook's gift created a distinctive academic community where world-renowned scholars collaborate, inspire, and thrive. However, in this area too, we face significant competition from other elite schools, which now offer similar support and tirelessly recruit our top faculty. We need to secure additional resources to support exceptional faculty scholarship and teaching.

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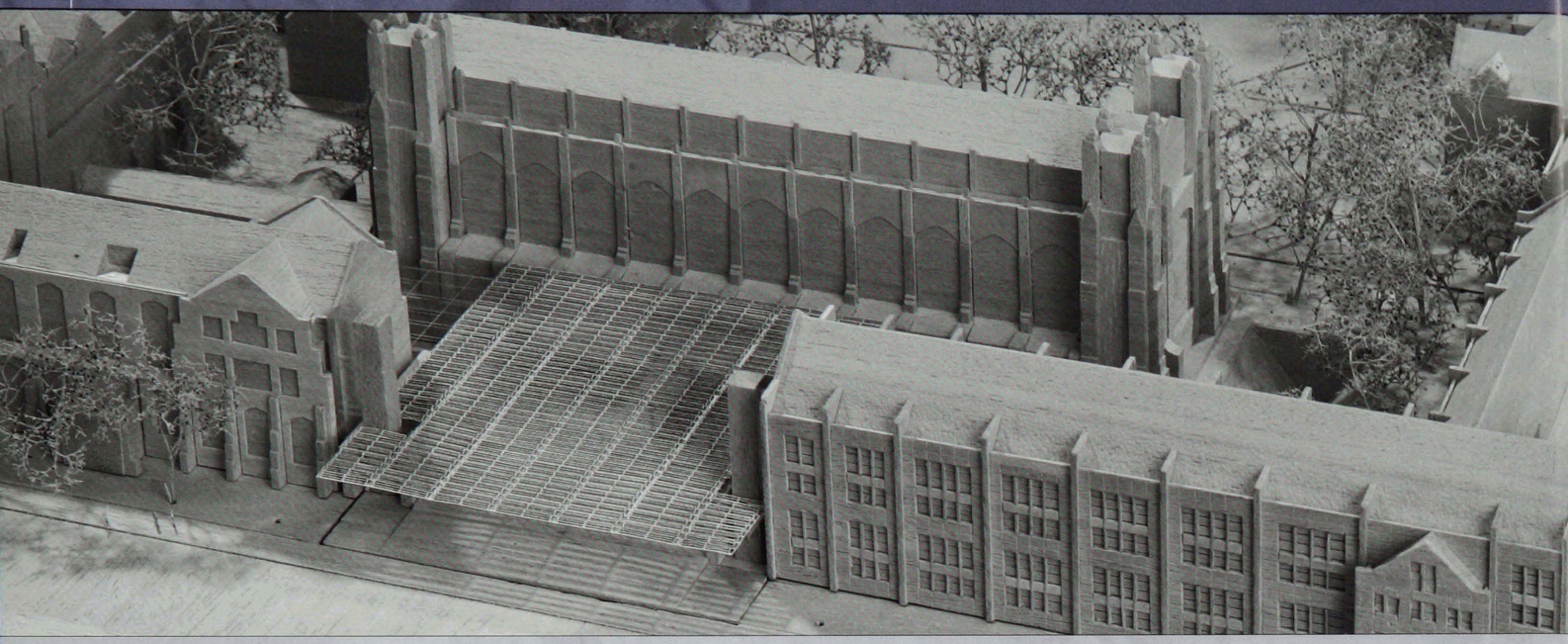

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Q: What needs do we have for student support?

A: This is fairly straightforward. We must continue to recruit the brightest students, and ensure that each admitted student can afford the opportunity to join us. Since our inception, Michigan has worked hard to make legal education accessible. Thanks to these efforts, we have a remarkable learning environment, where a broad range of students with varying backgrounds and perspectives engage in vibrant and challenging discussions. This campaign seeks the resources needed to continue that tradition for generations to come.

Q: How does the Law School campaign fit into the University-wide campaign?

A: The Law School's campaign is part of the overall University campaign. Now, our building goals are aggressive, and therefore we anticipate extending our timeframe beyond the December 2008 date the University has set to end its overall coordinated campaign.

Top, a model of the proposed main entrance and Monroe/Tappan wing. At left, Law Library Director Margaret A. Leary, center, discusses the proposed building with Kae and William Marcoux, '52.

Q: How much money does the Law School hope to raise in this campaign?

A: As part of the University-wide campaign, The Michigan Difference (which runs through 2008), the Law School will raise at least $30 million for our endowment and $35 million toward operating expenses. The Law School also will raise substantial monies for the new building project.

Q: What is the new building going to cost?

A: Since the project is now just in initial design phase, it is difficult to know what the exact cost of the construction will be. It is safe to say that current plans put the cost at more than $100 million. The complicated nature of this project — preserving the existing Quad while demolishing the stacks and adding new space, including the "piazza" or student area and a new building on top of the old — raises the costs beyond what might be typical for a new construction project.

Q: Isn't a capital campaign all about large gifts?

A: The goals of this campaign are ambitious, and it will certainly require a number of leadership gifts for this campaign to meet its goals. However, the only way we as an institution will be successful in the long term is for us to call on the participation of the entire Law School community. I hope that every graduate feels as though he or she has a stake in making sure that the experience remains one of the best in the world for legal education. It is no longer something that will happen without the active involvement of the larger community. That is why every gift to the Law School Fund counts toward the campaign goal, and why every gift actually makes a difference to future generations of students.

University-wide campaign champions 'The Michigan Difference'

The University of Michigan has launched a four-year fundraising campaign aimed at raising $2.5 billion. Championing "The Michigan Difference" — in academics, research, the quality of faculty, students, and graduates — the campaign builds on the strengths of the institution.

"The Michigan Difference will focus on maintaining and building the depth of excellence that is the foundation of the University of Michigan's preeminence as a public research university," said U-M President Mary Sue Coleman. "Fourteen of U-M's colleges and programs rank among the top 10 in the nation, a claim no other university can make. Our breadth of accomplishment and activity gives U-M students and faculty an unparalleled array of opportunities. The title of the campaign, The Michigan Difference, captures the remarkable capability of the University of Michigan to make a difference for our students, for our state, and for society."

Like the Law School, the University of Michigan in recent years has turned increasingly to private philanthropy in the face of dwindling state appropriations. As the University's second-ranking official, Provost Paul N. Courant, noted at the public kickoff: "Philanthropy has always been a part of what makes Michigan great, and is even more important in the budget climate that we face today. Private giving helps us to provide that margin of excellence that makes 'The Michigan Difference.'"

The U-M campaign, to continue until December 31, 2008, aims to raise $400 million for student scholarships and fellowships, $425 million for faculty support, $625 million for programs and research, $500 million for facilities, and $150 million for laboratories, infrastructure, and discretionary support. The pre-public, quiet phase of the campaign began in 2000. At the campaign kickoff, more than $1.281 billion had been raised, or 51 percent of the goal.

The University celebrated the public launch of the campaign in May. The three-day event included more than 90 separate events, sponsored by the University's 19 colleges and schools, three campuses, and other units. Hundreds of U-M graduates and volunteer supporters traveled from all around the country to join in the celebration and share their commitment to achieving the goals of the campaign.

The Law School, which held a number of events as part of the May 14 kickoff (see photos on pages 9–12), also was well represented at the University-wide celebration. Law School alumnus Robert B. Fiske Jr. '55, of Davis Polk & Wardwell in New York City, was cited during the University–wide program for his establishment of the Fiske Fellowships for Public Service, which provide stipends and debt relief to graduates who enter government service. Another Law School graduate, Mary E. Snapp, '84, vice president and a deputy general counsel of Microsoft Corporation, accepted an award for Microsoft's significant contributions to the University.

The campus-wide all-University campaign also draws on the expertise of Law School graduates. Law School Campaign Steering Committee Chairman Bruce Bickner, '68, Terrence A. Elkes, '58 (who chaired the Law School Campaign that concluded in 1997), Robert B. Fiske Jr., '55 and Barrie L. Loeks, '79 (who also are members of the Law School Campaign Steering Committee), and Samuel Zell, '66, are members of U-M President Mary Sue Coleman's 31-member President's Advisory Group, which provides leadership to the University campaign as part of an overall alumni advisory panel.

In Detail

Justice Scalia visits November 16–17

Antonin Scalia, Associate Justice of the Supreme Court" will visit the Law School November 16–17 as a Helen L. DeRoy Fellow. Dean Evan H. Caminker said he is pleased that Scalia is coming to Ann Arbor and looks forward to spending time with him during his visit.

Scalia was named to the Supreme Court in 1986 by President Reagan after serving on the U.S. Court of Appeals for the District of Columbia. Scalia also served in the executive branch as assistant attorney general for the Office of Legal Counsel.

An outspoken conservative jurist, Scalia enjoys visiting and speaking at law schools when his schedule permits. He has a long association with legal education and academic life. He was a professor of law at the University of Virginia and the University of Chicago, a scholar in residence at the American Enterprise Institute, and a visiting professor of law at Georgetown University and Stanford University.

During his visit here, Scalia will teach classes in Administrative Law and Constitutional Law, attend a Legal Theory Workshop, meet with faculty and students, and present a public lecture in the University's Rackham Auditorium.

The DeRoy Fellows program supports visiting faculty through a gift from the Detroit-based DeRoy Testamentary Foundation. Philanthropist Helen DeRoy's other gifts to the Law School have endowed a professorship in her name, supported clinical education, and established an annual award for the best student-written Note for the *Michigan Law Review*.

Summer child advocacy training marks 10th year with largest class, new support

"Child advocacy work is no way to get rich, at least not in money," says Donald Duquette, a clinical professor of law and director of the Law School's annual Bergstrom Child Welfare Law Summer Fellowship training program. But he says the people who choose this area of the law do so for the satisfaction it offers, not high wages.

Duquette also is founder and director of the Law School's Child Advocacy Law Clinic (CALC), which began in 1976 and today is the oldest and most highly regarded clinic of its kind in the country. Duquette's recognition of the need to expand training in this area of law led him to establish the annual summer fellowship training program 10 years ago.

The multidisciplinary fellowship program combines three days of intensive training through lectures, demonstrations, case preparation, and courtroom exercises followed by a summer-long internship at a child advocacy organization. As a side benefit, participants become part of the fellowship's growing roster of placement agencies, supervisors, and graduates that is creating a national network of organizations, experienced child advocates, and younger practitioners. Nearly 200 fellows from law schools throughout the country have completed this unique training program since it began in 1994.

The 30 fellows who made up this year's class trained at the Law School in May before dispersing to their summer internships. The class included four U-M Law students, as well as students from the law schools at Harvard, Columbia, Penn State, University of California – Berkeley and Davis, University of North Carolina at Chapel Hill, and Wayne State University, and other Universities.

This year marks the 10th anniversary of the annual Bergstrom Child Welfare Law Summer Fellowship program, and this summer's class of 30. shown here on the front steps of the Reading Room, was the largest ever. Standing at rear is Clinical Professor of Law Donald N. Duquette, founder and director of the program. In the midst of the group is Henry Bergstrom Jr., director of the Bergstrom Foundation, which has endowed the program's training and supports its internships. Bergstrom Foundation Program Director Donna Perkins is second from right in the third row. Above, left, are the Law School students who were fellows this year. From left are Kyra M. Hazilla, Jenna M. Goldenberg, Rachel L. Stein, and Kelli A. Fitzgerald.

Participants are selected through a highly-competitive process that drew some 100 applicants this year. A determining factor in the selection of fellows is their demonstrated commitment to child advocacy.

Kristin Kimmel, '96, an attorney with Lawyers for Children in New York for the past eight years, was a member of the fellowship's first class in 1994. She had come to law school to learn child advocacy law, but she quickly learned that "it is quite difficult to get a job in public interest law in general and child advocacy law specifically."

"This fellowship was the only opportunity for me to practice child advocacy during my second summer of law school, and the variety of placements made it an especially exceptional opportunity," explained Kimmel, who did her internship that summer with the dependency division of the public defender's office in Seattle. "We were able to experience the practice of child advocacy law across the entire country and compare our experiences."

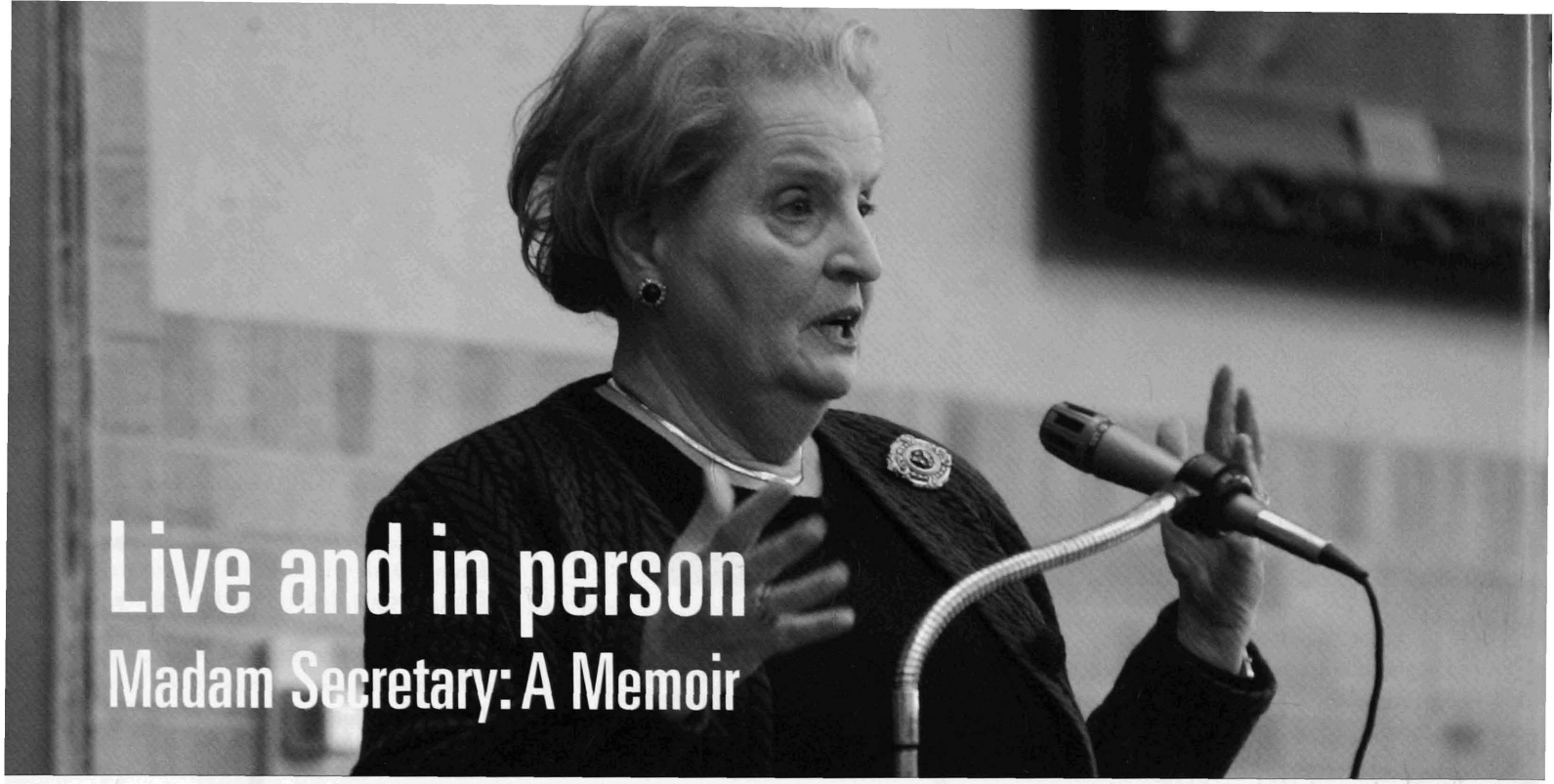
Kimmel added that last year she returned to Ann Arbor to help conduct the fellowship training and her office provided placements for two summer fellows.

Another graduate and fellowship participant, Ann Reyes Robbins, '98, also had high praise for the program. "Many lawyers spend years seeking the training and insight into the child welfare process provided in the very intense and inspiring Bergstrom Fellowship program," said Robbins, a 1997 Bergstrom Fellow and a panelist and mentor for this year's training. "In the course of several days we had an opportunity to meet victims, perpetrators, service providers, and judicial officers. Each conveyed their perspectives in a very candid manner about the legal process and what they believed helps families in need and what might have a negative impact on children, despite good intentions."

Robbins has built a career dedicated to child advocacy with the training she received as a law student and as a fellow. Upon graduating from Law School, she became a certified Indiana probation officer working for the local juvenile court judge in Fort Wayne. Robbins later developed a family practice in Fort Wayne that involved complex custody and dissolution of marriage and paternity actions. She has also served as contract counsel for the Allen County Division of Family and Children, and as a court-appointed *guardian ad litem* in more than 100 cases.

Launched with a diminishing seed grant from the Kellogg Foundation, the fellowship program now is supported by an endowment from the Bergstrom Foundation in honor of the late Henry A. Bergstrom, a 1935 graduate of the Law School. This year, the foundation provided an additional challenge grant matching up to $30,000 in contributions to provide stipends to support fellows in their summer internships. Donors for the stipend matching grants included Sidney C. Kleinman, '57, the Hon. Maurice Portley, '78, Adrian L. Steel Jr., '75, Joseph, '72, and Lynda Zengerle, '72, and the law offices of Butzel Long, Detroit, and Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz Ltd., which is located in Chicago.

"These stipends help our fellows take the kinds of internships that can really make a difference," Duquette says. Many internships are unpaid and prior to the stipend challenge students had to raise their own support for this second phase of the program. "We appreciate the Bergstrom Foundation and our donors for taking this next step."



Live and in person

Madam Secretary: A Memoir

We live "in the midst of the perfect storm," former U.S. Secretary of State Madeleine Albright told a standing-room-only audience at the Law School last spring. "There are so many issues impinging on the United States.

"There is no question that it will be critical to the [presidential] campaign. The question of the role of the United States in the world, and [the question of] our security is very much on people's minds."

Albright, speaking shortly after publication of her book *Madam Secretary: A Memoir*, mingled recollections and insights from her many years of public service with comments on past, current — and perhaps future — events. Speaking without notes, she exhibited her well-earned reputation for gaining and holding listeners' attention. On occasion, she praised the Bush administration.

The Iraqi situation is "fairly chaotic," she said, and disagreed with the U.S. war that toppled Iraqi ruler Saddam Hussein. "We pretty much had Saddam in a box," she said. As to weapons of mass destruction, "I never thought they proved an imminent threat. I thought we should pay more attention to Afghanistan."

Regarding the Israeli-Palestinian conflict, "I think the administration's got it backwards." Taking care of Iraq won't solve the Israeli-Palestinian issue. The "roadmap" for reaching peace isn't even getting looked at now, according to Albright. "The roadmap is in the glove compartment."

On other issues:

- Iran's decision whether or not to develop a nuclear capability is "an issue of great importance."
- "It's not over" in Afghanistan. "[Hamid] Karzai is basically the mayor of Kabul. He is not in control of the whole country."
- "What a mistake it was not to have picked up the talks" with North Korea over that country's nuclear program. Eight thousand fuel rods have been reprocessed.
- Haiti's instability "is going to be the example of a foreign policy issue that becomes a key domestic issue."

Overall, she said, "I am not very happy with the direction of [U.S.] foreign policy now. I never thought that our strength came from acting alone, but by being part of an international system, not by domination alone."

She added that she believes the Bush administration has learned from experience that it needs the help and cooperation of other countries around the world and might do some things differently now.

Albright also fielded a number of questions:

- Yes, the UN needs to reform and the Security Council should include a seat for the European Union. "The biggest issue is the reform of the Security Council. Five of its 15 members are European. The Security Council as currently composed does not reflect the power structure." Mostly, the UN "needs American support. This administration has undercut the credibility of the UN, and now it needs the UN, and this puts the UN in a very difficult position."
- Re: nuclear proliferation, "there has to be some whole new system. More cooperation."
- Turkey's entry into the European Community is "a geostrategic necessity" and can show how a secular Muslim country can work well with the West.

New clinic targets children in poverty

Children who live in poverty are more vulnerable to health and developmental risks than children in higher income families. Complex issues contribute to this fact, and assisting these children may require more than simply a medical perspective.


Schroth

To train students to deal with these complexities, and to assist those who need help, the Law School has launched a new multidisciplinary program, the Pediatric Advocacy Clinic, that combines medical and legal advocacy to provide the necessary advice, counsel, and direct representation to challenge such persistent barriers that affect children's health and wellbeing.

This fall, the first group of U-M Law students is participating in the Law School's new Pediatric Advocacy Clinic — one of the first law school-connected pediatric clinics of its kind in the nation.

The clinic is part of a larger project, the Pediatric Advocacy Initiative, that is being developed by the Law School as part of its community outreach work with the Michigan Poverty Law Program. The Initiative partners legal advocates, including clinical law students, with the University of Michigan's Ypsilanti Health Center and the University's C.S. Mott Children's Hospital.

Designed to supply legal assistance to low-income families in a healthcare setting, the clinic's goal is to improve the health of low-income children and families through legal advocacy and policy reform.

Students taking the clinic provide a range of advocacy interventions to address issues such as:

- Applying for food stamps or cash assistance;
- Litigating against landlords of substandard housing that cause health problems;
- Providing referrals and representation for victims of domestic violence;
- Navigating the special education system to ensure children receive legally required services; and
- Providing policy advocacy before government bodies and other advocacy organizations.


McCormack

This fall, students are working with clinic faculty to develop relationships with the doctors, nurses, and social workers in each of the pediatric settings, and working directly with clients to provide preventive care. Students are also training healthcare providers to better advise and advocate for their patients.

Clinic casework covers an array of issues that will likely include public benefits access and coverage; health insurance problems; domestic violence and other family law; housing law; and ethical issues. The clinic is designed to provide a preventive rather than reactive approach to legal advocacy.

Clinical Professor Anne Schroth worked with U-M Law School Associate Dean for Clinical Affairs Bridget McCormack to develop the clinic. "The clinic will not only serve a community need that has not been previously met," says Schroth, "but it will also provide a unique entry point for students interested in poverty law and the legal issues that can complicate the health of low income children."

Whither 'the lost Constitution'?

Randy E. Barnett, the Austin B. Fletcher Professor of Law at Boston University School of Law, outlined his recipe for "Restoring the Lost Constitution" during a talk at the Law School sponsored by the Law School student chapter of the Federalist Society.

Restoring the Lost Constitution also is the title of his most recent book, published by Princeton University Press. Barnett frequently appears on national news programs and is a lead attorney for the Oakland (California) Cannabis Buyers Cooperative in its case against the federal government and in the medical cannabis case of *Raich v. Ashcroft*.

Citing cases from *McCulloch v. Maryland* (1819) and *Gibbons v. Ogden* (1824) to *Griswold v. Connecticut* (1965) and *Lawrence v. Texas* (2003), Barnett traced his conclusion that the United States Supreme Court has redacted parts of the U.S. Constitution and substituted the doctrine of the "presumption of constitutionality" of laws.

"What I propose is to replace the presumption of constitutionality and adapt an across the board presumption of liberty," Barnett said. He explained that the "presumption of liberty" would hold Congress to its enumerated powers. In 2003, *Lawrence v. Texas* was "doctrinally revolutionary" in its recognition of liberty as the basis of overruling a state law against sodomy, he said.

Edson R. Sunderland Professor of Law Don Herzog, who also is a professor of political science, noted in his response that "if you care about precedent, how might you go about restoring the 'lost' part of the Constitution?" The Constitution, the Bill of Rights, and each of the amendments "produced an immediate variety of reaction," Herzog continued, and noted that "the lost Constitution" offers many subjects for disagreement.

Scholarship winners Adrienne R. Brooks, Sacha M. Montas, and Nadia A. Shash

Butch Carpenter Memorial Scholarship Fund awards $10,000 first prize

The Alden J. "Butch" Carpenter Memorial Fund awarded a record-breaking $10,000 scholarship at its annual scholarship banquet this year, the largest given during the program's 26-year history. The fund, a project of the Black Law Students Alliance (BLSA), also awarded two smaller scholarships of $5,000 and $2,500 at the annual banquet.

Scholarship recipients were:

- $10,000 first place award went to Nadia Shash;
- $5,000 second place award went to Sacha Montas;
- $2,500 third place award went to Adrienne Brooks.

Carpenter, who was from Detroit and died in a tragic auto accident before he finished his legal studies, was dedicated to the survival and growth of economically depressed communities. The scholarship fund provides assistance to students who exemplify his commitment.

In his report on the status of the fund, Saul Green, '72, noted that a quarter century ago the first award was for $200. In 1988, the fund made two awards for the first time. Today, Green said, the fund has a robust balance of $350,000 and one day will reach $1 million.

Other awards presented at the banquet were BLSA Faculty Member of the Year, to visiting faculty member Daria Roithmayer, and BLSA Member of the Year, to Jennifer Blecha-Decasper.

In dinner remarks, Dean Evan Caminker noted that since the U.S. Supreme Court upheld the Law School's admission policies last year, the School has been able to return its focus to matters of faculty development, educational programming, and other efforts associated more directly with its mission of training topflight lawyers.

BLSA Chairman Christopher Moody added that the Alliance similarly has been refocusing its efforts to devote more time to student, Law School, and career issues.

Keynote speaker Michele Coleman Mayes, '74, the senior vice president and general counsel of Pitney Bowes, sprinkled her remarks with anecdotes to illustrate the complexity of the issue of race. She told of encountering a person who was clearly unqualified for the position he had held for a long time. When she asked why he still held his position, she was told that no one wanted to fire him because he was a minority.

What did that have to do with anything? she asked. The person was incompetent. It wasn't about race, it was about whether the person could do the job.

"Race can always define how you see things," Mayes said. "The question is — should it?"

Identified as one of America's top black lawyers in 2003 by *Black Enterprise* magazine, Mayes has served as assistant U.S. attorney in Detroit and Brooklyn, and was chief of the civil division in Detroit. She has also served as vice president and associate general counsel for Colgate U.S., and as vice president of human resources for Colgate-Palmolive Company. In addition, she has served on the board of directors for the NOW Legal Defense and Education Fund since 1996 and as the organization's chair since 2001. Mayes is a member of the American Bar Association, where she has co-chaired the Arbitration Committee and been a member of the Commission of Women in the Profession.

"What are the things that are truly important in moving forward in your career?" Mayes asked the students in her audience. When she is looking for people to work for her, she looks for: people with good judgment, who are smart, have moral convictions, who can forge relationships, and have leadership ability. Mayes also recommended that students continue to be intellectually curious and intellectually challenged.

Finally, she reminded the audience about the value of mentors to their careers. "Look for mentors who can help you learn something," Mayes said. "They don't have to look like you or think like you" to be valuable to you. Remember, there is always someone who has done it before you. Look for that person and learn from her or his experiences.

Scholarship Dinner speakers Barry Adelman, '69, and Anna Crowell

Benefactor asks:

Why establish a scholarship?

Sometimes your children can help you understand your motivations better than anyone else. So it was with Barry A. Adelman, '69, a senior partner at Friedman Kaplan Seiler & Adelman LLP in New York and one of the featured speakers at the Law School's annual Scholarship Dinner.

"Several years ago, when we were discussing establishing a scholarship [at the Law School], my children asked, 'Why do you want to do it?'" Adelman related in his after-dinner remarks. There are many reasons why benefactors make gifts, from gratitude to guilt to nostalgia to a desire to help the next generation, and all these and others must have flitted through Adelman's mind as he shaped his answer to his children's question.

His answer was then, and is now, that "I feel I am incredibly lucky," as he told the Scholarship Dinner audience. "I enjoy what I do. I get up every day looking forward to the work I do.

"How did this come about? It came about because of this institution. The instruction, the tools they gave us. And they gave not only the tools, but also when you got out you enjoy the practice of law."

So giving back seemed the appropriate, proper, satisfying thing to do. "We determined the best way to do this was to create a scholarship . . . to give people the opportunity to go to the Law School."

And thus the Barry A. Adelman Scholarship became one of the more than 150 philanthropically supported scholarship and financial assistance funds that provide aid to Law School students. As the Scholarship Dinner program noted, these funds "enable us to attract students regardless of their ability to meet the high cost of today's legal education. These funds have a profound impact on the School and the lives of its students."

"It brought more back to me than I ever gave," Adelman said of his establishment of the scholarship. But he didn't stop there. During the Spring term 2004 he taught Anatomy of a Deal, bringing into the classroom the lessons and expertise he has acquired through his pioneering work in the telecommunications industry in the United States and internationally.

And once again by sharing he received a great deal.

"The student body here is spectacular," he reflected on his four months of teaching. "There is no question that four months ago I was not as good a lawyer as I am now — because of my contact with students." They come to class prepared, raise mind-probing questions, and force you to reexamine your earlier successes and consider new strategies for current or future cases, he explained.

The Law School, he concluded, "is a home for all of us for many years."

Second-year law student and scholarship recipient Anna Crowell thanked donors on behalf of students who receive the aid they provide. "Thank you very much," she said. "I am sure I speak for all, thank you for all the opportunities you provide for us."

Donations from generous supporters like Adelman have established endowed scholarships and other funds at the Law School. These funds are "critical" to the life of the Law School, explained Dean Evan Caminker, who also announced establishment of four new scholarships during the 2003–2004 year: the Herman B. Cass Scholarship; the Martin M. and Allene M. Doctoroff Fund; the James R. and Anita H. Jenkins Scholarship; and the David P. Wood Scholarship.

Participants say they look forward to the annual dinner because it gives scholarship recipients and scholarship providers a chance to dine together and get to know each other. It reinforces the connections to the Law School that both students and graduates share.

Commencement returns to Hill Auditorium

More than 350 former law students became Law School graduates in ceremonies at the recently renovated and restored Hill Auditorium in May.

Last year, the Law School's spring commencement was held outdoors in the Law Quadrangle because Hill Auditorium, the traditional commencement site, was closed for construction. Reopened last winter, Hill has a newly applied bronze-hued color scheme that re-creates the original of the renowned auditorium when it opened in 1913. Other additions include secondary, sound-blocking auditorium doors and air conditioning.

Dean Evan Caminker, speaking at his first May commencement since becoming dean in summer 2003, took note of the "bittersweet" nature of the occasion: "We share your pride," he told graduates, "but we also know that the relationship we have forged with you will change."

As a class, he told graduates, your experiences have ranged from the uncertainties and fears that accompanied the terrorist attacks of September 11, 2001, to the experience of winning a decision from the U.S. Supreme Court in summer 2003 that upheld the Law School's admissions policies; those policies use race as one of many factors to ensure that Law School enrollees are part of an educational enterprise that exposes students to as many kinds of people and viewpoints as possible.

"Legal skills are very important," Caminker told the soon-to-be lawyers. "They are precisely what is needed to address some of the national problems we face today. . . . [And a legal career offers] "an opportunity for usefulness that is probably unequalled."

Quoting the late U.S. Supreme Court Justice William J. Brennan Jr., Caminker urged graduates to assimilate the rationality of the law but also "continue to draw strength from your passion."

Commencement speaker Peter G. Fitzgerald, '86, the Republican U.S. Senator from Illinois, expanded on the theme, noting that as a result of solid legal education "it has probably occurred to you that it's ultimately possible to break down, de-construct, and disprove virtually everything — every assertion, every proposition, and even every belief."

"What I do hope you will consider is a caution, and that caution is that you not allow the relativism that appears intellectually invincible, to triumph, unexamined," Fitzgerald warned. "A relativism doesn't just reject belief, it literally annihilates it. And that nihilism can seriously corrode your soul — not to mention bring your career as a lawyer to an early and tragic end.

"Before you leave here to begin your careers as lawyers, I ask you to set aside just for a few brief moments your inclination to question the legitimacy of literally everything. I ask you to do so only with respect to one belief, which I freely admit can never be confirmed, and that is this: that it does matter what you choose to do. It does matter what you set out to achieve in your careers and why you set out to achieve it. Careers and objectives

are not fungible matters of taste."

Taking note of the recent scandals that have shaken many U.S. corporations, mutual fund operations, military procurements, professional athletics, and the news media, Fitzgerald warned graduates that soon they "will encounter avarice and corruption at every turn. If you choose to believe that there is no higher end in life than the promotion of self, then in a strictly utilitarian caution, it may well bring your career to an early and unhappy end. But more important, it will extinguish your purpose and corrode your soul."

"And graduates," he continued to widespread applause, "if you don't believe that you have a soul, then get one."

But "on an optimistic note, you will also quickly learn that for every villain in life there is a hero." People like the "incorruptible" John C. Bogle, who founded the Vanguard Group Inc., baseball's Cal Ripken, investor Warren Buffet, Clarence Darrow, or Army Specialist Joseph M. Darby, who sounded the first public alarm regarding abuse of Iraqi detainees at Abu Ghraib Prison in Baghdad.

"William W. Cook, class of 1882, made a vast fortune during his career as a New York corporate attorney," Fitzgerald concluded. "Toward the end of his career and at his death he gave the tens of millions — in today's dollars, hundreds of millions — which financed the construction of the incredible Law Quadrangle. Mr. Cook personally [wrote or selected] the inscriptions that appear above the entrances to the buildings. Above the State Street entrance to the Lawyers Club, he wrote:

"'The character of the legal profession depends on the character of the law schools. The character of the law schools forecasts the future of America.'"

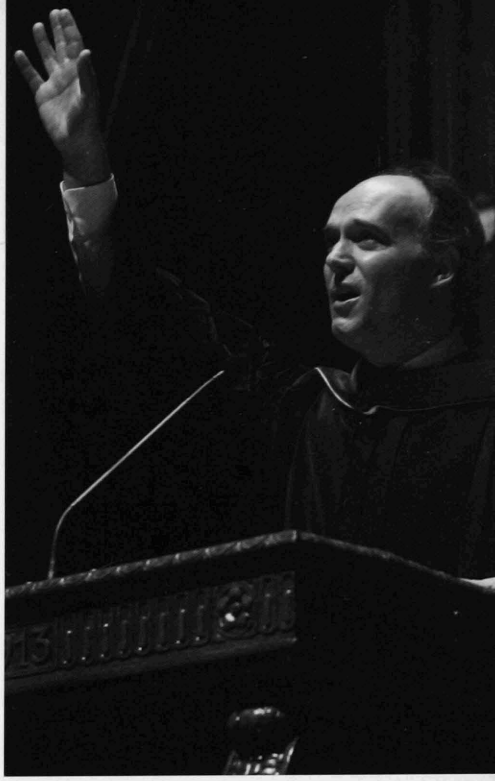
"And America, you know, is the shining city on the hill, and you are its inhabitants," said Fitzgerald.

"Welcome, graduates, to the shining city on the hill.

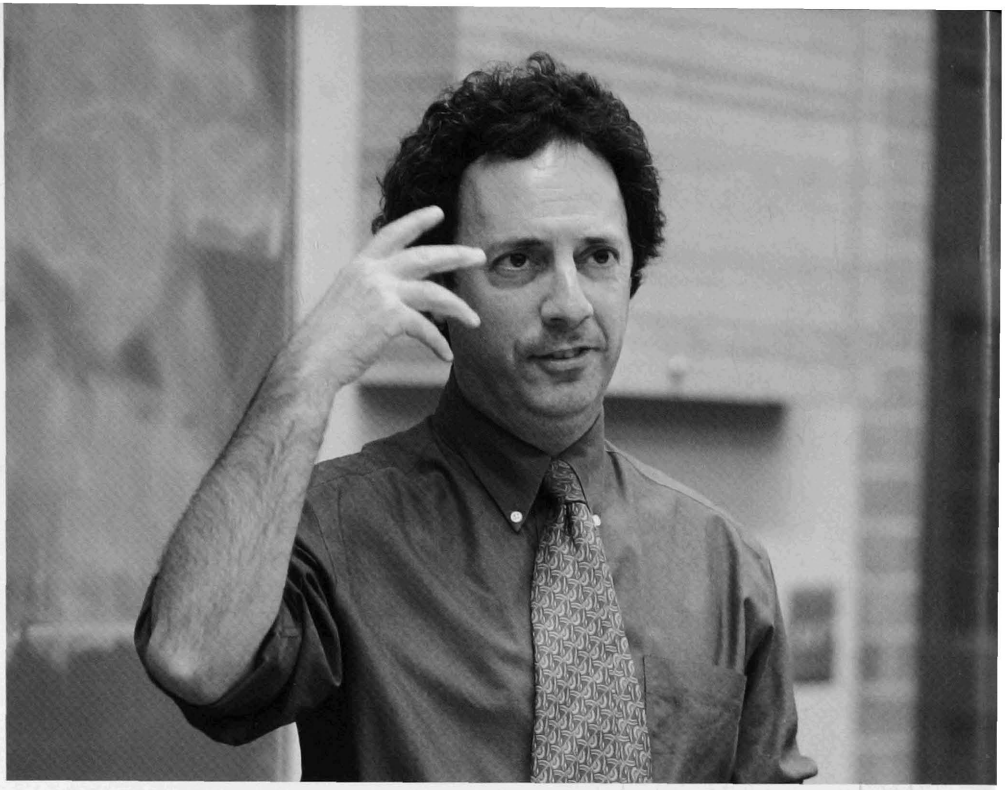
"Protect it, love it, and cede it to your children whom you will love above all else and who will teach you, finally, why you chose to believe."

Two-term president of the Law School Student Senate Maren R. Norton, herself a graduate, noted how members of the class of 2004 "began as classmates, became colleagues, and now are trusted friends.

"Live large, my friends," she urged them. "Live large."



U.S. Senator Peter G. Fitzgerald, '86, addresses Law School graduates last May. Below, graduates and well wishers mingle in Hill Auditorium's vestibule before heading to a reception at the Lawyers Club.



Kuwait and women's suffrage

Peter Berkowitz, associate professor at George Mason University School of Law and a research fellow at Stanford University's Hoover Institution, is a self-confessed "September 11, 2001, American." That means, he explained, that like many Americans he has "a new interest in American foreign policy" as a result of the 2001 terrorist attacks on the World Trade Center and the Pentagon.

Much of Berkowitz's heightened interest has centered on Kuwait, and he recounted his findings in his talk "The Struggle for Women's Suffrage in Kuwait," which closed the winter term's International Law Workshop (ILW) lecture series. The series features weekly talks by a variety of exports on cutting edge issues in international law.

Three years ago, Berkowitz related, he heard a three-woman delegation from Kuwait explain how the Kuwaiti emir favored women's suffrage. Berkowitz was intrigued by the idea of the royal family pushing for a progressive reform but holding back because of the possibility of popular backlash, an impression that was reinforced when he visited Kuwait in 2003 and again in 2004.

In his talk, Berkowitz described Kuwait as "a place where the culture of the desert meets the culture of the sea," whose history is one of seafaring trade bordered by desert isolation, a blend that has led to an unusual tolerance for differing ideas and practices coupled with great respect for and attachment to what is traditional. In the legal arena, he reported, this blend translates to a country in which women enjoy freedom, wealth, and influence, but have not demanded the power to vote.

One-third of Kuwait's labor force is made up of women, and there are no dress restrictions on females, according to Berkowitz. Kuwait's UN ambassador is a woman, the first from an Arab nation, but "women in Kuwait suffer in the area of family law." In 1999, he said, the emir issued a decree to give women the vote, but the national legislature rejected it; the lawmakers said they did so because such an important change should be initiated by the legislature, not the emir.

Professor of Law Ellen Katz, serving as commentator for Berkowitz's talk, noted that he was describing a cultural situation similar to that in the United States in the second half of the 19th and the early 20th centuries. The U.S. electorate doubled in size after passage of the Nineteenth Amendment, but "nothing changed at first," Katz said.

Other audience members, in the traditional ILW question-and-answer that followed the day's talk, wondered if poor women felt the same as educated Kuwaitis and Kuwaiti royal family members Berkowitz had talked with. Others expressed bafflement at how women could exercise social and economic power without wanting to have the vote.

Other speakers in the ILW series included:

- Emilio J. Cardenas, M.C.L. '66, president of the International Bar Association, former Argentinian ambassador to the United Nations, former executive director of HSBC Argentina Holdings S.A., and a visiting

faculty member at the Law School. Cardenas spoke on "The New Semi-Authoritarian Regimes: The Latin American Experience." A wave of democratization swept much of the world from the mid-1980s through the mid-1990s, but "now there is a counterwave of semi-authoritarianism," according to Cardenas. In countries like Pakistan, Malaysia, Peru, Venezuela, and others, there are democratic institutions but authorities use threat and intimidation to govern, he said. "They are not imperfect democracies. They are instead built as they are, with a very distinct character, and will not improve over time." He warned: "As soon as you see a country manipulate ballot calendars, watch out."

- Alice Palmer, co-director of the Foundation for International Environmental Law and Development and program director for the organization's Trade, Investment, and Sustainable Development Program in London. Palmer spoke on "A Public Voice in International Trade Disputes: NGO Strategies for the U.S. Challenge to European Regulation of Genetically Modified Products in the WTO." The WTO Appellate Body has been "erratic" in its policy toward accepting *amicus curiae* briefs, she said. In the few cases it has accepted briefs it has done so only if they accompanied the original case submission. The next major case in which the issue of briefs is expected to be significant is the dispute between Europe and the United States over genetically modified (GM) products.
- Jan-Werner Mueller, a fellow in modern thought at St. Antony's College, Oxford, spoke "On Euro-Patriotism." According to Mueller, "What the European Union (EU) seems to lack is what might be called an identification mechanism for the civil body as a whole," like an EU anthem. "Can emotion work for democracy beyond national boundaries?" he wondered. "What is special about the European Union as it has evolved?" Mueller also noted. 1) "The EU constitutionalization is an open-ended process." 2) The EU "also is open-ended and variable in regard to its constituency." And 3), the EU is "based on an expanding group, a plurality of people." The result is the requirement of "an unusually large degree of what you might call constitutional tolerance."
- Logan G. Robinson, vice president and general counsel of Delphi Corporation in Troy, Michigan, speaking on "The International Legal Practice of U.S. Multinationals: The Global Beauty Contest." China and Europe are "where the investment is going in a big way," Robinson reported. But litigation overseas usually requires the hiring of local attorneys because "litigation is specific to the local experience. Litigation is very provincial."
- Christian Joerges, professor of European economic law at the European University Institute in Florence and a visiting professor at New York University School of Law's Hauser Global Law School Program. He spoke on "The Darker Legacies of Law: The Shadow of National Socialism and Fascism over Europe's Future." How do the historical facts and legacies of National Socialism and Fascism affect current constitution-building? Joerges wondered. EU expansion is changing how peoples look at nations, he said, and East European populism is "a sign of trouble."
- Neil Walker, professor of European Law at the European University Institute in Florence and professor of legal and constitutional theory at the University of Aberdeen, spoke on "The European Constitution: Founding Moment or Fading Momentum?"

From the Supreme Court of Israel

Justice Dalia Dorner of the Supreme Court of Israel, above, addresses faculty members and others during a visit to the Law School last spring. Dorner's visit was facilitated by S.J.D. candidate Amir Chenchinski of Israel, who had clerked for Dorner at the Court. Named a permanent member of the Israeli Supreme Court in 1994, Dorner previously served as a judge of the District Court of Jerusalem, on the District Court of Be'er Sheva (an appellate court), and on the Military Court of Appeals. On the Supreme Court of Israel, she has delivered opinions recognizing women's right to serve as Israel Defense Forces pilots and homosexuals' right to equal treatment.

Conviction and disenfranchisement

Should conviction and imprisonment mean the loss of the constitutional right to vote? No, according to panelists who spoke at the Law School as part of the University's annual Martin Luther King celebration.

U.S. Congressman John Conyers Jr., D-Detroit, acknowledged that many people consider disenfranchisement of prisoners a minor issue, but nonetheless it is "a grievous wrong that has been perpetrated through the centuries. And we can correct it now."

Conyers' proposed Civic Rehabilitation and Participation Act would remedy such disenfranchisement in federal elections. And, he and fellow panelist Marc Mauer, assistant director of the Sentencing Project in Washington, D.C., agreed that the practical effect of such a federal law would mean that state elections would follow suit because of the difficulties of separating ballots.

"This is the kind of business we should be about," said Conyers, who urged listeners to contact their elected representatives. "Even the little things resonate out there."

Mauer, who has worked with the Sentencing Project since 1987, noted in response to a question from the audience that since 1996 nine states had loosened restrictions on voting by convicted felons. Two states, Maine and Vermont, allow prisoners to vote and their voting rates range from 5 to 10 percent, he said.

"I don't think there's a strong case to be made in taking or restricting voting rights," he commented. "There is one strong argument for [prisoners' right to vote], and that is rehabilitation. We have a very significant issue when people come out of prison. What reduces recidivism? People being connected to the community. When you exercise the right to vote it is a symbolic and healthy sign that you have a stake in your community."

More than 4 million Americans were not eligible to vote in the 2000 presidential election because they were in prison, reported the third panelist, Juan Cartagena, a civil rights attorney and general counsel for the Community Service Society of New York.

Cartagena also is co-chair of the New York Voting Rights Consortium and one of the attorneys involved in *Hayden v. Pataki*, a challenge to New York State's disenfranchisement laws. Minority inmates from the New York City area disproportionately come from a handful of city areas, he reported. "We assert that these laws are arbitrary and have the effect of taking away the collective voting strengths of blacks and Latinos in New York."

"Until the time that conviction of a crime costs you your citizenship, you should be allowed to vote," he said.

Cartagena added that "many individuals don't know what their rights are. They can vote if they've finished their prison term or parole." Most of the time, however, no one tells them.

The program, "The Right to Vote: Whether Felony Disenfranchisement Laws Impact Communities of Color," was moderated by Professor of Law Ellen Katz and introduced by Assistant Dean for Student Affairs Charlotte Johnson, '88.

The annual Martin Luther King Jr. Symposium is a multi-day, multi-event University-wide activity. Other parts of this year's symposium that involved Law School sponsorship or Law School groups included:

- "Nuestra Educacion: The *Mendez v. Westminster* Case Revisited." Held on January 15. An interdisciplinary symposium on the 1946 case that ruled against educational segregation of Mexicans and other ethnic minorities in California. The case provided material for developing arguments for *Brown v. Board of Education* eight years later. The Latino Law Student Association was a co-sponsor.
- "Fifty Years since *Brown v. Board of Education*." A talk by Harvard Law School Professor Christopher Edley Jr., co-director of Harvard's Civil Rights Project. Co-sponsored by the Law Library.
- "*Views and Voices*." January 13–30 and February 9–20. An exhibit examining the University of Michigan's role in the national debate about diversity and the recent Supreme Court decisions

U.S. Congressman John Conyers Jr. discusses voting rights for prisoners during a visit to the Law School in January as part of the University's Martin Luther King Jr. Symposium. Conyers' fellow panelists include Marc Mauer of the Sentencing Project in Washington, D.C., and Juan Cartagena of the Community Service Society of New York. Professor of Law Ellen Katz moderated the discussion.

upholding the principle of diversity in college admissions. The exhibit included a photographic record of activity leading up to the Supreme Court oral arguments by U-M Photo Services photographer Marcia Ledford, who practiced law for 10 years before turning to a career in photography. Co-sponsored by the Law School.

- "The Long Shadow of Little Rock." February 12. A program featuring "Little Rock Nine" member Ernest Green, the first black student graduate from Central High School, in 1958. Green earned a degree from Michigan State University, served as Assistant Secretary of Housing and Urban Affairs under President Carter, and currently is a managing partner and vice president of Lehman Brothers in Washington, D.C. Co-sponsored by the Law School.

Campbell Moot Court

The team of Katherine C. Lorenz and Jessie M. Gabriel, first and third from left, above, as counsel for the defendant, won the verdict in the annual Henry M. Campbell Moot Court Competition finals last spring. Stephen S. Sanders (standing below), who teamed with Aaron M. Page (seated) as counsel for the petitioner in the hypothetical case, was voted Best Oralist in the competition. Judges were the Hon. Norman H. Stahl of the U.S. Court of Appeals for the First Circuit; the Hon. Ann Claire Williams of the U.S. Court of Appeals for the Seventh Circuit; and the Hon. Arthur Tarnow of the U.S. District Court for the Eastern District of Michigan. The hypothetical case considered whether the survivor of a same-sex marriage in one jurisdiction could file a wrongful death action against an organization in a different jurisdiction that does not recognize same-sex marriage. The annual Henry M. Campbell Moot Court Competition was launched during the 1927–28 academic year to memorialize Campbell, who died in 1926. Campbell graduated from the University of Michigan Law School and in 1878 established a law partnership in Detroit with Henry Russell. The firm continues today as the Detroit-based Dickinson Wright PLLC, which presents the annual competition in conjunction with the Law School.

On judicial nominations

U.S. Senator Carl Levin

"Federal judges are the pillars of American civil rights and support for the Constitution," U.S. Senator Carl Levin, D-Michigan, averred in a talk on the nomination process at the Law School in March. So confirmation of their nomination to the bench should not be mired in politically-inspired delays, said the veteran senator.

Levin's appearance was sponsored by the Law School student chapter of the American Constitution Society.

Levin said he would like to see a bipartisan committee make recommendations for judicial nominees. He decried the two recess appointments of federal judges that President Bush had made after the nominations were rejected by the U.S. Senate.

"I'm not there to rubber stamp any president's nominees, whether Republican or Democratic," Levin said. Senate Democrats have blocked only five of Bush's nominations, according to Levin, while Senate Republicans had blocked some 55 of President Clinton's nominees. The Clinton nominees were blocked in committee, he added.

Earlier in the year, the society presented a three-part series on judicial nominations. Elliot Mincberg, vice president and general counsel, and legal and education director of People for the American Way, opened the series with a talk called "The Controversy over Nominations and the Dangers of Far Right Domination of the Courts." The series' second program presented a showing of the Alliance for Justice video "Packing the Courts: The Battle over President Bush's Judicial Appointments." The series concluded with a program on "Perspectives on Judicial Nominations and Clerking," presented by the Hon. Marianne Battani and the Hon. Avern Cohn, '49, both of the U.S. District Court for the Eastern District of Michigan.

Environmental moot court team shines in national competition

The University of Michigan Law School fielded a winning combination at the Environmental Moot Court National Competition held in at Pace University in White Plains, New York. The U-M team, comprised of Douglas Chartier and Richard Lee, both first-year law students, and Erica Tennyson, a third-year law student, advanced to the quarterfinal round.

The Law School team outperformed at least 45 other teams in the preliminaries to secure a place in the quarterfinals. Even more impressive, the team won Best Amicus Brief for the competition and Chartier and Tennyson received Best Oralist awards for their performances in the preliminary rounds.

The preparation for the national competition was grueling. Students who wanted to participate on the team had to submit a five- to six-page memo on the Clean Water Act (CWA), which was the broad subject of the competition. Upon selection, team members began meeting in early October with their coaches, Andrea Delgadillo, 2L, and Erica Soderdahl, 3L.

According to Chartier, it was normal for the team to work more than 10 hours a week on each of their issues for the brief, which addressed: 1) what the CWA regulates; 2) criteria for a citizen suit under the CWA; 3) when a citizen can sue under the CWA when there has been state action; and, 4) how to count the number of violations of a CWA permit. Each week the team members exchanged drafts and met to provide feedback for each other. Their *amicus* brief was due in early December.

Once the brief was submitted, the team began meeting once or twice a week for mock oral arguments with their coaches. U-M Clinical Assistant Professor of Law David Santacroce joined in the coaching at this point, and also traveled with the team to the national competition to assist them with feedback throughout the rounds.

The competition offered "a great way to learn, hone, and apply a wide spectrum of lawyering skills," Lee said. Tennyson "found it helpful to discuss the complex environmental issues and legal questions with the team and to continually refine their arguments." Chartier also praised the team approach and felt that "probably some of my best work was the result of discussing my arguments with my teammates."

"It is tough to put together a sound, cogent argument all by yourself," he explained. "I was surprised at how frequently I would have an argument that I thought was solid, yet that argument would begin to crack apart as I explained it to one of my teammates."

Where to now?

Above panelists discuss the unfolding impact of the U.S. Supreme Court decision in June 2003 that the Law School could continue to use race as one of many factors it weighs when considering applicants in order to ensure a diversity of backgrounds and perspectives among students. From left are moderator Daria Roithmayr, a visiting professor from the University of Illinois Law School; Professor Cynthia L. Estlund of Columbia Law School; Georgetown Law Center Associate Professor James Forman Jr.; and, speaking, U.S. Commission on Civil Rights member Peter N. Kirsanow, a Cleveland, Ohio, attorney. Not shown are Professor Kimberly Williams Crenshaw of Columbia Law School and UCLA; and visiting professor Kim Forde-Mazrui, '93, of the University of Virginia Law School. "It's fitting to be here," noted Forde-Mazrui. "This is ground zero, the center of the storm. This is a fitting place to ask what the decision means." Others' comments:

- Estlund: "Affirmative Action in the workplace is due for a day of reckoning."
- Forman: "It's an error to assume that what it [the Law School case] addresses [is] for the rest of education. It's in K-12 where so many of the children lose the chance to succeed, get stuck, and can't even apply to a place like the U-M."
- Crenshaw: "I think it was a greater loss to critics of affirmative action than it was a win for supporters of affirmative action." Diversity, "rather than a goal, should be seen as a baseline."

Juan Tienda Scholarship winners Rebecca Torres, Natalia Cortez, Amanda Garcia, and Michelle Echeverria flank J.T. Canales Award winner Luis A. Rosario, '0

Juan Tienda awards climb to $18,000

The Latino Law Students Association (LLSA) announced a new public service fellowship program and handed out a record-breaking $18,000 in scholarships and fellowships at its 19th annual Juan Tienda Scholarship Banquet this year.

Eleven law students were awarded fellowships totaling $8,000. In addition, LLSA presented four first-year students with Juan Tienda Scholarships of $2,500 each. The scholarships, whose number and amounts have grown steadily over the years, were totally funded this year by General Motors Corporation. GM's support made it possible for LLSA to devote its resources to the new fellowships, called the Project Communidad Juan Tienda Fellowships.

The new fellowships are the result of a conversation last summer between two LLSA leaders. "It'll take an awful lot of work," LLSA Chair Marisa Bono responded when Executive Board Member Alicia Gimenez proposed the new fellowships. The fellowships will help law students take low-paying, or non-paying public service jobs, responded Gimenez. "You're right," Bono told her. "If you can do it, go ahead."

Gimenez did, and helped announce winners of the new fellowships at this year's banquet, whose program also featured announcement of the traditional Juan Tienda Scholarships.

"Financially, they're scholarships, but morally they're loans," Scholarship Committee Chair Martin R. Castro, '88, said as he announced scholarship winners Natalia Cortez, Michelle Echeverria, Amanda Garcia, and Rebecca Torres. Castro, of Seyfarth Shaw in Chicago, won a Juan Tienda Scholarship as a student in 1986. He said he's gladly been paying back on that honor ever since with service to the Latino community and the legal profession.

Each scholarship winner also received one of the new Project Communidad Juan Tienda Fellowships. Other fellowship winners were: Jessica Berry, Gary Brucker, Ana Frischtak, Melissa Klein, Fernando Tamayo, Lisa Vara-Gulmez, and Lisa Zamd.

In other activity at the annual banquet, Luis A. Rosario, '99, of the Chicago office of Bell, Boyd & Lloyd LLC, won the J. Canales Award, named for an 1899 graduate of the University of Michigan Law School. Canales, (1877-1976), served in the Texas House of Representatives and founded the League of United Latin American Citizens.

Rosario, who was president of LLSA when he was a law student, specializes in antitrust and trade regulation work. He also is a volunteer at the Insight Tutoring Program at St. Joseph's School in Chicago. Receiving the award "is a new reminder" of his privilege in attending the Law School and also "a reminder to me that I owe it to you to continue to do these things, to work hard," he said in his acceptance remarks.

Keynote speaker Thomas Saenz, vice president of litigation of the Mexican American Legal Defense Education Fund (MALDEF), noted that people of Hispanic descent recently have become the largest minority in the United States. "We are now a population that is distributed throughout the country," he explained. Many Americans still fear Latinos or are hostile to them, and too often issues of language, accent, or immigration can become proxies for racial discrimination, he said.

"Too often these legitimate concerns morph into a generalized hostility," he explained. "What the legal system must face in the next five years is how to grapple with the use of these proxies, how to define clearly when to [legally] discriminate on the basis of immigration or language, and when it is as pernicious as racial discrimination in its worst forms."

Recognizing that this year is the 50th anniversary of the *Brown v. Board of Education* decision that ended segregation in public schools, Saenz noted that many separate and lesser known cases, including the earlier *Hernandez* case that won a similar ruling for Hispanics, led to the landmark *Brown* decision. Next up is the "Latino-focused civil rights era," he predicted, and "we must reapply the lessons of those lawyers who 50–60 years ago litigated the cases that led to *Brown*."

SOME COOL ICE

Law students who took to the ice last spring in the Skate for Justice tournament raised $3,600 to benefit the State Bar of Michigan's Access to Justice program, which helps poor people get legal assistance. Spearheaded by the Michigan Law School team captained by law student Brian Schwartz, this was the second annual tournament, featuring teams from law schools at Wayne State University, Michigan State University, University of Detroit Mercy, and the University of Michigan and Ave Maria Law School in Ann Arbor. State Bar of Michigan President Nancy Diehl, former State Bar President Reginald Turner, '87, and State Bar Treasurer Kimberly Cahill, '85, presided over opening ceremonies and the symbolic dropping of the puck. Fans got a full afternoon of hockey at the U-M's Yost Arena: two preliminary games, an open skate with the players, a consolation game, and the championship game. Despite vocal discouragement from bleachers full of Law School fans, the home team displayed good manners as host team for the tournament — and promises to play in a less well-mannered, higher scoring way next year.

ICRC works hard to be objective

The International Committee of the Red Cross (ICRC) "strongly believes that the global war against terrorism cannot be viewed as an international global conflict," Brigitte Oederlin, above, a Washington, D.C.-based legal advisor to the ICRC, told a Law School audience last spring. "Some terrorist acts are open armed conflict, some are not. Terrorist acts are first and foremost crimes." Earlier in the day, Oederlin addressed the Law School class of visiting professor Andreas Paulus, of the Institute for Public International Law at Ludwig-Maximilians University in Munich. In her public talk, Oederlin stressed ICRC's role of visiting prisoners and victims of conflict and keeping confidential the reports of abuses it files with the authorities in charge. ICRC neutrality is critical to doing its work, she explained. "ICRC hardly ever speaks publicly about any situation," and then only as a last resort, she said. "It is criticized for this, and it is sometimes extremely difficult, but it is something we have to comply with." Peter J. Bauer, a former U.S. military intelligence officer who served in Operation Desert Storm against Iraq in 1991, also spoke on the program. "The U.S. military does a very good job at training its interrogation people in what is legal," Bauer said.

In Detail

Croley article wins ABA scholarship award

An article by Professor of Law and Associate Dean for Academic Affairs Steven Croley has won the top award for scholarship from the American Bar Association (ABA) Section of Administrative Law and Regulatory Practice.

Croley's article, "White House Review of Agency Rulemaking: An Empirical Investigation," appeared at 70 *University of Chicago Law Review* 821-885 (2003). It examined White House review of federal agency rulemaking during the Reagan, first Bush, and Clinton administrations.

Reagan issued executive orders in 1981 and 1985 calling for White House review, and Bush continued them. Clinton revoked the previous orders and issued Executive Order 12866, which largely preserved the substance of the Reagan orders but provided for more transparency and record-keeping of the process.

The article is "largely an empirical investigation of the phenomenon of White House review of rulemaking, but it goes well beyond the reporting of data," the ABA section's Committee on Scholarship reported in its recommendation of Croley for the award. "The article situates the data within larger debates concerning the regulatory state, the proper role of the President of the United States within the regulatory state, and the costs and benefits of centralized review."

Croley mined the logs kept by the Regulatory Information Services Center (RISC) and the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. His investigation noted the high incidence of proposed Environmental Protection Agency rules during the Clinton years, which accounted for more than one-half of OIRA's review meetings. He found, for example, that: 1) The Reagan and Bush White Houses reviewed more than 2,000 rules a year, the Clinton administration fewer. But the Clinton White House reviewed more significant rules and required changes in more of them; 2) Agency representation, the significance of the rule under review, or the presence of representatives of outside interests at OIRA meetings did not appear to affect whether or not the proposed rule was changed; and 3) Environmental Protection Agency rules "constitute a dramatic case of the general trend during the Clinton administration of fewer rules reviewed and a much higher percentage of them changed as a result of the OIRA review process."

Croley writes that "the data here thus facilitate evaluation of competing claims about the merits of a strong regulatory president and competing visions of regulatory government. . . . Last but not least, this article argues that greater White House influence on agency rulemaking is, on balance, a welcome development in administrative law."

Law School welcomes five new faculty members

Students value their opportunity to learn from the Law School's exceptional faculty members, and graduates tell you their contacts with faculty members are at the heart of many of their fondest memories of their Law School years. After leaving the Law School and launching careers, many graduates maintain contact with faculty members as supporters, mentors, and sometimes colleagues.

This year, the Law School community welcomes five new faculty members who reflect the high level of accomplishment and promise that is traditional at the Law School. The new faculty members are:

Alicia Davis Evans

Assistant Professor of Law Alicia Davis Evans teaches in the corporate law area. Her current research focuses on how the law should respond to increased business complexity and on developing a superior means of deterring securities fraud and compensating its victims.

Evans earned her B.S. in business administration, *summa cum laude*, from Florida A&M University, her M.B.A. from Harvard Business School, and her J.D. from Yale Law School. While at Yale, Evans was co-notes editor of the *Yale Journal on Regulation*, a senior student director of the Housing and Community Development Clinic, and a co-recipient of the Stephen J. Massey Prize and Yale Elm and Ivy Award for her community development activities.

Evans

Evans practiced law at Kirkland & Ellis LLP in Washington, D.C., where she represented public and private companies and private equity firms in mergers and acquisitions and leveraged buyout transactions. Her experience also includes five years as an investment banker, first with Goldman, Sachs & Company in New York, where her clients included Fortune 100 companies pursuing equity and debt financings, and then with Raymond James & Associates in St. Petersburg, Florida, where she most recently served as a vice president and represented public and private companies in middle market mergers and acquisition transactions.

Evans is a member of the Florida and the District of Columbia bars.

Vikramaditya S. Khanna

Professor of Law Vikramaditya S. Khanna served on the Boston University School of Law faculty before joining the University of Michigan Law School faculty this fall. He earned his S.J.D. at Harvard Law School and has taught as a visiting faculty member at Harvard Law School and Northwestern Law School. He is a recipient of the John M. Olin Faculty Fellowship for 2002–2003.

Khanna

Khanna's areas of research and teaching interests include corporate law, securities fraud and regulation, corporate and managerial liability, and law and economics.

His papers have been accepted for publication in the *Harvard Law Review*, *Boston University Law Review*, and the *Georgetown Law Journal* among others. Among his recent articles are "Should the Behavior of Top Management Matter?" which appeared in the *Georgetown Law Journal* (91, no. 6 [2003]:1215–56) and "Double Jeopardy's Asymmetric Appeal Rights: What Purpose Do They Serve?" in the *Boston University Law Review* (82, no. 2 [2002]: 341–404).

Khanna also has presented papers at Harvard Law School, Columbia University School of Law, the American Law & Economics Association Annual Meeting, University of Michigan Law School, University of Southern California Law School, University of California at Berkeley Law School, the National Bureau of Economic Research, and Stanford Law School among others.

Roshunda Price

Roshunda Price, '93, is a member of the Law School's Legal Assistance for Urban Communities Clinic (LAUC). Prior to joining the clinic staff, she served as senior counsel with L.R. Sowell & Associates PLLC in Detroit, where she provided a full array of business legal services to corporations, partnerships, and other entities. Price's other experience includes serving as the staff attorney for LAUC; assistant corporation counsel for Wayne County, Michigan; senior attorney, Business Practice, for ANR Pipeline Company in Detroit; and associate attorney, Business and Commercial Practice, with Howard & Howard Attorneys PC in Bloomfield Hills, Michigan. She served as a law clerk to the Honorable John Feikens, '41, U.S. District Court, Eastern District of Michigan. Price earned her J.D. at the University of Michigan Law School and a B.B.A. from the U-M Business School. While earning her law degree, Price served as a contributing editor for the *Michigan Journal of International Law*. Price is also a Certified Public Accountant and licensed real estate broker. She is active in the State Bar of Michigan, having served as the

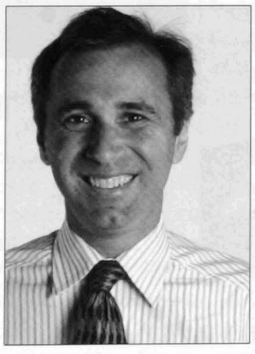
Price

chair of the Young Lawyers Section and the American Bar Association where she currently serves as delegate to the House of Delegates.

Steven R. Ratner

Professor Steven R. Ratner comes to the Law School from the University of Texas School of Law at Austin, where he taught international legal process, the law of war, protection of human rights in international law, international law on foreign investment, international organizations, and individual accountability for human rights abuses. He holds a J.D. from Yale Law School, an M.S. (diplôme) from the Institut Universitaire de Hautes Etudes Internationales (Geneva), and an A.B. from Princeton. Prior to joining the Texas faculty in 1993, he was an attorney-adviser in the Office of the Legal Adviser at the U.S. State Department.

Ratner's research has focused on the challenges facing new governments and international institutions after the Cold War, including ethnic conflict, territorial borders, implementation of peace agreements, and accountability for human rights violations. He has written and spoken extensively on the law of war, and also is interested in the intersection of international law and moral philosophy and other theoretical issues. In 1998–99, he served as a member of the UN Secretary-General's three-person Group of Experts for Cambodia.



Ratner

Among his publications are three books: *International Law: Norms, Actors, Process* (Aspen, 2002; co-author); *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (Oxford, 1997 and 2000; co-author); and *The New UN Peacekeeping: Building Peace in Lands of Conflict after the Cold War* (St. Martin's Press, 1995). Earlier this year, he published "Overcoming Temptations to Violate Human Dignity in Times of Crisis: On the Possibilities for Meaningful Self-Restraint," in *Theoretical Inquires L*, and "The Methods of International Law" in *Studies in Transnational Legal Policy*, co-edited with A. Slaughter and published by the American Society of International Law. A member of the board of editors of the *American Journal of International Law*, Ratner was a Fulbright Scholar at The Hague in 1998–99, where he worked in and studied the office of the OSCE High Commissioner on National Minorities.

Kimberly Thomas

Clinical Assistant Professor of Law Kimberly Thomas joins the faculty at the Law School this fall, teaching in the general civil/criminal clinic. She previously taught at the Law School as a visiting faculty member.

Thomas earned her B.S., *magna cum laude*, from the University of Maryland and her J.D., also *magna cum laude*, from Harvard Law School, where she was editor in chief of the *Civil Rights-Civil Liberties Law Review*. While in law school, she also taught an undergraduate seminar in Harvard's economics department.

Thomas clerked for Judge R. Guy Cole at the Sixth Circuit Court of Appeals and served as a major trials attorney with the Defender Association of Philadelphia prior to joining the Law School faculty.

During law school she worked for the NAACP Legal Defense and Education Fund, and spent time with Legal Aid of Cambodia and the Justice Committee of Parliament in Cape Town, South Africa.

Thomas

In addition to practicing law, Thomas has worked as a newspaper reporter and as a high school math teacher.

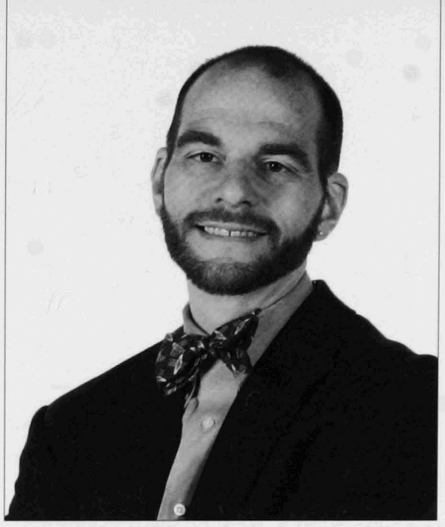
Pritchard on Powell: One of the Top 10

Professor of Law Adam C. Pritchard's article examining the influence of U.S. Supreme Court Justice Lewis F. Powell Jr. in the modern interpretation of securities law and his efforts to rein in the expansion of Securities and Exchange Commission power has been named one of the 10 Best Corporate and Securities Articles of 2003.

Pritchard's article was selected from more than 450 candidates, the most ever recorded in this competition. The record number of articles submitted reflects "the impact of corporate reform on our profession," Robert B. Thompson wrote in his award announcement letter to Pritchard. Thompson, the New York Alumni Chancellor Professor of Law at Vanderbilt University Law School, is editor of *Corporate Practice Commentator*, which makes the annual award. The judges in fact named 11 winners this year because their deliberations resulted in one tie.

Pritchard's article, "Justice Lewis F. Powell Jr. and the Counterrevolution in the Federal Securities Law," was published at 52 *Duke Law Journal* 841–949 (2003). Pritchard did much of his research for the article by combing through the Powell Archives at the Washington and Lee Law Library, where he had access to the informal memoranda, preliminary drafts of later-public documents, and other materials that offered insight into the conceptualization and evolution of Powell's ideas and those of other justices.

Powell's arrival at the Court in 1972 came at a time of expanding corporate liability and other changes in traditional securities law. But "by the time Powell retired from the Court on June 26, 1987, federal securities law had been confined,"



Pritchard

according to Pritchard. "In contrast to his reputation as a swing vote in constitutional cases, Powell had profoundly conservative views on the proper scope of the federal securities law, and he pushed the Court toward holdings consistent with those views," Pritchard notes.

"It would be an exaggeration to give Justice Powell sole credit for this retrenchment — other justices wrote important opinions curtailing the growth of liability under the federal securities law," Pritchard writes. "And the threat of a federal incorporation was beaten back with the election of Ronald Reagan, which augured a renewed commitment to the governing role of the states. Nonetheless, it would be difficult to identify anyone who did more to limit the reach of the federal securities law than Powell."

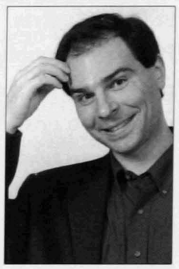
Pritchard focuses on six aspects of Powell's role:

- Pre-Court career and development of expertise on securities issues;
- Leadership role in the Court's securities issues;
- Efforts to minimize liability exposure under securities law;
- Preference for predictability in securities law;
- Protection of local business from hostile takeover; and
- Skepticism toward SEC efforts to expand its authority.

One of the other winning articles, "Internalizing Outsider Trading," by Ian Ayres and Stephen Choi, appeared at 101 *Michigan Law Review* 313–408 (2002). Ayres delivered the annual Olin Lecture in Law and Economics at the U-M Law School last fall.

Primus wins Wright Teaching Award

The Law School's annual Honors Convocation celebrates leadership in many areas throughout the Law School. Awards are presented to staff of Michigan law journals, recipients of fellows for overseas study, as well as certificates of merit for class performance and service awards.



Primus

The program also notes the special recognition of the L. Hart Wright Outstanding Teaching Award, "an annual award presented in recognition of excellence in teaching" that went this year to Assistant Professor Richard Primus. Named for a long-time and respected faculty member, the award recipient is selected by the Law School Student Senate from nominations submitted by law students.

Wright's name also is attached to one of the Law School's endowed professorships, and this year's Honors Convocation speaker was L. Hart Wright Collegiate Professor of Law James Boyd White. White praised the accomplishments of the award winners and those students who were about to graduate, noting that "you who are graduating have all been through something hard that few people could do at all."

White

Activities

In July, Irwin I. Cohn Professor of Law **Reuven Avi-Yonah** presented papers at the tax history conference at Cambridge University in England and at the conference on tax and trade law in Rust, Austria. In June, he visited the People's Republic of China to participate in the planning for the World Bank project on post-WTO tax reform in Beijing, to teach a course on international tax at Tsinghua University as part of the Michigan-Tsinghua exchange program, and to speak on international tax to the state tax administration at Yunan. In May, he taught a course on multinational business at Tel Aviv University Law School and delivered papers on corporate tax at Tel Aviv and Hebrew University law schools.

Assistant Professor of Law **Michael S. Barr** taught the mini-course International Banking & Finance at Tsinghua University School of Law in Beijing in May. In April, Michigan Radio interviewed Barr on the topic of financial services for the poor; the same month he also co-organized and moderated a panel on policy priorities, and gave a presentation on "Microfinance and Finance Development" for the conference "Globalization, Law, and Development" at the Law School.

Assistant Professor of Law **Laura Beny** in June presented a preliminary work on discrimination in law firms as part of the "Workplace Discrimination from the Institutional Perspective" panel at the First New Legal Realism Conference: The New Legal Realist Method, at the University of Wisconsin; the same month she attended the opening dinner at the ninth Mitsui Life Symposium on Global Financial Markets: Microanalysis and Emerging Markets at the University of Michigan Business School. In May, she presented her article "Do Shareholders Value Insider Trading Laws? International Evidence" at the annual meeting of the American Law and Economics Association at Northwestern University Law School; Beny also presented the same article earlier this year at the John M. Olin Conference on Empirical Research in Corporate Bankruptcy and Securities at the University of Virginia Law School. In April, she presented her article-in-progress "Law as Competing Narratives: Reflections on *Presbyterian Church of Sudan v. Talisman Energy Inc. and the Republic of Sudan*" at the annual meeting of the American Comparative Literature Association at the University of Michigan.

Assistant Professor of Law **Susanna L. Blumenthal** presented her paper "The Default Legal Person" at Boston College Law School in April and at Boston University Law School in March; also in March, she spoke on "Law and the Modern Mind: The Problem of Consciousness in American Legal Culture" at the Radcliffe Institute for Advanced Study at Harvard University. Last December, she delivered her paper "Law and the Problem of Trust" at the Yale Legal History Forum.

David L. Chambers, the Wade H. McCree Jr. Collegiate Professor of Law Emeritus, delivered the Mitchell Lecture at the State University of New York at Buffalo Law School in March; his talk title was "Going Beyond *Grutter*."

Rebecca S. Eisenberg, the Robert and Barbara Luciano Professor of Law, has been appointed to the Committee on Intellectual Property in Genomic and Protein Research and Innovation for the National Academies of Science. In June, she participated in the conference "The New IP Order — A Global Trade-Off," jointly held in Israel by the Interdisciplinary Center of Herzliya and the Center of Law & Technology at the Faculty of Law, University of Haifa. In May, she participated in the expert briefing for the American Civil Liberties Union on "DNA Banks to Designer Babies: Challenges for Civil Liberties," held at Suffolk University Law School in Boston. She spent the spring term as a distinguished visiting faculty member at the University of Toronto Law School and gave workshops at George Washington Law School, the University of Chicago Medical School, the University of Wisconsin Business School, UCLA Law School, and Cardozo Law School. She also delivered the keynote address, "Dual Controversies of the Double Helix: Challenges of Regulating the Information and Property Aspects of Genetic Technology," at a symposium at the University of Toronto Center for Innovation Law and Policy, and spoke on patent law reform at a symposium at the Berkeley Center for Law & Technology.

Frank Murphy Distinguished University Professor of Law and Psychology **Phoebe Ellsworth** spoke on appraisal theories of emotion at the meeting of the International Society for Research on Emotion in July. In June, Ellsworth lectured on race and juries at the Law and Society Association meeting. Earlier in the year, she delivered talks at Reed College on the interaction of race and juries and the relationship between culture and emotion.

Professor of Law **Daniel Halberstam** spoke on "Beyond Competences: The Political Morality of Divided Power Systems" at the program "Towards a European Constitution: From the Convention of the IGC and Beyond" at The Federal Trust for Education and Research at Goodenough College in London in July. In June, he spoke on "Federalism and Power" in a faculty lecture at the Law Institute at the University of Zürich. In May, he was a panelist to discuss "The Domestic Legal Effect of International Law in Europe and the United States" at the symposium on Europe and International Law sponsored by the *European Journal of International Law* at Villa La Pietra in Florence. Halberstam also spoke on "Interpreting Federalism in Europe and the United States" at the conference "The U.S. and EU [European Union] in Comparative Perspective" at the Center for European Studies at New York University. In April, he delivered the paper "Liberal Intergovernmentalism and Democracy in Europe: A Reply to Andrew Moravcsik" at the New York University-Princeton University Joint Colloquium Alteneuland: The Constitution of Europe in an American Perspective.

In May, Alene and Allan F. Smith Professor of Law **Robert Howse** chaired the launch event for *amicus* briefs filed in the EC-biotech case by the NGO coalition and academic experts at Harvard's Kennedy School of Government and Lancaster University in Geneva. Howse also was a commentator for the Michigan Law School/*European Journal of International Law*/New York University conference in Florence, Italy. During April-May, he taught an intensive course on WTO law at Tel Aviv University Law Faculty in Israel. In April, he spoke on "Europe and Global Order: Kojeve's 'Latin Empire' and Carl Schmitt's *Nomos der Erde*," at Osgoode Hall Law School and the University of Toronto Faculty of Law Conference "New World Legal Orders" in Toronto. In March, he briefed journalists on covering WTO law at the "Covering Globalization" workshop at Columbia University School of Journalism and on the "Initiative for Policy Dialogue" at Columbia University; and presented a workshop on the "Democratic Deficit of the WTO" at the University of Minnesota Law School.

Clarence Darrow Distinguished University Professor of Law Emeritus **Yale Kamisar** was a featured speaker at ceremonies at the University of California at Berkeley last February that marked the 50th anniversary of Earl Warren's ascension to the position of Chief Justice of the U.S. Supreme Court.

Professor of Law **Ellen D. Katz** moderated the panel on "Reframing Democracy: Texas, Georgia, Pennsylvania and the Redistricting Battles" at the national convention of the American Constitution Society held in June in Washington, D.C. In April, she participated in the University of Michigan roundtable discussion on "Comparative Perspectives on Race and Citizenship: Slavery and Post-Emancipation Societies in Brazil, Santo Domingo, and the United States," sponsored by the Department of Latin American and Caribbean Studies and the Atlantic Studies Initiative.

Richard O. Lempert, '68, the Eric Stein Distinguished University Professor of Sociology and Law, has been asked to join the Strategic Planning Advisory Committee of the International Social Science Council and participated in the committee's meeting in Paris in April. He continues on leave to serve as division director for the social and economic sciences at the National Science Foundation. In August, he participated in the Gordon Conference on Science and Technology Policy in Montana and in June took part in the Dahlem Workshop on Heuristics and the Law in Berlin. He returned to the Law School to moderate a panel on "Social Science Reframing: Social Cognition Theory/Social Psychology/Critical Sociology" at last spring's annual meeting of the California-based Equal Justice Society; the program topic for the conference's two days of panel discussions was "Protecting Equally: Dismantling the Intent Doctrine & Healing Racial Wounds." Earlier in the year, he took part in a conference in Bangalore, India, on "The ITC and Sustainable Development"; participated in a conference on "Probability and Causation and the Law" in Death Valley; spoke at a conference on science for judges at Brooklyn Law School; and spoke on "Social Science in the 21st Century: Implications for Drug Abuse Research" at the National Institute of Drug Abuse.

Clinical Professor of Law **Rochelle Lento**, director of the Law School's Detroit-based Legal Assistance for Urban Communities Clinic, continues to serve on the Federal Reserve Advisory Board. In May, she was a panelist for discussions at three conferences: "Understanding the Due Diligence Checklist in an Affordable Housing Transaction," part of the ABA Forum on Affordable Housing and Community Development Law at the ABA's annual conference in Washington, D.C.; "Understanding What You Are Getting Into: Legal Partnerships and Joint Ventures in Affordable Housing," at the

Michigan Affordable Housing Conference in Lansing; and on the panel "Clinical Programs for the Future: Small Business, Community Development and other Transactional Clinics," at the Association of American Law Schools Conference on Clinical Legal Education in San Diego.

Professor of Law **Nina Mendelson** spoke on congressional oversight of administrative agencies at the joint meeting of the sections of Administrative Law and of Legislation at the annual meeting of the Association of American Law Schools in Atlanta this year.

Professor of Law **Adam C. Pritchard** had his article "Justice Lewis F. Powell Jr. and the Counter-Revolution in the Federal Securities Laws" (52 *Duke Law Journal 841* [2003]) selected for inclusion in the Top 10 Corporate and Securities Articles of 2003. (See story on page 33.) In August, Pritchard taught Securities Disclosure and Enforcement at the University of Iowa College of Law. In March, he presented his paper "Do the Merits Matter More? Class Actions under the Private Securities Litigation Reform Act" at the American Enterprise Institute's program Empirical Research on Securities Fraud Litigation. In February, he presented his paper "Should Issuers be on the Hook for Laddering? An Empirical Analysis of the IPO Market Manipulation Litigation" at the 2004 Corporate Law Symposium at the University of Cincinnati College of Law and also was a panelist for the Pomerantz Lecture Program at Brooklyn Law School; and in January he was a panelist for the University of Michigan Business School's conference on European business.

Thomas M. Cooley Professor of Law Emeritus **John W. Reed** spoke on "A Matter of Black and White at the University of Oklahoma (the Ada Lois Sipuel case)" at the annual banquet of the University of Michigan Scientific Club in May. Last spring he discussed "Competence and Character" as keynote speaker for the National Conference of Bar Examiners biennial seminar at New Orleans and spoke on "The Tangle of Our Motives" to the International Society of Barristers annual convention in Naples, Florida. Earlier this year he discussed "Alternatives to Judicial Elections" at the Wayne State University Law School Judicial Independence Forum in Detroit. Reed also has been elected a trustee of the Ann Arbor Area Community Foundation, which awards grants to area organizations. He continues as a drafting committee member but has retired from chairmanship of the evidence portion of the Multistate Bar Examination (MBE), a post he had held since MBE began in the early 1970s. Reed is the longest serving chair of the six MBE drafting committees. He also continues as a member of the executive committees of the Institute of Continuing Legal Education and of the Board of Directors of the Michigan Supreme Court Historical Society.

In July, Hessel E. Yntema Professor of Law **Mathias W. Reimann**, LL.M. '83, spoke on "Is the Structure of American Law an Advantage for American Lawyers in Global Competition?" at the University of Bayreuth in Germany and discussed "Lessons from 10 Years of Common Core Research" at the 10th General Meeting of the Common Core of European Private Law Project in Trento, Italy. In May, Reimann spoke on "Emerging Global Standards in Product Liability Law" as part of the symposium in honor of Hein Kötz, M.C.L. '63, on the occasion of Kötz's retirement as president of the Bucerius Law School, Germany's only private law school, in Hamburg. In April, Reimann was a speaker at the American University College of Law on the subject of internationalizing the curriculum, focusing especially on U-M Law School's three years of experience with its pioneering Transnational Law course.

Assistant Clinical Professor of Law **David Santacroce** presented his paper "Discovering Evidence in the 21st Century" at the Association of American Law Schools' Conference on Clinical Education in San Diego.

In May, **A.W. Brian Simpson**, the Charles F. and Edith J. Clyne Professor of Law, delivered the Fulton Lecture in Legal History at the University of Chicago Law School, speaking on "The European Convention on Human Rights — Fifty Years On."

Assistant Professor of Law **Molly S. Van Houweling** last spring presented her paper "Distributive Values in Copyright" at the University of Virginia School of Law's Intellectual Property Colloquium, Stanford Law School's Property and Contract Go High-Tech seminar, and the conference "Intellectual Property, Sustainable Development, and Endangered Species: Understanding the Dynamics of the Information Ecosystem," hosted by Michigan State University Law School. Van Houweling also serves on the board of directors of Creative Commons, an organization dedicated to building a layer of reasonable, flexible copyright law in the face of increasingly restrictive default rules.

Lewis M. Simes Professor of Law **Lawrence Waggoner**, '63, as Reporter attended the May meeting of the American Law Institute to present the fourth installment of the Restatement (Third) of Property: Wills and Other Donative Transfers, a draft that covered class gifts, including the emerging topic of how a child of assisted reproduction should be treated for purposes of a class gift; the draft was approved and becomes part of the third volume of the Restatement.

Nippon Life Professor of Law **Mark D. West**, faculty director for the Law School's Center for International and Comparative Law and director of the University of Michigan's Center for Japanese Studies, spent part of the summer as an invited research scholar at Kyoto University in Japan. In May, he spoke on "Scandal in Japan and America" at the Japanese Legal Studies Conference at Cornell Law School and on the issue of "Dying to Get Out of Debt: Consumer Insolvency Law and Suicide in Japan" at the annual meeting of the American Law and Economics Association at Northwestern University. He also spoke on the relationship between debt and suicide in Japan at the University of Toronto Law and Economics Workshop in March.

In May, **James Boyd White**, the L. Hart Wright Collegiate Professor of Law, presented a paper on the relation between language and the mind at a conference in Brussels and was speaker for the Law School's Honors Convocation. In April, White was speaker for a conference of Canadian judges sponsored by the National Judicial Center in Ottawa and in March directed a session at the Law, Culture, and Humanities Conference in Hartford.

James J. White, '62, the Robert A. Sullivan Professor of Law, taught a special two-week Sales Seminar at Tel Aviv University in May. Earlier in the year, he was a speaker at the *Wisconsin Law Review* symposium "Freedom from Contract."

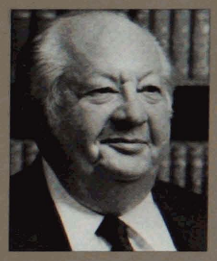
Visiting and adjunct faculty

Leonard M. Niehoff, '84, of Butzel Long in Ann Arbor, has received the Patriot Award from the Washtenaw County (Michigan) Bar Association "for outstanding service in promoting a better understanding of the Constitution and the Bill of Rights." In June, Niehoff spoke on "Defamation in Higher Education" at the annual meeting of the National Association of College and University Attorneys in Vancouver and was a panelist for the association's national "virtual seminar" on "Free Speech on Campus." In April, he spoke on "Media Relations in High-Profile Employment Cases" at the annual labor law symposium of the Institute for Continuing Legal Education.

Clarification

It has been reported erroneously that Clarence Darrow Distinguished University Professor of Law Emeritus Yale Kamisar is teaching part of the year at UC-San Diego School of Law. Kamisar is a tenured member of the faculty at the University of San Diego Law School, where he teaches part of each year. *Law Quadrangle Notes* apologizes for the error.

Professor Emeritus William J. Pierce, '49



Professor of Law Emeritus William J. Pierce, '49, died on July 6 at the age of 82. He taught at the Law School for 40 years, from the early 1950s until the early 1990s.

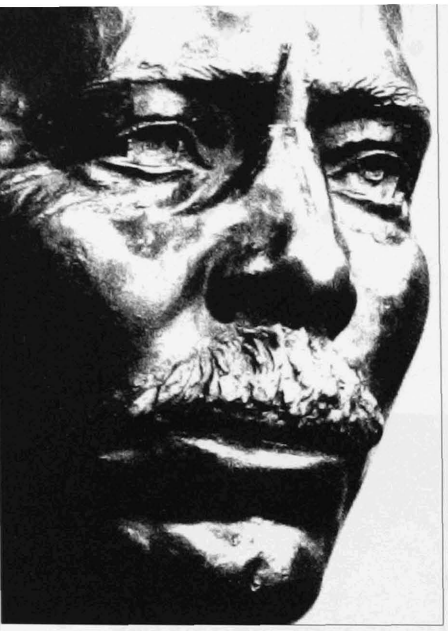
A native of Flint, Michigan, Pierce served in the U.S. Army with the 62nd Engineering Battalion during World War II before enrolling at the University of Michigan. He earned his bachelor's degree from the U-M in 1947 and his law degree in 1949.

Pierce joined the Law School faculty in 1951 and retired as professor emeritus in 1992.

A life member of the National Conference of Commissioners on Uniform State Laws, Pierce was an active participant in conference activities for more than 50 years and was a past president and executive director emeritus at the time of his death. He also was a member of the Permanent Editorial Board for the Uniform Commercial Code.

Pierce's wife Betty died last year. He is survived by his four children, nine grandchildren, and sister-in-law. A memorial service for Pierce was held in Ann Arbor on July 10.

Contributions in his memory may be made to the University of Michigan Law School via the Law School Development Office, 109 E. Madison, Ann Arbor, Michigan 48104, or to the Uniform Law Foundation, 211 E. Ontario #1300, Chicago, Illinois 60611.



Discovering Mr. Cook

The following feature is based on a talk given to the Law School's Committee of Visitors last fall. The author is writing a book on Law School graduate and benefactor William W. Cook.

By Margaret A. Leary

Before I begin to tell you some of what I've learned as I've tried to discover Mr. [William W.] Cook, please ponder two questions: What are your feelings about the Law Quad buildings? Think, for example of the first time you entered the Quad; studying in the Reading Room; seeing the snowy Quad for the first time; and socializing in the Dining Room. You probably have a flood of memories connected to these buildings. The Law School has outgrown them in many respects, but the buildings will always be inspirational.

Second, let me ask what you know about William W. Cook? How did he acquire the fortune he gave to the Law School? What law did he practice? Where, and when, did he live? I know that, before I undertook my research into Mr. Cook three years ago, I could say that I knew the buildings better than the man who gave us these cloistered, special buildings.

In brief, Mr. Cook gave the University of Michigan the Martha Cook Building, then the Lawyers Club, then the John P. Cook dorm (the dorms are named after his parents, Martha and John), then Legal Research, and finally Hutchins Hall. In 1933, the University valued the Law Quad buildings at $5.3 million. He also gave an endowment valued today at $44 million. Mr. Cook was an extraordinarily generous man.

His name isn't before us every day, as it would be if it were the name of the school. I was very curious to know more about a man who would give so much yet insist his name not be put on a building, let alone an entire school.

I wanted to delve even deeper into "who was Mr. Cook" than had earlier writers about the Law School (Professor Alfred Conard, Elizabeth Gaspar Brown, Ilene Forsyth, and Kathryn Horste). I used archival resources as well as libraries, and dug deeply into the digital *New York Times* and *Wall Street Journal*. I found more. I want to tell you some of what I have learned about this man to whom we owe so much.

On June 3, 1930, the mercury climbed 25 degrees in the day, to 87. That whole spring was hot and dry. People were collapsing and dying from the heat. In a Victorian mansion on 80 acres in Port Chester, near Rye, New York, William W. Cook struggled to breathe. His lungs were weak from a decade of tuberculosis. People massed in record numbers on railroads and cars to head for Coney Island, the Rockaways, and Long Beach. Mr. Cook did not have that option. His breaths were short. His bones may have ached, had the disease spread beyond his lungs. He had the comforts of his estate and his faithful household helpers, but he could not escape the heat. He took great comfort from his loyal niece, daughter of his favorite brother (who had died in 1920); and from his friends (but his best friend had died in 1924). He had no wife, no children.

His greatest comfort was knowing that his fortune, about $12 million acquired through hard work as a lawyer and author, and shrewd investments, would go toward what he most valued: the preservation of American institutions, in particular the legal system and democracy, by improving the education of lawyers. He had carefully written a will and trust instruments to ensure that his fortune would go to the University of Michigan Law School, and help to complete the set of collegiate gothic buildings that would house students and provide library, faculty offices, and classroom space. But there was more: endowments to support the *Michigan Law Review*, a lecture or professorship, and faculty research, consistent with Mr. Cook's belief that in the future scholars, not practitioners like himself, would write the great law books.

So, as Mr. Cook lay in the heat, he knew he had provided the ideas and the money for his *alma mater* to have a permanent role in preserving American institutions by providing the best legal education and research.

As a broiling sun brought New York to 90 degrees, the hottest day of the year, Cook died, on June 4, 1930.

The *New York Times* covered his death and his will as they had his earlier gifts, with awe and respect. On June 13, 1930, the *Times* reported that Cook's will added $12 million to his earlier gift of $3 million, and quoted University officials who said the gift would make the Law School "the wealthiest the world has ever known." However, on April 17, 1931, a disturbing headline appeared: "Will sue to break W.W. Cook's will." It reported that Mrs. Ida O. Cook, divorced by the lawyer in 1898, had retained William Gibbs McAdoo to represent her.

The impact of the contest on the Law School building program was dramatic: Cook had written checks and set up trusts to pay for the buildings, but when he died the programs were in serious jeopardy. Before I disclose the outcome of the contest, I want to tell you more about Cook, his former wife Ida, and the lawsuit.

Who was William Wilson Cook?

Cook was born in Hillsdale, Michigan, in 1858. His father was a founder of Hillsdale and a successful businessman and banker. Cook briefly attended Hillsdale College, then earned bachelors and law degrees at Michigan in 1880 and 1882.

He went, then, to New York City, and worked for the Coudert law firm; and shortly after for John William Mackay in 1884, first as a law clerk, then eventually as personal lawyer and general counsel to the Mackay companies.

John W. Mackay lived from 1831–1902. He was born in Dublin, Ireland, came to the United States in 1840, and moved to California in 1851. Working first as a miner, he struck rich ore in the Comstock Lode in 1873 and accumulated a fortune. He "retired" to New York City in 1882, but almost immediately went into business again. He observed the difficulties of communication that were caused by Jay Gould and his Western Union telegraph company's monopoly. With James Gordon Bennett, Mackay founded the Commercial Cable Company (1883) and laid two submarine cables to Europe (1884) to break the Gould monopoly in communications with Europe.

Then he organized Postal Telegraph Cable Company (1886) to lay land lines in the United States and break that Western Union monopoly. His son Clarence Hungerford Mackay (1874–1938) succeeded him in his interests, supervised completion of the first transpacific cable (1904), laid cables to southern Europe (1905), Cuba (1907), and more. The Mackay companies were the first to combine radio, cables, and telegraphs under one management (1928). And Cook created the corporate bodies for these activities.

Cook's law practice was, then, primarily but not exclusively that of corporate counsel, rather than trial advocate. He was frequently of counsel on the briefs when cases were on appeal.

Cook's name is associated, as counsel, in some 50 cases reported in Lexis and Westlaw, including two in 1919 in the United States Supreme Court, on one of which he worked with Charles Evans Hughes. Cook also worked on a couple of cases with Robert G. Ingersoll, the famous 19th Century agnostic orator.

Cook also represented the Mackay companies in congressional testimony. The issue before Congress related to cable lines to Cuba. From 1900 to 1902, Mackay and Cook tried to persuade Congress to declare invalid Western

Discovering Mr. Cook

Union's claim to an exclusive right to lay the cables. They did not prevail, but they did eventually lay cable lines to Cuba, when the monopoly expired. Cook's investments included Cuban railroads and a sugar refinery, both representative of the great importance of Cuba to U.S. political and economic interests especially right after the Spanish American War.

Equally important to his work as a corporate lawyer, Cook was a scholar and leading thinker and writer throughout his career, particularly on the law of corporations. His *Cook on Corporations* was the major treatise on this core topic from the time of the first edition in 1887, when Cook was only five years out of law school, to the last, eighth edition, in 1923. He designated the proceeds of the eighth edition to go to the Lawyers Club. Michigan's Professor Emeritus Alfred Conard says that Cook moved the focus of corporation law from the rights of corporations to the rights of stockholders within corporations, thus setting the pattern of modern corporate law; and that Cook's work is probably the most authoritative source of information on the development of corporation law in the decades just before and just after 1900.

Eighty years ago, in the last edition of *Cook on Corporations*, Cook — as Conard points out — made an observation that implied approval of shareholders derivative suits. Below, he writes about the weakness of stockholders in relation to directors of corporations:

"The expense, difficulty, and delays of litigation, the power and wealth of the guilty parties, the secrecy and skill of their methods, and the fact that the results of even a successful suit belong to the corporation, and not to the stockholders who sue, all tend to discourage the stockholders, and to encourage and protect the guilty parties."

Cook also wrote books and articles about telegraph law, railroad organization, the future of legal research, and American institutions and their preservation. In all, he wrote 14 books, 11 articles in the Michigan, Yale, Harvard, and American Bar Association law journals, and several pamphlets and proposed legislation relating to the organizations of railroads, for which he sought public control and low freight rates.

Cook was something of a club man. He belonged (but not until after his former father-in-law died) to the Union League Club. This probably influenced his appreciation of art and architecture, for the Union League was long associated with the Metropolitan Museum of Art, and was a major exhibition space for painting, tapestry, sculpture, and other art. He belonged to the Lawyers Club in Manhattan, long before he established another Lawyers Club in Ann Arbor.

Cook also belonged to the Blooming Grove Hunting and Fishing Club, in eastern Pennsylvania, where he owned land and a cottage, "Aladdin's", with another man who worked for Mackay. Of course, he founded our Lawyers Club, and he also helped set up a Physicians Club, with his own doctor as the president. He belonged to the New York Law Institute and the Association of the Bar of City of New York. Up until about 1902, he was actively involved in these latter two, serving on committees, for example.

However, Mr. Cook was very private, and increasingly so after about 1900. It is very difficult to get details about his life. He appears to have been active socially, mentioned in the *Times* as attending a party and engaging in professional activities, up until about the turn of the century. Then, he is more reclusive, or at least less apparent. I've found a few bits and pieces. For example, he wrote that Cornelia Otis Skinner was a "cherished friend" and that he was a "lifetime friend" of Clarence Mackay's first wife. He was a purported advisor to Mackay's daughter Ellin, who legend has it consulted Cook before she decided to marry Irving Berlin — a marriage opposed by her father who was a devout conservative Catholic. Cook advised her to follow her heart, even though her marriage caused a long break between Ellin and her father. Cook was a friend of W. T. Noonan, president of the Buffalo, Rochester, and Pittsburgh Railroad. Noonan's nephew Charles Francis graduated from the Michigan Law School in 1925, the year the Lawyers Club opened.

Like his father John Potter Cook, who had the finest house in Hillsdale, Mr. Cook sought fine architecture for himself. His Manhattan townhouse, built in 1911 on East 71st Street, was designed by York and Sawyer, the architects of the Law Quadrangle. At his Port Chester estate he made gracious plantings, with many unusual specimens and a tree-lined private road leading to the house. This, too, modeled what his Hillsdale family had done.

But I've been distracted from my story about the contest over William Cook's will.

Who was Ida Olmstead Cook?

She was the daughter of Dwight Olmstead, a lawyer in New York City whose main endeavor was buying and selling land as the Manhattan population moved north. In this, he was frustrated by the complex land title system in the city, and worked hard and successfully to reform the registration system. He belonged to the Church of the Messiah, where Ida and William were married in February, 1889.

Ida was a niece, by marriage, of Theodore Dwight, one of the early deans of Columbia Law School, and there must have been family dinners at which William and Theodore were able to discuss the future of American legal education, a topic we know was of preeminent importance to both of them.

William worked long and hard to persuade her to marry, and to marry in the winter of 1889. The marriage doesn't appear to have been a good one. That they lived with her family probably did not help, and during one of their four separations, Cook pleaded with her to return to him and promised to buy her a town house so they could live on their own. They made it through the Panic of 1893, but in 1894 they separated for good.

In 1898, Ida filed for divorce. She was in Wahpeton, North Dakota, and you may wonder why. For a brief time in the late 1890s, North Dakota was the divorce capital of the United States. Unlike the strict laws in New York, designed to discourage divorce, North Dakota laws had everything needed for a quick divorce: only three months residence; use of desertion as a ground; and use of personal service in another state to get jurisdiction over the defendant. Ida claimed Cook had deserted her in February 1894.

Cook cross claimed, did not dispute that divorce was appropriate, and asked that the divorce be granted to him, claiming she deserted him in January 1894. Papers "flew" back and forth by rail, and the court quickly granted a divorce to Mr. Cook. There was no alimony, no property, no children.

That they bothered to divorce was a bit unusual for the time. Many couples, finding that they just didn't like each other, simply lived separately. Especially with no children or financial connections, divorce was not necessary unless one party wanted to marry someone else. But neither Will nor Ida ever remarried, and I can find no hint of any romance except with each other, before, during, or after the marriage.

Nature of the will contest

Ida went to North Dakota to get a divorce, and she got one. On what ground could she possibly, then, claim a "widow's share" in Cook's estate when he died?

Ida claimed that the North Dakota court did not have jurisdiction over her, since Cook had neither asked her to go to North Dakota nor accompanied her there, and had in fact made the legal claim, accepted by the court, that by going there she had deserted him. Under the law in effect in 1898, Ida claimed, a wife's legal residence could only be where her husband is unless he gave permission for, or ordered her, to go elsewhere. If Ida was not, for legal purposes, a North Dakota resident, the court had not had jurisdiction over her. The divorce was invalid, so they were still married, her lawyers claimed.

If the divorce was invalid, a New York statute would come into play, which forbade a married person from giving more than half his estate to any entity other than his spouse. She claimed half his estate.

Was that a solid claim in 1930, based on the law in 1898? The court did not throw it out, and the University took it very seriously. Ida had well-known lawyers both in California and in New York, as did the University. There was no Office of General Counsel then, as there

Discovering Mr. Cook

is now. So Regent James O. Murfin, a Detroit lawyer, played a large role in making strategic decisions about how to deal with the lawsuit.

As evidence of how seriously the University took the suit, I offer this: The University asked a Harvard professor for his opinion about a hypothetical with the Cook facts. He wrote as an authority that Ida had no claim. This of course did not discourage her lawyers.

The two claimants, Ida and one of Cook's nephews, had caught the University at a difficult time. First, Cook's estate was largely in stocks and bonds, and in 1930 neither was going up in value. No one yet knew what the Depression would bring, but the University was fearful. Second, there was great difficulty for the University because the Legal Research Building, John Cook dorm, and Hutchins Hall were all under construction. While Cook was alive, he dispersed funds (usually by setting up trusts in which he was the trustee and the University the beneficiary). But after his death, that stopped. John Creighton (a 1910 graduate of the Law School), the successor trustee at National City Bank, would not even let the University have half of the interest income pending the outcome of the suit. At one point, the University had to get a loan from the construction company to continue work.

Finally, near the end of 1931, a settlement was announced. The parties agreed that Ida would get $160,000 and the nephew $10,000 (in spite of a clause in the will that anyone who contested would get nothing). The University did not get its money until November 1932, about two years later than an undisputed estate would have been distributed. The University was able to finish all the buildings, using interest from the Cook endowment.

Cook's dream did come true.

There is more of interest about Ida, who lived for many years in California. In the late 1930s, she accompanied her niece, Beatrice Borst, to a Midwestern university where Beatrice did graduate work in English. Beatrice went to the University of Michigan and brought Ida, along with Beatrice' recently orphaned young niece and nephew, here to Ann Arbor.

Ida, who always referred to herself as Mrs. William Cook (although Mr. Cook, after 1898, always referred to himself as single — not divorced), lived in the Michigan Union — across the street from the Law Quad that Mr. Cook never saw — under a special exception to the "men only" rule. According to the *Ann Arbor City Directory*, Ida worked for a year as a clerk in a bakery on North Main Street. Beatrice, meantime, won the Hopwood Award in 1941 for her very autobiographical novel *Nearer the Earth*, which has a character much like Ida. Ida died in 1942, in Ann Arbor.

That Mr. Cook never saw any of the buildings for which he paid is one thing we all probably "know" about him. My research reveals four reasons for this, each supported by correspondence, interviews with relatives, or facts.

First, he didn't want to spoil his dream, according to his lifetime friend Walter Sawyer, Hillsdale physician, and long-term Regent of the University.

Second, in his own words, he didn't want to get tangled up in University politics. This claim is a bit disingenuous. The correspondence shows him a master at maneuvering people by correspondence from New York, or by talking to people who came to see him. His impact on University politics is a separate story.

Third, his reclusiveness after the turn of the century, and his own words, say that he didn't want the publicity which would come from a trip to Ann Arbor because others would come after him for money.

Finally, the fact is that he was probably too sick with TB to travel far (he went only between his Manhattan townhouse and his Port Chester estate) by the time the first buildings, the Lawyers Club dormitory and dining hall, were done in 1925, and he died in 1930, before any other buildings were complete.

A word about Cook and the buildings

Cook insisted on very high quality, and he controlled every detail of the construction of the Lawyers Club. For example, he wrote or selected each of the inscriptions over the arches and in the dining room.

And listen to this, from a 1924 letter to his architects York and Sawyer, while the building was under construction:

"I was astonished to learn that without my knowledge or approval and at my expense you have placed . . . at the top of gargoyles [in the arch leading into the Quad from South University] six heads of persons. . . . Who suggested this and who selected them and who furnished the photographs and on what principle were the selections made and why was not I informed? . . . I wish you to remove the secretary [Shirley Smith], who is not even a lawyer, and the dean [Henry Bates] who has had predecessors and will have successors. . . . If new ones cannot be substituted later, let the gargoyles stand headless. I plan to stop schemes to clutter [the building] with geegaws and destroy the classic and time hallowed impressions given by every part of the building."

A 1925 letter to President Marion Burton with copies to several others says:

"The Lawyers Club and dormitories. I don't know who added those two words "and Dormitories" to the original name. . . . I instinctively drew back when I first saw the words "and dormitories". . . . The word "dormitory" is a useful word, but so is frying pan, toasting fork, and coal scuttle. Why advertise the bedrooms and spoil a dignified name? All large clubs have bedrooms but none of them mention that fact in their names. This caudal appendage is deplorable, abominable, intolerable, and altogether impossible. Away with it.

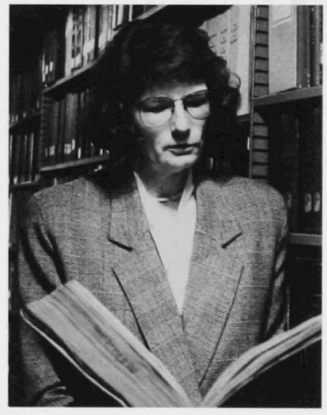
"P.S. All admire the stone but say nothing about the wondrous beauty of the architecture. Astonishing how the material overshadows the artistic. That building is York & Sawyer's masterpiece."

Mr. Cook really cared about the buildings, and the Law School.

The Cook trusts now have a total value of about $44 million. William Cook was not nearly so rich as the men who employed him; not nearly so rich as the men who gave money to Duke, the University of Chicago, Carnegie-Mellon, or other private universities.

But by recognizing, and publicly articulating, that taxpayer support was not enough, and by giving his money to the public law school he loved, providing it with inspirational buildings and a research endowment, he single-handedly boosted Michigan from being a "state" school to being a school with an international influence. Many others, of course (Harry Hutchins, Henry Bates, and their successors as dean, as well as dozens of outstanding faculty and thousands of students) deserve credit for what this Law School is today. But William Cook truly laid the foundation: the foundation of buildings, and the foundation of a research endowment.

Here's to Mr. Cook!



Margaret A. Leary *is director of the Law Library and has been doing research for a biography of William W. Cook. From 1973 to 1981, she 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.*

looking at the death penalty

INTRODUCTION

The United States remains one of the few countries in the world to use the death penalty, and concern over capital punishment has risen as DNA testing and other activities have shown that it often is being applied incorrectly.

The issue has drawn considerable attention at the Law School, which also hosts the nationally regarded Clarence Darrow Death Penalty Defense College each May. This year, the Death Penalty Defense College featured a nationally-known actor and activist, Mike Farrell, as keynote speaker. The college also devoted a session to the presentation of a ground-breaking interdisciplinary study on exonerations conducted by Law School Professor Samuel R. Gross.

In addition, another Law School faculty member, Professor Phoebe Ellsworth, devoted her highly regarded University-wide distinguished university professorship lecture to the topic, and alumni also have been involved in the issue.

Following is a series of stories that reflect activity the issue has generated.

At the Clarence Darrow Death Penalty Defense College:

Actor/activist Mike Farrell delivers keynote; Gross outlines exonerations study

Actor/activist Mike Farrell likes to quote Clarence Darrow — "There is in every man that divine spark that makes him reach upward for something higher and better than anything he has ever known," is one of his favorites — and he portrayed the famed attorney in a one-man show that toured the country. Farrell also is a tireless death penalty opponent and human rights worker, so he couldn't resist the invitation to visit the law school that Darrow attended to address participants in the fifth annual Clarence Darrow Death Penalty Defense College, held in May.

"If I can be helpful in eliminating this ugly blot on our society, I am happy to help," Farrell told some 30 attorneys who had come from throughout the United States to attend the six-day college. Members of the Law School faculty also attended, including Thomas and Mabel Long Professor of Law Samuel R. Gross, who led a session later that week on his ground-breaking study of exonerations of defendants convicted of serious crimes, including capital crimes.

Farrell, a veteran actor best known for his television portrayals of Army Capt. B.J. Hunnicutt in *M*A*S*H* and Dr. Jim Hansen in *Providence*, is president of the California-based anti-capital penalty organization Death Penalty Focus. He also co-chairs the California Committee of Human Rights Watch and

has worked with the American Indian Movement, the American Civil Liberties Union, United Farm Workers Union, Amnesty International, Special Olympics, Greenpeace, and other organizations. Farrell has been spokesperson for CONCERN/America, an international refugee aid and development organization, since 1979, and he and fellow actor/activist Ossie Davis have co-chaired the Committee to Save Mumia Abu-Jamal since 1994.

The death penalty is "racist and classist in application," Farrell said in his keynote talk. He linked the death penalty to human rights violations, noting that both Amnesty International and Human Rights Watch have condemned it. A recent Human Rights Watch study reports "there are more mentally ill people in our prisons than in our mental institutions," he noted.

"As [Professor] Gross has shown, exonerations need another look," Farrell said in reference to the report that Gross discussed later in the week. "Death row gets the attention, but the phenomenon of wrongful convictions is across the board."

Farrell and Law School Dean Evan Caminker, who welcomed participants, both praised the work of those attending the college. "You folks know the death penalty, you know it from being in the trenches against it," Farrell said. "I congratulate all of you doing this work."

Caminker noted that he was a clerk at the U.S. Supreme Court when the Court considered many cases like the Gary Gilmore execution case and praised the diligence of the Darrow Death Penalty Defense College participants. "I welcome and salute you," he told them.

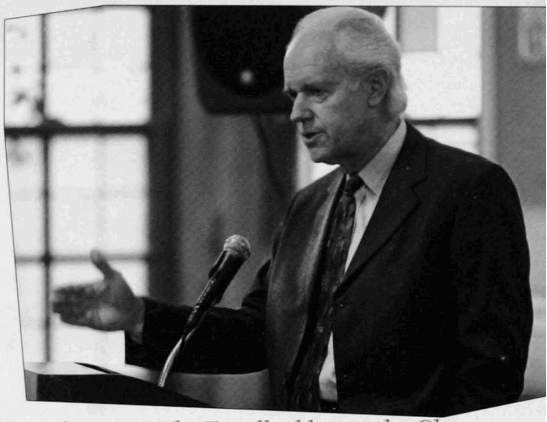
Later in the week, Law School Professor Samuel R. Gross elaborated on Farrell's remarks by devoting his teaching session to his recently completed study "Exonerations in the United States 1989 through 2003." The study is drawing widespread attention; the *New York Times* reported on it immediately after its preliminary release last April.

(An excerpt from the study begins on page 48. The complete study appears on the Law School Web site [www.law.umich.edu/newsandinfo/april2004.htm#gross] and is forthcoming in the *Journal of Law and Criminology*.)

The use of DNA identification began in 1989, and "the impact of DNA is huge," Gross explained. Nearly 90 percent of rape case exonerations were based on DNA evidence; DNA findings accounted for a fifth of exonerations of convictions for murder. Nearly all of the murder cases also involved rape.

Using a very narrow definition of exoneration, Gross and his fellow researchers found a total of 328 exonerations between 1989 and 2003: 316 men and 12 women; 145 cleared by DNA, 183 by other kinds of evidence. "They had served an average of over 10 years in prison for crimes for which they should never have been convicted," according to the report. "Four defendants were exonerated posthumously, after they had died in prison."

"Almost 90 percent of the false convictions in the rape exonerations were based in large part on eyewitness misidentifications," Gross and his co-authors reported. "The leading cause of the false convictions in the murder exonerations was perjury, including perjury by the real killers,



Actor/activist Mike Ferrell addresses the Clarence Darrow Death Penalty Defense College.

and by supposed participants or eyewitnesses to the crime; perjury by jailhouse snitches and other police informants; and perjury by police officers and state forensic scientists."

"We are much more likely to produce these errors in death cases," Gross said.

"Why?"

Because of the high profile nature of the crime, the drive to charge a suspect and get a conviction, and the higher probability that the case will be prosecuted, he explained. These cases attract the most resources in prosecution as well as review, he said, and appear to be only a small portion of the "thousands, perhaps tens of thousands" of total wrongful convictions for all kinds of crimes.

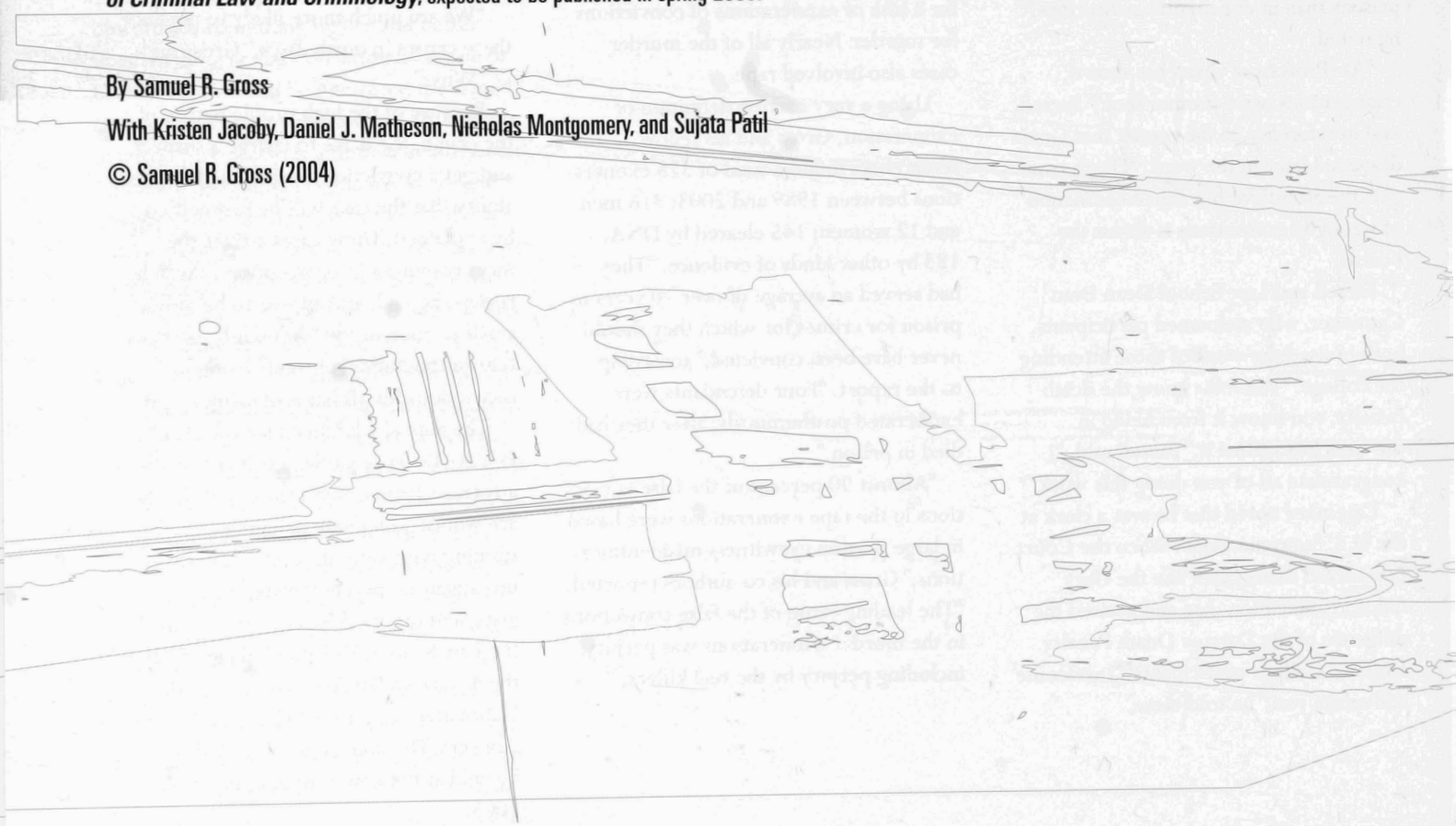
The annual Clarence Darrow Death Penalty Defense College brings together attorneys from around the country, who are working on death penalty cases, for training with veteran capital case lawyers, investigators, psychologists, sociologists, and others. Support came from the Law School, DePaul College of Law, the American Bar Association, and the National Association of Criminal Defense Lawyers. The college is scheduled to be held at the Law School again in May 2005.

The tip of the iceberg:

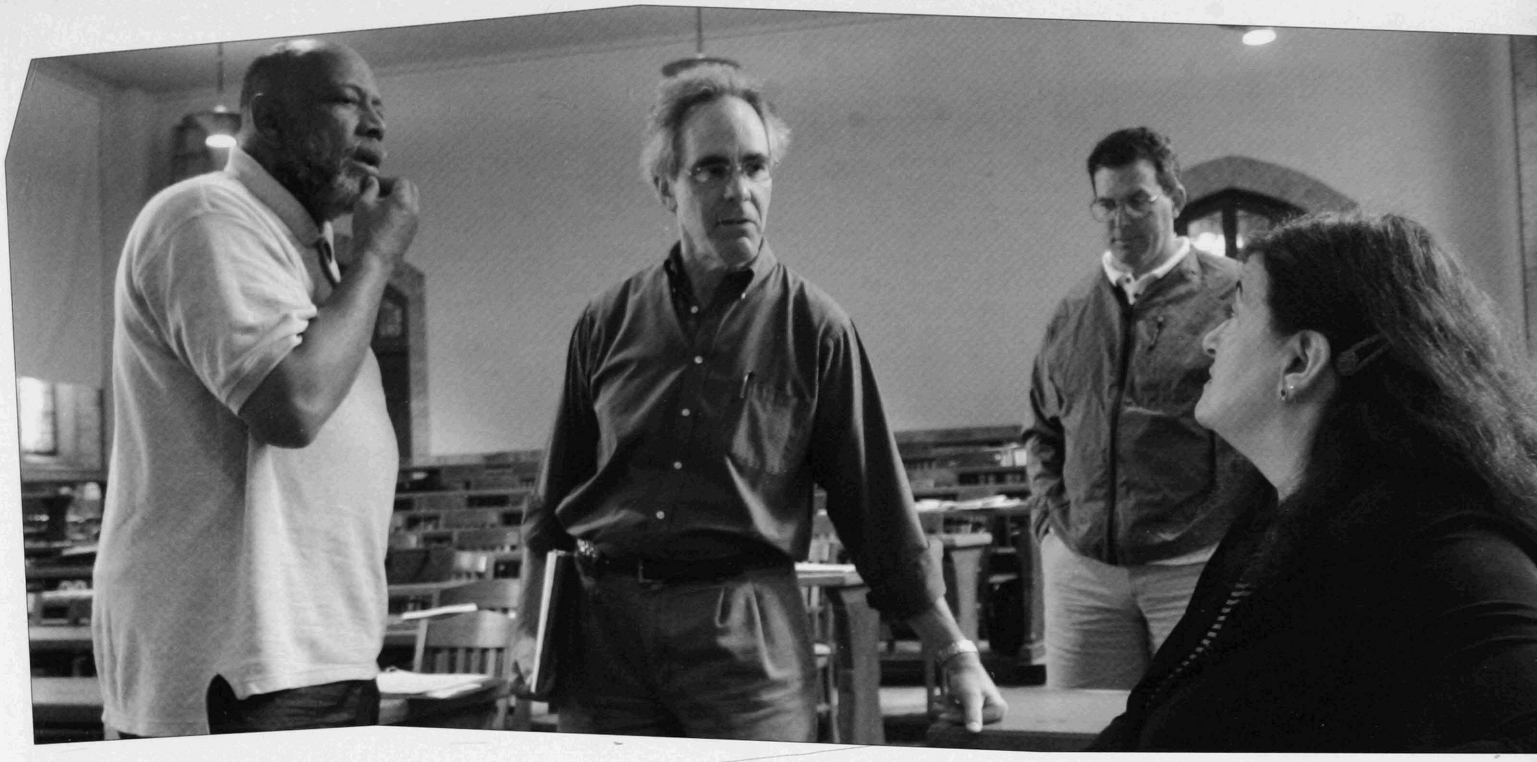
Exonerations in the United States 1989 through 2003

The following article is the executive summary of the study "Exonerations in the United States 1989 through 2003," which was conducted with funding from the Gideon Society of the Open Society Institute. The full report is on the University of Michigan Law School Web site (www.law.umich.edu/newsandinfo/april2004.htm#gross) and a complete version will appear in 95.3 ***Journal of Criminal Law and Criminology***, expected to be published in spring 2005.

By Samuel R. Gross
With Kristen Jacoby, Daniel J. Matheson, Nicholas Montgomery, and Sujata Patil



Professor Samuel R. Gross, center, with Clarence Darrow Death Penalty Defense College founder/director Andrea Lyon and two college participants.



This report summarizes findings from a study of exonerations of defendants convicted of serious crimes in the United States since 1989, when the first DNA exoneration occurred. This is the most comprehensive listing of exonerations to date. We plan to update it periodically. Our purpose is to study overall patterns in the exonerations that have accumulated in the past 15 years in order to learn about the causes of false convictions, and about the operation of our criminal justice system in general. The following are highlights of our key findings:

• We found a total 328 exonerations in that 15-year period, 316 men and 12 women; 145 of them were cleared by DNA, 183 by other sorts of evidence. They had served an average of over 10 years in prison for crimes for which they should never have been convicted. Four defendants were exonerated posthumously, after they had died in prison.

• The rate of exonerations increased sharply over the 15-year period of the study, from about 12 a year through the early 1990s to an average of 43 a year after 2000. From 1999 on, about half of all exonerations have been based on DNA evidence.

• Our count of exonerations is conservative. We consider only exonerations based on investigations in the individual cases of the exonerated defendants. Our database does not include at least 135 additional innocent defendants who were framed by rogue police officers and cleared in two mass exonerations: in 1999–2000 in Los Angeles, in the aftermath of the discovery of the Rampart area police scandal; and in 2003 in Tulia, Texas, when a single dishonest undercover officer was shown to have framed 39 innocent drug defendants.

• The most important findings of our study concern the cases that we don't see — miscarriages of justice that are not detected. Exonerations — those false convictions that do come to light — are no more than the tip of an iceberg. It is clear from these data that false convictions are much more common than exonerations, and that the vast majority are never caught. When we work hard to uncover false convictions, as we have in many death row cases, we discover many errors — but only among those cases where we concentrate our efforts. When we get a new scientific tool that detects judicial mistakes, as we have for rape convictions with DNA, again, we find a lot of errors — among those cases for which the new tool is relevant. If we worked as hard to reinvestigate all cases as we do for many capital cases, or if some new scientific technology did for all criminal convictions what DNA has done for rape convictions, the number of exonerations would be much higher than what we have seen in recent years.

• Almost all of the exonerations — 97 percent — grew out of convictions for the two most serious common crimes of violence: 1) 199 murder cases (61 percent of all exonerations), including 73

innocent defendants who were sentenced to death (22 percent); and 2) 120 rape cases (37 percent). Only six exonerations involved other crimes of violence, and only three drug or property crimes. Evidence from the mass exonerations in the Rampart and Tulia scandals suggests that false convictions may be at least as common among convictions for crimes other than rape and murder, but false convictions in those other cases almost never lead to the difficult and time consuming investigations that are the basis for almost all formal exonerations.

• In 88 percent of the rape cases the exonerations were based on DNA evidence; 20 percent of the murder exonerations involved DNA, almost all of them for homicides that also included a rape.

• The large number of rape exonerations is due to the unique power of DNA to detect false convictions for rape. False convictions may well be at least as common for other crimes of violence, especially robbery. If some error-detection technique comparable to DNA existed for those crimes, exonerations for robbery and other crimes of violence would almost certainly outnumber those for rape by a large margin.

• Defendants convicted of murder constitute about 13 percent of American prisoners, but 61 percent of all exonerations, and 87 percent of the non-DNA exonerations. Death row inmates number about one-fourth of 1 percent of the prison population, but 22 percent of the exonerated. There are only two possible explanations for these extreme disparities: 1) One possibility is that false convictions are not more likely to occur in murder and death penalty cases, but only more likely to be discovered because of the comparatively high level of care that is devoted to reviewing death sentences. But if that were the full explanation, it would mean that if we worked as hard to detect errors in prison sentences as we now do for death sentences, we would discover tens of thousands of false non-capital convictions that have not been identified. 2) On the other hand, if this first explanation is not the whole story, that inescapably means that false convictions are more likely to occur in murder cases, and far more likely in death penalty cases, than in other criminal prosecutions — that is, that we are most likely to falsely convict defendants who may themselves be put to death. The truth is clearly a combination of these two appalling possibilities.

• The four leading states for exonerations of falsely convicted defendants are Illinois (54), New York (35), Texas (28), and California (22).

• Almost 90 percent of the false convictions in the rape exonerations were based in large part on eyewitness misidentifications. Cross-racial misidentification is a special danger. About 50 percent of the exonerated rape defendants are black men who were misidentified by white victims, but only 10 percent or less of all rapes involve black perpetrators and white victims. As a result, black men are greatly over-represented among defendants who are falsely convicted and exonerated for rape.

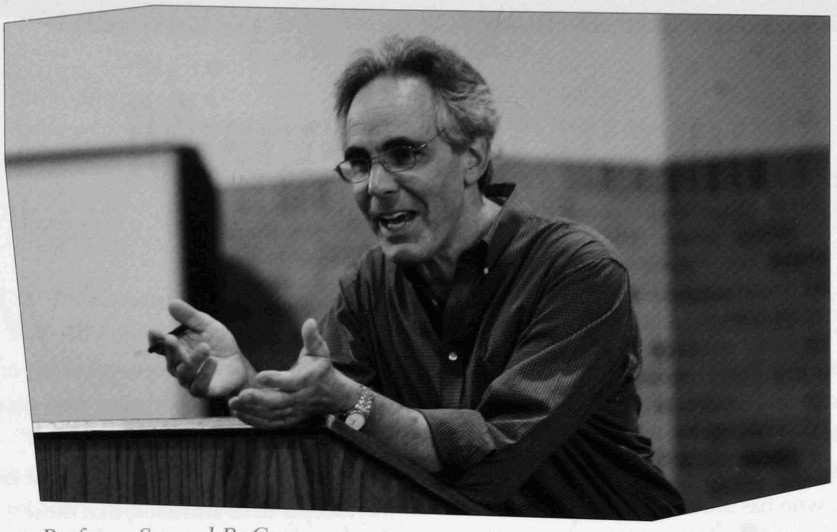
• The leading cause of the false convictions in the murder exonerations was perjury, including perjury by the real killers, and by supposed participants or eyewitnesses to the crime; perjury by jailhouse snitches and other police informants; and perjury by police officers and state forensic scientists.

• False confessions also played a large role in the murder convictions that led to exonerations, primarily for two particularly vulnerable groups of innocent defendants: 1) Juveniles: 44 percent of the juvenile exonerees falsely confessed, compared to 13 percent of adults. Among the youngest juveniles — those aged 12 to 15 — 75 percent falsely confessed. 2) Defendants with mental disabilities: 69 percent of the exonerees who were mentally retarded or mentally ill falsely confessed, compared to 11 percent for those without known mental disabilities. A majority of all exonerees who falsely confessed were juveniles, or mentally disabled, or both.

• Almost all of the juvenile exonerees who falsely confessed were African Americans — a pattern that may reflect a greater willingness by police officers to use coercive interrogation tactics on black juveniles than on white juveniles.

• One of the most troubling statistics in this report is, sadly, of a piece with racial disparities in our juvenile justice system in general: Nine out of every 10 exonerated juvenile defendants are black or Hispanic.

Conclusion: We can't come close to estimating the number of false convictions that occur in the United States, but the accumulating mass of exonerations gives us a glimpse of what we're missing. We have located 328 exonerations since 1989, not counting at least 135 defendants in the Tulia and Rampart mass exonerations, or more than 70 convicted childcare sex abuse defendants. Almost all the individual exonerations that we know about are clustered in two crimes, rape and murder. They are surrounded by widening circles of categories of cases with false convictions that have not been detected: rape convictions that have not been reexamined with DNA evidence; robberies, for which DNA identifica-



Professor Samuel R. Gross

tion is useless; murder cases that are ignored because the defendants were not sentenced to death; assault and drug convictions that are forgotten entirely. Any plausible guess at the total number of miscarriages of justice in America in the last 15 years must be in the thousands, perhaps tens of thousands.

We can see some clear patterns in those false convictions that have come to light: who was convicted, and why. For rape the dominant problem is eyewitness misidentification — and cross-racial misidentification in particular, which accounts for the extraordinary number of false rape convictions with black defendants and white victims. For murder, the leading cause of the false convictions we know about is perjury — including perjury by supposed participants or eyewitnesses to the crime who knew the innocent defendants in advance. False confessions also played a large role in the murder convictions that led to exonerations, primarily among two particularly vulnerable groups of innocent defendants: juveniles, and those who are mentally retarded or mentally ill. Almost all the juvenile exonerees who falsely confessed are African American. In fact, one of our most startling findings is that 90 percent of all exonerated juvenile defendants are black or Hispanic, an extreme disparity that, sadly, is of a piece with racial disparities in our juvenile justice system in general.

[Most of the exonerations we include in this database are listed on one or more of the Web sites that are maintained by three organizations: The Death Penalty Information Center, www.deathpenaltyinfo.org; the Innocence Project at Cardozo Law School, www.innocenceproject.org; and the Center on Wrongful Convictions at Northwestern University Law School, www.law.northwestern.edu/depts/clinic/wrongful. We have gathered additional information on most of the cases from these three lists, reviewed them carefully, and excluded some cases that do not meet our own criteria for an exoneration.]

Samuel R. Gross, the Thomas G. and Mabel Long Professor of Law, graduated from Columbia College in 1968 and earned a J.D. from the University of California at Berkeley in 1973. He was a criminal defense attorney in San Francisco for several years, and worked as an attorney with the United Farm Workers Union in California and the Wounded Knee Legal Defense Committee in Nebraska and South Dakota. As a cooperating attorney for the NAACP Legal Defense and Educational Fund Inc. in New York and the National Jury Project in Oakland, California, he litigated a series of test cases on jury selection in capital trials and worked on the issue of racial discrimination in the use of the death penalty. He was a visiting lecturer at Yale Law School and came to the University of Michigan from the Stanford Law School faculty. Professor Gross teaches evidence, criminal procedure, and courses on the use of the social sciences in law. His published work focuses on the death penalty, racial profiling, eyewitness identification, evidence law, the use of expert witnesses, and the relationship between pretrial bargaining and trial verdicts.

Co-authors Kristen Jacoby and Daniel J. Matheson are J.D. candidates at the Law School; Nicholas Montgomery is a Ph.D. candidate in the University of Michigan Department of Economics and Ford School of Public Policy; and Sujata Patil is a Ph.D. candidate in biostatistics at the U-M School of Public Health.

Ellsworth: Death penalty may be losing favor

Professor Phoebe Ellsworth delivering her distinguished university professorship lecture.

There once again is a slight shift in public attitude against the death penalty, according to Frank Murphy Distinguished University Professor of Law and Psychology Phoebe Ellsworth, who has studied the issue extensively.

"I think the trend is real — not huge — but real," Ellsworth explained in her distinguished university professorship lecture last spring.

(Each scholar who is named to the select ranks of distinguished university professors gives one University-wide lecture in commemoration of the honor. Ellsworth's talk focused on attitudes toward the death penalty.)

The United States is one of only a handful of nations that use the death penalty, according to Ellsworth. In 2002, the United States, with China and Iran, accounted for 80 percent of the world's legal executions. The United States ranked second only to China.

Still, there was an eight-year moratorium on executions in the United States, from 1968–76, and the Supreme Court ruled in 1972 that the death penalty was unconstitutional as it was being administered then. But executions resumed after the Court ruled in 1976 that the death penalty was legal if arrived at with ample and proper legal safeguards.

Today there are about 3,500 people on death row in the United States, 45 percent of them white, 42 percent African American, and about 10 percent Hispanic, Ellsworth reported. Women account for about 1.4 percent of those on death row.

"Obviously, this situation would not exist if the majority of Americans were opposed to the death penalty," Ellsworth said. During the 1950s and part of the 1960s, Americans did oppose the death penalty much more than they do now, she noted.

But social science theory sheds little light on how or why deeply held attitudes, like those on the death penalty and abortion, change, so there is no sure way to measure the impact of recent events like outgoing Gov. George Ryan's commutation of Illinois death row inmates' sentences, the high profile given to some recent reversals because of new DNA evidence, or the reversal of some wrongful convictions that dogged attorneys and anti-death penalty advocates have won.

Ellsworth has some very educated guesses, however. There need to be "enabling conditions" for such attitudes to change, she said, like repeated exposures of wrongful convictions and growing numbers of exonerations. "People need to be ready to change."

"You can predict death penalty attitudes by the crimes rates" because when violent crime drops the depth of support for the death penalty also drops, she said. And the shift of prominent conservatives like Ryan, columnist George Will, and others to the anti-death penalty ranks is adding to those enabling conditions that may soften Americans' pro capital punishment stance.

"What's next?" Ellsworth asked. "It's hard to say. In 1996, the pro death penalty attitudes went down about 10 percent and leveled off. And they did not go up after [the terrorist attacks of] 9/11."

Why didn't they go up? No one knows yet, she said.

Andrea Lyon:
Misconduct plagues death sentences

When outgoing Governor George Ryan commuted the sentences of prisoners on Illinois' death row to life imprisonment, he was bowing to pressure created by the growing numbers of reversals attorneys were winning for previous death sentences, according to an attorney involved in virtually all of those reversals.

"Governor Ryan is a pharmacist, and [he knows] you don't make a mistake 50 percent of the time and keep your license," veteran death penalty defense attorney Andrea Lyon told a Law School audience here last winter.

Ryan's decision, announced at Northwestern University, affected 156 Illinois death row inmates and 11 others. "Our capital system is haunted by the demon of error: error in determining guilt and error in determining who among the guilty deserves to die," he said. "What effect was race having? What effect was poverty having?

"Because of all these reasons, today I am commuting the sentences of all death row inmates." Ryan earlier had placed a moratorium on further executions.

Lyon, founding director of the Clarence Darrow Death Penalty Defense College held at the Law School each year, was one of the people Ryan cited as factors in his decision. For her part, Lyon, a former assistant clinical professor at the Law School and now a faculty member at DePaul Law School in Chicago, was pleased to see Ryan's turnaround in the face of new evidence.

"If you had told me that a Republican governor who had helped pass the constitutional death penalty" would do this, "I'd have said you were crazy," she recounted during her visit to the Law School. Her talk was sponsored by the Criminal Law Society.

Lyon said she did not set out expecting to find what she uncovered in so many Illinois capital cases: evidence of police misconduct, falsification and hiding of evidence, and other actions that led to false convictions. Other reversals came about because new evidence, like DNA test results, proved an earlier conviction to have been incorrect.

"I did not expect to see the prosecutorial misconduct that I saw," Lyon explained. "I did not have one case without prosecutable perjury. Even when they didn't need it, they cheated anyway."

Lyon showed a video of Madison Hobley, who had been convicted in 1990 of setting a building fire that killed his wife, infant son, and five other people. Lyon's post-conviction investigation revealed that police had falsified evidence in Hobley's case and won him a pardon.

Hobley was one of four death row inmates who were pardoned in conjunction with Ryan's commutations. Ryan said he was convinced that Hobley, who had been on death row for a decade, was not guilty. Lyon picked up Hobley at prison when he was released and drove him home.

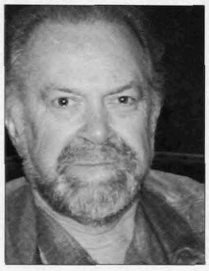
"How many other cases are there like this?" she asked.

"There are too many. I'm really hoping there are people in this room who will make it part of your life to not walk by injustice."

Andrea Lyon

The man behind (some of) the names

Pore through the Appendix to Professor Samuel R. Gross' report "Exonerations in the United States 1989 through 2003" (accessible with the complete report, at the Law School Web site, www.law.umich.edu/NewsAndInfo/april2004.htm#gross). Look under the heading "Massachusetts." You'll find the names of 15 people, followed by the year of their exonerations. Fourth on the list is Donnell Johnson, and eighth in the lineup is Ulysses Rodriguez Charles.



Hrones

Behind the appearance of these names on Gross' list stands attorney Stephen Hrones, '68, of Hrones and Garrity in Boston. Hrones led the battles that exonerated Johnson, who was freed in 2000 after he was convicted of a 1994 murder and sentenced to 18–20 years in prison, and Charles, who was freed in 2003 after being sentenced to 72–80 years for a rape committed in 1980.

And had Gross and his colleagues continued their research beyond 2003, you also would find the name of Anthony Powell, who was convicted in 1992 for a 1991 kidnap/rape and sentenced to 12–20 years.

When Powell walked out of prison after serving more than 13 years, he "owed his release largely to the efforts of the bearded man by his side, a dogged, abrasive, and incorrigibly confrontational lawyer named Stephen Hrones," Jonathan Saltzman wrote in a profile of Hrones that appeared last March in the *Boston Globe*.

"Hrones also got Donnell Johnson freed in 2000, after five years in prison for a murder he didn't commit, and won release last year of Ulysses Rodriguez Charles, who served 18 years for a rape he didn't commit" Saltzman continued.

Known as blunt and aggressive, Hrones does not suffer fools lightly. Nor does he coddle up to legal practices that survive because of tradition more than effectiveness. Once, for example, he sued a judge over a rule that required an attorney to have at least 10 years experience before he could be appointed to represent an indigent murder defendant. Hrones considered the rule ridiculous, and said many veteran lawyers were incompetent. (He had the satisfaction of seeing the rule abolished.)

Sometimes derisively called "the mad Czech," Hrones has been criticized for having "only one volume — loud," and harboring "a great dislike for law enforcement." He's been praised, too, for being dogged, for winning, and for eschewing what criminal defense/civil rights lawyer Harvey Silvergate calls the "terrible disadvantage" of trying to think the best of those who hold power.

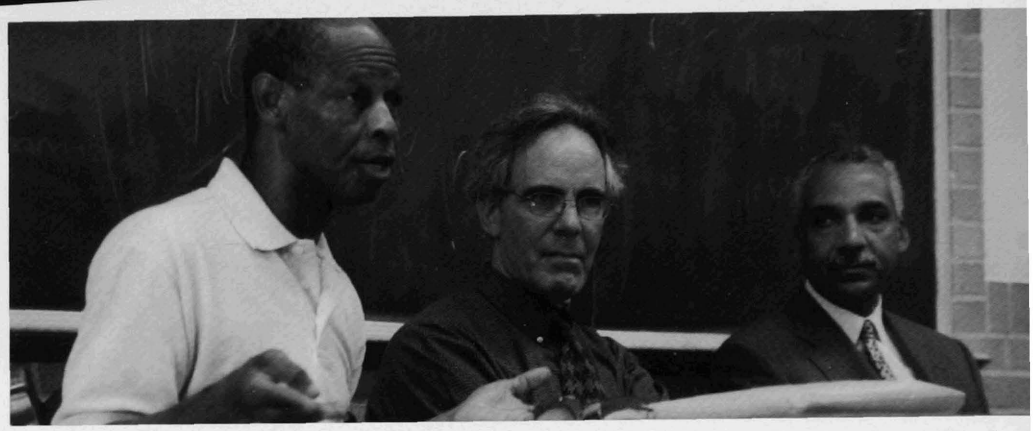
"If you try to think the best of people and try to always get along and be part of the club, you're never going to be able to challenge them in the way they should be challenged," Silvergate told the *Globe* for its profile of Hrones.

Hrones himself is as quick to admit his impatience and directness as he is to demand that wrong be made right. He doesn't, for example, dislike all police officers. "I hate bad cops," he told the *Globe*. "I dislike cops that violate people's constitutional rights, and I'm not saying most cops do it. There's a few bad apples."

Law School graduates at last fall's reunions got a sample of Hrones' directness during a panel discussion of the U.S.A. Patriot Act. One panelist, Clarence Darrow Distinguished University Professor of Law Yale Kamisar, criticized the Act's authorization of eavesdropping on attorney-client conversation, then peered into the audience, spotted Hrones, and asked, "Could you defend someone under these conditions?"

"No way," Hrones answered immediately. "What is more basic than attorney/client privilege? . . . This is the ultimate kangaroo court."

The son of an MIT engineering professor, Hrones grew up in Wellesley, Massachusetts, and Shaker Heights, Ohio. He earned his bachelor's degree at Harvard in economics, then came to the U-M Law School. After earning his J.D. in 1968, he went to the Sorbonne in Paris for a year to study French, and later returned to France as a Fulbright Scholar to study comparative criminal procedure.



Eddie Joe Lloyd tells a Law School class how he became the first person in Michigan to have his life sentence reversed because of new DNA evidence. At center is Professor Samuel R. Gross; at right is Lloyd's Detroit-based attorney, Saul Green, '72.

'Breathtaking' freedom comes after 17 years, 3 months, 5 days

Eddie Joe Lloyd last year became the first person in Michigan to be exonerated through DNA testing. Lloyd was convicted in a kidnap, rape, murder case and sentenced to life imprisonment. He related his experiences in a visit to the Law School several weeks after his release from prison in August 2003. This account is reprinted from the Fall/Winter 2003 issue of *Law Quadrangle Notes*.

After 17 years, three months, and five days in prison for a crime he did not commit, Eddie Joe Lloyd won his freedom on August 26 — the first person in Michigan to get his conviction reversed because of advances in DNA testing.

It's "breathtaking" to be free, the 54-year-old Detroiter told a Law School class during a visit here early in the fall term. "I feel like my family's been exonerated, too."

Lloyd and his Michigan-based attorney, Saul Green, '72, outlined Lloyd's case for law students in the seminar on Innocent Defendants taught by Professors Phoebe Ellsworth and Samuel R. Gross. Green, who is with Miller, Canfield, Paddock and Stone PLC in Detroit, is a former U.S. Attorney for the Eastern District of Michigan and studied under Gross at the Law School.

Ellsworth is the Frank Murphy Distinguished University Professor of Law and Psychology, and Gross is the Thomas G. and Mabel Long Professor of Law.

The Lloyd case began in 1984, when a 16-year-old Detroit high school junior was abducted, raped, and strangled. Lloyd confessed to the crime and was sentenced to life in prison without parole. He was in a psychiatric hospital and on medication when he made the confession, according to his attorneys.

Today he says his confession was false and designed "to smoke out the real killer."

"Fortunately, Michigan is one of 10 states without the death penalty," Lloyd told the Law School class. "If it weren't, I wouldn't be here talking to you."

Lloyd's long road back to freedom began seven years ago, when the Innocence Project, which uses DNA evidence to prove wrongly convicted people's innocence, began working on his case. Innocence Project Director Barry Scheck founded the organization in 1992 at the Benjamin N. Cardozo School of Law in New York. The project has been involved in most of the more than 100 recent cases that have used new DNA testing capabilities to win reversals of people's convictions.

Lloyd saw Scheck on *The Phil Donahue Show*, contacted him, and convinced Scheck to take his case. Green joined the case last year after Scheck asked Gross to recommend a Detroit-based attorney to join Lloyd's legal team.

Green told the seminar students that he had misgivings about Lloyd's defense — his second lawyer had only eight days to prepare after his first lawyer died suddenly — as well as about tactics the police used to get the confession that Lloyd says was false.

"I think a properly prepared, properly motivated defense counsel could have raised many inconsistencies," Green said. And "of the 110 [prisoners] who have been exonerated, about one-third of them gave confessions, so I'd suggest we have to look at the interrogation practices."

The former U.S. Attorney also praised Wayne County Prosecutor Michael Duggan and Detroit Police Chief Jerry Oliver for joining in the request to overturn Lloyd's conviction.

"You'll be on both sides of legal cases," Green explained. "The legal system is operated by human beings, and we make mistakes. When new evidence shows that a conviction you fought to get should be overturned, don't be defensive. Be open-minded. Be open to the continuing search for truth."

Looking ahead. . .

For this 2004–05 academic year just beginning, early plans promise a bright year and already include these major conferences:

- The American Society of International and Comparative Law is holding its annual meeting and conference at the Law School October 21–23. Topic for the gathering is Comparative Law and Human Rights.
- "Going Back to Class? The Reemergence of Class in Critical Race Theory." A 10th anniversary symposium sponsored by the *Michigan Journal of Race & Law* and the Law School that will re-unite current and former staff members of the journal and present a forum for cutting-edge scholarship on the current transformation of critical race theory. To be held February 4–5, 2005.
- "Not from Concentrate? Media Regulation at the Turn of the Millennium." A symposium sponsored by the *University of Michigan Journal of Law Reform* and the Law School to "explore the legal, policy, and logistic considerations that attend modern regulation." To be held March 18–19, 2005.
- "Tribal Court in Session." Hosting a tribal supreme court or appellate court session in conjunction with Indian Law Day, sponsored by the Law School chapter of the Native American Law Students Association (NALSA). "Holding a session at the Law School would enable NALSA to highlight the differences and similarities between state, federal, and tribal court systems," organizers say. To be held in spring 2005.

Under the looking glass

Conferences, symposia, and workshops bring experts to the Law School from around the world, and offer those who attend a chance to hear and mingle with leaders in their fields. Such gatherings offer participants and audience members alike the opportunity to put an intellectual magnifying glass on the issue at hand and examine it in a detail that seldom is otherwise available.

The past academic year was especially rich in such gatherings, with day-long and multiple-day programs devoted to issues of international affairs, globalization and development, feminism, indigenous peoples, the continuing impact of the *Roe v. Wade* decision, and taxation tools.

Following are reports on each of these gatherings.

Roe v. Wade attorney: Persevere

Conference speakers Jennifer Brown and Jacqueline Payne, '97.

Sarah Weddington was a neophyte Texas attorney with uncontested divorces and an adoption on her lawyer's scorecard when a group of women came to her in 1969 with the case that would lead the U.S. Supreme Court to declare four years later that a woman has the right to have an abortion.

"Why did you ask me?" Weddington asked them 30 years later when she was writing *A Question of Choice*, her history of *Roe v. Wade*. "We needed a woman lawyer, and you were the only one we knew," the women told her.

Weddington was the closing speaker for the conference "Reproductive Rights under Siege: Responding to the Anti-Choice Agenda," which brought more than 15 expert panelists to the Law School in March.

A great deal has changed for women since *Roe*, Weddington told participants in the conference at the Law School in March. There were not many women lawyers in Texas — or anywhere else in the United States — at that time.

A dean at McMurry University, where Weddington earned her bachelor's degree — and many years later the Distinguished Alumna Award — discouraged her from applying to the University of Texas School of Law, telling her that no woman graduate had gone to law school because "it's just too hard." She earned her J.D. from Texas in 1967.

On the job interview circuit, a law firm interviewer told Weddington that she could not handle the long hours because "you'll have to get home to cook dinner." Five years later she became the first woman elected from Austin to the Texas House of Representatives, where she served three terms and helped reform Texas rape statutes, pass an equal credit bill for women and pregnancy leave for teachers, and led efforts to block anti-abortion legislation.

From 1978–81 she served as assistant to President Jimmy Carter in the selection of women for the federal judiciary and other appointments — and in that role helped quash the judgeship nomination of the interviewer who had withheld a job because of her supposed culinary responsibilities.

Today Weddington is an adjunct professor at the University of Texas at Austin and a frequent speaker on women's issues and the development of leadership skills. She was profiled in the 1996 book *The Fifty Most Influential Women in American Law* and is one of 39 "Unforgettable Women" in the Record Breakers exhibit — along with the likes of Babe Didrikson Zaharias and Amelia Earhart — in The Women's Museum: An Institute for the Future, which opened in Dallas in 2000.

Roe v. Wade was decided long ago — Federal Express was incorporated but not yet operating, e-mail and fax were unknown, there wasn't even a women's restroom in the lawyers lounge at the U.S. Supreme Court — and women have made great advances in the 31 years since then, Weddington explained. Yet the issue of the right to an abortion remains as alive as current U.S. Justice Department requests for hospitals' abortion records. "I think the pillars that are *Roe v. Wade* are very much under attack today," Weddington told listeners.

"I feel tired sometimes," she confessed, "partly because I've worked on this issue for so long. I started in 1969, when a group of women came to me from Austin. We need help, they said. 'We want to help people not have babies, but sometimes they're already pregnant. Can we tell people there are good places to go [for

"I believe the hardest challenge we have ahead is to persevere," Sarah Weddington tells supporters of the Roe v. Wade *decision that she won in 1973.*

an abortion], or would we be prosecuted as accomplices?'" (Abortion was legal in New York then, but not in Texas.)

"We spent a lot of time pushing back barriers, and that's now being challenged in a way I've never seen," Weddington explained. "I believe the hardest challenge we have ahead is to persevere. We've got to be just as vigilant and work just as hard as the opposition."

"I won *Roe v. Wade* because I was a young lawyer and I was willing to do what I could . . . . The principle of *Roe v. Wade* is under attack and reinforcements are needed, and you are those reinforcements who will save the day by doing what you can."

Center for Reproductive Rights President Nancy Northup delivered the conference keynote address, and Cari Sietstra, founder and executive director of the national office of the recently formed Law Students for Choice, spoke at lunchtime on "Basic Training: Law Students Take up the Fight."

Three University of Michigan Law School graduates were among the panelists: Meg DeRonghe, '97, associate director for partnerships, global partners, Planned Parenthood Federation of America; Julia Ernst, '94, legislative counsel for U.S. Congresswoman Louise M. Slaughter (D-New York); and Jacqueline Payne, '97, assistant director of government relations, Planned Parenthood Federation of America.

Other panelists included: Jennifer Brown, vice president/legal director, NOW Legal Defense and Education Fund; Rebekah Warren, executive director, Michigan Abortion Rights Action League (MARAL) Pro-Choice Michigan; former Michigan State Senator Alma Wheeler Smith; and Renee Chelian, executive director, Northland Family Planning Centers.

Also: Dr. Lisa Harris, University of Michigan Department of Obstetrics and Gynecology; Sondra Goldschein, state strategies attorney, ACLU Reproductive Freedom Project; Linda Rosenthal, staff attorney, Domestic Legal Program, Center for Reproductive Rights; Silvia Henriquez, executive director, National Latina Institute for Reproductive Health; Leslie M. Watson, director, multicultural programs department, Religious Coalition for Reproductive Choice; Kathy Martinez, director, international legal program, Center for Reproductive Rights; and Wendy Turnbull, legislative policy analyst, Population Action International.

Among the conference's many individual and organizational sponsors were the University of Michigan Law Students for Reproductive Choice, the Law School, the Center for International and Comparative Law, and the Women Law Students Association Political Action Committee.

Taxing new financial instruments: An interim assessment

Professor Reuven Avi-Yonah and Lewis Steinberg

New financial instruments have proliferated in the past 15 years and brought profits to many, but the tax system has been challenged to keep abreast of and reap its share of taxpayers' real gains from these instruments. "There's a question whether the tax system can handle the problems and respond to the challenges" posed by these instruments, Assistant Professor of Law David Hasen noted as he opened the three-day conference "New Financial Contracts and the Federal Tax System — An Interim Assessment."

There was no escaping the symbolic value of the conference's opening day — Tax Day, April 15 — as scholars, current and former government officials, and practitioners gathered to discuss the tax aspects of recent innovations in financial products.

Products such as contingent payment debt instruments (which allow a lender to place contingencies on repayment), notional principal contracts (in which one party to a contract may promise to make fixed payments to a counter-party in exchange for the right to contingent or variable payments), and others have become more widespread and sophisticated, "worries about mistaxation, misallocation of resources, soaring compliance burdens, deadweight loss, and inequity in the tax system have grown," Hasen noted. "So have questions about whether the tax system is really capable of responding to the challenges that financial instruments pose." Although papers submitted for the conference "reflect conclusions from both the optimistic and pessimistic sides of discussion of the issues," Hasen told participants, "some support of the pessimistic view is warranted."

Visiting faculty member Yoseph M. Edrey and Assistant Professor David Hasen.

Other conference presenters and their topics included:

- University of Pennsylvania Law Professor Reed Shuldiner, "Taxation of Risky Investments." Discussant was Joseph Bankman, Ralph M. Parsons Professor of Law and Business at Stanford University.
- Dana Trier, '74, of Davis Polk & Wardwell in New York City, "Reconstructing Section 1032: The Treatment of Derivatives in a Second Best World." Discussant was Douglas Kahn, Paul G. Kauper Professor of Law at the University of Michigan Law School.
- Yoram Keinan, LL.M., S.J.D. '01, of Ernst & Young LLP, "Book-Tax Conformity for Financial Instruments." Discussant was Lewis Steinberg of Cravath, Swaine & Moore LLP in New York City.
- Yoram Margalioth of Tel Aviv University and Yoseph M. Edrey, visiting faculty member at the University of Michigan Law School and former dean of the Faculty of Law at Haifa University in Israel, "Financial Instruments and Productions: Adverse Effects of Taxation." Discussant was Professor David Weisbach of the University of Chicago Law School.
- David C. Garlock of Ernst & Young LLP, "The Proposed National Principal Contract Regulations — What's Fixed? What's Still Broken?" Discussant was Matthew Stevens, formerly of the U.S. Internal Revenue Service.
- The conference also included a panel discussion on "The Future of Financial Instruments Taxation." Panelists included John Buckley of the U.S. House Ways & Means Committee staff; Viva Hammer of the U.S. Treasury's Office of the Tax Legislative Counsel; Joel Slemrod, the University of Michigan Business School's Paul W. McCracken Professor of Business Economics; Lewis Steinberg of Cravath, Swaine & Moore; Matthew Stevens of the Internal Revenue Service's Office of Chief Counsel; and University of Chicago Law School Professor David Weisbach.

"I think it's fair to say that the realization rule — an enduring feature of our tax system (and of every large-scale income tax of which I am aware) — is widely viewed as the primary stumbling block to effective taxation of financial products," he continued. "For assets to which the rule applies, gains and losses that have economically accrued are not reckoned for tax purposes until, generally, the asset to which they relate is disposed of. For assets not subject to the rule, some form of accrual taxation is generally the rule."

Like a starting gun, the conference's first session brought the realization issue front and center. Traditionally, there must be a profit before it can be taxed, and that widely-accepted approach makes it hard to ensure that income from new types of revenue-producing transactions remains part of the tax base, New York University Law Professor Deborah H. Schenk pointed out in her "Economic Analysis of the Realization Rule."

"The realization requirement is the major reason there is no tax on capital income," said Schenk, who admitted to being part of a minority among modern tax experts who continue to believe that a tax on capital is appropriate. "Complete realization is not compatible with a capital income tax. I think there should be a tax on capital, and the problem is how to get there. . . .

"My bottom line is that we are not [currently] in a position to tax or burden capital, but I am in favor of some tax on capital income."

Similar dilemmas are posed by efforts to draw tax revenue from financial instruments while simultaneously keeping them free to operate, grow, and stimulate other growth. This tension arose repeatedly as participants worked through the conference agenda.

The conference was sponsored by the Law School with the support of Baker & Hostetler LLP.

Discussing feminist scholarship and activism

Academics from around the world gathered at the Law School in April for two and one-half days of discussion of issues associated with feminist scholarship and activism. Those who participated in the Michigan Workshop on Feminist Scholarship and Activism all have prior and current associations with the U-M Law School as graduate students, visiting scholars, visiting professors, or members of the faculty. The workshop was sponsored by the Law School's Center for International and Comparative Law.

Those who made presentations included:

- Susanne Baer, LL.M. '93, professor of public law and gender studies at the law school of Humboldt University in Germany, and director of Humboldt's Center for Transdisciplinary Gender Studies and the GenderKompetenzZentrum.
- Janine Benedet, LL.M. '95, S.J.D. '03, an associate professor at Osgoode Hall Law School in Canada.
- Christine Breining-Kaufmann, professor of law at the University of Zurich in Switzerland and chair for international, constitutional, and administrative law. Breining-Kaufmann was a research scholar at the Law School in 2000–01.
- Chao Ju Chen, LL.M. '00, S.J.D. '03, a faculty member at National Taiwan University College of Law and a member of the board of directors of the Taiwanese Feminist Scholars' Association.
- Christine Chinkin, professor of international law at the London School of Economics and a member of the U-M Law School's Affiliated Overseas Faculty.
- Gloria Claro, LL.M. '97, adjunct professor at Universidad Diego Portales in Chile.
- Rebecca Johnson, LL.M. '95, S.J.D. '00, a professor at the University of Victoria Faculty of Law in Canada.
- Orit Kamir, LL.M. '95, S.J.D. '96, senior lecturer at Hebrew University in Jerusalem, Israel, and a visiting professor at the University of Michigan Law School.
- Elizabeth A. Long Professor of Law Catharine A. MacKinnon, who also is cofounder and codirector of the Law Project of Equality Now (USA).
- Goran Selanec, LL.M. '02, an S.J.D. candidate at the U-M Law School who is a junior assistant in the Department for European Public Law at Zagreb University Law School in Croatia.
- Yukiko Tsunoda, professor at Meiji University Law School in Tokyo, legal adviser to the Tokyo Rape Crisis Center, and president of the Center for Education and Support of Women in Japan. Tsunoda was a research scholar at the Law School in 1995–96 and 2002–03.

Plenary panelists John Jackson, Charles Koch, P.S. Rao, Gerhard Hafner, and moderator William Burke-White

Can many voices find common meaning?

The international law arena is getting more densely populated all the time. It's no longer the meeting place where individual sovereign countries are the contestants and the resolution of issues ranges from agreement to war.

Today, international tribunals like the International Court of Justice, the European Court of Justice, the special tribunals for Rwanda and the former Yugoslavia, the World Trade Organization (WTO), NAFTA and its regional permutations, and of course, the United Nations, lend their weight to the multinational formulation of rules and accepted practices. So do the nongovernmental organizations (NGOs) that have become regular parts of the international scene and often perform like lobbyists in domestic policy making.

Also, countries' domestic courts increasingly are taking international precedent and jurisprudence into account in making their decisions. In South Africa, where the young constitution is the result of worldwide investigation of other countries' basic law, many courts are required to consider international standards and jurisprudence in reaching their decisions. Even the U.S. Supreme Court, a latecomer to this practice, has cited international jurisprudence in some very recent decisions.

Scholars from around the world gathered at the Law School last spring for a symposium to consider if this growing variety of inputs to international rulemaking is enriching the debate or degrading it into a gaggle of competing voices. Their symposium, "Diversity or Cacophony? New Sources of Norms in International Law," was part the 25th anniversary celebration of the *Michigan Journal of International Law* and their papers will appear in a future issue of the *Journal*.

"Diversity or Cacophony?"

Both.

Maybe.

As Oxford University Lecturer in International Relations Kalypso Nicolaidis put it in her remarks closing the conference: "The fear of cacophony not only stems from many instruments in the orchestra, but also from so many orchestras. I'm not sure this conference led to an answer as to the question of what diversity is, but it certainly showed how diverse the answers are."

"We must not fall [victim] to the temptation of finding harmony, rejoicing instead in the contrapuntal," she concluded. "The law can do a

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Panel topics and participants included:

- **Fragmentation and the Resolution of Public International Disputes:** John Jackson, Hessel E. Yntema Professor Emeritus of Law at the U-M Law School and professor at the Georgetown University Law Center; Charles Koch, Dudley Warner Woodbridge Professor of Law, William and Mary College of Law; Gerhard Hafner, University Professor of International Law at the University of Vienna; Joost Pauwelyn, Duke University School of Law; and P.S. Rao of the International Law Commission. Moderator was William Burke-White, of the Woodrow Wilson School of Public and International Affairs at Princeton University.
- **The Role of the State in International Law**: Daniel Philpott, assistant professor of political science, University of Notre Dame; Gunther Teubner, professor of private law and legal sociology, University of Frankfurt. Moderator was Andreas Paulus, visiting professor at the U-M Law School and assistant professor of law at Ludwig Maximilians-University in Munich.
- **The Creation of Supra-National Sovereignty**: Stephen Krasner, Graham H. Stuart Professor of International Relations, Stanford University; Dan Sarooshi,

At left, opening Speaker Iulia Motoc with panelist Gerhard Hafner, and, below, with closing speaker Kalypso Nicolaidis.

great deal as a roadmap . . . to empower politicians to solve conflicts peacefully."

Charles Koch, the Dudley Warner Woodbridge Professor of Law at William and Mary School of Law, expressed the ambiguity this way: "This kind of judicial dialog is crucial to vetting judicial views. . . . What we want is to come to some sense of consensus."

For International Law Commission member P.S. Rao, however, "I never have known for sure where the problem is."

"What kind of unity are we looking for?" asked Rao, a veteran of service within the Indian government. "Given the wide nature of global interaction, it's quite possible that things develop in different directions. . . . With a multiplying of issues, we have need for multiple international forums. Diversity is a sign of maturity rather than fragmentation."

Also, noted WTO expert Robert Howse, organizations like the WTO can affect ideas and practices far beyond their immediate jurisdictions. "The WTO is a site for generating norms that go far beyond trade," said Howse, the U-M Law School's Alene and Allan F. Smith Professor of Law. "The WTO offers a norm transmission vehicle that is different from global finance."

Participants were nearly universal in their praise of the increasing transparency accompanying WTO activities and the impact of NGOs in a variety of areas, from trade to human rights. Most also praised the growing ability of NGOs and individual citizens to take part in international decision making processes.

Dickinson School of Law Professor Thomas Carbonneau, however, questioned the value of this democratization. There is "a division between politics and commerce" and "I ignore politics," he explained. The growing use of arbitration is "building a new procedure in the way that international disputes are settled," he said. "It's naïve in the extreme to say that democracy will solve everything," he told a questioner.

Iulia Motoc, professor of public international law at the University of Bucharest, delivered the conference's opening remarks. Emilio Cárdenas, M.C.L. '66, delivered the gathering's closing remarks; Cárdenas, a visiting faculty member at the U-M Law School, is president of the International Bar Association. He has extensive experience as a diplomat and ambassador at large for Argentina, and is a former president of the UN Security Council.

Herbert Smith University Lecturer in International Economic Law, Faculty of Law, University of Oxford; Saskia Sassen, Ralph Lesis Professor of Sociology, University of Chicago, and Centennial Visiting Professor, London School of Economics; and Karel Wellens, professor of international law, Catholic University of Nijmegen. U-M Law School Professor of Law Daniel Halberstam moderated.

- **Non-State Actors and the Contemporary Legal Order**: Robert Howse, Alene and Allan F. Smith Professor of Law at U-M Law School; Thomas Carbonneau, Samuel P. Orlando Distinguished Professor of Law, Dickinson School of Law; Francesco Francioni, professor of international law and human rights, European University Institute; and Jordan Paust, Law Foundation Professor of Law, University of Houston Law Center. Moderator was Assistant Professor of Law Michael Barr, U-M Law School.
- **Internal Fragmentation: Partial Sovereignty of Culturally Distinct Minorities**: Olli Lagerspetz, docent philosoph, Abo Academy, Finland. Margaret Moore, professor of political science, Queen's University, moderated.

Keynote speaker questions laissez faire approach

"Let me pose some questions," began Robert Kuttner, cofounder and coeditor of *The American Prospect* and a keynote speaker for the conference on "Globalization, Law & Development" last spring

• Is global commerce under an essentially *laissez faire* system optimum for human development?

• What is the role of law in allowing commerce to proceed?

There's a paradox in successful developing economies —"all the leading economies are mixed economies: they have central banks [and] social programs that account for one-third to one-half of gross domestic production. Each of the wealthy nations has opted for some mixed economy . . . to enhance efficiency because of the *laissez faire* market."

Keynoter Robert Kuttner

Domestically, advanced industrial nations painfully learned in the mid-19th century to make the political decision to regulate the economy in order to provide for national needs like education and healthcare, Kuttner explained. It's "as if we have suddenly discarded the lesson of the last century and one-half" in advocating the "Washington Consensus" of *laissez faire* investment in developing countries, he said.

"Today, there is the risk that in the name of laissez faire we are trying to impose a [single] model," he said. "The appropriate blend of economic development and human development is a political choice and not an economic imperative. Nor is there a simple correlation between a *laissez faire* economy and political democracy."

For example, apartheid-practicing South Africa was very hospitable to capitalism, but slavery existed there, he said. India and China are among the most successful countries in the international arena, and neither has a *laissez faire* economy, he concluded.

Daniel Kaufmann, the World Bank Institute's director for global governance and for Latin America capacity building and learning, delivered the conference's second keynote speech.

. . . and participants ponder U.S. role

What role will the United States play? After more than two days of rigorous and occasionally contentious discussion, participants in last spring's conference "Globalization, Law & Development" distilled their issues down to two questions:

• First, what role will the United States play?

• Second (a distant second depending on your answer to the first): How do you implement the well-considered ideas for encouraging, financing, and otherwise supporting development that have been discussed over the past two days.

These questions framed much of the conference's concluding session, which culminated discussions of the purposes of development, the role of law and institutions in development, policy priorities for development, the role of trade and foreign direct investment in development, and how to finance development.

Participants noted that during the past 10 – 15 years the amount of private investment in less advanced countries has surpassed aid from the governments of advanced nations. They also took note of the proliferation of bilateral agreements that have been formalized since the breakdown of World Trade Organization talks at Cancun two years ago, when developing countries rejected the trade-organizing efforts of the world's economic giants.

The question that hovered over the discussions, like the proverbial elephant in the room, asked what role would be taken by the increasingly unilateralist-minded United States, the world's sole surviving military/economic superpower. As Assistant Professor Michael Barr, one of the organizers of the three-day conference, asked in reference to the U.S. role: "How do you fit the great unilateralist circle into the multilateralist square?"

Conference organizers Reuven Avi-Yonah and Michael S. Barr of the Law School faculty chat with conference participants.

"It's partly the American psyche that leads us to unilateral solutions," responded Kenneth Dam, a professor at the University of Chicago Law School and former deputy secretary of the U.S. Treasury. "What works best is a unilateral launch that becomes general, like the Breton Woods system (UN agreements) and the Marshall Plan. I think the focus has to be on how to make our international operations work more efficiently."

What will be the impact of the collapse of major multilateral efforts and the growth of bilateral systems? asked conference co-organizer Reuven Avi-Yonah, the Irwin I. Cohn Professor of Law.

"Bilateral agreements will become powerful tools in litigation and may be powerful factors in tailored exceptions," explained Alene and Allan F. Smith Professor of Law Robert Howse. Controversies involving these agreements also may become catalysts "to link investor rights with investor good behavior," Howse added.

But "what I don't think is feasible or desirable is a wholesale retreat from investor protection," he cautioned, and "the evidence is that investors do care. Ironically, some investors are more ready to open arbitration [to public view] than governments are."

One of the huge hurdles in international investment is the difference in the values of different nations' currencies. Invest using cheap currencies and profit in upper-end currencies is the byword. The result can be chaos, or worse.

Panelist Robert Litan, a senior fellow in economic studies at The Brookings Institution and vice president of the Kauffman Foundation, suggested that minimizing the number of currencies used for international investment might be helpful. He reported that in a forthcoming book his coauthor suggests "dollarizing" foreign investment to eliminate currency fluctuations and reduce risk. If it is not politically palatable for the world's nations to base their economies solely on the U.S. dollar, perhaps the world could adopt a tripartite scheme that relies on the Euro, the Yen, and the U.S. dollar, he explained.

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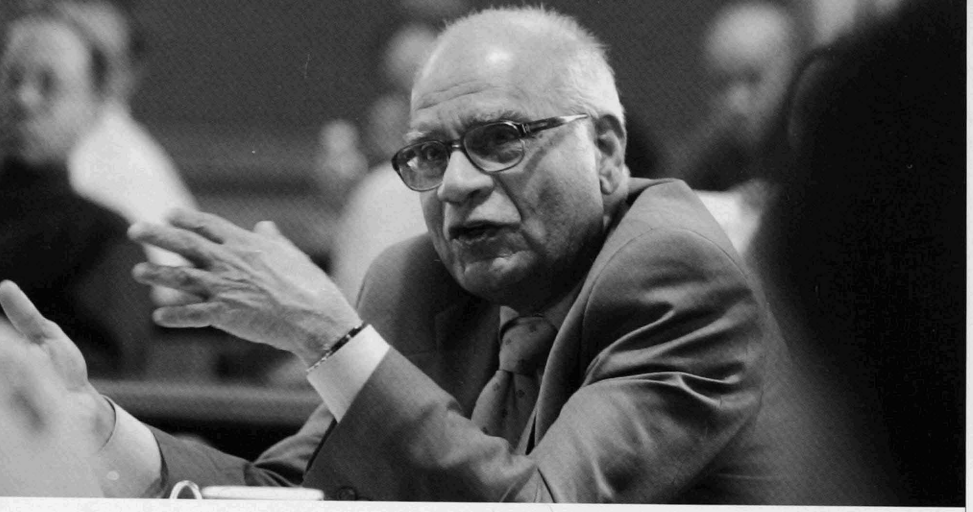
Panel subjects and participants included:

- **Purposes of Development**. With panelists Kamal Malhotra, senior adviser on inclusive globalization, in the Poverty Group, Bureau for Development Policy, UN Development Program; Albert Park, U-M associate professor of economics; and U-M Professor of Economics Linda Tesar. Moderated by Jan Svejnar, then-executive director of the U-M's William Davidson Institute.
- **The Role of Law and Institutions in Development** (I). With panelists John Hiatt, AFL-CIO general counsel; David Kennedy, professor and director of the European Law Research Center, Harvard Law School; T.N. Srinivasan, professor of economics and chair of South Asian Studies, Yale University; and Michael Trebilcock, professor of law, University of Toronto. Moderated by University of Chicago Law School Professor Kenneth Dam.
- **The Role of Law and Institutions in Development** (II). Panelists included Kevin Davis, associate professor, faculty of law, University of Toronto, and visiting professor at New York University School of Law; Katharina Pistor, Columbia Law School associate professor; Associate Professor Kerry Rittich, faculty of law, University of Toronto; and Katherine Terrell, professor in the U-M Business School and Ford School of Public Policy, and director for labor of the U-M's Davidson Institute. Moderator was Robert E. Litan of The Brookings Institution and the Kauffman Foundation.
- **Policy Priorities for Development**. With panelists Lael Brainard, former deputy assistant to the president for international economics and now a senior fellow in economic and foreign policy studies and holder of the New Century Chair at The Brookings Institution; Professor John Braithwaite of the law program and chair of the Regulatory Institutions Network, Research School of Social Sciences, Australian National University; and Steven Radelet, a senior fellow at the Center for



Panelist T.N. Srinivasan

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Such a move would meet with stiff international opposition because of nations' attachment to their currencies as part of their sovereignty, countered Abdel Hamid Bouab, chief of the United Nations' Public Financial and Private Sector Development Branch.

Nor would it ensure wise investment, added Dam. Overbuilt Thai hotels, fueled by dollars but built with Thai bots, still would be empty if all activity had been done in dollars. Poor planning can't be saved by unifying currencies, Dam explained.

The key to making any of these suggestions work is to develop support and good practice at the local level, then work upward through the society and government, explained Katharina Pistor, an associate professor at Columbia Law School.

For Howse, solutions lie in bringing together the academic and political worlds. "On the question of how to put into practice what we've been talking about, we should keep talking to each other — but [also] adopt a politician and share your ideas with him. . . . I believe in the nobility of the political."

Global Development. Assistant Professor of Law Michael Barr moderated.

- **The Role of Trade and Foreign Direct Investment in Development.** Panelists included former Deputy U.S. Trade Representative Carlos Correa, director of the Center for Interdisciplinary Studies on Industrial Property and Economic Law at the University of Buenos Aires; Susan Esserman, '77, former U.S. Deputy Trade Representative and chair of the International Department of Steptoe & Johnson LLP; Kevin A. Hassett, resident scholar and director of economic policy studies, American Enterprise Institute; and Professor Petros Mavroidis of Columbia Law School. Alene and Allan F. Smith Professor of Law Robert Howse moderated.
- **Financing Development**. With panelists Abdel Hamid Bouab, chief of the Public Finance and Private Sector Development Branch at the United Nations; Anthony Clunies-Ross, professor, Department of Economics, University of Straithclyde; and Senior Lecturer Michael Littlewood of the Auckland (New Zealand) Faculty of Law. Moderator was Irwin I. Cohen Professor of Law Reuven Avi-Yonah.

Conference sponsors included the Center for International and Comparative Law and the John M. Olin Center for Law & Economics, both of the Law School, and the William Davidson Institute at the U-M Business School.

Challenges
to indigenous peoples

The ancient lineage of his Catuan ancestors is apparent in Fortunato Turpo Choquehuanca's face, and he honors that Peruvian heritage by speaking out and working to protect the existence of native peoples throughout the world.

Three huge threats — terrorism, poverty, and the forces of a social order that honors expansion and profit — loom over the heads of indigenous peoples, Turpo Choquehuanca told participants in a conference on native peoples at the Law School last spring. In addition, he said, "we must also rescue our indigenous youth. Indigenous youth are in a state of abandonment, and have a deep frustration" with the uncertainties of how to maintain traditional lifestyles while embracing new ones.

Turpo Choquehuanca, who spoke in Spanish with U-M graduate student Maria Gonzalez translating, was closing speaker for the day-long conference "Indigenous Peoples in International Fora." The program was presented by the Law School's International Law Society and Native American Law Students Association and other supporters.

Turpo Choquehuanca, who is dean of the Andean University Law School and president emeritus of Andean University, serves as Peru's representative to the UN's Permanent Forum on Indigenous Issues. Organization of the forum in 2000 was a significant step and "responds to many decades of struggle of indigenous nations," he explained, but unfortunately "in many countries and in some departments of the UN the Permanent Forum is not recognized or known about."

Fortunato Turpo Choquehuanca with translator Maria Gonzalez.

But it must become better known. There are some 350 million indigenous people in the world, 40 million of them in Latin America, according to Turpo Choquehuanca, and the issues of education, culture, the environment, human rights, economic and social development, health, and other questions must be dealt with.

He quoted UN Secretary General Kofi Anan on the forum: "We are a group, an entity, an organization that is just beginning to learn to walk, for the reason that in the next 15 years the importance of the Permanent Forum will be in addressing the needs of the indigenous community."

Turpo Choquehuanca said one of the forum's proposals is to establish a university for indigenous people that "will help indigenous youth recuperate." The forum also must wrestle with indigenous people's issues of health (30 percent of native people are malnourished), human rights ("violence continues; there is a permanent lack of protection for our communities"), control over natural resources, and other issues.

Conference discussion panels and other participants included:

- **Indigenous Peoples in International Human Rights Law**. Panelists were Katherine Gorove, attorney adviser for human rights and refugees with the Office of the Legal Adviser at the U.S. State Department and adjunct professor of law at American University; University of Toronto Faculty of Law Professor Patrick Macklem, who served as a constitutional adviser to the Canadian Royal Commission on Aboriginal Peoples and has advised many of Canada's First Nations in appellate litigation and treaty negotiations; Lawrence Rosen, a professor of anthropology at Princeton University; Notre Dame Law School Professor Dinah Shelton, a member of the executive council of the International Institute of Human Rights; and St. Thomas University School of Law Professor Siegfried Wiessner, who also is academic director of St. Thomas' Human Rights Institute. A.W. Brian Simpson, the U-M Law School's Charles F. and Edith J. Clyne Professor of Law, served as moderator.
- **Indigenous Litigation Strategies in Tribal and International Courts**. With discussants Steven M. Tuyllberg, a co-founder of the Indian Law Resource Center and director of its Washington, D.C., office; and New Mexico Law School Associate Professor and Southwest Indian Law Clinic founder Christine Zuni Cruz, who also is an associate justice on the Isleta Pueblo Appellate Court and editor in chief of the *Tribal Law Journal*. Riyaz Kanji, of the Ann Arbor-based Indian law specialty firm Kanji and Katzen, moderated.
- **Indigenous Peoples in Trade and Environmental Fora**. Panelists were U-M Law School visiting professor Gavin Clarkson, a member of the faculty of the U-M School of Information and an enrolled member of the Choctaw Nation of Oklahoma; Kirsty Gover of New Zealand, a visiting fellow at New York University's Institute for International Law and Justice, who has been a consultant to the New Zealand government on its treaty obligations to the Maori people; Professor Jon Van Dyke of the William S. Richardson School of Law at the University of Hawaii, a specialist in constitutional and environmental issues; and Eric Wilson, an international program analyst with the U.S. Department of the Interior who has served on U.S. government delegations to the Organization of American States Working Group on the Rights of Indigenous Peoples, the Convention on Biological Diversity, the UN Permanent Forum on Indigenous Issues, the World Summit on Sustainable Development, and others. Moderator was Del Laverdure, an assistant professor at Michigan State University College of Law and an enrolled member of the Crow Tribe and chief appellate judge of the Crow Tribal Court of Appeals.

Yuji Iwasawa, professor of international law and international relations at the University of Tokyo and Japan's representative to the UN Permanent Forum for Indigenous Issues, delivered the conference's opening remarks. George Martin, an elder of the Lac Courte Orielles Band of Lake Superior Ojibwe of Wisconsin, opened the day of discussion with a ceremonial "smudging," a traditional offering of smoke from natural incense to participants to cleanse themselves of bad energy and welcome positive feelings.

In Detail

John H. Pickering, '40: A Lifetime of Achievement in the Law

The name of John H. Pickering, '40, weaves through the last 60 years of American legal history like a weaver's pattern stitch.

- When President Harry S. Truman seized U.S. steel mills as part of the World War II war effort, the young Pickering was there to successfully challenge him.
- When Congressman Adam Clayton Powell challenged Congress' power to oust him for extra-constitutional reasons, Pickering was there (in a losing effort) to support Congress.
- During the Civil Rights era of the 1960s, when Mississippi business leaders challenged a 1966 NAACP boycott as restraint of trade, Pickering was there to ensure that the boycott was protected — in a Supreme Court decision handed down in 1982 — as the exercise of free speech.
- In the 1990s, when the issue of physician-assisted suicide reached the U.S. Supreme Court, Pickering was on the front lines again, in both *Washington v. Glucksberg* and *Vacco v. Quill*.
- And when critics challenged the University of Michigan Law School's use of race as a factor in making admissions decisions, Pickering was there again on the winning side.

(Pickering actually started at the top. The first case he tried was before the U.S. Supreme Court. But that story can wait until later.)

So when leaders at *The American Lawyer* magazine scanned the legal landscape for candidates for their first Lifetime Achievement in the Law Awards, the name of John H. Pickering emerged immediately. "Our selection criteria were simple," editor Aric Press explained in his column last March. "The editors looked for lawyers with sterling records in practice who also played important

roles as citizens. We wanted exemplary people, those who by work and deed can serve as role models for younger lawyers. And we limited this honor to lawyers at or near the end of their careers. Most of those we'll honor continue to work; we looked merely for those who had cut back from, say 2,750 billables to just 1,500."

American Lawyer initiated the awards as part of its 25th anniversary celebration, and presented them at a gala banquet in Washington, D.C., last April. Pickering and his longtime partner Lloyd N. Cutler won two of the awards. Pickering, Cutler, and elder statesman attorney Dick Wilmer established Wilmer Cutler Pickering in 1962 in Washington, D.C., and built it into an international firm that is widely respected for the skill of its lawyers as well as for its policy of devoting substantial portions of its lawyers' time to *pro bono* cases. Last June the firm merged with Boston powerhouse Hale and Dorr and now operates as Wilmer Cutler Pickering Hale and Dorr LLP.

Wilmer Cutler Pickering was one of only two firms with two attorneys among the *American Lawyer*'s 12 Lifetime Achievement winners. Winners Newton N. Minow and Howard J. Trienens both are with Sidley Austin Brown & Wood.

The other eight winners were: William T. Coleman Jr. of O'Melveny & Myers; Joseph H. Flom of Skadden, Arps, Slate, Meagher & Flom; Alexander D. Forger of Milbank, Tweed, Hadley & McCloy; Robert D. Raven of Morrison & Foerster; John M. Rosenberg of the Appalachian Research and Defense Fund of Kentucky; Frederick A.O. Schwarz Jr. of Cravath, Swaine & Moore; Robert S. Strauss of Akin Gump Strauss Hauyer & Feld; and the Hon. Patricia Wald, retired chief judge of the U.S. Court of Appeals for the District of Columbia Circuit.

"These are lawyers who gave meaning to the profession's values, lawyers whose careers are a challenge to those who follow," according to Amy Vincent, who profiled the winners in last May's special anniversary issue of *The American Lawyer*.

For Pickering, the award is the most recent of many. If he were he a military man, his uniform would be weighted with medals.

In addition to his Lifetime Achievement Award this year, the ABA's *Human Rights* magazine honored him in April as a Human Rights Hero. His law partner John Payton noted in his tribute that "for more than 60 years, John H. Pickering has devoted his career to serving others with integrity, generosity, and civility. In addition to being a distinguished appellate lawyer, renowned for his insightfulness and superlative skills as an advocate, John's passionate pursuit of equal justice for the underprivileged and underserved, including the elderly, has given voice to countless numbers who would otherwise have gone unheard."

Pickering himself aptly summed up his viewpoint in a 1994 interview for the District of Columbia Bar's "Legends in the Law" series:

"In reflecting on a lifetime, I think there's always the temptation to ask, 'What if?' — What if I'd gone back to New York and made partner? Would I have made more money? Yes, I would have made more money. Would I have had as much fun? No, definitely not.

"I've had the opportunity to play a substantial part in the creation of a major law firm, and I've been able to do a lot of things for the Bar, for court reform, and for the Michigan Law School. That has given me a feeling that I've done something with my life other than just service the interest of clients."

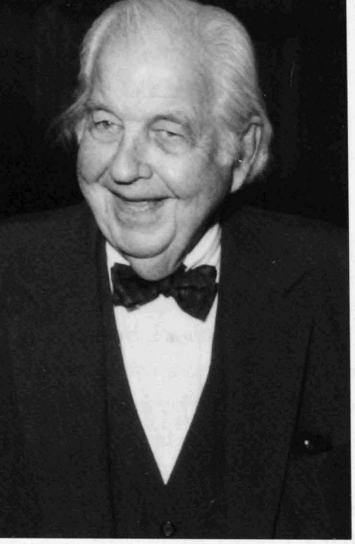
Dean Evan Caminker has had the good fortune of experiencing Pickering's passion for helping others through legal reform first hand — not just through Pickering's work for the Law School, but 15 years ago when Caminker was a young associate at Wilmer, Cutler & Pickering.

"One of my first projects at the firm was to assist John in writing an *amicus* brief in the landmark 'right-to-die-with-dignity' case involving Nancy Cruzan," Caminker explained. "Learning to draft a Supreme Court brief from such a master advocate was a memorable experience. Of course John taught me a great deal about first-rate brief writing; but much more significantly he illustrated by example the possibility and importance of marrying reason with passion, and of dedicating one's energy and talents to causes that speak to the heart."

Pickering's attachment to the Law School is consistent and well-known. He delivered the commencement address here in 1992. He helped organize and launch the Law School Fund in 1960, was a charter member of the Law School's Committee of Visitors when it was organized in 1962, and chaired the School's development committee from 1973–81. In the mid-1990s his firm established the John H. Pickering Scholarship in his honor.

He enjoyed life as a law student, and afterward moved to New York City to practice with Cravath, de Gersdorff, Swaine & Wood, where he had worked as a summer associate. He quickly found himself working on the "Black Tom" case that involved claims of damages from Germany's destruction of the Black Tom terminal in New York during World War I.

Pickering expected to remain in New York as a corporate lawyer, although "I didn't know what that meant, but that's what I was going to be." In 1941, however, he got the offer that would alter the course of his life — to clerk for U.S. Supreme Court Justice Frank Murphy, '14, a fellow University of Michigan



Law School graduate. "Justice Murphy had a great influence on my career," according to Pickering. "He was a firm believer in protecting the rights of the individual and protecting the rights of the minority against the tyranny of the majority."

One of Pickering's first directives from Murphy was to look for an opportunity to acknowledge error and eventually reverse the justice's holding in *Minersville v. Gobitis*, in which he had joined the Court majority in ruling that a Jehovah's Witness child could be expelled from school for refusing to recite the pledge of allegiance and salute the flag. Eventually, in *West Virginia v. Barnette*, the Court gave its blessing to the individual's right to refuse to say the pledge of allegiance because it offends his religious beliefs.

There is no higher peak to climb in American jurisprudence than to reach the U.S. Supreme Court. Pickering is no stranger there, and has spent some 60 years helping to shepherd cases that are significant to him. Asked once to identify his "favorite cases," Pickering quickly cited issues that had made it to the U.S. Supreme Court.

"Looking back, I'd say the cases I've enjoyed the most have been those that have some real constitutional significance," he told his "Legends in the Law" interviewer. "One was the steel seizure case which overturned President Truman's seizure of the nation's steel mills. Another was *NAACP v. Claiborne Hardware*, which Lloyd Cutler argued and I worked on the brief [defending the NAACP boycott]. . . . We took the case to the Supreme Court, where we prevailed. The Court held that the boycott was not an antitrust violation, but a permissible exercise of economic speech.

"I also helped represent the U.S. House of Representatives in the expulsion of Adam Clayton Powell. In that case I might have preferred to be on the other side. That's one thing the public doesn't fully understand about lawyers. You should not turn down a case just because you may have some sympathy for the other side. . . . I did not have any such problem in the Adam Clayton Powell matter. He had sued to get his seat back after he had been expelled from the House. We won the case in the District Court and in the Court of Appeals, but we lost in the Supreme Court, which held that Congress is restricted to the three qualifications stated in the Constitution when it judges qualifications of members. Those three qualifications are age, citizenship, and residency. That's it. I think the Court was right in that ruling despite our respectable arguments to the contrary."

And that first Supreme Court case?

"That was in 1946. I'd just been mustered out of the Navy, and in those days when the Supreme Court needed to appoint counsel for an indigent they would use former law clerks. One Saturday afternoon my phone rang at home, and the deputy clerk said, 'John, the Court would like to appoint you to represent the defendant in a mail fraud case. Do you agree?'

"Well, I couldn't have said no even if I'd wanted to. So I argued my first case in the Supreme Court."

"I was brought back to earth the following week," he continued, his touch of humble humor inescapable. "My second court appearance was a traffic case in the old municipal court. I defended a chauffeur on a change of lane violation — and I lost."

A. Vincent Buzard, '67, named president-elect of New York State Bar Association

A. Vincent Buzard, '67, assumed duties this summer as president-elect of the 72,000-member New York State Bar Association (NYSBA). Elected at the association's 127th annual meeting in New York City last winter, Buzard is the first University of Michigan Law School graduate to lead the NYSBA, the nation's largest voluntary state bar association.

As president-elect, Buzard chairs the NYSBA's House of Delegates and co-chairs the President's Committee on Access to Justice, which was formed to help ensure that civil legal representation is available to the poor.

Buzard is based in Rochester, New York, where he is a partner in the statewide law firm Harris Beach LLP. He is a native of Sullivan, Indiana, and earned his bachelor's degree at Wabash College before enrolling at the Law School.

A trial lawyer for more than 35 years, Buzard chairs Harris Beach's Appellate Practice Group and focuses his practice on complex civil litigation including commercial and municipal matters. He also represents people with serious injuries, especially those who have suffered brain injuries. He is a past president and former board member of the New York State Head Injury Association and has lectured widely on trial practice and the representation of people with head injuries.

Long active in the bar association, Buzard co-chairs the NYSBA's Special Committee to Review Attorney Fee Regulation. He served on the Executive Committee, as vice president for the Seventh Judicial District, and as association secretary. He has served as a member of the House of Delegates,

chaired the New York State Conference of Bar Leaders, and co-chaired both the Lawyers in the Community and Medical Malpractice committees.

As chair of NYSBA's Special Committee on Cameras in the Courtroom, Buzard led a comprehensive study of audio-visual coverage of trials in other states. His committee determined that "there is no pattern of specific harm in specific cases and no substantial evidence that cameras adversely affect the outcome of trials." Buzard guided the report through the House of Delegates in 2001 and helped convince the delegates to reverse their long-standing requirement that cameras can be used in courtrooms only with the consent of both parties to a suit.

Buzard was president of his local Monroe County Bar Association in 1993–94, and won the Adolf J. Rodenbeck Award for his contributions to the community and the profession. He was corporation counsel for the City of Rochester in the early 1970s, and today serves on the city's Cultural Center Commission and Monroe County Sports Development Authority. He previously served on the Rochester Board of Ethics, was president of the Landmark Society of Western New York and the City Club of Rochester, and served on the Commission of Ministry of the Episcopal Diocese of Rochester.

He currently is a member of the Governor's Fourth Department Judicial Screening Committee to review candidates for judicial appointment by the governor and serves as a referee for the New York State Judicial Conduct Commission. He also is heard frequently on radio and television as a legal and political analyst. He previously has served on Chief Judge Judith S. Kaye's Special Committee on the Establishment of Commercial Courts in the State of New York.

Faegre & Benson honors Brian O'Neill, '74

Brian O'Neill, '74, a senior litigator at Faegre & Benson in Minneapolis, has been named recipient of the firm's 2003 John C. Benson Pro Bono Award and also has been inducted into the International Academy of Trial Lawyers.

Established in 1994 to honor the late John C. Benson, the annual award is presented to the attorney who best exemplifies a commitment to professional excellence in the delivery of *pro bono* legal service.

Brian O'Neill, '74

O'Neill has selected Defenders of Wildlife, a nonprofit organization dedicated to protecting native flora and fauna in their natural communities, to receive the $3,000 charitable contribution Faegre & Benson makes in honor of this award.

O'Neill was recognized for his 25-year record of *pro bono* service in public interest environmental litigation, his leadership in establishing Faegre & Benson's nationally recognized *pro bono* practice in this area, and his mentoring of scores of young lawyers interested in public service.

Since joining the firm in 1977, O'Neill has represented more than 60 public interest clients, among them the Wilderness Society, Defenders of Wildlife, the Environmental Defense Fund, the Sierra Club, the National Audubon Society, the Grand Canyon Trust, and the Friends of the Boundary Waters Wilderness. His *pro bono* cases have involved issues of clean water, park and wilderness area land management, snowmobile and motor boat use in wilderness areas, nuclear waste disposal, forest and timberland management, and wildlife protection.

A number of environmental organizations, including the Sierra Club, Izaak Walton League, Defenders of Wildlife, Friends of Boundary Waters, and the Minnesota Center for Environmental Advocacy previously have honored O'Neill for his work. In 1995, the Trial Lawyers for Public Justice named him Trial Lawyer of the Year, and in 1994 the *National Law Journal* named him one of the 10 best trial lawyers in America. He is listed in *Best Lawyers in America* as an antitrust lawyer, business litigator, and environmental lawyer.

Among O'Neill's notable cases is *Defenders of Wildlife v. Hodel*, which resulted in the successful reintroduction of gray wolves into Yellowstone National Park. His legal victories also have extended protection to the Boundary Waters Canoe Area Wilderness, Superior National Forest, and Voyageurs National Park in northern Minnesota.

O'Neill's induction into the International Academy of Trial Lawyers brings him into the select company of the maximum of 500 Fellows from the United States that the Academy allows among its membership. To become a Fellow, a lawyer must be evaluated for outstanding skills and experience, personal and professional character, integrity, honesty, and other qualities.

The academy was chartered in 1954 to cultivate the science of jurisprudence, promote legal reforms, facilitate the administration of justice, and to elevate the legal profession's standards of integrity, honor, and courtesy.

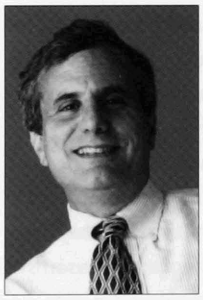
Members of Law School 'family' named to four deanships

Four members of the Law School family have become deans of major U.S. law schools .

- Former Law School faculty member T. Alexander Aleinikoff was named dean at Georgetown Law Center in July;
- Former faculty member Larry Kramer assumed dean's duties at Stanford University Law School on September 1;
- Law School graduate Stewart J. Schwab, '80, has become dean at Cornell University Law School; and
- Graduate Frank H. Wu, '91, was named dean at Wayne State University Law School in Detroit.

T. Alexander Aleinikoff, who taught at the University of Michigan Law School for 15 years during the 1980s and 1990s, was named executive vice president for Law Center affairs and dean of the Georgetown University Law Center on July 1. He had been a professor at Georgetown since 1997, and is a nationally recognized authority on immigration.

Georgetown President John J. DeGioia called Aleinikoff "a distinguished scholar, teacher, and public policy leader" and praised his dedication to "scholarship, teaching, and service." Aleinikoff, who has been serving as a senior associate at Georgetown's Migration Policy Institute, said he was honored by the appointment and called Georgetown "unique among law schools because of its academic excellence, its commitment to the pursuit of justice, its service to the community, and its location."



Aleinikoff

The new dean has published more than 50 books and articles on immigration law, constitutional law, and statutory interpretation, including *Semblances of Sovereignty: The Constitution, the State and Citizenship*, and was co-editor of the books: *Migration and International Legal Norms* and *Immigration and Citizenship: Process and Policy.*

Aleinikoff also has held high-level positions with the U.S. Immigration and Naturalization Service. He was general counsel from 1994–95 and served as executive commissioner for programs from 1995–97. He earned his bachelor's degree from Swarthmore College and his law degree from Yale Law School.

Georgetown Law Center enrolls 575 full- and part-time students.

Larry Kramer, who taught at the U-M Law School from 1991–94, became dean of Stanford Law School on September 1. Kramer previously had been a professor and associate dean at New York University School of Law.

"Professor Kramer is a dynamic and thoughtful legal scholar and educator," Stanford President John Hennessey said in his announcement of Kramer's appointment.

Kramer

Stanford Provost John Etchemendy, who co-chaired the search committee for the new dean, praised the matchup of Kramer and Stanford. "Stanford is probably unique in having an unbroken run of four constitutional scholars at the helm of its law school over the last generation," Etchemendy said. "Moreover, Larry Kramer is widely considered to be among the best and the brightest of the new generation of leaders in legal education."

Kramer has written several books and dozens of journal articles. His most recent book, *The People Themselves: Popular Constitutionalism and Judicial Review*, was published by Oxford University Press earlier this year.

Stanford Law School accepted its first students in 1893, two years after Stanford University opened, and currently enrolls 550 J.D. candidates.

Stewart J. Schwab, '80, a member of the Cornell University Law School faculty since 1983, was named dean in December. The announcement was made by fellow U-M Law School graduate and Cornell President Jeffrey S. Lehman, '81, a former dean of the U-M Law School.

Schwab

Lehman praised Schwab as "a nationally recognized scholar who has the respect and admiration of his colleagues on the Cornell faculty." Schwab's leadership "will continue to prepare our students for lives of accomplished service within a rapidly changing profession," Lehman added.

"I am delighted but humbled at being chosen," responded Schwab, a specialist in labor and employment law and tort and contract law. Schwab earned his bachelor's degree at Swarthmore College and his advanced degrees — trial organization, J.D. *magna cum laude*, and Ph.D. in economics — from the University of Michigan. He clerked at the U.S. Court of Appeals for the Fourth Circuit and then for U.S. Supreme Court Associate Justice Sandra Day O'Connor.

Schwab is co-editor of the *Journal of Empirical Legal Studies* and coauthor of *Foundations of Labor and Employment Law* (2000) and of the casebook *Employment Law: Cases and Materials* (3rd edition, 2002). His scholarly writings on employment discrimination, workplace accommodations for people with disabilities, sexual harassment in the workplace, constitutional tort litigation, and labor law reform have appeared in law journals at Yale University, the University of Chicago, New York University, William and Mary, the University of Michigan, and Cornell.

Schwab has been a distinguished visiting professor at the University of Nebraska Law School, a Fulbright senior scholar at the Australian National University's Center for Law and Economics, a visiting fellow at the Center for Socio-Legal Studies at Oxford University and at Victoria University faculty of law in New Zealand, an Olin visiting research professor at the University of Virginia Law School, and a visiting professor at both the U-M and Duke law schools.

Cornell Law School was founded in 1887 and enrolls about 600 students.

Frank Wu, '91, grew up in the Detroit area, clerked for a federal judge in Cleveland, practiced for two years in San Francisco, and taught for nearly a decade at Howard University Law School in Washington, D.C., before becoming dean at the 850-student Wayne State Law School. At Howard, he also directed the Clinical Law Center.

Wu is well-known here at the Law School, where he was a visiting professor throughout the 2002–03 academic year. He described the experience in the Spring 2003 issue of *Law Quadrangle Notes*:

"My students at Michigan were extraordinary. I was impressed with them collectively and individually. They prompted me to reflect on the lives of teachers and students, respectively, and the relationships among them. Ours is a joint enterprise. In a professional school, unlike a graduate program, the faculty are scholars training practitioners. The faculty may value their research, but we must also appreciate the educational endeavor. Otherwise, our research will become isolated, bereft of tangible benefits to anyone but ourselves."

Wu

Wu's career fuses the scholarly and the practical. He is the author of *Yellow: Race in America Beyond Black and White* (2002), coauthor of the textbook *Race, Rights and Reparation: Law and the Japanese American Internment* (2001), and has written more than 200 articles that have appeared in journals and newspapers across the country. He has chaired the D.C. Human Rights Commission and served on the Board of Professional Responsibility for the District of Columbia Court of Appeals. He is a member of the Board of Trustees for Gallaudet University, which was founded to serve deaf and hard-of-hearing people, an elected member of the American Law Institute, and a Fellow of the American Bar Foundation. He earned his bachelor's degree at Johns Hopkins University and is a *cum laude* graduate of the U-M Law School.

Wayne State University President Irvin D. Reid called Wu "the right person at the right time for our law school" and praised his "diverse and impressive background in teaching, scholarship, administration, and legal practice."

For his part, Wu is happy to return home. "I sought this deanship, and only this deanship, because I believe in the future of Detroit," he told *Law Quadrangle Notes*.

"I am pleased to say that I will reside in the city proper, not in the suburbs," he explained. "I want to demonstrate in the most practical manner my faith. I also am establishing the Izumi Family Foundation, in honor of my late in-laws. At least 10 percent of my salary will be donated to this foundation, which will support activities of the Wayne State Law School."

Wayne State University Law School was founded in 1927.

Law School graduates join international courts

Three Law School graduates have earned positions with international courts this year. Two recent graduates are working with the International Court of Justice (ICJ) in its prestigious University Traineeship Program. A third graduate is clerking for Judge Theodor Meron, president of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

Sonia Boutillon, '03, and **Carsten Hoppe**, '04, have been selected to participate in the ICJ training program. Only a select group of academic institutions are able to nominate students in the highly competitive process for this program. Michigan is one of only two schools to have more than one student or graduate selected by the court, and this is the first year that the Law School has submitted nominations. Only 10 positions are available each year.

"This will be an opportunity both to deepen my knowledge of public international law and to work closely with leading figures in the field," Boutillon says. "As international relations developments have shown, bridging the gap between different conceptions of international law is crucial to furthering a viable multilateral system."

In addition to earning her J.D. at the Law School, Boutillon earned a B.A. in political science and international relations from the Institut d'Etudes Politiques de Paris and an M.A., with honors, in international and European economic law from the University of Paris X. Prior to beginning the traineeship she was an associate with the Washington, D.C. law firm of Sutherland Asbill & Brennan, where she worked mostly on international trade matters. She is a member of the New York Bar.

At the Law School, Boutillon was executive articles editor of the *Michigan Journal of International Law*. Her article, "The Precautionary Principle: Development of an International Standard," (23 *Michigan Journal of International Law* 429 [2002]), won the 2003 Francis Deak Award from the International Law Students Association/American Society of International Law as best student publication in international law; the article also won the University of Michigan Law School's 2003 Eric Stein Award as the best student contribution to the same journal.

Boutillon also has written an article on the European Union's interpretation of Article I of the 1951 convention relating to the status of refugees that was published in the *Georgetown Immigration Law Journal*. She is bilingual in English and French, fluent in Spanish, and has basic proficiency in German and Russian.

Carsten Hoppe, the other graduate going to the ICJ, plans to begin doctoral studies in public international law following completion of the program. "The Michigan-sponsored position will provide an invaluable learning opportunity along that path," he says. "Completely immersing myself in public international law on the highest level will be the ideal preparation for my dissertation."

Hoppe received his B.A., *magna cum laude*, in economics from the University of Rochester, and since 2001 has been a fellow of the German National Academic Foundation. At the Law School, he served as the international blue book editor of the *Michigan Journal of International Law*, and as a research assistant to Professor Mathias Reimann, LL.M. '83. In 2002 he worked as a summer associate at Kaye Scholer in New York City, and in the summer of 2001 he served as an assistant to then-Commissioner Bruno Simma at the International Law Commission of the UN. Simma, a member of the Law School's Affiliated Overseas Faculty, now is a judge on the UN's International Court of Justice.

A third recent graduate, **Benjamin Mizer**, '02, in September became a clerk for Judge Meron at the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ITCR). Mizer earlier this year completed a judicial clerkship with Justice John Paul Stevens at the U.S. Supreme Court before moving to The Netherlands to begin his work with Meron.

Mizer said he was attracted to the clerkship at ITCY for the opportunity to live and work in Europe for a year and to get an inside look into the work of the tribunals. He has always been interested in criminal law, he explained, "but this

Assistant Dean for Career Services Susan Guindi,'90, introduces the discussion of international legal careers presented last spring in cooperation with the American Bar Association. Panelists seated behind her include, from left, C. Peter Theut (not shown), '63; Alexander W. Koff, '96; Peter Vint of the American Bar Association Section of International Law and Practice, which organized the program; Terence Murphy, '66; and Lisa Murray, '96.

job will provide me with a whole new perspective on the legal norms that govern criminal behavior and punishment."

Mizer points out that as a result of the war on terror, the U.S. courts and government are confronting issues of international law and the law of war. Several of the biggest cases on the Supreme Court's docket this past term dealt with these issues. This activity has increased his interest in learning more about international human rights law, he explains. "I can't imagine work that is more important than that of the Tribunals — striving to achieve some sense of justice in the context of two of the great human atrocities of recent history," he says.

The ICTY, whose most famous case is probably the trial of Slobodan Milosevic, which began in 2002, sits in The Hague. Mizer hopes to travel with Meron at least once to the ICTR hearings in Arusha, Tanzania. Meron, on leave from his Charles L. Denison professorship at the New York University School of Law, was elected an ICTY judge in March 2001 and was designated a member of the appeals chambers of the tribunals for both the former Yugoslavia and Rwanda in November the same year. He serves as president of both appeals panels.

Panel: International practice offers opportunities for women

International legal practice is an especially attractive field for women because it is too new to have developed the bad habits of a good ole boys network, according to graduates who visited the Law School in March as part of the American Bar Association's Pathways to Employment in International Law program.

The downsides of difficult travel and gender discrimination are diminishing all the time, yet the field still is too young to have developed the closed networks that can limit women's opportunities, panelists said.

"I can't think of an area of law that is better for females to go into," explained C. Peter Theut, '63, a Butzel Long partner based in Detroit. "Things are less fossilized, so it's easier for women to make inroads," added panelist Lisa A. Murray, '96, of Baker & McKenzie's Washington, D.C. office.

A corporate transactions lawyer who often works in China, Theut acquired his international spurs in admiralty law. Litigation experience remains valuable in the international arena, Theut added, but "arbitration is the way that things are going in international law."

Murray, who specializes in trade issues, noted that you don't have to accumulate frequent flyer miles or have a deep knowledge of international legal principles to be involved in international matters. For example, she reported, "I never left my office" during the years that she represented a U.S. client before the United Nations Claims Commission in a case stemming from the first Gulf War in 1991.

"I tend to represent foreign clients who want to import into the United States," Murray explained. "I've been very fortunate to do work that meshes with my personal values."

Other members of the panel included Alexander W. Koff, '96, of Paul, Hastins, Janofsky & Walker LLP in Washington, D.C., and Terence Murphy, '66, a strategic adviser for MK Technology, also in Washington. The discussion was moderated by Peter D. P. Vint of the ABA's Section of International Law and Practice, whose boutique practice focuses on international work, especially in Asia.

Advocating for children: Fulfilling, frustrating, exhausting

Lawyering on behalf of children is "fulfilling — but also frustrating and exhausting," according to the winner of the first Public Interest Alumni of the Year Award presented by the Law School's Public Interest and Community Service Organization (PISCO).

Such work also is as intellectually challenging and stimulating as other specialties, he says.

Vivek Sankaran, '01, has been with the Children's Law Center in Washington, D.C. for three years and has learned firsthand the low priority that agencies often assign to advocating on behalf of children. He described his experiences after receiving PISCO's Award in ceremonies at the Law School in April.

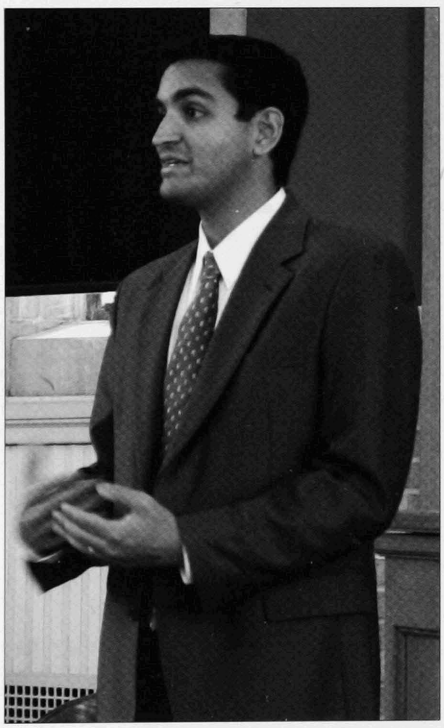
"To say this has been an eye-opening experience to me is an understatement," Sankaran said. As an attorney, "you come to the family at the worst time of their life, when their child has been taken away." Typically, he explained, the child advocate's work on the case begins only hours after the child has been removed from a home.

In one of his cases, authorities said children who had been removed from their home would have to spend a month in foster care while authorities acquired the beds that were needed for them to stay with their grandmother. "Why not buy the beds ourselves and get reimbursed by the court?" Sankaran wondered. The court agreed, and the children moved quickly to their grandmother's home.

In another case, he worked for months with a young girl, but then she ran away and has not been located. Such experiences exact an emotional toll, and "this is when the public interest network is essential," Sankaran explained. "It can support you."

Sankaran was a Skadden Fellow at the Children's Law Center during his first two years there, and reported that the network of past and current fellows what Skadden supporters call "the law firm without walls" helped him through many low spots. Now, after more time on the job, he also has developed additional contacts for assistance and support.

"One of the good things about going to Michigan is the incredible number of alumni who are everywhere doing everything," he said.



Vivek Sankaran

Mary Frances Berry, '70, wins Spirit of Excellence Award

Mary Frances Berry, '70, chair of the U.S. Commission on Civil Rights and Geraldine R. Segal Professor of American Social Thought at the University of Pennsylvania, has won the 2004 Spirit of Excellence Award of the American Bar Association Commission on Racial and Ethnic Diversity in the Profession.

Instituted in 1996, the Spirit of Excellence Award recognizes the accomplishments of lawyers and judges who have advanced racial and ethnic diversity in the legal profession. Winners are chosen for their achievements in promoting the advancement of lawyers from diverse backgrounds and for the contributions to professional excellence.

"Dr. Berry has served the public and her profession as an influential civil rights pioneer in so many capacities, it is difficult to catalogue," said Lawrence R. Baca, chair of the ABA commission. "From her work as the first African American woman to head a division at the U.S. Department of Health, Education, and Welfare to her appointment as the first African American woman to serve on the U.S. Civil Rights Commission, Dr. Berry has shown a lifelong commitment to pursuing justice and equality for people of all backgrounds."

Berry was appointed to the Civil Rights Commission in 1980 and has been its chair since 1993. When President Reagan fired her from the commission for her criticisms of his administration's civil rights policies, she sued in federal district court and won reinstatement.

"Dr. Berry's efforts to improve civil rights around the world, by founding the

State Attorney General Mike Cox, '89

Free South Africa Movement, and even going so far as to be arrested and placed in jail for this particular cause, only further demonstrate her immense passion and commitment to civil rights advocacy," Baca said.

Berry attended Howard University and earned her Ph.D. as well as her J.D. at the University of Michigan. She has received an honorary doctorate from the University of Michigan and 30 other universities, and many awards for her public service and academic achievements. She is one of six recipients of Spirit of Excellence Awards for 2004, which were presented last winter at a luncheon in San Antonio.

Michigan Attorney General Cox, '89: Public service a noble calling

Michigan Attorney General Mike Cox, '89, whose new Child Support Collection Division collected some $1.4 million in support payments from deadbeat dads during its first year of operation, used his visit to the Law School in March to urge students to consider a career in public service.

"Show me a job that's more worthwhile than protecting the community," he said during a midday program in the Lawyers Club Lounge. "Show me a job that's better than advocating for people who cannot advocate for themselves."

Since his election in 2000, Cox, a Republican, has devoted major effort to getting children the childcare payments to which they are entitled. Each day, some 650,000 children awake without knowing if they will get the court-ordered support that is due to them, he reported. He explained that his office's new child support collection efforts are modeled on those that Mothers Against Drunk Driving initiated 20 years ago: getting authorities to enforce the law and getting the public to understand the issue and the need to do something about it.

"Why are you here?" he asked his student audience. "Why have you chosen this endeavor as opposed to something else?" People choose a legal profession because they can earn high income, because they want to do good, and/or because of the academic/intellectual challenge such work poses, he answered.

"I hope among you there is a group of students who are here because they eventually want to do public service," he continued. "In public service I've been very lucky to meet so many exceptional people who are motivated by causes greater than themselves."

Public service gets you involved with clients and issues, he explained, and "in the end the skills I learned as a public attorney were but a small part of what I learned, a small part of the compensation package. I was privileged to become part of a person's life."

The legal profession is a noble profession, according to Cox. "Society relies upon us to uphold the rule of law. It's a great responsibility and a great obligation."

Looking to Detroit

Below, Dean Evan Caminker listens as Assistant Dean for Career Services Susan Guindi, '90, introduces a program on opportunities for lawyers in the Detroit area, held at the Law School last spring as part of a series of programs on opportunities in major cities around the United States. Graduates can find many opportunities in Detroit as well as faster advancement, better living conditions, and a more relaxed lifestyle than in many larger cities, panelists explained. From left are: David Foltyn, '80, of Honigman Miller Schwartz and Cohn LLP; Jill Wheaton, '90, of Dykema Gossett PLLC; Reggie Turner, '87, of Clark Hill, vice president of the National Bar Association and past president of the State Bar of Michigan; and Mireille (Mimi) Raoul Volmar, '98, of Miller Canfield. "We have benefited a great deal by having this great school in our backyard," said Foltyn, a corporate law specialist. "Like many of you, I could have worked at any law firm in the country." Wheaton, who practiced in New York City for four years before joining Dykema Gossett, first in Detroit, now in Ann Arbor: "I wanted a life" and you gain experience more quickly here than in New York. Said Turner: "We have a healthy competition among strong, well-managed firms" and Detroit is "a great place for me to make a difference and contribute to society." For Volmar, who practiced in Chicago before coming to Michigan because her spouse got a fellowship here, "The beauty of being here is the huge opportunity to get mentors. The first thing I noticed when I got to Miller Canfield was the access to partners and colleagues. It's very empowering."

Reunion weekends feature special speakers

Participants in reunion weekends this Fall have the opportunity to hear talks by a prominent member of one of the reunioning classes.

Mary Snapp, '84, vice president and a deputy general counsel of Microsoft Corporation, speaks as part of reunion weekend activities September 17–19. Classes holding their reunion that weekend include classes of 1979, '84, '89, '94, and '99.

Snapp

Snapp is an active supporter of the Law School and serves on the Law School's Campaign Steering Committee.

Larry D. Thompson, '74, former deputy U.S. attorney general and now a senior research fellow at the Brookings Institution, will speak as part of reunion activities during this fall's second reunion weekend, October 8–10. Reunion classes that weekend include those of 1949, '54, '59, '64, '69, and '74.

Thompson

(An interview with Thompson appeared on pages 46–47 of the Spring 2004 issue of *Law Quadrangle Notes*.)

Brent Smyth and Ben Konop

December grads set eyes on Congress

December grads share a special camaraderie. Take it from Ben Konop and Brent Smyth.

Konop and Smyth were friends at the Law School, and graduated together in December 2000. Then they went separate ways: Konop to three years of practice with Fulbright & Jaworski in Washington, D.C., Smyth to three years of practice at Cooley Godward in Palo Alto, California.

Now they're together again, Konop as the Democratic candidate for a congressional seat from Ohio, Smyth as his campaign manager.

"I always wanted to pursue a career in public service, and I found the opportunity to do so in December when I decided to move back to my native Ohio and run for the U.S. Congress in Ohio's Fourth District," Konop explained. As for Smyth, "I'd always been interested in politics, and I just thought, 'If not now, when?'" Smyth explained from campaign headquarters in Ada, Ohio.

Konop's bid for office stemmed from a conversation he had with Congresswoman Marcy Kaptur, D-Ohio, for whom he had worked when he was an undergraduate at Emory University. Kaptur suggested to him late last year that he challenge 11-term Republican Congressman Michael G. Oxley for the Fourth District seat. Konop also had worked for Northern Ohio Federal District Court Judge James Carr and for Ohio Common Pleas Judge Fred McDonald, and was a page in the U.S. House of Representatives.

Konop formally announced his candidacy last March, citing the area's 11 percent unemployment rate as a central issue in his campaign. "My primary focus will be on bringing good jobs back to our community," he said as he launched his kick-off tour at a foundry in Mansfield, Ohio. "Having a good job is the key to realizing the American Dream."

Konop noted that he and Smyth are "two U-Mich guys in the heart of Buckeye country. But it's been a great experience so far and we're really gaining momentum."

Now they're in the stretch headed toward Election Day.

ABA honors Scott Hollander, '90, for his child advocacy work

Scott M. Hollander, '90, an innovative mover and shaker in child advocacy work and the founding director of the multidisciplinary child assistance organization KidsVoice in Pittsburgh, has won the American Bar Association's prestigious Child Advocacy Award. The award was presented at the ABA's annual meeting in Atlanta in August.

Established in 1990 by the ABA's Young Lawyers Division in conjunction with the Center on Children and the Law, the annual Child Advocacy Award "recognizes the contributions to the legal profession by child advocates who have actively labored on behalf of children" and "celebrates the often unheralded service that child advocates bring to children and the legal profession." Two awards are given each year; one is restricted to a winner who has been admitted to practice within the past five years or is less than 36 years old.

Hollander's groundbreaking work on behalf of children also has been recognized by his Pennsylvania-based peers. Earlier this year, the Pennsylvania Bar Association presented him with its Child Advocate of the Year award. The award recognizes "an attorney or jurist who has advanced the rights or legal representation of children."

Hollander began his work on behalf of children as a student at the Law School, where he represented children in abuse, neglect, and custody proceedings as part of his enrollment in the Child Advocacy Law Clinic (CALC). As a student, he also won an interdisciplinary fellowship to study child abuse.

Today, nearly 15 years after completing his Law School studies, he continues to support the School's training of future child advocacy specialists. Each summer, one or two enrollees in the annual Bergstrom Fellows child advocacy summer training program do the internship portion of their training at KidsVoice in Pittsburgh, where they work alongside of and learn from child advocacy specialists from the fields of law, medicine, psychiatry, social work, and other fields.

"I took CALC in my second year and loved it. But I wasn't sure if I loved it because I loved being a lawyer working with kids, or just loved working with kids," Hollander explained during a talk he gave at the Law School in 2002 as part of the Inspiring Paths series sponsored by the offices of Career Services and Public Service.

"[And] there was this wonderful fellowship in an interdisciplinary approach to working with kids," he continued. "It ended up influencing me greatly."

1937

Judge **William A. McClain** has been honored as a 2004 Hall of Excellence Inductee by the Ohio Foundation of Independent Colleges. McClain has served on the Law School's Committee of Visitors for more than 30 years and has taught at the University of Cincinnati Law School, Salmon P. Chase Law School, and the University of Toledo's Ohio Legal Center Institute.

1941

The Class of 1941 continued its 1997 reunion fundraising effort beyond the reunion to raise a total of $191,425 for the Law School's Legal Practice Program. Class co-chairs for this project were **John Feikens, Jim French, Sam Krugliak,** and **Harold Rosenn.**

1949

55TH REUNION

The class of 1949 reunion will be October 8–10

Co-chairs: Art Prine and John Laird

1953

Jean-Gabriel Castel, distinguished research professor emeritus, senior scholar at York's Osgoode Hall Law School in Canada, and lecturer of international law at Glendon College, has received the David W. Mundell Medal for Excellence in Legal Writing. The medal is presented annually to an Ontario writer on legal or professional matters who has made a distinguished contribution to law and letters.

1954

50TH REUNION

The class of 1954 reunion will be October 8–10

Co-chairs: Lawrence L. Bullen and Myron M. Sheinfeld
Committee: Robert B. Aikens; Stephen A. Bromberg; Paul B. Campbell; Granger Cook Jr.; Roderick K. Daane; Robert B. Dornhaffer; Benton E. Gates Jr.; Norman N. Gottlieb; Carl A. Hasselwander; Leonard Kravets; James S. Patrick; Herbert S. Ruben; John F. Shantz; Theodore J. St. Antoine; William K. Van't Hof; Stanley R. Weinberger; Marvin Oscar Young; Richard W. Young

1956

In April, The Contemporary Arts Company performed a stage reading of Act 1 of **Herbert R. Brown**'s two-act play, "You're My Boy," at the Riffe Center in Columbus, Ohio. Act I explores the relationship between Eisenhower and Nixon in the six months preceding the 1952 election.

An exhibition of the works of **Judith Lieberman**, LL.M., called "The Holocaust and the Power of God" opened at

From left, John A.Wise, '62; Kenneth D. Stein, '67; Steven Winnick, '69; Fred M. Woodruff Jr., '69; Charles M. Lax, '71; Tom Morgan, '72; Stuart A. Schloss Jr, '72; William J. Danhoff, '74; Douglas R. Herman, '75; Patrick E. Mears,' 76; Mark E. Putney, '76; Ronald I. Heller, '80; Darrell W. Pierce, '80.

University Circle in Cleveland, Ohio, in April and hung through October this year. An exhibition of her paintings, wall hangings, and her "Genocide Series" showed from May-September this year at the Florida Holocaust Museum. Her book *Holocaust Wall Hangings* was published in 2002.

1959

45th REUNION

The class of 1959 reunion will be October 8–10

Committee: Gerald L. Bader Jr.; Stanley N. Bergman; Charles F. Clippert; John H. Jackson; James P. Kennedy; Jerome B. Libin; J. Lee Murphy; Hilary F. Snell; Frank K. Zinn

1960

Boris Kozolchyk, LL.M. (S.J.D. 1966), is the recipient of the American Bar Association Section of International Law and Practice's Leonard J. Theberge Award for Private International Law. Recipients are selected based on their long-standing contributions to the development of private international law.

1962

John A. Wise has joined the Detroit, Michigan, office of Howard & Howard Attorneys PC as a result of the recent merger of Williams Mullen's Michigan offices into Howard & Howard. A major portion of his practice is devoted to corporate, commercial, and real estate matters.

1964

40th REUNION

The class of 1964 reunion will be October 8–10

Co-chairs: Michael V. Marston and Thomas E. Palmer
Committee: James R. Borthwick; Timothy K. Carroll; James L. Copeland; Irwin J. Dinn; Daniel Robert Elliott Jr.; Leon E. Irish; Justice G. Johnson Jr.; James L. Krambeck; John E. Mogk; Richard A. Rossman; Neal Schachtel; Lloyd Ashby Semple; Marvin S. Shwedel; James M. Wilsman; Stephen M. Wittenberg; James D. Zirin

1966

Terence Murphy has been appointed a senior associate of the Center for Strategic and International Studies, a think tank in Washington, D.C. He is listed in the Center's media directory as an expert in international law and policy and in strategic tech transfer. In addition, Murphy is midway through a four-year term as a trade controls adviser to the Commerce Department and led a team advising the Defense Department on munitions export policy.

1967

Kenneth D. Stein, formerly partner with Benetar Bernstein Schair & Stein, has become the managing partner of the newly opened New York City office of Ford & Harrison LLP. He represents companies in all areas of labor relations and employment law.

1969

35th REUNION

The Class of 1969 reunion will be October 8–10

Co-chairs: Peter P. Garam; Robert E. Gooding Jr.; and Stanley S. Stroup
Committee: Ben J. Abrohams; John T. Blakely; Stephen C. Brown; Marilynn J. Cason; Spencer T. Denison; John E. Dewane; Darrel J. Grinstead; Frederick Lambert; John F. Lynch; Joseph L. McEntee Jr.; James P. Murphy; Allen J. Philbrick; Donald E. Shelton (Honorary); Ronald L. Walter; Steven Y. Winnick

Kelly V. Rea and his wife, Mary Jean Jecklin, have co-authored *Buy the Best of Ireland*, which details nearly 450 Irish crafters, companies, craft villages, galleries, etc. Rea is an attorney and Irish craft historian. The couple lives in Minneapolis, Minnesota, and Sarasota, Florida.

Steven Winnick received the Presidential Distinguished Executive Rank Award for 2003. This is the highest award given to career officials of the executive branch of the federal government. Winnick serves as deputy general counsel and designated agency ethics official of the U.S. Department of Education.

The Michigan Foundation for Educational Leadership named **Fred M. Woodruff Jr.** president effective January 2004. Woodruff recently retired from being president and CEO of the Miller Foundation in Battle Creek.

1970

Gregory L. Curtner, principal in the New York office of Miller, Canfield, Paddock and Stone PLC, and his team, which includes two other Law School graduates from the Ann Arbor office, Frederick R. Juckniess, '92, and Kimberly K. Kefalas, '02, obtained a major victory for the Coalition of Independent Filmmakers in a case against the Motion Picture Association of America Inc. Curtner handled the lawsuit and negotiated the settlement, which cleared the way for filmmakers to distribute Hollywood's awards screeners.

1971

Charles M. Lax, shareholder with the Southfield, Michigan, firm Maddin, Hauser, Wartell, Roth & Heller PC, has been selected by the Internal Revenue Service to join the Advisory Committee on Tax Exempt and Government Entities. In this position, Lax provides input on developing and implementing IRS policy on employee plans.

1972

Tom Morgan, a senior partner in the Minneapolis, Minnesota, office of Faegre & Benson, has been named chairman of the firm's management committee. He has served on the committee since 2000 and has led the firm's international expansion.

In March, Vice President of the Indiana State Bar Association **James W. Riley Jr.** of Indianapolis, Indiana, attended the American Bar Association's Bar Leadership Institute in Chicago, Illinois. The institute is a tool used by the association to foster partnerships with state and local bars and related organizations.

Stuart A. Schloss Jr. has won the VIP (Volunteering Is Phenomenal) Award from the Hamilton County (Ohio) Community Mental Health Board in recognition of his work with Core Behavioral Health Center, one of 50 local behavioral health organizations under contract to the Mental Health Board. Schloss, who also has served as president of Core's board of trustees, is a member of Ulmer & Berne's Business Law, Trusts and Estates, Tax, Intellectual Property and Technology, Nonprofit, and Mergers and Acquisitions groups.

1974

30th REUNION

The class of 1974 reunion will be October 8–10

Chair: Richard J. Gray
Committee: Gail L. Achterman; Stephen R. Drew; Allen E. Giles; Forrest A. Hainline III; Gene H. Hansen; Thomas F. Koernke; P. Kenneth Kohnstamm; Richard G. Moon; Clarence L. Pozza; Bart J. Schenone; Langley R. Shook; Barbara S. Steiner; Larry D. Thompson

William J. Danhoff, a principal at Miller, Canfield, Paddock and Stone PLC, has been appointed by President George W. Bush to the U.S. Holocaust Memorial Council, the governing body of the U.S. Holocaust Memorial Museum in Washington, D.C.

1975

Douglas R. Herman has been appointed by North Dakota Governor John Hoeven as a district judge for the East Central Judicial District located in Fargo. Herman previously spent 22 years in private practice and seven years as in-house senior counsel with Microsoft Corporation. His wife, **Sarah Andrews Herman**, '77, practices with Dorsey & Whitney in Fargo.

Michael H. Runyan, a partner at the Seattle offices of Lane Powell Spears Lubersky LLP, has become a fellow of the American College of Trial Lawyers. His practice focuses on commercial litigation and products liability.

1976

Patrick E. Mears has joined Barnes & Thornburg LLP as a partner. He is working with both the Grand Rapids, Michigan, and Chicago, Illinois, offices and concentrates his practice in the areas of insolvency, commercial finance, securitizations, and creditors' rights.

Mark E. Putney, a principal and resident director in the Grand Rapids, Michigan, office of Miller, Canfield, Paddock and Stone PLC, has been elected to a one-year term as chairman of the board of directors of Special Olympics Michigan Inc.

1977

Sally Cohen Swift has joined Kramer Levin Naftalis & Franken LLP as special counsel in the Corporate Department. She previously was associate general counsel and group manager for Bank of America, N.A.

1979

25th REUNION

The class of 1979 reunion will be September 17–19

Co-chairs: John K. Hoyns and Donald R. Parshall Jr.
Committee: Mary Kathryn Austin; Richard E. Cassard; Bruce D. Celebrezze; Ethan J. Falk; Beverly K. Goulet; Kevin S. Hendrick; Carol M. Kanarek; David Bernard Kern; Charles C. Lane; Bradford L. Livingston; John Vincent Lonsberg; Jack A. Molenkamp; Barbara Schlain Polsky; John M. Quitmeyer

1980

Ronald I. Heller, director and stockholder at Torkildson Katz Fonseca Moore & Hetherington Attorneys at Law in Honolulu, Hawaii, has been selected by the National Federation of Independent Business as "Small Business Champion" for the State of Hawaii and for the six-state Southwest region of the United States.

Geoffrey Isaac has joined Brokers' Risk Placement Service Inc. in Chicago, Illinois, as its vice president for administration and claims. Brokers' is a managing general underwriter and insurance intermediary specializing in the liabilities of schools and school districts. Prior to joining the firm, Isaac had practiced for 23 years with Peterson & Ross and then for one year with Boundas, Skarzynski, Walsh & Black.

Darrell W. Pierce, a member of Dykema Gossett PLLC's Corporate Finance Group, presented at the April 30 meeting of the Uniform Commercial Code Law Institute held in Chicago, Illinois. Pierce works out of both the Ann Arbor and Chicago offices.

From left, Andrew E. Grigsby, '81; Mark T. Boonstra, '82; Andrew O. Schiff, '85; Thomas F. Walsh, '85; David L. Balser, '87; John F. Brent, '89; Sam Silver, '89; Stephon B. Bagne, '95; Kristina D. Maritczak, '95.

1981

Valerie B. Jarrett, executive vice president and managing director of The Habitat Company, has been elected chairman of the Chicago Stock Exchange for a term that runs through April 2006.

Andrew E. Grigsby has been elected a capital partner in his firm, Hinshaw & Culbertson LLP, and works from its Florida office.

Randall Kaplan has been elected chairman of the Board of Directors of Hillel: The Foundation for Jewish Campus Life, the world's largest Jewish campus organization. He is owner and CEO of Capsule Group LLC and a resident of Greensboro, North Carolina.

1982

Mark T. Boonstra, principal in the Ann Arbor office of Miller, Canfield, Paddock and Stone PLC, has been elected to a one-year term as chair of the Washtenaw County Economic Club.

Blair B. Hysni has joined the Business Practice Group in the Detroit office of Clark Hill PLC. His practice specializes in mergers and acquisitions, corporate finance, transactional, and business counseling.

1983

LandAmerica Financial Group Inc. in Richmond, Virginia, has named **Michelle H. Gluck** executive vice president, general counsel, and corporate secretary. LandAmerica is a Fortune 500 and NYSE-listed real estate transactions services company.

1984

20TH REUNION

The class of 1984 reunion will be September 17–19

Co-chairs: Meg Waite Clayton and Stephen G. Tomlinson
Committee: Marjorie Sybul Adams; Sandra A. Bulger; Gregory D. Hopp; Susan M. McGee; Grant Whitney Parsons; Robert J. Portman; Rex L. Sessions; Michael R. Shpiece; Russell O. Stewart; David K. Tillman; Kurtis T. Wilder (Honorary)

1985

Kent K. Matsumoto has joined Mayne Pharma (USA) in Paramus, New Jersey, as vice president and general counsel. He directs the legal function for the Americas (United States, Puerto Rico, Canada, and Latin America), focusing on company and product acquisitions, intellectual property, legal compliance, and company operations. Mayne Pharma is a manufacturer and developer of generic injectable oncology pharmaceutical products and is the pharmaceutical operations for Mayne Group, an Australian healthcare company.

The law firm of Klehr, Harrison, Harvey, Branzburg & Ellers LLP, headquartered in Philadelphia, Pennsylvania, has named **Andrew O. Schiff** partner. Before joining the firm, Schiff was an assistant U.S. attorney in New Jersey. He concentrates his practice in bankruptcy and insolvency.

Thomas F. Walsh has joined Hiscock & Barclay LLP in its Rochester, New York, office.

1987

David L Balser, of Long, Aldridge & Norman in Atlanta, won a ruling from the Georgia Supreme Court that freed a former high school honor student and athlete after he spent 15 months behind bars. Balser, working *pro bono* on the case of Marcus Dixon, 19, successfully argued that Dixon should not have been prosecuted for aggravated child molestation after he was acquitted of the charge of rape. The court ruled 4-3 that Dixon should have been prosecuted solely on the misdemeanor charge of statutory rape because the incident involved a female who was 15 at the time of the incident. At the time of his release last spring, Dixon also faced a separate sexual battery charge involving a 14-year-old student. The court's ruling has generated discussion among lawmakers of changing Georgia's mandatory sentencing laws.

Reginald M. Turner Jr., of Clark Hill in Detroit, has been elected president-elect of the National Bar Association, the nation's largest organization for African American Lawyers. Turner also has won the eighth annual Damon J. Keith Community Spirit Award, presented by the Wolverine Bar Foundation. The award, which honors Judge Damon J. Keith of the Sixth Circuit Court of Appeals, recognizes a lawyer who demonstrates an exemplary commitment to community service and champions the rights of others in the battle for social equality. A past president of the Michigan State Bar, Turner is a member of Clark Hill's Executive Committee, Labor and Employment Practice Group, and Government Policy and Practice Group.

1989

15TH REUNION

The class of 1989 reunion will be September 17–19

Co-chairs: Stephen W. Kelley; Rebecca J. McDade; and Michael M. Parham
Committee: Earl J. Barnes II; Lydia Barry Kelley; David H. Baum; Charles A. Browning; J. Danielle Carr; Steven R. Englund; Brandon D. Lawniczak; Paul G. Thompson; J Douglas Toma; Bruce G. Tuchman; Linda S. Warshavsky

John F. Brent has joined the Ann Arbor office of Howard & Howard Attorney PC as a result of the merger of Williams Mullen's Michigan offices into Howard & Howard. Brent practices in the areas of corporate law and insurance law.

Robert D. Gordon has joined Clark Hill PLC as a member of the firm's Detroit office Business Practice Group. Gordon represents distressed companies, creditor constituencies, trustees, purchasers of assets, and other parties in complex matters in Michigan and throughout the United States.

Samuel W. Silver, partner at Schnader Harrison Segal & Lewis LLP in Philadelphia, Pennsylvania, has been appointed chair of the firm's Litigation Services Department. Silver previously served as chair of the Product Liability and Mass Tort Practice Group. He is a past recipient of the firm's Earl G. Harrison Pro Bono Award and has been recognized by the Philadelphia Bar Association for his *pro bono* work, which has included representation of death row inmates.

Charles John Vigil, president-elect of the State Bar of New Mexico, participated in the American Bar Association's Bar Leadership Institute in March. The institute is held annually in Chicago, Illinois, for incoming officials of local and state bars, special focus lawyer organizations, and bar foundations. Vigil is a resident of Albuquerque.

1991

Davis Wright Temaine LLP in Seattle, Washington, has named **James A. Flaggert** chair of the firm's Trusts & Estates Practice Group. Flaggert, a partner at the firm, is also a fellow of the American College of Trust and Estate Counsel. He and his wife, Alison, and their son, Jack, reside in Seattle.

Equal Employment Opportunity Commission (EEOC) attorney **Elizabeth Grossman** was profiled in the *New York Times* in July as a "tenacious, meticulous" lawyer who has successfully represented workers in discrimination cases against "not only mom-and-pop companies, but also giants like Woolworth's, T.W.A., and Bell Atlantic." The *Times* story noted that in July, "just before opening trial statements," Grossman "even managed to help wring a $54 million settlement from Morgan Stanley for as many as 340 female employees." Grossman noted in the article that the goal of EEOC's legal actions is "the benefit of the public interest. We're not at the whim of an individual client." The article also notes that Grossman was in her office at 7 World Trade Center the morning of September 11, 2001, "saw the shadow of the first plane out her window and quickly fled the building, which later collapsed."

1992

Apprise Media LLC, a New York-based strategic management and investment company, has named **Michael P. Behringer** senior vice president of development. In his new position, Behringer is responsible for identifying, structuring, and closing transactions. Prior to joining the company, Behringer was executive vice president for development at Primedia's Consumer Guide Group.

Frederick R. Juckniess, senior attorney in the Ann Arbor office of Miller, Canfield, Paddock and Stone PLC participated on a legal team led by **Gregory L. Curtner**, '70, principal in the New York office, that obtained a major victory for the Coalition of Independent Filmmakers. The case against the Motion Picture Association of America Inc. cleared the way for filmmakers to distribute Hollywood's awards screeners. **Kimberly K. Kefalas**, '02, associate in the Ann Arbor office, also participated on the team.

1993

Charles Hunter Wiggins has joined the Chicago office of Sonnenschein, Nath & Rosenthal as a partner to lead its SEC Defense Practice. Since 1999, Wiggins previously held several positions in the Division of Enforcement of the U.S. Securities and Exchange Commission in Washington, D.C., most recently as deputy assistant director.

1994

10TH REUNION

The class of 1994 reunion will be September 17–19

Co-chairs: Ann-Marie Anderson and Cheryl A. Hipp
Committee: Otto Beatty III; Julie A. Beck; Janene A. Collins; Julia L. Ernst; Michael R. Etzioni; Armando Irizarry; Dennis R. Kiker; Liam B. Lavery; Monica P. Navarro; Gregory J. Ritts; Elizabeth M. Rosenfeld; Andrew M. Winograd; Heather Martinez Zona

1995

Southfield, Michigan, law firm Kupelian Ormond & Magy PC has announced that **Stephon B. Bagne** has become a shareholder in the firm. He specializes in real estate law, employment law, and a variety of other litigation matters.

In February, **Kristina D. Maritczak** of Miller, Canfield, Paddock and Stone PLC's Detroit office, spoke at the DePaul University College of Law Sports Law Symposium on "The Impact of Criminality in Athletics Today." Maritczak is a member of the Criminal Defense and Corporate Compliance and Litigation and Dispute Resolution Practice Groups, and belongs to the Sports Lawyers Association.

Christine A. Bonaguide, '96; David Rossmiller, '98; Aradhana Das, '99; Michelle A. McIntyre, '99.

1996

In June, **David J.B. Arroyo** became director of legal affairs for Scripps Networks Inc., which owns and operates various cable television networks, including Home & Garden Television and Food Network. Arroyo is responsible for managing all litigation against the company. He formerly was associated with Gibson, Dunn & Crutcher LLP in New York City. He and his wife, **Laurice Bekheet Arroyo**, also a '96 graduate, and their two children, Zachary and Isabel, live in Brooklyn, New York.

Christine A. Bonaguide has been elected partner in Hodgson Russ LLP. Bonaguide, who works with the Corporate & Securities Group in the Buffalo, New York, office, concentrates her practice in corporate law and governance, mergers and acquisitions, and corporate finance.

Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates has named **Susan Hassan** as a partner in the firm's Chicago office. Hassan focuses her practice on corporate matters.

Bose McKinney & Evans LLP, based in Indianapolis, Indiana, has elected **Andrew McNeil** partner. He practices in the firm's Labor and Employment, Appellate, and Litigation Groups.

1997

Ilann Margalit Maazel has become a partner at Emery Celli Brinckerhoff & Abady LLP, a New York City law firm specializing in civil rights litigation. In addition to civil rights, his practice includes police misconduct, free speech, employment discrimination, international law, intellectual property, class action, and commercial litigation.

1998

David Rossmiller has joined the litigation practice of Portland, Oregon, law firm Dunn Carney Allen Higgins & Tongue. He focuses on commercial and insurance coverage litigation. Previously, Rossmiller was an associate with Gordon & Polscer LLC and Tonkon Torp LLP. Before attending the Law School, Rossmiller worked as a reporter for the *Phoenix Gazette* and was nominated for a Pulitzer Prize.

1999

5TH REUNION

The class of 1999 reunion will be September 17–19

Co-chairs: Gregory W. Cooksey and David R. Grand
Committee: Abhay Dhir; Jenny L. Floyd; Mei-Ling Huang; David C. Kirk; Camille C. Logan; Margaret H. Mack; Emily K. Paster; Elliot M. Regenstein; Joel H. Samuels; Joshua S. Spector (Friend of Committee)

Matthew Alshouse has joined Daspin & Aument LLP in Chicago, Illinois. A new boutique practice, the firm's core focus is real estate, tax, corporate, and estate planning.

William B. Berndt has joined the Chicago business litigation firm Schopf & Weiss as an associate focusing his practice on commercial and appellate litigation. He previously practiced with Mayer, Brown, Row & Maw.

Indiana Governor Joseph Kernan has named **James Birge** of Indianapolis as deputy chief of staff for policy development. He will coordinate the administration's research and policy development and will work with members of the governor's cabinet. Prior to taking this position, Birge was an associate with Baker & Daniels.

The Detroit-based law firm of Honigman Miller Schwartz and Cohn LLP has elected **Aradhana Das** as a partner. Das practices in the Litigation Department, where she concentrates on representing corporations, partnerships, and individual clients in trials, arbitrations, and mediations.

Elliot Regenstein has become the Chicago-based director of Education Reform in the office of Illinois Governor Rod Blagojevich.

2000

Michelle A. McIntyre, associate with Miller, Canfield, Paddock, and Stone PLC, has moved from the firm's Detroit office to the Kalamazoo, Michigan, office. McIntyre practices in the Business and Finance Group.

2002

Kimberly K. Kefalas, '02, associate in the Ann Arbor office of Miller, Canfield, Paddock and Stone PLC participated on a legal team led by Gregory L. Curtner, '70, principal in the New York office, that obtained a major victory for the Coalition of Independent Filmmakers. The case against the Motion Picture Association of America Inc. cleared the way for filmmakers to distribute Hollywood's awards screeners. **Frederick R. Juckniess**, '95, senior attorney in the Ann Arbor office, also served on the team.

In Memoriam

'27	Howard E. Wahrenbrock (S.J.D. '33)	4/11/04
'32	Herman B. Cass	11/23/03
'33	Dallas Webb Dort	3/9/04
'36	John H. Rockwell	4/2/04
'37	Mrs. Emma Rae Mann Jones	12/10/03
	Archibald W. McMillan	4/10/04
	James H. Roberton	1/3/04
	Milton Roberts	4/13/04
'38	Hubert L. Allensworth	12/6/03
	Robert C. Brouse	2/10/04
	James F. Holden	12/20/03
	Milton Keiner	1/24/04
	Ivan M. Wheeler	1/11/04
'39	Kennard J. Besse	12/9/03
'40	J. Richard Kendrick	2/20/04
	John Spear Pennell	3/22/04
'41	The Hon. Robert P. Kneeland	3/21/04
	Alan R. Vogeler	12/16/03
'42	Ralph S. Boggs	1/1/04
'44	The Hon. Mary Brier Goodhue	3/21/04
'47	Thomas E. Dougherty	3/13/03
	James M. Forkins	4/15/04
	David I. Friedman	9/19/03
	Alfred Hafke	2/26/04
	John A. Huston	1/11/02
	Russell K. Kono	11/27/03
	J. Paul Smith	12/30/03
	Roy M. Tolleson Jr.	2/20/04
'48	Ralph B. Maher	5/20/04
	Owen C. Neff	12/11/03
'49	John E. Leggat	1/10/04
	William J. Pierce	7/6/04
	Roger Williams	12/30/03
'50	Paul W. Eaton	2/2/04
	Roy Philip Franchino (LL.M)	3/21/03
	Gordon L. Hawkins	5/20/04
	Frederick E. Salim	4/22/04
'51	Daniel Harry Dunbar	3/5/04
	William J. Rademacher	4/21/04
'52	John J. Edman	2/2/04
	Robert D. Mandenberg	1/2/04
'53	Herbert K. Anspach	11/22/03
	Ruth Lois G. Blumrosen	1/13/04
	Bruce R. Coulter	3/28/04
	Homer Hugh Kirby Jr.	2/22/04
'54	Frank M. Wheeler	2/26/04
'55	Carl R. Gaylord	3/7/04
	O. Keith Petersen	5/25/04
	The Hon. Thomas F. Shea	12/4/03
'56	Mark Turpen	5/19/04
'57	Harry N. Blum	1/18/04
	Charles S. Cadwell Jr.	2/17/04
	Fritz W. Reichert-Facilides (LL.M., M.C.L.)	10/23/03
	John M. Saylor	12/4/03
'58	Grant J. Gruel	4/5/04
	Raymond Olson Jr.	4/3/04
'59	Peter M. Knowlton	2/11/04
'60	Donald L. Anderson	1/17/04
	John William Bales	1/17/04
'63	Edward C. Johnson	5/11/04
'64	Nelson B. Robinson	12/16/03
'65	Kenneth L. Spangler	1/28/04
'66	Kevin M. Beattie	12/5/03
	David H. Julian	3/21/04
'67	Ronald William Egnor Sr.	2/9/04
'68	Philip W. Hopkins	3/29/04
'69	William S. Baird	12/21/03
'73	Allen Q. Watkins	1/6/04
'76	Craig J. Gehring	4/3/04
	John Rocendo Guillean	3/17/04
'79	Jonathan I. Epstein	10/13/03
	Roger T. Steston	1/11/04
'80	Peter O. Shinevar	2/19/04
'85	Douglas R. Pappas	5/20/04
'88	James W. Teevans	3/8/04
'03	Reuben Sobczyk	3/27/04

Degrees of Freedom:

Building Citizenship in the Shadow of Slavery

The following essay is based on the inaugural lecture for the Charles Gibson Distinguished University Professorship, delivered last spring to the University by Professor of Law and History Rebecca J. Scott.

By Rebecca J. Scott

I have borrowed my title today — *Degrees of Freedom* — from our colleagues the physicists. For them, it is a technical term, used to speak about dynamical systems with many interacting parts. The degrees of freedom are the number of independent dimensions along which one must specify values for each of the component elements, in order to specify fully the state of the entire system. Over time, as values are fixed on each of these dimensions, the range of possibilities for the next state of the system narrows. As a historian, I am tempted to use the metaphor expansively, because it suggests an image of historical dynamics that takes account of the range of motion possible at a given time, both its scope and its limits. By seeing events in the past as part of a dynamically evolving system with a large, but not indefinite, number of degrees of freedom, we can turn our attention to the multiple possibilities for change, and to the ways in which societies that are initially similarly situated may go on to diverge very sharply. Thus it is, I will argue, with societies in the 19th century that faced the challenge of building citizenship on the ruins of slavery.

At the midpoint of the 19th century, the economies of both Louisiana and Cuba rested on the enslaved labor of some 300,000 Africans and their descendants, many of them living on sugar plantations. From sunup to sundown enslaved men and women used hand tools to plant, hoe, weed, cut, lift, and haul the cane. During the harvest they labored through the night in the sugarmill with sophisticated equipment to process the cane juice into crystals.

In the second half of the 19th century, each of these slave systems was destroyed by war and by the upheaval and legislation that followed war. Former slaves and other descendants of Africans stepped forcefully onto the public scene, seeking to give durable meaning to their legal freedom. Over the ensuing decades, in each region, a postemancipation order was forged through a deadly serious competition for power, resources, and the right to define membership in the political community. The place of workers designated black or white in the society, and the conditions of their encounters with each other, proved to be crucial elements in a struggle in which labor and politics were inextricably linked. There is, in effect, no convincing way to isolate something called "race relations" from the specific ways in which labor was employed in the countryside and power was contested in the polity. People did not live their color separate from their work and their politics. Hence the complexity of the historian's task.

Louisiana and Cuba were similar societies, suitable for comparison, each evolving along close yet crucially different trajectories. In this way, they were "alternative possible worlds" relative to one another, but, unlike the philosopher's notion of alternative possible worlds, they lived side-by-side in the same real world, separated by a stretch of the Gulf of Mexico. Their economies were part of a larger Atlantic sugar economy. And at key moments, their histories overlapped and intersected, and the alternative worlds that each represented became visible to men and women from the other. Travelers, soldiers, and exiles — as well as those who met them — could begin to see what freedom had come to mean on the other shore, with all that this might suggest about their own future. Observers have long commented on the differences between the social meanings of color in the United States and in Latin America, but such observations have been hard to interpret rigorously. Practices found in Cuba, for example, could be attributed to Latin culture or to Catholic doctrine, to different states of economic development, or to different experiences of emancipation. Moreover, appearances of difference could themselves be deceiving. Seemingly more flexible etiquettes might disguise a reality of dichotomies and discrimination. But simply seeing that things were different elsewhere did make that which was here seem less natural.

Today I'll try to demonstrate that a pair of life histories can illuminate key points of inflection in the evolution of these two societies. I will look at two men of color who came of age during the period of slave emancipation, each of whom served as a soldier in the 1890s, and each of whom lived on into the third decade of the 20th century.

Pierre Lacroix Carmouche was born in Ascension Parish, Louisiana, in 1861, a year or so before the forces of the Union Army pushed their way up from New Orleans into the rich sugar-producing countryside of Louisiana and created the conditions for the breakdown of slavery in the areas that they occupied. His home district of Ascension held a population of about 7,400 slaves, 3,900 free people counted as white, and just 168 free people categorized as colored. Pierre Carmouche's mother had been born a slave, and his father was a free man of color.

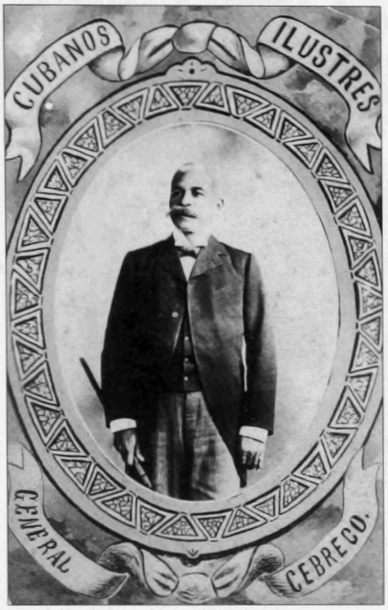
Agustín Cebreco was born in Cobre, in eastern Cuba, in 1855. Cobre was a mining and agricultural district of low mountains, adjacent to the rich sugar-growing area of San Luis. At mid-century the district held a population of about 6,300 slaves, 4,700 free people of color, 2,600 free people counted as white. Ascension Parish and the district of Cobre were thus roughly the same size, but Cobre had a much larger number of free people of color. Cebreco's father was apparently a Spaniard, his mother a woman of color.

The focusing device of these life histories may enable us to see two things: first, the networks of collective support on which these men built the various initiatives and campaigns in which they participated; second, the pivot points at which their lives — and the lives of others similarly situated — moved in new directions. Pierre Carmouche and Agustín Cebreco were exceptional, rather than typical, of people who lived through the process of slave emancipation. But they are examples of what Jacques Revel calls the "normal exceptional." Their exceptional lives are illustrative of the evolving norms and possibilities of the societies in which they lived.

By the time Pierre Carmouche was three years old, slavery had ended in Louisiana, and local common schools were opening to children of color. At school, he seems to have acquired substantial competence in reading and writing, in English as well as his native French. He would go on to become a lifelong generator of written words. The death of Carmouche's father in 1876 thrust him into

the labor market at the age of 15. To train as a blacksmith, he went downriver to New Orleans, a city which at the time was boiling with political debate, activity, and violence.

Under Louisiana's Reconstruction-era constitution of 1868, all citizens could claim equal "civil, political, and public rights" and nearly all adult men had the right to vote. In a state whose population was about evenly divided between those counted as white and those counted as black, the result was a highly competitive political system. With an alliance between the great majority of black voters and a minority of white voters who supported the Republican Party, an ideology of equality and the rejection of rules of caste was momentarily ascendant. The state legislature mandated equal access without regard to color to restaurants, cafes, streetcars, and steamboats.



Many of the local activists were, like Carmouche, bilingual men and women of color who looked not only to the Union Army but to France and the Caribbean for inspiration. During Reconstruction they worked in a tense but largely effective alliance with black Anglophone Protestants in the state. Both groups faced a formidable opponent: The White Leagues and the state Democratic Party itself, which sought to silence the public voice of people of color and restore a politics of privilege, by any means necessary.

To someone like Pierre Carmouche, this political contest in the 1870s was critically important, and its outcome was by no means foreordained. When federal troops were withdrawn from the region in 1877, the Democrats took power, and it became even more dangerous for black citizens to vote. In 1879 the previous constitution was replaced by one that no longer affirmatively guaranteed their "civil, political and public rights" though it did not explicitly violate them either. Many things were still possible; a formal system of Jim Crow was not yet in place. In 1886, Carmouche ran for the office of tax assessor in Donaldsonville, and won.

At that same moment, 1886–87, the sugar plantations of Louisiana held thousands of workers who, unlike sharecroppers in cotton, were brought together in large groups both in the plantation quarters and in work gangs. Around 1886 the Knights of Labor, a vigorous and highly political union movement, began to organize in southern Louisiana, first on the railroads and in the sugar towns, and then in the cane fields. Pierre Carmouche joined this effort, and soon the Donaldsonville branch of the Knights of Labor claimed 1,200 members, most of them black, some of them white, and nominated him for what was to prove an unsuccessful campaign for the state legislature.

In November 1887 the Knights of Labor formulated their key local demands: a dollar a day for labor in the cane fields, better pay for night watches, payment in cash, not scrip redeemable only at the company store, and so forth. Planters categorically refused to negotiate, and in November of 1887 10,000 workers went out on strike — most of them black, some of them white. In the face of evictions from plantation housing and the intervention of the state militia, however, the Knights of Labor were unable to sustain the strike movement. And as they faltered, white supremacist vigilantes pressed their advantage, portrayed the labor conflict in stark color terms, and hauled black strikers out of the homes in which they had taken refuge in nearby Thibodaux. An unknown number of black workers were shot dead in the streets. The movement was broken by this state-sanctioned terrorism.

Pierre Carmouche, however, was not a man who was easily deterred. He continued to see himself as an able artisan, a loyal Republican, and a public servant. Equally important, even after the killings in 1887 he kept open the lines of communication up and down the Mississippi river between activists in the countryside and those in the city who were organizing a legal challenge to new laws imposing separation by color. Digging through issues of the New Orleans newspaper, *The Crusader*, I came across a list of contributors to the shoemaker Homer Plessy's challenge to Louisiana's Separate Car Act, which had mandated compulsory color segregation on the railways. There was Pierre L. Carmouche, Donaldsonville, along with his neighbor, a Donaldsonville schoolteacher named Alice E. Hampton. Hampton wrote to the paper that it was hard to do one's duty in the hot summer of 1895, but that she and other young ladies from the local school were pleased to send their contribution to the challenge.

Here, long after the end of Reconstruction, an alliance of urban and rural activists was trying to win back through litigation the rights to equal standing in the public sphere that had been undermined when Democrats had taken hold of the state. But this strategy, like the electoral and labor strategies that preceded it, ended in a devastating defeat. In the 1896 case of *Plessy v. Ferguson*, the U.S. Supreme Court accepted the arguments of the state of Louisiana, which accused Plessy and his allies of attempting to claim an unearned "social equality." The Court turned back Plessy's argument that the law had no business forcing the railways and their passengers to conform to white-supremacists' insistence that public conveyances be "equal but separate." After *Plessy*, the way was clear for the state to impose systematic public humiliation on its citizens of color.

By 1896, then, the Knights of Labor had been crushed in the cane fields and its vision of cross-racial labor organization had been overwhelmed by racially-specific repression. The public rights sought by the activists in the *Plessy* challenge had been denied, and a new set of electoral laws had squeezed black voters off the registration lists. Pierre Carmouche's vision of freedom, however, encompassed more than Louisiana and the

United States, where these disappointments were multiplying. By his own account, Carmouche was following events in Cuba, and hoping for the victory of what he described as the "cause of Antonio Maceo," the rebel general who had been fighting at the head of a cross-racial army seeking Cuban independence from Spain. *The Crusader*, the newspaper of the New Orleans activists, had been reporting in its pages on General Antonio Maceo's progress. In February of 1898, the battleship Maine exploded in Havana harbor, and it became clear that the United States might enter the war in Cuba. Within days, Pierre Carmouche wrote to the U.S. Secretary of War to offer his services and those of 250 other "colored Americans, on short notice, in the defence of our country, at home or abroad." The Secretary of War did not know quite what to make of this offer, which would have implied arming black men in the heart of a southern state ruled by a governor and legislature categorically opposed to such displays of citizenship.

If we leave Pierre Carmouche's offer hanging for a moment, we may turn to Cuba, particularly its eastern region of Oriente, home to Antonio Maceo himself and to Agustín Cebreco. Cebreco's family, like that of Pierre Carmouche, crossed socio-racial categories in what was still, at the time of his birth, very much a slave society. Like Pierre Carmouche, Agustín Cebreco left home at the age of 15. In 1868 an armed movement for the separation of Cuba from Spanish rule, and for the abolition of slavery, had begun to take shape. Agustín Cebreco and two of his brothers soon joined the rebellion, serving under Antonio and José Maceo. This military movement for national independence was self-consciously anti-slavery, and drew on a broad social base, including free people of color, disaffected white farmers and artisans, and some slaves. Most important, it brought Cubans together under white, mulatto, and black rebel officers. There were some tensions, but there was no firm color line in the rebel ranks.

After a decade, however, the first Cuban rebellion exhausted itself without achieving its goal. The leading white rebel officers were ready to sign a treaty and lay down their arms, but Agustín Cebreco followed Antonio Maceo and some white radicals and men of color in refusing the treaty because it did not grant the immediate abolition of slavery. Cebreco was soon captured by the Spanish, however, and sent to prison in Spain. Across the 1870s and 1880s, the Spanish crown and parliament did carry out a defensive, gradual abolition of slavery in Cuba, in part in order to deprive the rebels of a continuing moral claim against them. By 1886 slavery in Cuba had ended, but the island remained under Spanish rule.

In the 1880s, Cebreco escaped from a Spanish prison and made his way back across the Atlantic, first to the United States, and then to Central America, where he linked up again with Antonio Maceo to continue planning rebellion. In 1891, still in exile, they proceeded to Costa Rica, where Agustín Cebreco acquired a small banana farm on the east coast, while they planned together for a return to Cuba. (The photo on page 86 that opens this article shows Maceo and Cebreco, third and fourth from the left in the back row, in Costa Rica.)

Here, then, was a nexus for mobilization: a cross-racial community of Cuban exiles, encompassing tobacco workers in Tampa, Florida, activists in New York City, veterans in Central America, all providing support for the rebuilding of a cross-racial political movement. In early 1895, Agustín Cebreco joined in an expeditionary force of 24 men who sailed from Costa Rica to Jamaica and from there to eastern Cuba, where they landed secretly and made their way inland to link up with local rebels. With Antonio Maceo and Máximo Gómez in command, Cebreco and others recruited men and some women from the eastern countryside. Cebreco eventually pulled together an entire division of the First Corps of the rebel army, which he would command until the end of the war.

The nexus had now expanded far beyond the exiles, and the movement would recruit within the rural population, including sugar workers, on the basis of an ideology that explicitly refused color as a dividing line. For the next three years the formative collective experience for thousands of Cubans was this cross-class, cross-racial struggle for national independence — precisely the sort of shared pursuit of a goal that modern psychologists tell us is most likely to overcome pre-existing prejudices and stereotypes.

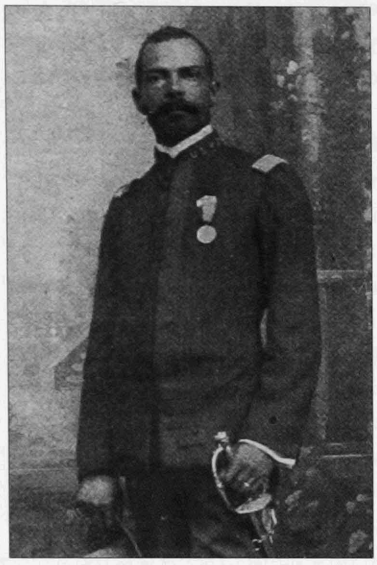
This does not mean that the rebel army was a color-blind band of brothers. On the contrary, rebel General Calixto García routinely accused Generals Antonio and José Maceo of "racial" favoritism for having built up the corps of officers of color; and admirers of the Maceos would in turn mutter that it was the white Calixto García who was the racist. But the Cuban rebel army as an institution built on the multiracial communities of workers, artisans, and small farmers in the Cuban towns and countryside, and reflected their diversity. Ideologically, it represented a decisive break not only with colonialism, but also with key elements of colonial society in matters of color. Racism as a legacy of slavery thus came to be strongly associated at the symbolic level with Spain and with colonialism, and anti-racism became, at least at the level of political belief, part of what it meant to be Cuban. And as Cubans, the rebels pounded away at the Spanish forces through three long years of guerrilla warfare.

This brings us, then, to 1898, and to the last months of the Cuban war. And it is there that we will find the pivot point at which Louisiana's and Cuba's two histories, with their elements of parallelism and elements of divergence, will come together on the ground, but separate in their trajectories so sharply that they can never again resume parallel paths.

In the spring of 1898, the U.S. government entered the Cuban war, unbidden, intent on expelling the Spanish and on taking credit for that expulsion. One of the McKinley administration's main concerns seems to have been that the multiracial Cuban rebel army might, if and when it proved victorious, define a very new kind of Cuba. In uneasy alliance, the U.S. forces and the Cuban troops of Generals Calixto García and Agustín Cebreco besieged the eastern port city of Santiago. A portion of Spain's

naval forces were bottled up in the harbor, and when Madrid ordered them to attempt to break out, the U.S. Navy sank them. Weakened by the siege and by this and other blows, Spanish forces in Santiago surrendered. The U.S. high command, however, ordered the Cuban rebel forces to remain outside the city; the formal capitulation would involve only Spain and the United States.

In the summer of 1898, then, the two lives that we have been following abruptly converge. As he had promised the War Department, Pierre Carmouche had persuaded men of color from his neighborhood around Donaldsonville to volunteer for service, and they joined a unit of federally-recruited infantry. Carmouche had a harder time persuading his neighbors to accept the ruling that every company of black soldiers would be placed under the command of a white captain, a concession the federal government had made to the Louisiana authorities. But in July of 1898 Carmouche was mustered into the Ninth U.S. Volunteers, and commissioned first lieutenant. It was just days before the Spanish troops would capitulate in Santiago de Cuba. There would soon no longer be a war to fight in, only an occupation to impose. In August, Carmouche's regiment shipped out from New Orleans to Santiago, and was sent to garrison the town of San Luis, adjacent to Agustín Cebreco's home district of Cobre.



Pierre Carmouche

So by September of 1898 these two men were in the same place — Lieutenant Pierre Carmouche stationed in San Luis, his unit charged with keeping the peace and suppressing "banditry;" General Agustín Cebreco in the nearby countryside, in command of some 4,000 troops, waiting to see what relationship would be established between those who, like himself, had been engaged in an armed struggle against Spanish colonialism for much of the last 30 years, and the occupying U.S. forces, who had entered this battle only in its final stages. Cebreco's soldiers, moreover, were in limbo, prohibited from foraging because hostilities had ended, but refused rations by the U.S. authorities who held Santiago.

If I were a novelist or a filmmaker instead of a historian, I could at this point bring Cebreco and Carmouche face to face. Would each recognize the other as a kindred spirit? Or, equally likely, would each offend the other's patriotic sentiments? But I am not a novelist, so I have to leave them a few miles apart, each only obliquely aware that there exist men like the other.

I cannot bring the two men together, but it is possible to reflect on the ways in which this moment functions as a pivot point in the histories of their societies. For the struggles surrounding questions of class, color, and citizenship were soon to be given formal constitutional expression at this turn of the century, highlighting what was at stake, and setting the parameters for the future.

The U.S. military occupation government that ruled Cuba from 1899 to 1902 was prepared to accept popular sovereignty on the island only in a very limited form. In the name of providing democratic elections for municipal office and for a constitutional assembly, U.S. Military Governor Leonard Wood imposed in 1900 a set of electoral rules for Cuba that sharply limited access to the vote. Only those with substantial property or the ability to prove that they could read and write could register, though an exception was made for those honorably discharged from the Cuban rebel forces. But the results of this constrained election were somewhat surprising. Cuban voters sent to the constitutional convention a set of strongly nationalist figures, including the black activist and journalist Juan Gualberto Gómez and, as an alternate delegate, General Agustín Cebreco. And in this powerful "constitutional moment," the convention placed a robust guarantee of universal manhood suffrage into what would be the founding document of the Cuban republic — something the U.S. Constitution had never done, and that even the Fifteenth Amendment to the U.S. Constitution did not guarantee. The popular and anti-racist tenor of the Cuban rebellion itself, combined with its broad cross-racial and cross-class base, made such a step seem to be a matter of honor. To do anything else would be to disrespect those who had fought and died.

As a result, when the U.S. flag came down in Havana on May 20, 1902, and the Cuban Republic began, a broadly inclusive set of political rules had been put in place. And while the vote itself was limited to men, such a system invited electoral alliances that could provide important room for maneuver for women as well. Thus, for example, when a former slave named Andrea Quesada from the town of Cienfuegos decided in 1906 to sue the heirs of her former master, asserting that she had been held in bondage illegally in the 1870s, a white attorney and politician took up her case, and carried it to the Cuban Supreme Court.

A constitutional convention had also been deliberating in Louisiana in 1898, its members chosen under an even more restrictive set of electoral rules than those General Wood had imposed on Cuba. The Louisiana convention, a lily-white conclave dominated by white-supremacist Democrats, represented a very different constitutional moment. It proposed literacy and property requirements designed to disqualify the great majority of black men who might seek to register to vote, and combined these with a grandfather clause that readmitted most white voters excluded by those requirements. The legislature then promulgated the whole text as a new state constitution, without putting it up for ratification — precisely because

experience had shown that voters had a tendency to reject such proposals. The chair of the convention was perfectly blunt:

"What care I whether the test which we have put be a new one or an old one? What care I whether it be more or less ridiculous or not? Doesn't it meet the case? Doesn't it let the white man vote, and doesn't it stop the negro from voting, and isn't that what we came here for?" The record then reads — "applause."

What was at stake was not just the exercise of the franchise. Access to the vote could mean negotiating power as a potential member of alliances, and was emblematic of the right to voice as well as to formal representation. Denial of the vote meant that there was virtually no recourse in cases of political abuse and no recognition of one's standing as a member of the political community.

Louisiana activists of color, in alliance with some white Republicans, tried one last time to challenge this attempt to lock them out of the political process, and brought suit against the new state constitution under the Fourteenth and Fifteenth Amendments. But before their case could reach the U.S. Supreme Court, the issue was resolved in a similar case brought from Alabama. In *Giles v. Harris*, Justice Oliver Wendell Holmes, speaking for the majority, concluded that if Alabama's new constitution excluded from the franchise black citizens and voters who had been members of the political community for the previous 30 years, the individuals denied registration had no federal constitutional remedy. The Supreme Court would take no action against a state or its registrars, and would reject even a simple suit for damages.

The divergences marked in these two constitutions are visible in the subsequent lives of Pierre Carmouche and Agustín Cebreco. When Pierre Carmouche was mustered out and returned to Donaldsonville in 1899, he found that some of his white neighbors refused the very idea that a man of color might presume to the standing of an officer and a gentleman. They boycotted his blacksmith shop, and testified against him when he applied for a federal war pension. Carmouche continued to try to operate as a public figure, writing with some anguish to President McKinley that if ever there was a time when a "colored Republican" needed assistance, it was now. But to no avail. One door after another closed.

In despair, Carmouche left the state and moved with his family to Detroit in 1902. Carmouche had been weakened by illness during his time in Cuba, and he eventually could find work only as a janitor in the Wayne County Courthouse. In 1912 he wrote bitterly to Booker T. Washington: "What I did and encouraged our people to do, in our war with Spain in 98, is what I would not attempt to do again Not Unless it was for the complete and perminent rights, liberties, opportunities, and freedoms of the Colored Citizens of America or U.S."

Agustín Cebreco, by contrast, remained active in the Cuban public sphere, dignified by the respect accorded officers in the war, independent of color. He ran for congress from his home region of Oriente, and was elected for several terms. At a critical moment in the early Republic, 1912, when a group called the Independent Party of Color organized an armed protest in pursuit of greater political representation, Cebreco was proposed as a mediator between the government and the leaders of the protest. The army nonetheless carried out a massacre of those suspected of affiliation with the protest. The killings showed that in Cuba in 1912, as in Louisiana in 1887, it was possible for the state to racialize a labor or a political struggle, and to employ violence when the existing relations of power were threatened.

In Cuba, however, the doors to public and political participation for men and women of color had not been slammed shut. Men of color remained active and visible leaders in national politics, journalism, and labor unions. In 1915, Cebreco took the lead in a symbolic affirmation of the vision of Cuban nationality that both transcended color and respected Cubans of African descent. On horseback, he led a column of 2,000 veterans — black, white, mestizo; Liberal, Conservative, and socialist — who rode together in a public procession into the mountains to the sanctuary of the Virgin of Cobre, the popular figure of veneration generally portrayed as a woman of color. There, the veterans' group delivered a formal petition to be conveyed to the Pope, asking him to declare this Virgin the *patrona de Cuba*, the patroness of the island. Their request was granted a year later.

So where are we, then, at the end? If we return to our metaphor of degrees of freedom, what have we learned about the range of possibilities for building citizenship in the shadow of slavery? Perhaps something about the function of law, and something about the experience of cross-racial mobilization.

Slavery in the modern world had been a system that relied upon law. To transform a human being into property required the legal construct of a "person with a price." Slavery may have been regionally specific in its geography, but it had to be national in the maintenance of its controlling fiction. What the comparison of Cuba and Louisiana after slavery suggests is that the same is true of white supremacy as a postemancipation project. Not color prejudice as a predisposition, or even white supremacy as a kind of psycho-social pathology — those can emerge in many situations. But white supremacy as an organized structure constraining the life prospects and attempting to undercut the dignity of those whom it labeled inferior, was not simply the natural legacy of slavery. Upon abolition, the legacy of slavery was a contest between contending pictures of citizenship. White supremacy was a political project aimed at ending that contest, at locking in a permanent structure of privilege. In the United States, the project of white supremacy, like slavery before it, required legal backing right up to the top of the system. And, by 1896–1904, *Plessy* to *Giles*, it found it.

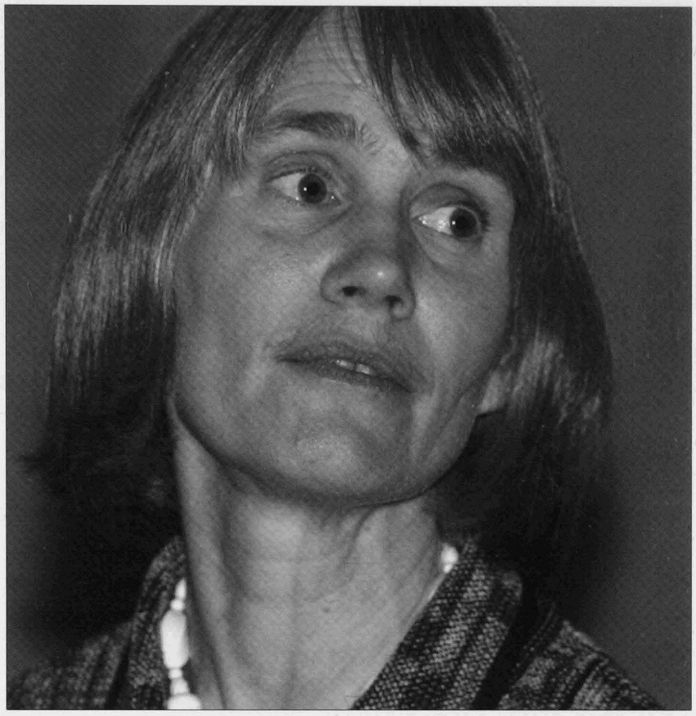
So if we think of our two cases as complex dynamical systems in motion, over time, we can see that in the years after slavery various possibilities were in play — an inclusive citizenship that would transcend color, or a white-supremacist project that would constrain public rights. As long as the struggle had a strong electoral and labor dimension, as it did in Louisiana during Reconstruction, or involved a cross-racial movement for national independence, as it did in Cuba, the struggle remained a true contest. But in Louisiana the underpinnings of collective action were knocked out one by one.

In Cuba, there was significant momentum behind the transracial project, reinforced by the character of the fight against slavery, the increasing heterogeneity of the rural work force, and the experience of the rebel army that had made the nation possible. When the moment of truth came in the Cuban Constitutional Assembly in 1901, the arc was bending toward inclusion. Even conservative white delegates, even men who were moved by sentiments of prejudice, voted for an inclusive citizenship and universal manhood suffrage.

That did not mean that the contest was won, or that equality was guaranteed. The army killings in 1912 made that clear. It meant instead that the contest would continue, that alternatives would remain in play, and that conflicts would continue. Within each of these horizons of possibility, then, one relatively broad in Cuba, one quite narrow in Louisiana, there unfolded different degrees of freedom for men and women of African descent.

Within each horizon, however, there was also a vernacular sense of the deeper meaning of freedom, an interior experience of rights and claims to dignity even in the face of constraint. And this vernacular sense of rights was expressed with particular conviction by those who looked out on the narrowed horizon. So we might end with words written by Rodolphe Desdunes, one of the activists in the *Plessy* challenge, as he braced for their defeat in the Supreme Court. He suggested, in effect, that the meanings of freedom could be defined by those who had fought for it, not just by those who now controlled the state:

"'It is well for a people to know their rights even if denied them,' and we will add that it is proper and wise for a people to exercise those rights as intelligently as possible, even if robbed of their benefits."



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